



Establishing a Vetting Mechanism for the Security Forces of the Democratic Republic of Congo

April 2014

The Democratic Republic of Congo has been plagued by repeated cycles of violence and attacks on civilians for over two decades, especially in the eastern part of the country. Members of the Congolese security forces have been responsible for some of the worst abuses, including ethnic massacres, summary executions, mass rapes, torture, arbitrary arrests, and abductions.¹ The pattern of abuse is in part due to the lack of accountability for past abuses and a record of integrating former rebels into the security forces without formal training or vetting for their involvement in past human rights abuses. While there has been some progress with prosecutions in recent years, the vast majority of soldiers, police, and officers responsible for grave abuses in Congo remain unpunished, and many continue to serve in the Congolese security forces.

Human Rights Watch believes it will be difficult to end the cycles of violence in Congo until those responsible for serious abuses are removed from the security forces and brought to justice. To that end, we believe that a vetting mechanism should be a central component of Security Sector Reform (SSR) in Congo. Such a mechanism would remove perpetrators of serious human rights abuses from the security forces and support efforts to build disciplined, rights-respecting forces that protect civilians instead of preying on them.

Recent commitments and public statements from Congolese President Joseph Kabila and his government indicate that there may be an opportunity to move forward with a vetting mechanism as part of overall SSR efforts in Congo in the coming months. In October 2013,

¹ For an overview of abuses by Congolese security forces between 2009 and 2013, please see Human Rights Watch, "Democratic Republic of Congo: UPR Submission September 2013", September 2013, <https://www.hrw.org/news/2013/09/24/democratic-republic-congo-upr-submission-september-2013>. Other reporting on abuses by Congolese security forces is also available on the Human Rights Watch website's page on Congo: <http://www.hrw.org/drc>.

President Joseph Kabila, in a speech to both chambers of Parliament, stressed the importance of fighting impunity for atrocities committed against civilians in Congo.²

Throughout the peace talks in Kampala with the M23 rebel group, the Congolese government remained firm in its position that M23 combatants would not be allowed to reintegrate *en masse* into the Congolese army, and that M23 leaders responsible for war crimes, crimes against humanity, and other serious abuses would not benefit from an amnesty, but should instead face justice. This position was maintained in the final declarations signed in Nairobi in December 2013, marking a significant shift from how the government dealt with past rebellions—integrating former rebels into the army and rewarding former warlords with senior ranks and access to wealth, resources, and power.

The establishment of a vetting mechanism was included in the initial benchmarks of the national follow-up mechanism (*Mécanisme National de Suivi*, MNS) for the Peace, Stability and Cooperation Framework Agreement for Congo and the Region, signed in Addis-Ababa in February 2013. The benchmarks included four categories of soldiers who would be removed from the army as part of the army reform efforts: 1) those of retirement age; 2) those responsible for grave human rights violations; 3) children; and 4) others who do not fit the profile of serving in the army.³

This document provides a brief overview of how a vetting mechanism could work in the Congolese context. Long-term financial, technical, and other support from Congo's international partners will be crucial to the successful development and implementation of such a program. The United Nations peacekeeping mission in Congo, MONUSCO, has also been given a specific mandate by the United Nations Security Council to support the Congolese government in SSR implementation, including through vetting mechanisms.⁴

² Speech by President Kabila to both chambers of the Congolese Parliament, October 23, 2013, <http://afrique.kongotimes.info/rdc/politique/6768-cohesion-nationale-discours-joseph-kabila-devant-congres.html> (accessed April 5, 2014).

³ Mécanisme national de Suivi (MNS), « *Critères et Indicateurs de Progrès de Septembre 2013 à Septembre 2014 : Engagements Pris au Niveau National aux termes de l'Accord-Cadre pour la Paix, la Sécurité et la Coopération en République Démocratique du Congo et dans la Région* », September 18, 2013, on file at Human Rights Watch.

⁴ United Nations Security Council, Resolution 2147 (2014), S/RES/2147 (2014), March 28, 2014, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2147\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2147(2014)) (accessed April 4, 2014). Article 5(e) states: "Provide good offices, advice and support to the Government of the DRC to enable the development and finalisation of a clear and comprehensive SSR implementation roadmap including benchmarks and timelines to establish effective and accountable security institutions, including vetting mechanisms."

1. What is a “Vetting Mechanism”?

A vetting mechanism is a formal process to identify and remove individuals responsible for abuses from public service, including the police, army, prison services, and the judiciary. A vetting mechanism is often implemented in post-conflict or post-authoritarian situations as part of broader institutional reform or transitional justice efforts. Vetting mechanisms usually target those who are personally responsible for grave human rights violations or serious crimes in violation of international law. These include war crimes, crimes against humanity, crimes of genocide, extrajudicial execution, torture and other cruel, inhuman and degrading treatment, enforced disappearance, and slavery.

A vetting mechanism does not replace criminal prosecutions, but it can help ensure that individuals implicated in serious abuses are not allowed to continue serving in public institutions while awaiting judicial proceedings, which might take longer in a post-conflict setting.⁵

2. How is a Vetting Mechanism different from MONUSCO’s “Human Rights Screening” Process or the United States government’s Leahy Law?

MONUSCO’s Human Rights Screening Process is meant to ensure that MONUSCO does not provide any logistical, military, or other support to Congolese army units responsible for gross human rights violations or led by commanders implicated in serious abuses, as per the UN’s Human Rights Due Diligence Policy.⁶ The US Leahy Law is meant to ensure that

⁵ For more information on vetting guidelines and examples of vetting in different contexts, see Office of the High Commissioner for Human Rights, “Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework,” 2006, <http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf> (accessed April 4, 2014); United Nations Development Program, “Vetting Public Employees in Post-conflict Settings: Operational Guidelines,” 2006, <http://ictj.org/sites/default/files/ICTJ-UNDP-Global-Vetting-Operational-Guidelines-2006-English.pdf> (accessed April 4, 2014); Alexander Mayer-Rieckh and Pablo de Greiff, eds. (for the International Center for Transitional Justice), “Justice as Prevention: Vetting Public Employees in Transitional Societies,” Social Science Research Council, 2007, http://www.ssrc.org/workspace/images/crm/new_publication_3/%7B57efec93-284a-de11-afac-001cc477ec70%7D.pdf (accessed April 4, 2014).

⁶ United Nations, A/67/775-S/2013/110, “Identical letters dated 25 February 2013 from the Secretary-General addressed to the President of the General Assembly and to the President of the Security Council” with the annexed “Human rights due diligence policy on United Nations support to non-United Nations security forces”, March 5, 2013, http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/IdenticalLetterSG25Feb2013_en.pdf (accessed April 4, 2014).

the US government does not provide military training or other assistance to individuals or units implicated in gross human rights violations.⁷

While these processes prevent alleged human rights abusers from receiving certain kinds of assistance, they do not lead to their removal from the Congolese security forces. A global vetting mechanism would remove these individuals from the security forces, in theory making the UN screening process and other similar programs much simpler and quicker to implement.

3. How will a Vetting Mechanism relate to other SSR efforts?

Removing human rights abusers from the Congolese security forces will likely make other aspects of SSR easier. Many of those responsible for grave human rights abuses in Congo have also been implicated in the illegal exploitation of resources, support to armed groups, embezzlement of soldiers' salaries, and other forms of corruption. Removing these individuals— and ensuring they are arrested and prosecuted—could go a long way in supporting efforts to build modern, professional, and disciplined security forces. As mentioned above, removing human rights abusers could be one component of the overall cleaning-up (*assainissement*) of the army, in addition to removing those of retirement age and those who do not meet the other criteria for service.

4. What categories of personnel will be subject to the vetting process?

Vetting can be applied to all government employees. This document focuses specifically on a vetting process for the Congolese security forces, and in particular members of the army (*Forces Armées de la République Démocratique du Congo*, FARDC) and the police (*Police Nationale Congolaise*, PNC). Similar programs could also be envisioned for members of the Republican Guard, the intelligence services (*Agence Nationale de Renseignement*, ANR), prison personnel, judges, magistrates, and other public employees.

⁷ US Department of State, “An Overview of the Leahy Vetting Process,” July 9, 2013, <http://www.humanrights.gov/2013/07/09/an-overview-of-the-leahy-vetting-process/> (accessed April 5, 2014).

5. Who will manage the vetting process and how would it work?

Congolese authorities should adopt a law establishing a “Vetting Commission.” The members of the Commission should be appointed by an independent body, with a mandate to oversee implementation of the vetting mechanism. Success of the vetting mechanism will largely depend on ensuring that members of the Commission are independent, impartial, and well-qualified. While Congolese participation will be important to ensure national ownership of the process, non-Congolese should also participate to provide technical support and to ensure impartiality and help prevent interference from senior military and political officials. Members of the Commission should have strong backgrounds in human rights, as well as a deep understanding of the Congolese military and political context. The Commission should be free of ethnic, geographic, or political bias. The members should be appointed in a transparent way, following broad consultations with the public, including victims’ groups and Congolese human rights organizations.

The Commission should establish a database of members of the Congolese army and police who have allegedly been responsible for serious human rights abuses, according to UN documentation and public reports, reporting by Congolese and international human rights organizations, court records, independent investigations, and media reports. The Commission should also accept allegations from members of the public. A good starting point would be the database of security force members allegedly responsible for serious abuses that has already been developed by the UN’s Profiling Unit.

The Vetting Commission would then be responsible for verifying and investigating the allegations of those listed in the database. If the Commission is able to confirm that an individual was most likely implicated in the alleged abuses, the Commission would recommend the individual’s removal from the security forces. As vetting is an administrative rather than a judicial process, with less severe consequences, a lower standard of evidence is required. UN guidelines recommend using a “balance-of-probabilities” standard whereby the Commission would “follow the version of events that appears the most probable, reasonable, or likely, after taking all the evidence into

account,” as opposed to the “beyond-reasonable-doubt” standard used in criminal proceedings.⁸

It is crucial that the vetting mechanism be incorporated into Congolese law to help ensure that the Commission’s recommendations for removal would be binding.

It will also be important to ensure that measures are in place to protect victims, witnesses, and members of civil society who submit allegations or who are interviewed during the verification process. Sharing of information and cooperation between the Vetting Commission and MONUSCO, the European Union advisory and assistance mission for security reform in Congo (EUSEC), the European Union police mission (EUPOL), and other international actors involved in security sector reform will also be crucial to the success of the vetting process.

Vetting New Recruits

One component of a vetting mechanism should ensure that new recruits who join the army or police do not have records of involvement in or responsibility for serious human rights abuses. The vetting commission should screen new recruits and investigate those suspected of possible involvement in past abuses. Particular attention should be given to former members of armed groups. If the allegations are confirmed, the commission should recommend that such individuals not be allowed to join the army or police.

Vetting of Those Currently Serving in the Army and Police

The second component of a vetting mechanism should seek to remove currently serving members of the army and police who are allegedly responsible for serious human rights abuses. Given the size of the Congolese army and police, the vetting commission could do its work in stages, starting first with senior ranking officers and/or working through the army and police unit by unit. The commission could start, for example, with the newly proposed Rapid Reaction Force of the Congolese army, which is due to assume the responsibilities of the UN’s Intervention Brigade after the brigade’s departure. The UN Security Council has specifically called on MONUSCO to support the establishment of a

⁸ Office of the High Commissioner for Human Rights, “Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework,” 2006, <http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf> (accessed April 4, 2014), p. 26.

“vetted, well-trained and adequately equipped ‘Rapid Reaction Force’” within the Congolese army.⁹

6. What happens to those found to be implicated in serious human rights abuses?

Once the commission has determined that a serving member of the police or army is reasonably suspected to be personally responsible for serious human rights abuses, following an independent and impartial investigation, this individual should be removed from his post in the army or police.

Those removed because of their responsibility for grave human rights abuses, such as war crimes and crimes against humanity, should be brought to justice in criminal proceedings. Measures should be taken to help prevent those dismissed from the army or police from going back to criminal activity or joining armed groups while awaiting justice. The vetting mechanism could give severance packages to those who are removed from the security forces, but it will be important to ensure that such individuals are not seen as being rewarded for their behavior.

7. What are the rights of the accused?

While the vetting process is not a criminal proceeding, due process rights of the accused should still be respected. The accused should be given the opportunity for a fair hearing within a reasonable time period after the start of proceedings. Among other rights, the accused should be aware of the case against them, have the opportunity to respond to the allegations during the investigation, have access to the relevant data and evidence, and have the right to be represented by a lawyer. Once the commission determines that an individual is most likely responsible for the alleged crimes, after taking into consideration all of the evidence, the accused should be informed of the decision as well as the

⁹ United Nations Security Council, Resolution 2147 (2014), S/RES/2147 (2014), March 28, 2014, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2147\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2147(2014)) (accessed April 4, 2014). Article 5(f) states: “Provide good offices, advice and support to the Government of the DRC, in compliance with the HRDDP, for a reform of the army, including, as a first step, the establishment of a vetted, well-trained and adequately equipped ‘Rapid Reaction Force’ within the FARDC which should form the nucleus for a professional, accountable, well-sustained and effective national defence force, and support, when appropriate and in coordination with international partners, the training of the ‘Rapid Reaction Force’ which should, in the frame of the benchmarks and timelines set by the SSR roadmap, develop the capacity to assume as soon as possible security responsibilities from the Intervention Brigade of MONUSCO.”

commission's reasoning for coming to that conclusion. The accused should also be given the right to appeal the decision to a court or other independent body.¹⁰

In order to call for the removal of an individual from the army or police, the commission should determine that that individual is *personally* responsible for serious human rights abuses or other international crimes, including as a matter of command responsibility. Belonging to a particular army or police unit that carried out serious abuses should not be enough on its own to disqualify an individual from service.

8. How could the Vetting Mechanism work with the proposal to establish Specialized Mixed Chambers?

The Congolese government is currently discussing a draft law to establish specialized mixed chambers to prosecute those responsible for war crimes, crimes against humanity, and crimes of genocide committed in Congo over the past two decades.¹¹ The chambers would be within the Congolese justice system, but mixed with international and Congolese judges and other personnel. If established, the mixed chambers could play an important role in ensuring that those who are removed from the army and police during the vetting process, and who are suspected of the gravest crimes, such as war crimes and crimes against humanity, are then prosecuted in fair trials before a competent, independent and impartial court. Procedures and guarantees should be established for a fair and effective exchange of information and evidence between the Vetting Commission and the specialized mixed chambers.

¹⁰ Office of the High Commissioner for Human Rights, "Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework," 2006, <http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf> (accessed April 4, 2014), pp 25-26.

¹¹ See Human Rights Watch, "Accountability for Atrocities Committed in the Democratic Republic of Congo," April 2013, <http://www.hrw.org/news/2014/04/01/accountability-atrocities-committed-democratic-republic-congo>.