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RESPONSE TO HUMAN RIGHTS WATCH ON ALLEGED RECRUITMENT OF M23 COMBATANTS IN LATE 2016

Background

The Eastern DRC has been a theatre of armed conflict for more than two decades since 1994 when Rwanda experienced war and the subsequent genocide and the bulk of armed government soldiers that were driven out of Rwanda took refuge in DRC and formed an armed outfit called Forces for the Liberation of Rwanda (FDLR) and other militia groups have since sprung up both indigenous and foreign through exploitation of weak state structures. One of such armed groups that sprung up in April 2012 was the M23.

Genesis of M23

M23 is a result of the failed 23rd March 2009 Agreement that was signed in Goma between the then rebel movement—National Congress for the Defence of the People (CNDP) of Gen Laurent Nkunda and the DRC government. The M23 rebels claimed to have used “M23” to remind the government of DRC of its failure to honour that particular Goma agreement thus the subsequent resumption of war. Former senior commanders and cadres in the CNDP emerged to lead M23 including; John Bosco Ntaganda, Sultan Makenga, Bishop Jean Marie Runiga, and Bertrand Bisiimwa.

Statement of the Problem

The emergency of M23 in Eastern DRC in 2012 compounded the security challenges facing the Great lakes region in general and Uganda in particular. Since that period, Uganda has faced an influx of Congolese refugees who are presently in the range of 200,000 in the country. The failure by the DRC government therefore to repatriate the ex-M23 combatants after signing the Nairobi Declarations in 2013 further compounds the problem.

Having participated fully in the process of resolving the ex-M23 conflict, Uganda up to date still bears the burden of accommodation, feeding, clothing and general welfare of ex-M23 combatants. This is being done against a constrained budget. Bearing in mind that these members are neither in prison nor in a refugee camp, containing their movement has been difficult. Their repatriation therefore is overdue and should be expedited.

Uganda's Interventions

When the M23 rebellion broke out in Eastern DRC, Uganda was serving its second year as Chair of the ICGLR having assumed the chairmanship in December 2011. The President of Uganda, H.E. Yoweri Museveni, therefore as Chairman of the ICGLR took the responsibility of not only resolving the M23 conflict but also working towards eradication of other armed militias in eastern DRC. Additionally, H.E. President Joseph Kabila and H.E. Ban Ki Moon, Secretary General of the UN, formally requested the Ugandan President to assist in finding a political solution to the conflict between the DRC government and the M23.

Subsequently, a number of technical and ministerial meetings involving ICGLR Chiefs of Intelligence Services, Chiefs of Defence Forces, Permanent Secretaries, Ministers of Defence and Foreign Affairs were held both in Uganda and outside in an attempt to resolve the M23 conflict. These meetings preceded Summits by Heads of State and Government as shown below:

- a. Extraordinary Summit of the Heads of State and Government, Addis Ababa, Ethiopia, 15th July 2012.
- b. Extraordinary Summit of the Heads of State and Government, Kampala, Uganda, 7-8th August 2012.
- c. 3rd Extraordinary Summit of the Heads of State and Government, Kampala, Uganda, 8th September 2012.
- d. 4th Extraordinary Summit of the Heads of State and Government, Kampala, Uganda, 8th October 2012.
- e. 5th Extraordinary Summit of the Heads of State and Government, Kampala, Uganda, 24th November 2012.
- f. 6th Extraordinary Summit of the Heads of State and Government, Nairobi, Kenya, 31st July 2013.
- g. 7th Extraordinary Summit of the Heads of State and Government, Kampala, Uganda, 5th September 2013.

In addition to the above meetings and summits, in September 2012, the Minister of Defence of Uganda, Hon. Dr Crispus Kiyonga, on behalf of the President of Uganda commenced work as the facilitator of the dialogue between the DRC government and M23 in Kampala which culminated into the signing of Nairobi Declarations on 12/12/13.

Interventions by the Regional and International Community

In addition to running a secretariat that coordinates all the meetings, the ICGLR setup mechanisms that would quicken the peace process in Eastern DRC. Such mechanisms included the Joint Intelligence Fusion Centre (JIFC) that would help to get actionable intelligence and monitor violations of agreements among the warring parties in eastern DRC, which was established in June 2012 in Goma. The function of the JIFC was to collect intelligence/ information on negative forces; armed groups from partner states, analyze, verify, produce and disseminate actionable intelligence with courses of action. The ICGLR also established the Expanded Joint Verification Mechanism (EJVM) with the following roles:

- a. Monitoring, verifying and reporting on the security situation along Rwanda-DRC border.

- b. Monitoring, verifying and reporting M23 troops crossing from neighboring countries to Eastern DRC.
- c. Monitoring, verifying and reporting the presence of FDLR/FOCA along the common border.
- d. Conducting border patrols.
- e. Verifying and investigating any allegation of military cooperation at tactical and operational levels either between FARDC and FDLR/FOCA and other negative forces against Rwanda or between RDF and M23 and other negative forces against DRC.
- f. Verifying any provision of logistical support in terms of ammunition, arms, uniforms, medicine and food to FDLR, M23 and any other negative forces.
- g. Verifying any training support to FDLR, M23 or any other negative forces.

The Nairobi Declarations and Status of Implementation

The signing of Nairobi Declarations by the DRC government and M23 in December 2013 was meant to offer a permanent solution to the conflict that had lingered on for a period of time between M23 and the DRC government. It would also provide an opportunity for other indigenous armed groups in DRC to resolve their conflicts with the government through dialogue. In the Declarations that were signed, both parties made commitments which if implemented would bring the conflict to an end. The commitments that were undertaken by the Congolese government were:

- a. Grant Amnesty to ex-M23 combatants
- b. Respect and implement transitional security arrangements which would include cantonment, disarmament, demobilization and social reintegration of the ex-M23 combatants
- c. Grant the release of ex-M23 prisoners
- d. Transformation of the ex-M23
- e. Demobilization and Social Reintegration of ex-M23
- f. Return and Resettlement of the Refugees and Internally Displaced Persons
- g. Set up a Commission tasked with identifying despoiled, extorted, stolen, looted and destroyed property, to examine every case and to refer them to the competent courts, for the purpose of restoring their rights to the legitimate owners.
- h. To establish a National Reconciliation Commission
- i. Carry out Governance and Socio-Economic Reforms
- j. Implementation of the conclusions of the review of the peace agreement of 23 March 2009
- k. Implementation, Follow up and Evaluation Mechanism of the Nairobi Declarations.

On the other hand, the commitments that were undertaken by the ex-M23 Movement were:

- a. End of rebellion
- b. Accept amnesty
- c. Comply with and implement the transitional security arrangements
- d. Produce a list of its members who are imprisoned so that they may be released
- e. Transformation of ex-M23 into a political party in accordance with the Constitution and laws of the DRC
- f. Encourage return and Resettlement of refugees and Internally Displaced Persons

- g. Ex-M23 representatives to be included in the Commission that the Government shall set up, tasked with identifying despoiled, extorted, stolen, looted and destroyed property, to examine every case and to refer them to competent courts, for the purpose of restoring their rights to the legitimate owners
- h. Ex-M23 representatives to participate in the national Reconciliation Commission which shall be established by the government
- i. Participate in mechanism for implementation, monitoring and evaluation of the declarations

Current Status of Ex-M23

Following the defeat of M23 in November 2013, the group numbering 1456 reported to Kisoro in Uganda. The group was disarmed by Ugandan security and their arms were later inspected and handed over to the DRC government at Kasindi. Within one week after their arrival, 1312 ex-M23 combatants were relocated from Kisoro to Hima, in Kasese district. While in Kasese, the ex-combatants were visited by the International Committee of the Red Cross (ICRC) and the EJVM. Among the M23 reporters were 50 juveniles who were handed over to the Red Cross for further management.

In December 2013, 1325 ex-M23 combatants were relocated to Bihanga Training School in Ibanda district. While at Bihanga, these former combatants have been visited by teams from MONUSCO, EJVM, Journalists from AFP, CCTV Reuters and also Defence Attaches accredited to Uganda.

Following the signing of the Amnesty Law in February 2014 by President Joseph Kabila, on 01 May 2014, a delegation of 20 officials from the DRC government visited the ex-M23 combatants in Bihanga for a documentation exercise.

The delegation later visited other areas accommodating ex-M23 combatants and cadres including Rwamwanja Refugee camp, Kisoro, Mbarara and Kampala. A total of 1664 both ex-combatants and cadres were documented awaiting repatriation.

Currently, the Ex-M23 combatants in Uganda are neither prisoners, NOR refugees and because they are NOT prisoners, some of them have moved out of the cantonment and scattered in other surrounding areas, including refugee camps and other country sides in search for employment to raise cash for basic essentials such as clothing and et.al.

On 25 Apr 16, Uganda hosted a meeting of the Guarantors of the Peace, Security and Cooperation Framework for the DRC and the region, to discuss the delayed implementation of the Nairobi Declarations; particularly the stalemate over the repatriation of the ex-M23 combatants. The Guarantors were also facilitated to meet political leaders of the ex-M23 at Protea Hotel, Kampala.

In coordination with the ICGLR Secretariat and the office of the Special Envoy of the United Nations Secretary General in the Great Lakes Region, Uganda assisted the ex- M23 representatives to travel to Kinshasa to attend the 27 May 2016 Kinshasa meeting between signatories to the Nairobi Declarations and Guarantors of the Peace, Security and Cooperation (PSC) framework for the DRC and the region.

Way Forward/Recommendations

It is recommended that, stake holders agree on one most viable option in handling the ex-M23 combatants. Among the options include:

- a. Compelling the DRC government to comply with the repatriation clause of the Nairobi Declarations.
- b. Granting ex-M23 combatants a refugee status in Uganda.
- c. Relocating the ex-M23 combatants to third country.

RESPONSE ON THE ALLEGED RECRUITMENT OF M23 EX COMBATANTS IN LATE 2016

In reference to your letter dated August 25, 2017, on the above matter, in which you raise a number of issues relating to recruitment of M23 Ex combatants living in Uganda into combat activities in DRC, by some individuals including military officials from DRC, Rwanda and Uganda. We wish to respond to the issues raised as follows:

Issue 1

How many M23 fighters are currently residing in Uganda, where are they being held, and what is their current legal status?

Response

Upon their surrender in November 2013, 1,312 M23ex-combatants were relocated from Kisoro to Hima-Kasese and finally to Bihanga Military Camp. However, the number of ex-combatants at Bihanga has kept fluctuating, depending on their movements to and from the refugee camps, while visiting their families and others disappearing and infiltrating DRC. Also, others have been leaving the camp to hunt for casual jobs within the local communities. In this regard, therefore, it is not possible to state the actual number of M23 ex combatants living in Uganda.

Currently, 214 ex combatants are physically present, 193 were repatriated (2014 and 2015), 11 have died of natural causes and 64 Convicted, jailed in Ndorwa, Kisoro and Luzira Government prisons. Currently, 887 ex combatants are unaccounted for (including those in refugee camps, local communities and those who disappeared to DRC).

Regarding the legal status of the M23, to date, the Uganda government and the international community, including the UN, have not defined the legal status of the M23 ex-combatants. However, in view of the failure to implement the December 2013 Nairobi Declarations, the Uganda government, in consultation with other stake holders, is in the process of granting refugee status to willing M23 ex combatants, currently living in Uganda.

Issue 2

What kind of supervision, if any, do Ugandan authorities, including the UPDF, have over M23 combatants residing in Uganda?

The M23 Ex Combatants are cantoned within Bihanga Training School, therefore the commandant of the School and his staff officer exercises supervision over the group, in addition to their routine duties. At strategic level, through its structures, the higher

headquarters, provides logistical support and overall guidance on matters of M23 ex combatants, living in Uganda.

Issue 3

What steps has the Uganda government or the UPDF taken, including in collaboration with the Congolese government, to repatriate M23 combatants to DRC Congo since their arrival in Uganda in 2013.

Response

- a. In May 2014, the Uganda government facilitated a DRC Delegation to conduct a registration exercise focused at granting Amnesty to the M23 elements living in Uganda, as stated in the 12 December Nairobi Declarations.
- b. In Dec 2014, Uganda Government facilitated the visit of a DRC Delegation headed by Hon Francois Mwamba Tshishimbi, Minister for Regional Cooperation, to Bihanga to mobilize the M23 ex-combatants, in preparation for their repatriation.
- c. In Dec 2014 and Dec 2015, Uganda government facilitated the DRC government to repatriate 193 M23 ex-combatants. On 25 Apr 16, Uganda hosted a meeting of the Guarantors of the Peace, Security and Cooperation Framework for the DRC and the region, to discuss the delayed implementation of the Nairobi Declarations; particularly the stalemate over the repatriation of the ex-M23 combatants. The Guarantors were also facilitated to meet political leaders of the ex-M23 at Protea Hotel, Kampala.
- d. In coordination with the ICGLR Secretariat and the office of the Special Envoy of the United Nations Secretary General in the Great Lakes Region, Uganda assisted the ex- M23 representatives to travel to Kinshasa to attend a meeting, on 27 May 2016, between signatories to the Nairobi Declarations and Guarantors of the Peace, Security and Cooperation (PSC) Framework for the DRC and the region.

Issue 4

Did Senior Congolese security force engage in convert recruitment efforts of M23 combatants living in Uganda in late 2016, or other recruitment drives that may have occurred more recently? If so, what steps has the government or the UPDF taken in response to such recruitment?

Response

No incident of such recruitment has ever been reported to Uganda authorities.

Issue 5

Have any Uganda army officers facilitated recruitment efforts by providing transport or other support to the M23 combatants as they travelled from Uganda to Congo in late 2016? If so, have any steps been taken to sanction or discipline these officers?

Response

No Ugandan officer(s) has been reported for facilitating the recruitment or providing transport to M23 Ex-combatants to travel to DRC from Uganda.

On the contrary, Uganda security has been sharing information with its DRC counterparts on matters relating to the activities of the ex-combatants in Bihanga and the refugee camps, including their disappearance from the country, since November 2016.

In Jan 2017, Uganda security forces intercepted, in Mbarara, 101 ex-M23 elements and some of their civilian relatives, while escaping to DRC.

On 15 Jan 17, Uganda security intercepted a vehicle loaded with 06 SMGs and 01 PK in Kisoro. They were suspected of being associated with M23. The DRC liaison officer in Kisoro, was invited to witness the impounded items.

On 18 Jan 17, Uganda government hosted a DRC Delegation, headed by an FARDC General, to verify information about the activities of M23. The delegation was facilitated to visit UPDF's 2 Inf Div in Mbarara, talked to the intercepted 101, M23 elements and also visited Bihanga, where they talked to the M23 ex-combatants, who were in the camp.

In this regard, therefore, there has been no need for Uganda authorities to sanction or discipline any of its officers.

Issue 6

Concerns about absence of prosecutions of Crimes allegedly committed by M23 members, by Uganda Government.

Response

Uganda government facilitated the talks and final signing of the 12 December 2013 Declarations, between the DRC government and the M23. The Declarations were witnessed by the international Community, including the UN. The declarations provide a wide range of considerations including issues on national reconciliation and justice. Para 8.4 of the Declarations by DRC Government provides that "the Government shall ensure that prosecution for war crimes, genocide, crimes against humanity, sexual violence and recruitment of child soldiers are initiated against any presumed author thereof." In this regard, therefore, the responsibility to prosecute the said offenders does not lie with the Government of Uganda, but the DRC Government, upon implementation of the Nairobi Declarations.



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MINISTER OF DEFENCE AND VETERAN AFFAIRS

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