

HUMAN RIGHTS CHALLENGES IN THE DRC: A VIEW FROM MONUC'S HUMAN RIGHTS SECTION

Roberto Ricci¹

Introduction

From the outset, it must be emphasised that the Human Rights Section is not acting alone in the pursuit, promotion and protection of human rights in the Democratic Republic of the Congo (DRC). Indeed, within the UN family, there is a plethora of actors involved in human rights work. In addition to the OHCHR, one must also think of OCHA, UNICEF, UNHCR, and UNDP.² Likewise, within MONUC itself, human rights work is done by a number of divisions, including Child Protection, Humanitarian, Civilian Police (CIVPOL) and Military Observers.

MONUC's Human Rights Section is presently composed of some 50 personnel – inclusive of both administrative and substantive staff, possibly increasing to 90 with the approval of the new budget. MONUC presently has 12 field offices in the DRC, with a further two soon to become operational. This may seem like a sizable presence in the field, but the number of human rights officers and offices is miniscule, when we consider the size of the country. By way of comparison, in 1996 the OHCHR had more than 120 international human rights officers in Rwanda alone – a country less than one hundredth the size of DRC.

Strictly focused on human rights issues, this chapter will not touch on gender issues, which are the subject of a separate paper by MONUC's Senior Gender Advisor. Nor will it address the issue of child soldiers, as this is a subject that is best tackled by the Disarmament, Demobilisation, Repatriation, Resettlement and Reintegration (DDRRR) Division. Similarly, the important issue of transitional justice and the longer term human rights challenges are best dealt with by OHCHR. The focus will simply be on a synopsis of some of the most salient short to medium term challenges – specifically those outlined in the mandate stemming from Security Council resolution 1493 in the areas of *impunity and the rule of law*.

Impunity

Ambassador Swing has emphasised that “there will be no impunity for human rights violators”. Strictly speaking, the issue of impunity ought to be dealt with by the DRC government. However, given the situation on the ground and the embryonic nature of the Transitional Government, it is clear that the international community also has a key role to play in combating impunity in the DRC. As a very small (but important) representative of the international community, the Human Rights Section of MONUC has the following basic tools at its disposal to join forces in the fight for justice and against impunity:

- Monitoring;
- special investigations; and
- thematic reports.

Capacity building may also be regarded as a tool in the fight against impunity, and will be dealt with under the rule of law section below.

Monitoring involves the following elements:

- *Pro-active observation* – this entails learning about the environment one works in. To be at the service of a community one must be able to understand its dynamics and keep abreast of current events, one must know who is who, the geography of the region and, above all, be accessible. All of this requires a non-bureaucratic approach to human rights work;
- *Interventions/interaction with local authorities* – local authorities are responsible for the protection and promotion of human rights. It is therefore paramount to engage with them in a respectful but frank dialogue. It is always preferable to address issues locally. Only in exceptional cases should matters be brought to the attention of the central authorities;
- *Protection of civilians*, e.g. preventive actions and re-settlement initiatives (reducing the threat caused by proximity) – protection of civilians is normally done through intervention with the authorities. A classical example is interventions with prosecutors, the police or the military hierarchy in the event of illegal arrests and detentions. At times, threats against civilians may be such that they demand re-settlement. Luckily, since the DRC is so vast, the option of re-settlement does not entail more refuge abroad. It must be stressed, nevertheless, that this is an extreme-measure that is seldom resorted to; and
- *Reporting* to the UN Security Council, to MONUC HQ, and share information with pressure groups – such as concerned members of the diplomatic corps.

Moreover, the ultimate goal of monitoring is to establish a historical record, so that the truth is available to the persons it belongs to and that it can possibly also be used for justice and compensation purposes. Due to limited resources, the Human Rights Section has had to prioritise its monitoring activities, focussing essentially on gross violations of human rights - especially summary executions/extra-judicial killings; enforced disappearance; torture; and illegal arrests and detention. Sexual violence, including that visited upon men, has been singled out as an area deserving particular attention. The need to limit the breadth of monitoring tasks and to prioritise springs from the conviction that it is better to do little, but do it well, than to be spread too thin and thus have little or no impact.

Special investigations by the Human Rights Section are spearheaded by a two-person team, which concentrates on gross violations of human rights. In the DRC, the latter are normally associated with massacres, in which case the Section organizes a larger, multi-disciplinary investigation team. Besides limited resources, a major challenge to special investigations is the fact that it is virtually impossible to conduct follow up on an initial investigation. This limit imposes the use of particularly stringent caution in terms of exposure of witnesses and other sources of information. "*Do no harm*" is a basic tenet of human rights work. There may be times when a special investigation team will have to decide whether to gather information - and by so doing risk jeopardizing the sources of information, or go home empty handed. This dilemma, unfortunately common, becomes even more acute in situations where the team knows that it may never be able to go back and check that those sources are, in fact, safe and sound and, if they are not, intervene for their protection.

Somewhat linked to the issue of special investigation, is the sad realisation that the systematic and effective use of forensic techniques to ascertain causes of death, as well as for purposes of identification, is a distant dream in DRC. The issue of identifying the many missing persons and their families, which so far does not appear to be a priority on the agenda of civil society, is therefore likely to remain an unfortunately neglected aspect of investigation.

Both in fact-finding activities of a monitoring nature, and in special investigations, a major and necessary challenge is to adopt a methodology that renders human rights work fully compatible with the requirements of criminal justice (including meeting the burden of proof), if these activities are to support the fight against impunity.

Thematic reports aim at collecting and analysing data on areas that deserve particular attention. The challenge is to point to the root causes of problems, and to identify recommendations that can lead to a concrete improvement in the human rights situation. The Human Rights Section is presently working on two special reports: one on the situation in Ituri, and the other on sexual violence in the DRC. These will be released during the first half of 2004.

Other aspects that are directly connected to impunity include:

- Amnesty – the presidential amnesty decree is soon to be translated into law. The challenge will be to ensure that, while promoting reconciliation, it will not result in impunity for crimes included in the Rome Statute, and also that this law is applied in a non-discriminatory fashion;
- DDRRR – how to ensure that those who have committed serious crimes in the DRC are not repatriated to neighbouring countries without disrupting the DDRRR process?
- How to deal with those who, despite serious allegations of being involved in atrocities, have secured or will secure for themselves a position of power? Can a method be found to disqualify dubious characters from running for elections?
- The International Criminal Court – will the United Nations/MONUC be able to co-operate fully with the ICC, despite the overt opposition of the most powerful permanent member of the Security Council?
- Transitional justice – will the Truth and Reconciliation Commission and the Observatoire National des Droits de l'Homme (Human Rights Observatory) be working for or against impunity?
- The DRC judiciary – how long will it take for the Congolese judiciary to be able to act effectively and independently?

Rule of Law

After years of dictatorship and war, the DRC is a state with limited police, and no judicial and correctional capacity in the territories that remained under government control, and little or no capacity at all elsewhere. The task of reconstruction is immense. A first step to begin work in this area is the forthcoming rule of law audit mission, which is co-sponsored by the EU, UNDP, OHCHR and MONUC. Other important partners such as the World Bank and some major bilateral donors are likely to join. The mission, which started in mid-October 2003, should result in a comprehensive report, to be issued in the first quarter of 2004, that outlines areas of coordinated intervention for the short, medium and long term.

The situation in Bunia is symptomatic and symbolic of the broader lack of rule law in DRC. It should actually constitute a comprehensive case study. Here, in a situation totally void of any form of legality, MONUC operates under Chapter VII. According to its Rules of Engagement, MONUC's military can and do arrest and detain civilians and militia elements that are caught red-handed engaging in obviously criminal acts. The lack of a national police/judiciary/detention capacity results in such suspects being released after short periods of detention. At times, persons may be arrested for contra-

vening orders imposed under MONUC's Chapter VII authority – for instance, refusal to disarm in the town of Bunia. What is the legal framework for these arrests? Can MONUC be considered an occupying power and hence apply the Geneva Conventions?

Another major challenge, which is of a general nature, but also impacts on human rights and the rule of law, is co-ordination. How does one ensure co-ordination of the different actors involved in human rights? How does one ensure that donor money, however well intended, does not generate conflict and jealousies among NGOs, and result in the disruption of existing networks and grass-root initiatives? For example, in Bukavu, an initial spontaneous and successful co-ordination around the issue of sexual violence suffered a major setback the moment donors and other external players began to show an interest in it. Somewhat understandably, the focus of many actors shifted from the victims to fund-raising and power grabbing. As a result, co-ordination came to a virtual standstill for a number of months during which the debate revolved around rather fictitious items of a purely formal nature. Eventually, after much struggling, the co-ordination picked up again. However, it would appear that not much progress resulted from that unfortunate interlude.

Conclusion

Of course, there are many, many more challenges than those touched upon above. All are significant; most are daunting. And often there is little guidance from the many human rights instruments that are now part of international law. Perhaps this is because some of the challenges stem from a unique blend of African and Congolese society and culture, which, while inherently good and respectful of human rights, has been distorted by past and ongoing violent conflicts.

In certain areas, it would seem that certain cultural habits or superstitions have indeed suffered grave perversions during the recent years of conflict, possibly becoming the triggers of major human rights violations. This appears to be the case with the seeming resurgence of acts of cannibalism that are linked to indigenous superstitions. Likewise, there are those who argue that the explosion of rape and other forms of sexual violence can find its root in certain tribal traditions. Slanted differently, a challenge is to find cultural keys for reconciliation and absolution. For instance, it has been suggested that the rehabilitation of women victims of sexual violence could be achieved through the identification of “acts of community purification” to be performed in the course of a national day or week devoted to victims of sexual violence.

This chapter has been deliberately brief, for the few issues highlighted as salient human rights challenges have raised multiple questions. These are

questions for which MONUC's Human Rights Section cannot (and should not be expected to) provide definitive answers. We need collective wisdom, and broader engagement and support, in order to come up with reasonable answers and solid recommendations. Hopefully, some emerged during this workshop, or at least in the wake thereof, as the debate is taken to a wider audience.

NOTES

1. Mr. Roberto Ricci is the Head of the Human Rights Section of MONUC.
2. (UN) Office of the High Commissioner for Human Rights, (UN) Office for the Co-ordination of Humanitarian Affairs, United Nations Children's Fund, United Nations High Commissioner for Refugees, and the United Nations Development Programme.