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Beyond Kampala: Creating a legitimate peace process for eastern Congo

By Aaron Hall

This dispatch is based on research and interviews conducted by the author in Kampala, Uganda between September 11–18, 2013 at the site of Kampala Peace Talks between the Government of Congo and the M23. It is part of an ongoing Enough Project series on issues related to the peace process in Congo and the Great Lakes region.

Executive Summary

As the ongoing Kampala Peace Talks potentially wind to an end, it has become clear that a broader and more inclusive regional peace process is vital to address core drivers of conflict in Congo, particularly along its eastern borders. Despite the last-chance efforts of the ICGLR and the international community to broker a deal between the government of Congo and the M23, systemic flaws concerning inclusivity, transparency, and accountability remain in the process. Those flaws will ultimately define the legacy of this effort regardless of any agreement.

Further, the key issues being brought to the table as preconditions for disarmament by the M23 are no longer issues that can be solely and legitimately negotiated between the sovereign state of Congo and the M23 as non-state rebel group with connections to the government of Rwanda. Rather if credible talks regarding the key drivers of conflict in eastern Congo are to take place, these issues must be negotiated in a regional forum that includes the government of Congo and the government of Rwanda. The current Kampala talks must therefore be concluded in order to make space for broader, more legitimate, and more inclusive talks that are inclusive of both state and civil society interests.

The U.N. Special Envoy to the Great Lakes Region, Mary Robinson and U.S. Envoy Russ Feingold, in conjunction with their international partners, should use the opportunity of the United Nations General Assembly in late September, to broker agreement between the ICGLR, Uganda, Congo and Rwanda to roll outstanding issues from the Kampala talks into an expanded regional process. That process should be conducted under the umbrella of the recently created U.N. Peace, Security, and Cooperation Framework for Congo and the Region, or U.N. PSCF. Alternatively, a renewed regional process with expanded participation and expanded scope could be created and mediated by an external, neutral arbiter and include participation from regional and international stakeholders.

Current Dynamics of the Talks

The two parties are nearing agreement on a few key issues within the talks. These include the review and address of commitments made by the government of Congo in the March 23, 2009 Goma peace agreement; the conditions for amnesty for M23 leadership and rank-and-file troops; and the mechanisms for military re-integration for those M23 troops

who would choose to return the Congolese National Army once granted amnesty for mutiny. In addition to those issues, the facilitator of the talks, Ugandan Defense Minister Crispus Kiyonga, has put forward a recently revised and consolidated peace-agreement based on the initial submission for draft agreement from each party. The issues within the consolidated agreement include:

Amnesty for M23 leadership and rank-and-file

- Congo appears prepared to offer amnesty for all those M23 rank-and-file troops that are not suspected or accused of having committed war crimes. The intention of this amnesty is to only be applicable only for the act of mutiny. Therefore, if a member of the M23 is accused in the future of having committed war crimes, he can still be charged for those crimes in domestic or international courts as the amnesty received in this deal would not protect him. Further, Congo has recently released the names of 100 M23 commanders that have been accused of war crimes, are on international sanctions lists, or have been granted previous amnesties for rebellion will not receive amnesty again. This now presents a difficult decision for M23 leadership in accepting any deal that might extend amnesty to the remaining 1700 M23 troops, but exclude the chance of prosecution for the list of 100.ⁱ

Commission of Inquiry

- Further, both sides have separately discussed the possibility of creating a commission of inquiry to investigate war crimes committed by both the Congolese Army and the M23. Agreement on such a committee at this stage would require military elements of the government of Rwanda to be subject to inquiry as well, given their logistical support to senior leadership of M23, according to the U.N. Group of Experts.ⁱⁱⁱⁱⁱ

Disarmament, Demobilization, and Military Reintegration for M23 troops

- Following agreement on the amnesty issue, it appears Congo will be willing to give those M23 troops that qualify the chance to reintegrate into the Congolese national army. According to the chief spokesperson for the Congolese delegation to the Kampala Talks, this will be done on a case-by-case basis.^{iv} For those that do not wish to integrate back into the armed forces, agreement will have to be reached on how these individuals are to return to civilian life. Some of the options that currently exist for determining the framework for demobilization and reintegration are third country repatriation for some M23 leadership, political inclusion for some members of M23, commitment to the creation of joint technical committees on demobilization, and amnesty granted to all M23 below the rank of Lieutenant.^v

Eliminating the Threat of the FDLR

- The fate of the FDLR is one of the most contentious and complex issues on the table. Rwanda and, by extension, the M23, view the FDLR as credible security threat. The Congolese as well as some external analysts view the issue as a red-herring used to justify Rwandan interventionist policies in eastern Congo. Regardless of one's perspective, the FDLR must be dealt with. The key question in this case is how to go about it. In particular, what does a successful strategy look like to Rwanda? Thus far, neither Kigali nor the M23 leadership has been

clear as to what tangible steps they would be willing to accept from DRC, MONUSCO, the Intervention Brigade, and the broader international community that would constitute progress in taking on the FDLR. If Rwanda and M23 are willing to lay out realistic options for a roadmap to deal with the FDLR, it would be a signal that they desire a political settlement.

The return of refugees and internally displaced Tutsi communities to eastern Congo

- Another intractable issue between the parties, refugee return extends far beyond the credibility of M23 to negotiate alone. The fate of thousands of Congolese Tutsi exiled to Rwanda and elsewhere during the mass displacement in the conflict following the Rwandan genocide and the thousands of internally displaced families as a result of fighting between the government of Congo and M23 since the onset of the rebellion are of serious concern to all parties. However, the current driving force behind the fate of those refugees is the United Nations High Commissioner for Refugees, or UNHCR. As such, agreements on refugee status can only be brokered by UNHCR, along with the two states in question, Congo and Rwanda. The M23 has no basis to negotiate over outcomes on these issues. Therefore, as one of fundamental issues of the Kampala talks, the case can be made once more for the need to include Rwanda in any legitimate process and resulting agreement.

Implementation of the Agreement

- This issue would determine what agreements and mechanisms would be put in place to ensure oversight and implementation of agreements derivative of the Kampala Talks. Such an agreement requires third party arbiters from ICGLR, the U.N., and perhaps SADC. Given the implications of, and connections to, the Rwandan government for many of these issues, it stands to reason that Kigali should not be excluded from any official agreement, again making the case for direct bilateral discussions between Congo and Rwanda to ensure long-term credibility to any peace deal.

Recommendations

- The U.N., U.S., E.U., and A.U. Special Envoys should use the U.N. General Assembly in late September 2013 to bring the ICGLR, Uganda, Congo, and Rwanda together to agree to commit to rolling outstanding security, refugee, and economic issues to be discussed in a negotiations process that includes Congo, Rwanda, Uganda, and civil society.
- Further, in order to incentivize broader regional dialogue, the U.N. and partners should simultaneously work to prioritize the commitments made to regional economic integration under the U.N. PSCF as a means of building commitment for broader peace talks. This can be achieved by building off existing commitments from the World Bank and other international partners to bolster energy, trade, and infrastructural development projects in the region. By increasing efforts to work with both public and private sector investors keen to invest in the region, this complementary initiative to the political process can, at

the same time, create economic opportunities for states involved and begin to solidify security, stability, and development in eastern Congo and the region.

- The International Criminal Court should prioritize the investigation of recent war crimes committed in Congo by the M23, the Congolese army, the FDLR, and all armed groups, including crimes of pillaging and sexual violence.
- The U.S., U.N., and E.U. and A.U. Special Envoys should press Congo and the M23 to immediately sign a cessation of hostilities agreement in the wake of the U.N. General Assembly meetings.

ⁱ News 24. *DRC Rules Out Amnesty for Top M23 Leaders*. September 20, 2013. Accessed on September 20, 2013 at <http://www.news24.com/Africa/News/DRC-rules-out-amnesty-for-top-M23-rebels-20130919>

ⁱⁱ United Nations, [Midterm report of the Group of Experts on the DRC submitted in accordance with paragraph 5 of Security Council resolution 2078 \(2012\)](#) (July 19, 2013). Available at <http://www.un.org/sc/committees/1533/egroup.shtml> (accessed September 2013).

ⁱⁱⁱ Charbonneau, Louis and Michelle Nichols. « Rwanda, Uganda arming Congo rebels, providing troops - U.N. panel. » Reuters. October, 2012. Available at <http://www.reuters.com/article/2012/10/17/us-congo-democratic-rwanda-uganda-idUSBRE89F1RQ20121017> (Accessed September 2013).

^{iv} Interview with the Congolese spokesperson for delegation to the Kampala Talks, Francois Muamba, September 14, 2013.

^v Based on anonymous interviews with participants of the Kampala Talks, September 2013.