

Protecting human rights in the DRC:

Reflections on the work of the Joint Human Rights Office and MONUSCO

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Introduction

This study forms a part of broader project, “Protection through expanding UN Human Rights Field Operations: Assessment and lessons learned” which is looking globally at the achievements of expanded human rights operations since 2005. The research in the Democratic Republic of Congo was the first of several field visits in this project.

These are our preliminary reflections after spending two weeks interviewing key stakeholders in Kinshasa, Kananga, Goma and Kisangani. We met with over 20 human rights officers of the JHRO, as well as other MONUSCO staff working in Civil Affairs, JMAC, Child Protection, MONUSCO military, heads of Regional offices and the Deputy SRSG, as well as UNHCR. We met with FARDC military authorities, members of the Military Judiciary, local police authorities, the Ministry for Justice and Human Rights, and civilian judiciary. In addition we got feedback from dozens of representatives of civil society organizations – including local human rights activists in all four cities.

Given the scale and complexity of the conflicts and human rights problems in the DRC and the deployment of the JHRO in 21 locations, a two week research visit to four places is obviously insufficient to reach any firm conclusions. These preliminary reflections, therefore, do not pretend to be an ‘evaluation’ of the work of the JHRO. We look forward to feedback from the JHRO, and expect that additional inputs will correct some of our errors. Eventually, these results will be integrated into a global analysis at the end of the project, which will be distributed to all human rights field operations.

The role of the Joint Human Rights Office

The UN human rights presence in the DRC is one of the largest in the world, although its scale still pales in comparison to the size of the country and the extent of conflict and violations on the ground. The Joint (OHCHR and DPKO/MONUSCO) Human Rights Office (JHRO) has expanded its presence in the country, especially through opening new field offices and sub-offices over the years. It has shown considerable flexibility in working together with other components of MONUC/MONUSCO, including through an active engagement in the cross-mission commitment to Protection of Civilians.

The “Joint” office is a relatively recent innovation in the relationship between OHCHR and Peace Operations (Burundi is the only other such office.) It differs from other DPKO/DPA human rights components in so far as it has some independent funding through OHCHR, and some HR staff are OHCHR employees. Although all DPKO HR components have dual reporting lines (to the High Commissioner and to the SRSG), this structure should ideally serve to increase the

level of independence and autonomy of the human rights voice of the UN¹. It also allows for independently funded human rights projects which can bring on additional staff.

Another structural experiment of the JHRO has been the creation of special thematic units and task forces on priority issues, through which the work in Kinshasa and in field offices on each theme can be coordinated and the combined impact of their efforts maximized. Although we could not assess all the different task forces, it appeared that they were having some positive impact, especially for those themes which benefit from the support of staffed units in Kinshasa. The task forces function through regular conference calls enabling field staff from all over the country to compare notes, advise each other on local approaches to current challenges, and discuss joint strategy at the national level. This enables the less experienced HROs in field offices to benefit from regular advice from others on each theme. It ensures that ongoing priority themes do not get lost or forgotten amidst the pressure of the more immediate pressing crises that constantly arise at the field office level. And the task forces give the field office staff a regular voice in strategic discussions at the national level. These taskforces also interact directly with the Special Procedures linked to their theme, enabling the JHRO to make full use of their visits or their expert inputs from outside the country.

From our numerous interactions with Congolese NGOs and authorities, it is clear there is a broad level of respect for the role of the JHRO and MONUC/MONUSCO². MONUC/MONUSCO – through the efforts of the JHRO – is perceived by many as the only entity with the combination of sufficient political clout and field-based information and contacts to effectively apply pressure to call attention to abuses and demand action from state authorities. Within MONUC/MONUSCO, the JHRO has achieved a high level of influence on overall political decisions and strategy compared to many DPKO human rights components.

The vital human rights “voice” of the UN in the DRC

Nearly everyone agrees that there is near-total impunity for human rights abuse in the DRC. Despite a few high-profile prosecutions, ICC attention, and numerous low-level arrests, the widely-shared opinion, even among many Congolese authorities, is that military and police officers above a certain rank remain relatively untouchable, being well-protected by networks of high-level connections linked to political patronage, corruption, tribal and factional loyalties going at times all the way to Ministerial and Presidential levels.

¹ This case study could not effectively assess this independence in this brief visit. But the issue of the independence of the human rights voice inside DPKO missions is important, and the global study will be considering the DRC model in comparison with others as the research proceeds.

² Given the recent change of name of the mission, we will attempt to avoid confusion by referring to “MONUC/MONUSCO” when we are discussing dynamics that span both timeframes, and use “MONUSCO” when discussing current and future work.

Nonetheless, almost paradoxically, we received strong feedback that one of the few effective weapons available to confront abusers was human rights information and pressure. NGOs strongly urged the JHRO and MONUSCO leadership to use its voice more actively by calling public attention to abuses at levels of the hierarchy of Congolese authorities where local NGOs cannot have their voice heard. Some non-JHRO MONUSCO managers suggested that human rights clout was about the best leverage the mission had, because many of these abusive military officers have aspirations of political legitimacy and do not want to be pointed at as abusers. Even local and judicial authorities affirmed the impact of this pressure. One police authority, for instance, urged MONUSCO to always raise its pressure to a higher level of authority when lower echelons were unresponsive. Judicial authorities confirmed that it was only with MONUSCO pressure that they could get the Military Command to produce violators. Other authorities, in contrast, nearly begged us to dissuade MONUSCO from ever going public or talking about abuses to the media – their vehement assurance of its ineffectiveness was clear evidence of their sensitivity to public pressure.

In this kind of crony-ist system, effective dissuasion through human rights pressure will be limited, and examples of blatant impunity will always appear to contradict its impact. But that is all the more reason to make maximal use whatever tools of pressure are available. The JHRO, and MONUSCO leadership, need to continually take advantage of opportunities to exercise the clout they have, putting pressure on high-level abusers *even though such pressure is a source of annoyance to the authorities and may cause temporary friction in the relationship.*

This last point is key: state authorities *never* want pressure, and will *always* seek strategies to counter-act it, or to punish the mission for applying it. If a mission's strategy is to avoid such friction, it will never apply pressure. A strategy of human rights pressure, therefore, must always have a component of political damage-control within it, to sustain or rebuild relationships that will logically suffer from the application of necessary pressure. MONUSCO management need to see this as a constant cycle: PRESSURE -> FRICTION -> RE-STRENGTHEN RELATIONSHIPS. The relationships should not be recuperated by apologizing for the pressure, but by constant respectful diplomacy that sustains UN principles, by ongoing joint collaboration in a search for solutions, and by provision of services that authorities need.

Let us consider three aspects of this UN 'human rights voice': quiet diplomacy, public reports, and the recent 'conditionality' approach – and the interaction among the three.

Quiet diplomacy

According to one military prosecutor, "The worst thing for an international actor to do is to take unilateral action on a problem from the outside, without first sitting down with local actors to look for a local solution." Often local solutions are possible through dialogue and subtle pressure, and HROs throughout the DRC are involved constantly in such processes. The

“Comites de Suivi” discussed below are a good example. Human rights officers need to be constantly out in contact with authorities, developing and strengthening relationships and looking for opportunities and mechanisms to use their ‘problem-solving’ influence to find such local solutions.

Quiet diplomacy and local problem-solving often requires some level of carrot-and-stick approach. Local actors have more motivation to find solutions if they perceive some risk associated with not doing so: a risk that the HRO will report him to his superior or make a problem public. Thus the strategic question is not “quiet versus public” but rather, at all times, what is the best combination of quiet and public approaches to maximize the motivation of local players to take action. This raises the question for JHRO: *is there enough public pressure visible to these local authorities to create the necessary motivation to respond efficiently to all the quiet diplomacy efforts going on?*

There is also a quantitative challenge to the “local quiet diplomacy” approach. While local solutions can be found in many cases, this does little for the thousands of other local human rights problems in hundreds of communities where HROs have no capacity to engage. Human rights efforts are most effective when they have both a direct and indirect audience, where pressure on one actor implicitly sends a message to others to change their approach. This is the objective of public reporting or focusing on emblematic cases. The quiet approach, by definition, has almost no indirect audience. This raises an additional question for the JHRO, given the scale of the human right challenge in the DRC: *How can successful quiet local problem-solving move beyond the status of being merely an un-strategic drop-in-the-bucket? How can these successes somehow be amplified, rewarded or advertised in a way that would have some impact on other local authorities who don’t have the benefit of direct contact with the JHRO?*

Public reporting

We did not have the opportunity to do a thorough review of the public reports of the JHRO. Feedback we received suggests that some past reports have had a significant impact, including contributing significantly to the international promotion of the Protection of Civilians agenda, and ensuring that concerns about impunity stay on the public agenda. In a recent report on the human rights violations of the LRA, the JHRO collaborated jointly with the human rights component of UNMIS – a process that should be encouraged in other missions when dealing with cross-border human rights dynamics.

However, we also received frequent input about serious functional problems in the public reporting system. Many pointed out how few reports have been released in recent years, and bemoaned how terribly slow the international approval process (of the SRSG, New York and Geneva) is on these reports. As a result, even though the JHRO has unique field-based access to

information, international NGOs are often the ones who are releasing the most groundbreaking reports. There was a serious concern that JHRO reports utterly lose their strategic value due to these delays.

The vast amount of data available to HROs is a unique resource to the entire Congolese and global human rights community, and it is doubtful that the JHRO's level of public reporting is taking full advantage of this resource. We would urge the JHRO to continue to be as proactive and productive as possible with its public reports, continuing to push to release them more often, more promptly, and with multi-faceted strategies for ensuring their advocacy impact.³

Conditionality – leveraging resources to protect human rights

Just as the threat of 'going public' can be a motivator for action when quiet diplomacy is stalled, sometimes a greater threat is needed when even public denunciation has not worked – a threat with direct material consequences. MONUSCO's 'conditionality,' or 'zero tolerance' policy, explicitly outlined in the text of UNSC Resolution 1906, provides a potential source of leverage with the FARDC. MONUSCO provides significant support to the Congolese government and the FARDC, including direct support for military engagement with armed groups. This policy obliges MONUSCO to selectively choose which operations and military units will benefit from resource support, based on the criteria of the human rights records of individual officers.

The conditionality policy to some extent emerges from a need for damage-control by the UN, to protect itself from moral, political and potentially legal liability for the substantial war crimes and abuses of FARDC elements who benefit from UN support. Thus although MONUC leadership was not entirely in agreement about the benefits of this policy, this 'liability' argument prevailed in the Security Council debate leading to the UNSCR 1906 text. In essence, the policy lays the groundwork to deny direct UN responsibility for future war crimes or crimes against humanity by avoiding a situation in which it knowingly supports military action by known violators.

MONUSCO's direct decision-making role is only about whether or not to offer support to a particular unit or operation based on which officers are participating. The FARDC is responsible for any subsequent decision as to whether or not to remove an officer from an operation in order to continue to receive MONUSCO support. MONUSCO can thus argue that this is a purely self-serving policy, implying no undue interference in FARDC decisions, but only giving MONUSCO to power to control its own vulnerability to future liability. In practice this can amount to an indirect vetting of FARDC officers. MONUSCO staff communicate in advance to

³ A common failing we have found in the global study that this report forms a part of is that the energy spent on human rights reporting usually focuses far too much on research and production and not nearly enough on post-production strategic advocacy and follow-up. We will be doing further follow-up with the reporting unit to document what sorts of follow-up strategies have been implemented by the JHRO with its reports.

the military command when they know they are going to have a problem offering support. Although the policy is relatively recent, it has already resulted in direct actions on both sides: In some cases, based on MONUSCO advance warning, FARDC has removed certain officers from command of certain operations to preclude a MONUSCO withdrawal of support, and in some cases MONUSCO has implemented the policy fully by refusing material support to operations where known violators remained in command.

Such a tool depends on accurate information, and through its “Profiling” the JHRO is currently developing a database aimed at tracking the deployments and postings of FARDC officers, creating a historic profile of each key officer that identifies which past operations they have participated in, where there were grave violations under their command. This database, drawing from public and UN documents, should allow MONUSCO to more effectively target its conditionality decisions in the future.

The conditionality policy is relatively new in its current mode of implementation⁴, and has already come under criticism. Some MONUSCO political and military actors are concerned that this policy is creating too much friction in the relationship between MONUSCO and the FARDC, consequently limiting MONUSCO’s diplomatic influence over FARDC leadership. Others argue that the policy is too selectively applied, and the FARDC has already worked out strategies for ensuring that MONUSCO’s conditionality approach does not severely limit its behaviour. Violators are shifted around the country, and only a few are affected directly. And MONUSCO has little influence over unilateral actions taken by the FARDC without direct MONUSCO support.

A key challenge of the conditionality approach is deciding at what level of the pyramid of military command it can most effectively be applied. Given the wide deployment of FARDC forces over a huge terrain, commanding officers at higher levels may have very little influence over units deployed far from them – they might not even be aware of the actions of those they command. The policy will have its best impact if it can be targeted to commanders who actually know the abuses they are ordering or benefitting from. But if the level of application is too close to the ground, too far down the pyramid of command, it becomes much easier for the FARDC to evade any tangible overall impact of the policy. They can easily shift officers around and pick and choose which activities will be “joint” and which will be “unilateral.” Unless the conditionality policy is applied at the highest levels, the FARDC can continue business as usual with massive abuses without suffering any noticeable material costs. And if MONUSCO at the highest level is facilitating and funding this systematic process of abuse, knowing its

⁴ The conditionality policy was already implicit under previous UNSCRs, since MONUC/MONUSCO support for the FARDC was always supposed to be within the constraints of international human rights, humanitarian and refugee law. But the impact of the current practice of actual removal of support and advance vetting is significantly different than before.

conditionality policy is being successfully evaded, it is even dubious whether the internal goal of limiting MONUSCO's moral and legal liability will be achieved.

Despite these concerns, as long as MONUSCO's 'stabilization' mandate commits it to direct support of FARDC military action, and the FARDC's human rights performance remains as abysmal as it has been to date, MONUSCO's conditionality policy is a potent tool for human rights leverage over military behaviour, and an essential element of the overall MONUSCO mission. Without it, the UN is at much greater risk of complicity with abuse.

A robust implementation of the conditionality policy will inevitably have an initially negative effect on the MONUSCO relationship with the FARDC, as was mentioned by several respondents. As explained above, pressure always causes friction. Implementation of the conditionality policy *demands* a concurrent diplomatic strategy combining respectful communication and ongoing collaboration (within principled limits) to slowly rebuild the former relationship, to the point where the conditionality approach becomes the accepted status quo of the relationship.

For this policy to have an impact of dissuasion of abuse or protection of human rights, it must over time create the belief within the officer corps that "significant human rights abuse will hurt your career." Beyond temporary re-assignment, it has to limit their access to promotion. Also, since it is common knowledge that military operations in the DRC are all about control over natural resource wealth, for this policy to have its best dissuasive effect it has to limit the access of the worst abusers to control over the richest territories.

Whenever the application of the conditionality policy succeeds in sanctioning an abuser or limiting his benefits, this success must somehow be publicized within the entire ranks. As explained above, preventive human rights impact is always about the indirect audience. Abusive officers have to suffer the consequences, but more importantly, all the other officers have to know about it.

Specific tools promoting justice

There are several different ways in which the JHRO is accompanying DRC authorities in the pursuance of justice. Comités de Suivi, Joint Investigation Teams (JIT), Audiences Foraines and Joint Vérification Commissions (JVC) are all tools that have been used to facilitate the justice system as well as to push the relevant authorities to do their job⁵. The idea is to 'make justice happen'. These tools can contribute to unclogging the justice system so that it can more effectively function on the minimal resources it has available.

⁵ Although JVCs were mentioned by a few respondents, our research focused more on JITs and Audiences Foraines, which will be the topic of the subsequent analysis.

Comités de Suivi (Follow-up Committees) exist to monitor actions taken on allegations of human rights violations by police and military. They are formally established multi-lateral committees including the JHRO, the judiciary (military or civilian) and the Commanders (military or police). These meetings provide a regular space in which cases of human rights violations by soldiers and police can be dealt with rapidly and efficiently. The JHRO provides the initial impetus for these meetings, and serves as a regular reminder and potential source of pressure if the military or police command is not fulfilling their obligations to press cases forward.

In Joint Investigation Teams the JHRO goes with local authorities (police or judiciary) to investigate allegations of abuses. The “Audiences Foraines” are instances where the JHRO takes the entire judicial apparatus (judges, prosecutor, etc.) out to the provinces where there is no judicial infrastructure, and this portable court hears cases, pass judgments, and hands out sentences. In both situations, the JHRO/MONUSCO provide all the necessary logistical support for the authorities to go often well beyond what they would normally have the capacity to do. In a country as vast and under-resourced as DRC this can be very expensive. The expensive manner of implementing the joint investigations or the audiences foraines, using MONUSCO helicopters or flying large numbers of authorities to a site could not happen without JHRO funding, so questions should therefore rightly be raised about the sustainability of such approaches. It is unlikely that Congolese judges and lawyers will ever have the resources to travel by helicopter to each area that is inaccessible by road, nor will the government provide the salaries that would make such efforts worth their while.

However, in some cases the *audiences foraines* have been promoted in a simpler manner. In late 2010 the Kananga office organized for three judges to be flown to Tshikapa, supporting them with a few hundred dollars to cover other costs, while persuading the mayor of Tshikapa to provide housing and other support. These judges issued 109 verdicts, among then 75 for minor crimes in which the accused had already been languishing in jail for longer than the maximum possible sentence. As a result, not only was the judicial process completed in all these cases, but the overcrowded conditions in the jail were significantly improved.

In addition to processing numerous, these joint actions can bring a high profile to a few key cases and can have an important impact. They may reveal or confirm the involvement of high ranking military or police officials in human rights abuses, or illustrate a particularly worrying trend, or shed light on a region or issue that had gone unnoticed. In this sense they can yield information that is important to pressure authorities into action, at the same time as providing the ‘carrot’ of logistical support. The JHRO should continue to seek affordable ways to support this projection of the Congolese justice system into rural areas.

The visible element of these tools is also key. They should be used strategically in cases and places where the impact of justice being seen to be done will be greatest. In a JIT or JVC an

isolated community sees that human rights violations are being investigated by national and international bodies. In an Audience Foraine they may see justice being done right there where the violation took place. This serves both to encourage/empower the community and local activists as well as to deter potential abusers.

Comités de Suivi

These follow-up committees seem to be functioning well in some locations, and less well in others. The Comité de Suivi working with the FARDC in Kananga seemed to function particularly well because the regional Commander understood the process as a means of control over his troops. JHRO provides him with information about the behaviour of his troops that he otherwise would likely not have, and the Comité de Suivi process enabled him to deal rapidly with problem individuals. In advocating for human rights with the military leadership it is an effective strategy to appeal to the military principle of control and command. Clearly a functioning Comité de Suivi cannot be established if the military or police command are reluctant to engage. Consistent pressure needs to be applied in order that they recognise it as being in their own interests to cooperate.

The Comites de Suivi will have greater impact the more they become institutionalized as a standard operating governmental procedure, with regular meetings that become the norm, rather than the exception. In some locations this “norm” was not yet established, and the will of the commanders was not as evident, so it was difficult to convene the key players to set the process in motion. In Kisangani, where one Comité de Suivi deals with both military and police cases, it seemed difficult to convene both commanders for meetings at the same time.

The Comite de Suivi, unlike the other tools discussed in this section, requires no substantial logistical or material support. The question of sustainability is therefore more about how to replace the human rights information and voice of the JHRO in the process in order to have functional Comites de Suivi after the JHRO has left, or in communities where there is no JHRO. The HROs involved in these Comites should seek ways to involve other local actors, such as reputable human rights NGOs or the Bar, who might in the future be able to provide this human rights guidance and monitoring.

Joint Investigation Teams

Joint Investigation Teams are made up of JHRO with relevant military/civilian/legal authorities that carry out an investigation in isolated areas where HRV have occurred. They have been seen to facilitate a quicker state reaction to abuses, as well as demonstrating to both the community and potential abusers that human rights violations do not always go unnoticed. The military prosecutor in Goma pointed out that the UN presence in the JITs also provided security to local investigators.

A representative of the Ministry for Justice and Human Rights expressed concern that both JITs and Audiences Foraines raise the expectations of communities who see the UN with all its resources and believe that they are going to be paid reparations. He feared that the UN might be increasing the burden on the justice system as people may make false denunciations of rape etc. in the belief that they will get paid reparations. Although this may be a biased perception, the risk of raising undue expectations should be borne in mind during JITs.

Audiences Foraines

As outlined above, the funding and facilitating of Audiences Foraines is an effective strategy that can have an immediate impact, both in terms of protection for the community by sanctioning those responsible for HRV and as a deterrent to others by demonstrating that justice can reach even very isolated areas.

Given the large number of arbitrary arrests in the DRC, and the number of people awaiting trials, an Audience Foraine can also reduce violations in rural places of detention by rapidly resolving cases and reducing extreme overcrowding. Ideally this process should also demonstrate to the police that those who are illegally detained have a right to justice.

Audiences Foraines should therefore be followed by increased monitoring and dialogue with authorities to make clear that their future actions will be scrutinised. In the best scenario an Audience Foraine or some other judicial process would take legal action against those police officers who arbitrarily arrest and illegally detain people for their own gain.⁶

Getting out to communities – Protection of Civilians and prevention

For over a decade, the United Nations has been grappling with its commitment to the Protection of Civilians, and the DRC has been a laboratory for a range of approaches. MONUC's human rights component (now the JHRO) has played an important role in this process. Its reports on massive abuses in the DRC, for instance, have helped to justify and push forward the overall protection of civilians agenda at the global level. Its investigations and reports on FARDC and even MONUC abuses have forced the UN to consider its own potentially damaging influence on civilian security.

Human rights field operations have been developing strategies for using monitoring and presence to help to protect civilian communities in areas of conflict for nearly two decades. The peace operation in the DRC has probably advanced the farthest in combining civilian approaches with the strategic use of

⁶ Since illegal detentions are often a source of income for the police and local prison authorities, it may be in their interests to continue to detain as many people as possible, to replace the income being generated by those released by an Audience Foraine. An Audience Foraine should not be simply a matter of clearing out a prison so that the authorities have more space to refill it. This economic dynamic of 'detention for profit' should also be considered by the JHRO when facilitating or funding the construction of new prison facilities. While such facilities may temporarily relieve overcrowding, without monitoring of the entire process, they may ultimately be facilitating an increase in arbitrary arrests. In one case a new prison cell constructed with JHRO support was turned into a "VIP cell" by prison authorities, allowing them to collect extra money from prisoners in exchange for access to a minimally decent cell.

military deployment for protective impact. This effort now involves all of the substantial civilian units of the mission, with significant leadership and involvement from senior management and the Civil Affairs section. As the two largest civilian components in MONUSCO, Civil Affairs and the JHRO are two of the most crucial players in these efforts.

Earlier studies have demonstrated the crucial role of rural projection and local advocacy of UN human rights monitors and other personnel in contributing to protection of civilians in conflict areas.⁷ The voice of the UN at the local level can have far more clout than in the larger towns, because international attention is rare at this level, and the UN represents a significant player perceived as powerful by local actors. MONUSCO has developed an array of strategies over the years to project its impact into the field for protective purposes, using both civilian staff and military peacekeeping units, and the JHRO has been a key player both in multi-lateral cross-mission strategies and in devising independent human rights protection approaches.

The first level of expanded JHRO projection was the installation of more human rights officers in more field offices and sub-offices over the years. In earlier years the MONUC human rights component also had a practice of “mobile teams” - a rotating set of teams of HROs who would be out in communities for two weeks at a time. HROs were thus constantly out in the field visiting communities, assessing the situation and making the UN presence known, doing preventive diplomacy at the local level as well as collecting human rights data and identifying needs. Feedback during this research trip was quite positive about the mobile team approach. Some see it as a precursor to the current Joint Protection Team model, but with greater human rights expertise and focus. Others were concerned that the end of the mobile human rights teams signified a reduction in rural human rights presence which was not really being replaced by the JPTs.

The office, along with other branches of MONUSCO, still engages in a variety of modes of field visits, including through Joint Investigation Teams and *Audiences Foraines* (discussed above), as well as other ad-hoc multi-lateral investigations.

Coordinated projection of protective presence

More recently, the most prolific mode of protective field projection by MONUSCO involves an integrated combination of Joint Protection Teams, Community Liaison Interpreters, flexible deployment of small MONUSCO military units (known as Company Operating Bases or Temporary Operating bases), and a network of community focal points. All of these efforts get analytical and strategic guidance from the “Senior Management Group for Protection” (SMG-P) and the Rapid Response Early Warning Cell (RREWC) in the DSRSG’s office.

⁷ See Mahony, Proactive Presence: Field strategies for civilian protection, 2006.

In theory, the way this system interacts to contribute to civilian protection is as follows: Senior management teams at the regional level, together with the RREWC, are regularly assessing risks and making decisions about where to send out Joint Protection Teams. These JPTs are multidisciplinary teams (including representation from the military, UNPOL, Civil Affairs, the JHRO, JMAC, Political Affairs, Child Protection, Gender, etc.) which visit an identified area for several days to talk with all local stakeholders and assess possible strategies for addressing protection threats and vulnerabilities. JPT reports with recommendations are fed back to the regional management team, the SMG-P and the RREWC, as well as to other actors whose collaboration is needed for implementing recommendations. JPT recommendations might include advocacy to FARDC leadership, urging the National Police to make its presence felt in a region, proposing support for local community alert or early warning systems (radios, etc), proposing trainings for local authority around key issues or community sensitization (e.g. re SGBV), highlighting humanitarian needs for MONUSCO or other actors to respond to, proposing additional visits to neighboring areas, encouraging dialogue among key local actors, and many more.

For security and logistical reasons, the JPTs mostly visit communities where there is already a MONUSCO military presence. These small military bases now often have a ‘Community Liaison Interpreter,’ a permanent national staff-person who helps the MONUSCO military relate to the local community, and therefore also has a role in trying to assist with the implementation of recommendations after a JPT visit (especially those recommendations relevant to the MONUSCO military relationship with local people).

Meanwhile, for the majority of communities where there is no MONUSCO presence, the Civil Affairs section is working with the local CARITAS organization, through the local churches, to establish a wide network of community focal points with mobile phones and radios. This broader early warning information network will feed into MONUSCO’s protection analysis, informing decision about the deployment of future JPTs and military units to areas where they are not currently present.

This is an impressive strategy and structure, with a high level of coordination and institutional buy-in, horizontally across units and vertically right up to the SRSG. The DSRSG office and Civil Affairs section play key coordinating roles in this process. The JPTs, described by some as the “flavour of the month,” benefit from substantial resource and logistical support, and their reports and recommendations are dealt with right up to the senior management level. We are not in a position to assess the overall ground impact of this approach yet, or whether the majority of JPT recommendations are effectively implemented or result in a net change in security for the communities. The hard-sell that the JPT approach is getting within MONUSCO could risk generating unrealistic expectations.

Despite this concern, this array of mutually-reinforcing mechanisms represents a substantial opportunity for greater protection of human rights in those areas where they are being implemented. The JHRO has played a substantial and collaborative role in the development of these tools at the senior management and regional levels. HROs are participating in all the JPTs, and the JHRO is trying to ensure that human rights concepts and approaches are included in the trainings for JPTs and CLIs. To further the human rights role in the JPTs, the JHRO has found funding for new HRO staff positions which will be dedicated to working with JPTs. There are concerns among some HROs that the JPTs are monopolizing MONUSCO logistical resources, while JHRO cannot get sufficient support or transport for serious follow-up with expert human rights investigations. Nonetheless, the JHRO should increase its engagement support the JPT process, contributing its human rights expertise to this multilateral effort, while pursuing internal advocacy for greater support to deeper human rights investigations.

A crucial potential of the JPTs and associated strategies is that of local preventive diplomacy. HROs on these missions, as well as other MONUSCO staff in the JPTs, need to make sure that they are not overly focused on gathering information for writing reports and recommendations, at the expense of ensuring that the visit itself has an immediate local advocacy impact. These JPT visits to localities, even though they are short, are a key opportunity for the UN to make its “protection voice” heard. It is a chance to impress upon local authorities, local traditional leaders, local armed groups leaders or liaisons, local FARDC leadership that the international community is watching, is close by, and will be back again. Any local actors who have influence over patterns of violence or abuse need to *feel* this UN presence – they should leave these discussions with a sense that there will be some political or other cost associated with future abuses.

It is clear from JPT reports and assessments that this kind of advocacy is happening to some extent. Maximizing this immediate influence of the visit demands a clear strategy and collaborative preparation by each JPT. The JPTs should be analyzing which local actors have influence over dynamics of violence, making sure they communicate with these actors, and planning the messages that will have the greatest dissuasive influence. Where relevant, the community liaison interpreters should also be engaged in this message development, as they can continue to project it after the JPT is gone. The effective transmission of these messages – to perpetrators and their allies - may have far more immediate protective impact than collecting detail on past events from victims. (Note – with these reflections we are not suggesting that this is not already happening, but simply encouraging more of it.)

The Community Liaison Interpreter idea is in principle a logical extension of the JPT – a more permanent civilian presence with each MONUSCO field base who can continue to monitor the situation in the community, and follow up on recommendations involving the base. We would

caution, however, that this idea has been implemented very rapidly, taking advantage of a temporary staffing opportunity of unfilled interpreter posts. The challenge being given to these CLIs demands analytical and diplomacy skills that go far beyond language interpretation. It requires a very subtle analysis of a local community, an ability to create relationships with community members and leaders, and an ability to gather information without creating undue risks. Given the close military linkages between MONUSCO and the FARDC, there is also a potentially serious security risk for CLIs, since in some areas they could logically be considered by an opposing armed groups to be nothing more than FARDC spies. The quality of staffing and the security realities of the CLIs should be a subject of careful ongoing assessment if this approach is to avoid backfiring.

It appears that a significant aspect of this overall protection strategy rests on the assumption of the protective or violence-deterrence influence of the deployment of small MONUSCO military bases in or near communities. To a certain extent, these thinly spread military contingents should serve as a visible reminder of the presence of the international community (in remote areas where such presence is extremely rare), and thus may provide some deterrence impact without engaging in any overt military action. However, MONUSCO and its JPTs should not overestimate this military protection, and must make sure to take advantage of every other available civilian and political strategy for influence and advocacy with actors at all levels. The dependence on the military also limits the application of protection strategies only to those areas where MONUSCO military have chosen to deploy, when in fact there may be a variety of other strategies that civilian substantial sections could be applying in areas and communities even where there is no MONUSCO military presence.

The myth of “individual” versus “collective” protection

The JHRO needs to address and correct a serious misconception of its role in protection, shared by some HROs as well as other parts of MONUSCO. One regional head of office described the relationship in these words, “The JHRO focuses on individual cases, whereas we are focusing on collective protection.” The mission of the JHRO, as the representative of the HCHR, is clearly much broader than dealing with individual cases. In fact, it is explicitly about overall collective protection: about making a systematic impact on human rights dynamics. The use of individual cases is only a tool to be used strategically to achieve this broader impact. The office may work on individual violations either as emblematic cases to draw attention to trends in impunity or potential solutions, or as sources of information that are accumulated for reporting and advocacy – advocacy that always has a broader objective than the affected individual. No UN human rights office could ever respond to the countless cases of individual abuses in an exhaustive way – only in a symbolic or strategic way to send a message and change underlying dynamics.

The JHRO's recent successful proposal to fund extra JPT-focused posts, for instance, clearly outlines this strategic and organic linkage between case-based information, work against impunity, and the protection of civilians work of the JPTs. But the conception of the JHRO role expressed in that document is not universally understood in the mission as a whole. Other units in DPKO sometimes tend to oversimplify or marginalize the human rights role, seeing it only as focusing in individual cases, legal responses and writing reports. These misconceptions exist outside of MONUSCO as well, in fact throughout the UN system. HROs themselves can also fall into this oversimplification – it is a natural human reaction to suffering to get overly immersed in a responsive mode, helping to follow up on individual cases one comes into contact with, or pursuing legal and reporting strategies that might match the HROs personal expertise. But the HROs need to keep in mind - and consistently demonstrate to others - how the JHRO role is strategically contributing to the overall collective protection objectives of the mission. In essence, the protection of civilians mandate is a human rights mandate, and the JHRO can and should engage with it without any narrow definition of its role, but rather with creative and flexible strategies to maximize its contribution to the broader protection effort of the mission as a whole.

Protecting and supporting NGOs and HRDs

The JHRO's Protection Unit and the Protection Officers now deployed in many JHRO field offices are effectively channeling more resources towards the issue of protection of human rights defenders, witnesses, victims and journalists. One of the key good practices of the Protection Unit has been to create protection networks among NGOs. In some areas the networks established have become a useful broader mobilisation exercise for NGOs while a smaller sub-network is also established to focus on protection issues. Forming networks among NGOs encourages information exchange, solidarity and capacity-building around the analysis of threats and risk. Crucially they can also become powerful sources of advocacy, giving NGOs a much greater weight and voice and allowing them to dialogue more effectively with government.⁸

HROs in some of the field offices we visited mentioned the difficulties that can arise when threatened human rights defenders, witnesses, victims and journalists are relocated to different parts of the country. While it is clearly an important option to have available in an extreme case, the long-term implications should be clearly understood by all involved. Moving somebody away from their family, source of income and support networks often means making them completely dependent on JHRO financial aid and once this aid runs out people can quickly become destitute.

⁸ It should be noted that the small group of NGO representatives we spoke to in Kinshasa appeared to have no knowledge of the existence of the protection unit or network.

Another interesting initiative is the series of round table events held in May 2010 in Aru, Mahagi and Bunia. These events were attended by administrative and judicial authorities and local NGOs who discussed the responsibility of the authorities in the protection of victims, witnesses, human rights defenders and journalists. These round tables not only provided a space to debate protection issues, but also allowed NGOs to directly approach authorities and begin to establish constructive working relationships, a factor which in itself can contribute to the protection of human rights activists. (see below)

Given how severely limited many human rights NGOs are for lack of resources, and the importance of these NGOs for the future sustainability of human rights protection efforts, the JHRO could play a more proactive bridging role between human rights NGOs and international funders. In addition, most NGOs that we met with listed training as one of the key ways in which the JHRO can support them. Training is no panacea for structural weaknesses, and the JHRO potential as a trainer for such a vast network of NGOs is limited, but it might be effective to move beyond training in basic human rights concepts to offer (or make available through linkages with other training resources) some very practical institutional skill-building, particularly in areas such as fund-raising, which would make NGO action more sustainable.

Very often human rights defenders cannot afford to travel to outlying areas, and in some cases HROs are paying from their own pockets to cover travel, food or accommodation costs of human rights activists who accompany them on field trips. Given that not every field trip can be a well-funded Joint Investigation Team, it might be useful if the JHRO tried to create an earmarked small fund specifically to cover the field trip expenses of NGOs that could accompany the JHRO. This would encourage an increase in joint activities and mutual learning.

Joint action with NGOs

If the JHRO is to better protect and support local human rights NGOs over the long run, joint action could be made more of a priority. Relevant human rights defenders can accompany JHRO on field visits, in the monitoring of detention facilities, in certain meetings with civilian, judicial and military authorities, in Comites de Suivi, in Joint Investigation Teams/Joint Verification Commissions, or in training workshops with authorities or security forces.

Joint action is an on-the-job capacity-building opportunity for local human rights defenders and JHRO staff alike. It provides human rights defenders with an opportunity to establish working relationships with authorities in an atmosphere that is likely to be less confrontational because of the JHRO presence. In some situations, according to JHRO staff, some local human rights defenders are 'generating' threats against themselves because they do not know how to appropriately and diplomatically address and deal with authorities. Each time a local activist is seen to accompany the JHRO in their work they gain visibility and credibility in the eyes of authorities. In some cases they may also be directly protected by the presence of the UN. All

these factors combine to make the work of local human rights NGOs more secure, effective and sustainable, increasing the likelihood of JHROs interventions having a lasting protective impact.

Bridging Human rights NGOs and local/national authorities

As in most other countries in conflict and/or with unstable governments, local human rights defenders in DRC are generally regarded with great suspicion by both military and civilian authorities. This is very often the case at all levels of authority but may be more direct at the local and provincial level. We heard of several cases of direct threats against human rights defenders by provincial authorities and governor's offices.

NGOs need to be seen as legitimate in order to be secure, and in order to sustain a constructive dialogue with the government. Given its international status and credibility, the JHRO can play an important bridging role between local human rights activists and authorities. This not only facilitates more constructive working relationships but also have a direct protective benefit for human rights defenders since mutual mistrust and suspicion is likely to be reduced if both parties are gaining from collaborating in some way. The fact that the UN is seen to be facilitating the relationship is key since human rights NGOs will gain legitimacy from being seen to be working in partnership with the UN, while the authorities will be aware that if they threaten the NGO or fail to cooperate the UN has access to their superiors at a national level.

As outlined in the previous chapter, including relevant local activists in *Comités de Suivi* or Joint Investigation Teams might help these NGOs to establish dialogue with authorities who may otherwise be suspicious of them. It also provides a valuable opportunity for HROs and NGO staff to learn from observing each other's approaches to these diplomatic encounters.

Another useful bridging role is simply to provide a space where NGOs and authorities can meet, exchange information, discuss cases etc. Many of the human rights defenders we spoke with identified the creation of such a space as an important role for the JHRO. A 'Cadre de Concertation' is already in place in Kisangani and NGOs felt that this was beneficial, both to provide information directly to authorities as well as to advocate for an appropriate response. Such round table spaces can also play a capacity-building role in demonstrating how to dialogue with authorities in a diplomatic and respectful manner.

The 'Entite de Liaison' in Kinshasa is a government-led initiative that also aims to bring together authorities and local and international NGOs to share information and deal with cases. The Ministry of Justice and Human Rights considers it to be central to reducing human rights violations in DRC. They stated that the entity will be replicated at provincial level, in all provinces. However NGOs and JHRO believe that its primary aim would be to censor and reject NGOs reports since all reports would need to be submitted to the entity for revision prior to

publication. NGOs are apparently also boycotting the entity due to the lack of government response to the killing of Floribert Chebeya.

This 'Entite de Liaison' may be, as some allege, a deliberate 'buffer' set up to absorb, co-opt or control human rights criticism. It is logical, in fact, that the government would similarly attempt to manipulate other 'cadres de concertation' or round-tables in the provinces in order to counter-act criticism. The JHRO and the NGOs participating in and facilitating such spaces should be aware of this risk, but they should also do everything possible to make such spaces for dialogue function in their interest. The government and the human rights movement will never have identical objectives in such fora, and there will always be pushing and pulling in different directions. The diplomatic and political challenge for the human rights actors is to take advantage of these spaces to push for positive action, without allowing them to be excessively manipulated against human rights objectives.

Sustainability of protection efforts: reaching a 'tipping point'?

Concerns were raised in meetings with NGOs regarding the sustainability of MONUSCO/JHRO's work. This concern was possibly exacerbated by an assumption that the planned draw-down of MONUSCO troops would necessarily mean the withdrawal of the human rights office. But even if the JHRO regional presence outlasts MONUSCO military presence, the sustainability of its efforts must be addressed as early as possible. Human rights threats in the DRC will undoubtedly outlast MONUSCO.

Most international field initiatives for protection are inherently unsustainable. The international community musters resources and capacity in the short and medium-term, based on crisis-driven pressures and incentives, and this investment will seldom if ever be subsequently matched by local and national human rights actors. In a crisis situation in a poor country, local capacities are never a match for the prevailing levels of violence and abuse. The objective of external international intervention or support, therefore is two-fold: first to take rapid preventive action to reduce the high level abuses that are assumed to be temporary and crisis-related, and get past the crisis. The second is to build up national capacity to the point where it can handle the post-crisis levels of abuses, allowing for a reduction of international support.

The "crisis-mode" interventions, therefore, do not necessarily need to be sustainable, as it is assumed that they will no longer be needed when the crisis is past. But a base-level of functional national human rights protection capacity must be built up in a sustainable way to provide ongoing protection after the crisis. This suggests that the human rights interventions of the UN should be trying to reach a *tipping point* – a point where violations are reduced such that the short-term unsustainable interventions can stop, and the national system takes over with more sustainable approaches. That sustainability requires a 'human rights friendly'

environment and central to that is a functioning, independent civil society. Support to local civil society not only is a means of protection but a fundamental component of building a long-term system of protection for all.

This tipping point is of course difficult to assess, and most would agree that the DRC has a long way to go. Today's actions, though, must always be assessed in terms of their contribution to both of these objectives (sufficient reduction of abuse, sustainable future capacity). This assessment is particularly complicated when the same kinds of interventions serve to address both crisis situations and ongoing post-conflict levels of abuse. Consider, for instance, the "audience foraine," using costly UN air support to temporarily move an entire judicial process out to rural areas. On the one hand, this can be seen as a costly and therefore unsustainable short-term international intervention, aimed at calling attention to particularly dramatic crisis-related situations and helping to pressure for an overall reduction in abuses. But at the same time, for local actors who have seen some good results, the audiences foraines (which they cannot pay for) appear to be the only feasible method of bringing justice to rural areas. The crisis intervention may create an unsustainable expectation that could actually inhibit the search for more cost-effective alternatives.

The JHRO needs to sustain a critical dialogue with local human rights actors about this dilemma, involving a simultaneous process of: A) joint strategic thinking about where are the most important situations to apply the most costly and unsustainable approaches, B) an ongoing discussion about expectations and sustainability, in order that these approaches do not set an impossible standard for the future, and C) creative experimentation with more economically feasible approaches that will serve the human rights community in the long-run.

The limits of combatting impunity

The JHRO strategy puts a very heavy emphasis on combatting impunity – it appears both on paper and in terms of HRO efforts to be the major focus of the work of the office. Huge amounts of energy are invested in pushing for prosecutions of military officers, police and others responsible for abuses. Legal clinic support encourages victims and NGOs to pursue their own cases against impunity as well.

Levels of impunity are so high in the DRC that any successful prosecution seems almost miraculous. HROs, civil society and judges alike all attested to the transformative impact on communities the first time they see that a man with a gun could be arrested and prosecuted. It was frequently described as "incredible" – something no one previously believed to be possible. The human rights efforts of MONUSCO over the years have led to a number of high profile cases against officers thought to be untouchable. An increasing number of lower level soldiers and police are facing judicial action for rape and other abuses.

Although some respondents suggested that a reduction in the number of arbitrary arrests was one result of the work on impunity, given the continuing prevalence of impunity at all levels it is very difficult to measure such impact, when the few successful cases are at best symbolic and emblematic. It is important therefore, to think strategically about *how does combatting impunity contribute to protection? How can the energy invested in combatting impunity have a maximum of dissuasive impact on current abuses?*

The assumed logic linking combating impunity and protection is that successful prosecutions or other sanctions suffered by abusers will prevent those prosecuted from repeating their crimes, but more importantly, send a message to others that will convince them to hold back from committing similar abuses. Protection derives not as much from the prosecution itself as from the message it sends, and from the construction of new norms of behavior based on a pattern of such messages.

Are such messages being heard? Do the ranks of the military and the police know about it each time one of their colleagues is arrested or jailed? The common flaw in the ‘impunity’ approach throughout the global human rights movement is that human rights actors simply assume that just because we push for cases against criminals this automatically has some kind of dissuasive effect. This logic always then says: if there is still impunity, we need to push more cases. But an “impunity” case only has a protective impact if it is matched with sufficient active promotion to maximize its message. The JHRO should be putting as much strategic effort into making sure this message of deterrence is being projected to all potential perpetrators as it puts into pushing more cases.

Stabilization versus protection of civilians?

MONUSCO is committed through its guiding UNSC resolutions to supporting the government of the DRC in “stabilizing” the military situation of the country, in particular by assisting the FARDC in eliminating military activities of non-state or foreign actors within the nation’s territory. It is also committed to the protection of civilians. Whether these two key commitments are consistent is not at all clear. According to our respondents, FARDC military operations often have only a temporary impact, with the same armed groups returning in the medium term. Worse yet, a transfer of control of territory from an armed group to the FARDC does not necessarily lead to any improvement in the human rights situation for the local residents. FARDC elements are reputedly as rapacious, abusive, and corrupt as those they are replacing in terms of their abuse of the population and their primary interest in the corrupt profiteering from the natural resources of any region they control.

This poses a difficult quandary for the JHRO, which is not solely bound to the UNSC resolutions promoting ‘stability’. It is equally and independently answerable to the High Commissioner for

Human Rights. This dilemma may be in part addressed by the Conditionality policy, but that policy currently limits its scope to the actions of individual officers. There are broader questions which an independent human rights presence might arguably have a role in investigating. *Does MONUSCO's support for the FARDC, with full knowledge of FARDC abuses and its corrupt intentions of territorial control for personal economic gain, represent an overall net gain in security and human rights for the citizens of the DRC? Are there alternative stabilization strategies to the FARDC's violent military approach, which might be more consistent with MONUSCO's commitment to protection, which MONUSCO should instead be promoting?*

Conclusions – summary of recommendations

The Joint Human Rights Office plays a crucial and unique role within the UN system's efforts in the DRC, and certain steps to could improve its contribution to protection.

- The JHRO should press for a more pro-active and outspoken use of the UN's *human rights voice*, through continued quiet diplomacy, regular public statements (by the JHRO itself or by the DSRSG or SRSG) on human rights concerns, and greater public reporting. When public statement generate friction with the government this should be seen as normal, and a friction that can be subsequently reduced through continued diplomacy (but not through silence).
- Public reports must be frequent and must be disseminated proactively with targeted advocacy strategies around each of their key recommendations.
- The JHRO should continue to play a key role in pushing the use of the Conditionality Policy to influence FARDC human rights behaviour. FARDC officers have to suffer real career setbacks and reputational losses for this policy to have its intended deterring effect – so any sanctions and implementation of conditions must be publicized broadly.
- The JHRO should continue and strengthen its efforts promoting justice, including Comites de Suivi, Audiences Foraines, Joint Investigation Teams and Joint Verification Commissions. In order to work towards longer term sustainability of such efforts, more effort should be made to include local actors from civil society in these efforts. Such mechanisms need to become standard operating procedures for the state.
- All possible efforts should be made to maximize the JHRO's field presence and visibility on the ground, through increased sub-office staffing, increased patrols and rural visits, continued participation in JPTs and other cross-mission field projection. Field visits need to put more effort into local advocacy rather than focusing solely on the collection of information.
- The JHRO should continue to be actively involved in the broader POC strategies of MONUSCO, including close involvement with JPTs and CLAs. JPTs need to be encouraged to take advantage of their local protection advocacy potential, doing local preventive diplomacy through visits to local authorities, armed group, tribal leaders, etc.

- The JHRO should create a clearer and more proactive image of its role in protection, overcoming the stereotype of focusing only on gathering data and writing report, and confronting the erroneous distinction that claims its work focuses only on individual cases rather than broader collective protection concerns. The HROs need to consistently demonstrate to other how the JHRO role contributes to the overall collective protection objectives of the mission with creative and flexible strategies.
- The JHROs Protection Unit can be an important support for local actors. The JHRO should continue this protection support as well as other strategies for strengthening the role of local actors, including more round table events and other spaces bringing together civil society and the authorities, and more joint activities with civil society. Joint action can help to make the work of local human rights actors more secure, effective and sustainable, increasing the likelihood of the JHRO's interventions having a lasting protective impact.
- Recognizing that Congolese actors will not always have MONUSCO JHRO to support them, the JHRO needs to sustain a critical dialogue with local actors about the dilemma of sustainability, involving strategic thinking about where best to apply limited international support for costly approaches, continual discussion of realistic expectations for the future, and creative experimentation with more economically feasible approaches for the long-term
- The JHRO should continue its efforts confronting impunity, but realistically recognizing that perceptions of rampant impunity are very slow to change, it should be putting more effort into making sure the message of deterrence implied by each advance is being projected to potential perpetrators.
- The JHRO needs to sustain an independent analytical and political role within MONUSCO, capable of honestly questioning whether the mission's military support to the FARDC is achieving a net gain in human rights for the citizens of the DRC, and proposing alternative non-military approaches to protection.

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