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Technical assistance and capacity-building

### **Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo\***

#### *Summary*

The Human Rights Council in its resolution 10/33 invited the United Nations High Commissioner for Human Rights to report to the Council at its thirteenth session on the development of the situation of human rights in the Democratic Republic of the Congo and on the activities carried out by her Office (OHCHR) in the country.

The High Commissioner acknowledges the tentative efforts of the Government to align its policy and practice with the international human rights obligations it has voluntarily assumed. However, she is concerned that improvement in the human rights situation in the country, critical to achieving a well-functioning democracy, has been limited and that the human rights situation in the country remains extremely problematic.

Through interaction with various parts of the United Nations human rights system, including the High Commissioner, the Human Rights Council and its special procedures, as well as the treaty bodies, numerous recommendations have been made to the Government of the Democratic Republic of the Congo, yet very limited progress has been made in their implementation. Consequently, the Congolese people remain insecure in enjoying even their most fundamental human rights.

As an emerging “recommendation fatigue” can be observed, the approach of this report is not to make new recommendations to the Congolese authorities, but rather to recall conclusions and recommendations made in particular by the High Commissioner and seven thematic special procedures in their previous reports to the Council, as well as by other special procedures and treaty bodies.<sup>1</sup> The report assesses the Government’s response

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\* Late submission.

<sup>1</sup> The recommendations referenced in this report are extracted from the following documents: conclusions and recommendations of the Committee against Torture, CAT/C/DRC/CO/1; United Nations Joint Human Rights Office (UNJHRO), “The Human Rights Situation in the Democratic Republic of the Congo during the period January to June 2007”; report of the Special Rapporteur on

to these recommendations during the period from March to November 2009 to identify setbacks and to determine the causes for the insufficient implementation of the recommendations.

The Congolese Government must take a series of coherent, systematic and human rights-focused measures, with the assistance of relevant local, national and international stakeholders, to implement the recommendations that have been already made, in order to respect, protect and fulfil the human rights of its citizens. The High Commissioner will continue to support the Government and other partners in the country in their efforts towards promotion and protection of human rights in the country. It will do so mainly through the United Nations Joint Human Rights Office.<sup>2</sup>

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violence against women, its causes and consequences, A/HRC/7/6/Add.4; Report of the Representative of the Secretary-General on the human rights of internally displaced persons on a mission to the Democratic Republic of the Congo, A/HRC/8/6/Add.3; concluding observations of the Committee on the Rights of the Child, CRC/C/COD/CO/2; report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, A/HRC/10/58; combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country, A/HRC/10/59. References are also made in the report to the main findings and preliminary recommendations issued following recent visits to the country by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions in May and October 2009, respectively, as well to the recent concluding observations issued by the Committee on Economic, Social and Cultural Rights, E/C.12/COD/CO/4. In order to avoid repetition, the sources of the recommendations will not be repeated throughout the report as most of the recommendations have been issued by several mechanisms indicated above.

<sup>2</sup> UNJHRO was established on 1 February 2008 with the integration of the OHCHR country office and the Human Rights Division of the United Nations Mission in the Democratic Republic of the Congo (MONUC) into one office.

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## I. Main human rights developments

1. During the reporting period, the Congolese people have suffered from widespread human rights violations linked to armed conflicts, mainly in the eastern provinces, in addition to structural and politically motivated human rights violations committed throughout the country. Human rights activists and journalists continue to be the target of intimidation and threats throughout the country. Rape and sexual violence also remain a matter of serious concern.

2. In recent months, numerous human rights violations, including arbitrary executions; rapes; arbitrary arrests and detentions; torture; cruel, inhuman or degrading treatment of civilians; forced labour; pillaging and illegal exploitation of natural resources, were committed by the Congolese National Armed Forces (FARDC) and the Congolese National Police (PNC). Of particular concern are the violations perpetrated by the FARDC within the scope of the Kimia II operation. For example, during an investigation mission in Nyabiondo, Masisi territory, in North Kivu Province, the United Nations Joint Human Rights Office (UNJHRO) was able to confirm that, between May and September 2009, the FARDC participating in the Kimia II operation killed at least 62 people, and that 8 others disappeared from several villages around Nyabiondo. Credible witness testimony indicates that the death toll could be much higher. Aside from these killings, cases of rape, widespread forced labour, extortion and arbitrary arrests by the FARDC were documented. Following the preliminary findings of this investigation, on 1 November 2009 the United Nations suspended its logistical and operational support to the Congolese army unit allegedly implicated in the killings.

3. Armed groups, such as the Democratic Liberation Forces of Rwanda (FDLR) and the Lord's Resistance Army (LRA), operating in the eastern regions of the country, have perpetrated serious human rights violations against the local population during recent months, including mass killings, widespread rape, forced recruitment into armed groups, and looting. Ongoing violations, including executions of civilians,<sup>3</sup> abductions of villagers and sexual violence, continue to be perpetrated by the LRA against the civilian population in the districts of Haut Uele and Bas Uele, Orientale Province.

## II. Measures and response to recommendations

### A. Arbitrary and/or illegal arrests and detentions

#### Existing recommendations

4. The Government should strictly limit the number of security forces and services with powers of arrest, detention and investigation, and ensure that the police force is the primary law enforcement agency. Furthermore, all arrested persons should be formally registered and brought before a judge; they should also be able to exercise their right to have the assistance of a lawyer of their choosing, to be examined by a doctor, and to contact their families or other persons of their choosing. In addition, UNJHRO should have unfettered access to all prisons and detention centres in accordance with the mandate of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and with the presidential directive dated 5 July 2005. Finally, the State should thoroughly

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<sup>3</sup> At least 1,250 victims were reportedly killed by the Lord's Resistance Army from September 2008 to September 2009.

investigate all alleged cases of arbitrary detention, prosecute the perpetrators and award full compensation to the victims.<sup>4</sup>

#### **Actions taken by the Government and the current situation**

5. According to information received, the Government has not taken significant action to implement the above recommendations. At the time of writing, several branches of the executive power, security forces and judicial authorities persist in the arbitrary and illegal arrest and detention of individuals throughout the country. Individuals are also arrested for reasons that reach beyond criminal law. Human rights officers routinely find people detained for civil matters such as non-payment of debts and property disputes. UNJHRO has also observed a trend of PNC arrests of family members or close associates of alleged criminals when the perpetrator cannot be located, without any charges or evidence that the arrestee was involved. Agents of the State intelligence service (*Agence nationale de renseignement – ANR*), also frequently arrest people accused of common law offences that are in no way linked to State security matters. Lastly, members of security forces, including the ANR, have also been implicated in politically motivated human rights violations directed at political opponents, journalists and human rights defenders.<sup>5</sup>

6. After arrest, detainees are commonly denied the guarantees they are entitled to under Congolese law. In particular, detainees are generally not properly registered, and consequently record keeping is often incomplete or out of date. Detainees are commonly denied the right to appear before a judge within the 48-hour period required by the Constitution and this practice has led to the proliferation of *hébergés*, that is inmates who are detained without officially being charged. Additionally, very few cases are transferred to the offices of the Public or Military Prosecutor, and many detainees are released after paying fines that are not officially recorded.

#### **Actions taken by the United Nations Joint Human Rights Office**

7. UNJHRO has taken tentative steps against arbitrary and/or illegal arrests and detentions to prompt the Government to provide the protection that detainees are entitled to under Congolese law and international human rights law. During the period under review, it visited numerous holding cells and prisons throughout the country, in several cases with national prosecutors, in order to verify the legality of detentions, and obtained the release of scores of people who had been illegally detained. After requests made by UNJHRO to judicial and police authorities that all detainees be notified of their rights and the charges pending against them, the Prosecutor General required all detaining officials to inform detainees of the charges against them. In practice, however, this requirement is seldom followed. Also, during the reporting period, UNJHRO organized several workshops and sensitization activities for the Congolese security forces to increase their respect for human rights. It should be recalled that UNJHRO and other human rights actors still do not have access to a number of detention facilities, such as the Tshatshi military camp, the headquarters of the military intelligence in Kinshasa and most ANR detention facilities throughout the country, despite instructions given to the relevant authorities by the President in July 2005.

#### **Obstacles to the implementation of existing recommendations**

8. Arbitrary and illegal arrests and detentions are often part of a money-making scheme. These cases frequently do not reach the judiciary, but regularly lead to a bartered,

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<sup>4</sup> See footnote 1.

<sup>5</sup> See below part E.

monetary arrangement with the arresting officer who forces the victim or his family to pay a bribe to buy back his liberty from the police. Because of fear of retribution or re-arrest, only rarely do individuals subsequently lodge a complaint after they have been released. Apart from these cases, illegal detentions are also politically motivated. Both of these problems are exacerbated by the dysfunctional state of the criminal justice delivery system.<sup>6</sup>

## **B. Conditions in the penitentiary system, torture and ill-treatment in detention**

### **Existing recommendations**

9. Immediate steps should be taken to reduce overcrowding, to address appalling detention conditions and to improve security in all prisons. Additionally, legislation should be enacted to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Effective measures should be taken to prevent any acts of torture or ill-treatment from occurring in the Democratic Republic of the Congo. Prompt, impartial and exhaustive investigations into alleged acts of torture and ill-treatment should be carried out, and the perpetrators convicted of such acts should be appropriately sentenced and ordered to compensate their victims. Moreover, the State should take effective measures to ensure that all persons reporting torture or ill-treatment are protected from threats or intimidation.<sup>7</sup>

### **Actions taken by the Government and the current situation**

10. During the period under review, the Government has made little progress towards developing a policy to make prisons more self-sufficient. The new Strategic Plan on Prison Reform being developed by the Ministry of Justice with the support of the MONUC Rule of Law Division is under discussion. The majority of prisons are characterized by crumbling facilities, starvation and sickness. These conditions amount to cruel, inhuman or degrading treatment for the detainees, and fail to comply with basic international standards for the humane and dignified treatment of prisoners.<sup>8</sup> Abysmal prison conditions lead to an extremely high death rate for those in detention. Forty-four persons reportedly died in detention at the *Centre pénitentiaire et de ré-éducation de Kinshasa* (Penitentiary and Re-education Centre of Kinshasa – CPRK), between January and August 2009, mainly due to a lack of food and medicine.

11. Overpopulation, resulting mainly from the abuse of pretrial detention, continues to be a major problem affecting prisons throughout the country. Convicts and pretrial detainees, as well as minors and adults, are often detained in the same areas. However, the authorities have taken some steps to reduce overpopulation. For instance, to alleviate overcrowding in the CPRK, the authorities released inmates who had served at least one quarter of their sentence and had been well-behaved. However, there are concerns that perpetrators of rape, sexual violence and other human rights violations also benefited from this decision. Given the protest registered against the releases granted to perpetrators of sexual violence, the Minister of Justice announced, in October 2009, that a bill is being prepared, the purpose of which is to exclude the perpetrators of sexual abuse from receiving a conditional release.

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<sup>6</sup> See below Part F.

<sup>7</sup> See footnote 1.

<sup>8</sup> Article 10 of the International Covenant on Civil and Political Rights.

12. Due to lack of security, crumbling infrastructure, corruption and the slowness of judicial proceedings, pretrial detainees and convicted prisoners, including high-profile offenders, regularly escape. Between March and November 2009, 135 detainees escaped from the prison of Mahagi, Ituri District, Orientale Province. The frequency of escapes from Congolese prisons seriously undermines efforts to fight impunity. In some instances, actions were taken against officials accused of having facilitated escapes: the director of Mahagi prison was arrested on 3 July 2009, and the second in command of the Gwoknyeri police station (27 km from Mahagi) was arrested on 10 June 2009.

13. The Parliament has not yet adopted a law criminalizing torture, and detainees in custody are still frequently subjected to torture and other forms of cruel, inhuman and degrading treatment by the PNC, ANR and FARDC. Ill-treatment occurs at different stages of the detention process — upon arrest, during interrogation and in pretrial detention — and often results in the death of or serious injury to the detainee. On 16 June 2009, for instance, a detainee died in a prison cell in the *groupement* of Bena Mpiana, Ngandajika territory, Kasai Oriental Province, after he was arrested and beaten by PNC officers because he was “illegally” wearing “policeman” shoes. Only a few investigations into alleged acts of torture and ill-treatment and trials for such acts have been carried out during the period under review. No effective measures have been taken by the Government to ensure that all persons reporting torture or ill-treatment are protected from threats or intimidation.

#### **Actions taken by the United Nations Joint Human Rights Office**

14. During the period under review, UNJHRO continued to make frequent visits to prisons throughout the country, including joint visits with the Minister of Human Rights in some provinces, and documented crumbling cells, lack of food and medical care, corruption, and unqualified prison staff. In the case of food insecurity, the International Committee of the Red Cross (ICRC) intervenes when 30 per cent of those detained in a facility are suffering from malnutrition. As such it is providing sufficient food to overcome the malnutrition problem in eight locations. This has reduced the problem of deaths from malnutrition in detention. However, there is concern that ICRC assistance has lulled the Government, which had done very little, into doing even less. UNJHRO has continued to carry out its awareness-raising activities and to promote the adoption of a law criminalizing torture. In the context of the celebration of the International Day in Support of Victims of Torture on 26 June 2009, UNJHRO organized a number of activities. Furthermore, in partnership with *Avocats sans frontières (ASF)*, UNJHRO facilitates the implementation of decisions by the United Nations Trust Fund for Victims of Torture. In October 2009, in cooperation with the Ministry of Justice and judicial authorities, UNJHRO organized a workshop on “the judiciary and the problem of torture and death in prison”. At this workshop, participants asked the *Procureur général de la République près la Cour suprême* (Prosecutor General of the Republic to the Supreme Court) to draft a directive for the prosecutors on the need “to effectively investigate cases of torture and death in custody”. This directive is currently being developed with the assistance of UNJHRO. UNJHRO has actively continued to advocate for making prisons more self-sufficient

#### **Obstacles to the implementation of existing recommendations**

15. Prison personnel are for the most part not systematically recruited, are not trained and are not being paid. Moreover, the Government does not provide adequate funding for prisons and detention facilities. There appears to be little desire within Government to address the prison situation and to begin the necessary reforms, because this would upset the network of corruption which has developed around the “privatization” of the penitentiary function. The creation of prison farms to guarantee a food supply and the provision of basic medicines to prevent disease outbreaks are necessary steps, but the “privatization” of the State function has impeded even these efforts. Regarding the

implementation of the Convention against Torture, the adoption of the necessary legislation has experienced delays, due mostly to the current legislative backlog. The lack of prosecutions by the authorities against perpetrators of torture is more evidence of the chronic impunity that still persists in the country. Years of governance that has been at best unresponsive and at worst threatening have created a cultural belief among Congolese victims of human rights violations by State officials that complaining is useless because it will be met with either inaction or retaliation.

## C. Sexual violence and impunity

### Existing recommendations

16. All provisions of Congolese law that discriminate against women should be abolished. Two important legislative steps should be a comprehensive reform of the Family Code and the adoption of a gender equality law implementing article 14 of the Constitution. With regard to sexual violence, State institutions should issue public and unequivocal denunciations of all forms of violence against women, including spousal abuse, marital rape and sexual harassment. These denunciations should not be tempered by invoking any custom, tradition or religious consideration to justify or excuse such violence. The Government should ensure that members of the State security forces know and comply with the law on sexual violence, and that the legal system brings the perpetrators to justice without delay or partiality. Furthermore, the Government should establish and promote an effective mechanism to receive complaints of sexual violence, including at custodial facilities, should investigate every complaint and provide victims with psychological and medical care. Finally, the State should pay damages to all victims of sexual violence committed by State agents and create a fund for this purpose in the national budget.<sup>9</sup>

### Actions taken by the Government and the current situation

17. The number of cases of sexual violence recorded by UNJHRO throughout the country remained alarmingly high during the period under review. These cases are not limited to areas of armed conflict but are happening throughout the country. Due to lack of security and lack of separation between inmates, female detainees are at particular risk of sexual violence. As an example, on the night of 20 to 21 June 2009, during an escape attempt at the Goma prison, 23 female inmates were raped by co-detainees. While most rapes are committed by members of armed groups and by the FARDC and the PNC, UNJHRO has documented a significant and growing number of civilian perpetrators.

18. Promising initiatives taken by the Government against sexual violence, such as the Laws on Sexual Violence which were adopted on 20 July 2006 and which introduced major improvements to the Congolese Criminal Code and the Code of Criminal Procedure, have not produced the changes expected. If perpetrators of rape are tried and convicted, they rarely receive prison sentences as long as five years and the State has rarely paid damages, even though it has been regularly ordered to pay them. In June 2009, the *tribunal de grande instance de Mbuji Mayi* rendered decisions in 11 cases of rape, but only 1 prison sentence exceeded 5 years. The other sentences ranged from 3 to 24 months. Even when victims are awarded damages for abuses committed by State officials, the Government fails to pay the damages.

19. On 25 November 2009, the Government took a step forward by launching its National Strategy to Combat Gender-Based Violence, which will be implemented with the

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<sup>9</sup> See footnote 1.



support of the United Nations system in the country. The Government has developed a strategy aimed at preventing, remedying and mitigating the effects of sexual violence in conflict areas that incorporates the Comprehensive Strategy on Combating Sexual Violence in the Democratic Republic of the Congo. The Ministry of Gender, Family and Children is also currently drafting legislation to reform the Family Code and to implement the gender equality provision of the Constitution.

20. On 5 July 2009, the President declared a “zero tolerance” policy for human rights violators, particularly rapists, within the Congolese security forces. On 31 July 2009, for instance, the *Cour militaire du Kasai oriental*, upheld on appeal the sentence against an inspector at the military prosecutor’s office of Lodja, Sankuru District, Kasai Oriental Province, for the rape of a minor in December 2007. He was sentenced to 20 years in prison and to the payment of a fine of 100,000 Congolese francs. Despite some positive developments with regard to trials and convictions of low-ranking soldiers and police officers, impunity for sexual crimes remains chronic. The Congolese authorities have made very little progress in arresting and prosecuting FARDC elements who are suspects, in particular high-ranking commanders. During the Security Council visit to the Democratic Republic of the Congo in May 2009, a list of five high-ranking army officers accused of rape was handed over to high-level authorities, including the President. Despite such high-level advocacy, little progress has been made six months down the line. While two of the five are being detained, no charges have been brought against any of them.

21. Members of non-integrated armed groups also continue to commit rape. On 3 June 2009, five Mai Mai militia men who raped 135 women in July 2007 in Lieke Lesole, Opala territory, Oriental Province, were convicted by the military tribunal of Kisangani for crimes against humanity, including violent rape, and were sentenced to between 30 years and life in prison. The convicted militiamen were also found jointly liable with the State for US\$ 2,500 in damages for each victim of violence and US\$ 10,000 in damages for each victim of rape. The Lieke Lesole judgement is a milestone for damages awarded to victims, but unfortunately no damages have yet been paid.

#### **Actions taken by the United Nations Joint Human Rights Office**

22. UNJHRO continued its empowerment and capacity-building activities in the fight against sexual violence. Within the framework of the national plan on sexual violence, UNJHRO is responsible for coordinating this component in the fight against impunity. This programme aims at decreasing impunity for sexual violence by providing legal assistance to victims through legal aid clinics in several provinces. Complementing this programme, UNJHRO provides support in terms of mission allowances for military prosecutors in order to facilitate investigations; it transports justice personnel, victims and their legal advisers to Court; and it documents and intervenes to improve the situation. It has also held training sessions with State and non-State actors. In addition, it has closely monitored and reported on cases of sexual violence to ensure that those responsible, particularly those in the security forces, are prosecuted and has offered its support to the military prosecutor for the investigation needed to bring high-ranking army officers to justice. Recently it has developed a nationwide programme on access to justice for victims of sexual violence with the support of various donors. A pilot initiative to advocate for the rights of victims of sexual violence, including through an assessment of the existing mechanisms for remedies and reparations for such victims, is also being developed.

#### **Obstacles to the implementation of existing recommendations**

23. Impunity for the perpetrators of crimes of sexual violence is chronic. High-ranking officials are rarely prosecuted, and, even when there are prosecutions, the justice sector is so severely under-resourced and understaffed that judicial proceedings are slow. Often

high-ranking officials — and in fact all those accused who have money — simply pay their way out. Furthermore, alleged perpetrators regularly “escape” from prison. Other factors hinder improvement in the plight of victims, such as the influence of local customs and the victim’s fear of rejection by their family and community. The gender-specific root causes of sexual violence, namely the subordinate social, economic and political position of women in Congolese society is not effectively addressed by the State. Victims also face enormous difficulties in accessing justice because of expensive judicial fees, amicable settlements, pressure and threats against them, and ignorance of the law among the police in rural areas. All of these impediments contribute to the climate of impunity for crimes against women.

#### **D. Violation of economic and social rights and illegal exploitation of natural resources**

##### **Existing recommendations**

24. In the domain of economic and social rights, comprehensive measures that adequately address the illicit exploitation of natural resources in the country should be taken. The Government should increase transparency in the collection of State resources, in particular by mapping revenues received from actors exploiting mineral-rich areas in compliance with the Extractive Industries Transparency Initiative (EITI), and by allocating revenue in compliance with the duty of the State to maximize the use of its resources for the progressive realization of human rights. This latter obligation requires the Government to use revenue to guarantee free access to primary education for all children, to provide access to affordable basic health care, and to ensure that health centres and hospitals have adequate human, medical and financial resources. At its forty-third session in November 2009, the Committee on Economic, Social and Cultural Rights considered the Democratic Republic of the Congo and recalled, *inter alia*, the need for the State party to promote good governance and to combat corruption as well as to take all appropriate measures to ensure that its natural resources are not subjected to illegal exploitation and mismanagement.<sup>10</sup>

##### **Actions taken by the Government and the current situation**

25. Central and local authorities do not ensure the enjoyment of economic and social rights and the efforts made so far to improve the situation are insufficient. The lack of adequate collection and allocation of resources by the Government continues to cause structural human rights abuses and corruption across the country, as unpaid or underpaid officials extort money from the population in the course of their duties. Although the Government professes adherence to the EITI, transparency remains elusive in practice. Private companies and public institutions rarely disclose profits, and authorities have failed to hold State and non-State actors accountable for their role in the illegal exploitation of Congolese natural resources. The unregulated natural resource economy has been also the primary recruiter and exploiter of labour in the country. Employees of social services that are supposed to protect labour rights, such as labour inspectors, often sacrifice the rights of workers in order to collect money to survive. Also, massive firings have been executed by private companies in total disregard of the rules and procedures.

26. The Democratic Republic of the Congo is an often cited example of the so-called “paradox of plenty”. While the country is extremely rich in natural resources (e.g. 80 per cent of worldwide resources of coltan, 10 per cent of worldwide resources of copper), the population suffers from extreme poverty (80 per cent of the Congolese population live on

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<sup>10</sup> See footnote 1.

less than 20 US cents a day).<sup>11</sup> In the provinces where the rich mineral resources are extracted, security problems and human rights violations linked to resource extraction have continued to be reported. Clashes between rebel groups and government forces to gain control over mining sites frequently occur. In August 2009, FDLR and Mai Mai Shikito attacked a mine under the protection of government forces in Omata, Walikale territory, North Kivu Province, resulting in looting and the death and injury of several civilians. Moreover, government security forces and irregular armed forces continue to commit acts of sexual violence and to subject artisanal miners and other civilians living in the area to forced labour, illegal taxation and extortion.

27. With regard to the right to education, despite the fact that article 43 of the Constitution requires free public and compulsory primary education, parents are expected to contribute to teachers' salaries due to lack of sufficient government funding. Access to food and health care is also far from meeting minimal standards. The State health-care system is barely functional, and the Government is unable to react to treatable illnesses that plague the population. Due to the existence of user fees, the health-care system is not accessible to the poorest in society. As a result, maternal and infant mortality rates are among the highest in the world. In the east of the country, the widespread looting of health clinics and the arbitrary obstruction of humanitarian convoys intended to replenish medical supplies have aggravated the situation; moreover, a rapid increase in medical capacity is required as many Congolese medical workers have been forced to flee. High rates of malnutrition among women, children and internally displaced persons, have made them even more vulnerable to infectious diseases. Of particularly grave concern is the plight of displaced persons because of the magnitude of the problem. These people, having lost their homes, live in absolute poverty without access to sufficient food, drinking water, health care or education for their children.

#### **Actions taken by the United Nations Joint Human Rights Office**

28. UNJHRO is increasingly focusing on the link between the illegal exploitation of natural resources and the paucity of government revenue allocated to the realization of economic and social rights. It is advocating for the Government to increase its efforts to ensure the enjoyment of economic and social rights by its citizens. In addition, UNJHRO carries out investigative missions to increase its understanding of the challenges to regulation and policy relating to the exploitation of natural resources. It also monitors and assesses the progress made in relation to social and economic rights throughout the country. UNJHRO is undertaking efforts to increase stakeholder knowledge of article 2 of the International Covenant on Economic, Social and Cultural Rights which could be used as a tool to combat the illegal exploitation of natural resources, with the goal of progressively realizing all human rights.

#### **Obstacles to the implementation of existing recommendations**

29. Many of the government ministries with responsibilities relating to supervision of and revenue collection from the natural resources sector are understaffed, underfunded, and lack the technical capacity to perform their functions. This in turn leads to corruption. The Government collects far less in taxes and fees than it should from the mining sector due to corrupt practices at every level. For those actors, impunity prevails because most of the abuses occur with the consent or under orders of superior officers. These officers interfere in the legal apparatus to block the investigation and prosecution of cases of illegal exploitation, corruption and other crimes relating to the natural resources sector.

<sup>11</sup> <http://eiti.org/DRCongo>, visited on 23 September 2009.

## **E. Situation of journalists, human rights defenders, victims and witnesses**

### **Existing recommendations**

30. State institutions should encourage public dialogue and scrutiny to sustain and advance the democratic process. The State should respect its international obligations related to freedom of expression and of the press and take all necessary measures to protect victims, witnesses, human rights defenders and members of the media who are increasingly being threatened with arrest or even death. During her visit in May 2009, the Special Rapporteur on the situation of human rights defenders recalled these recommendations and made some additional specific recommendations, such as the adoption of national and provincial laws on the protection of human rights defenders. The Government should also respect the regime of notification governing the right to peaceable assembly. Finally, the Government should grant legal personality to non-governmental organizations (NGOs) that comply with the administrative requirements.<sup>12</sup>

### **Actions taken by the Government and the current situation**

31. There is still no law for the protection of human rights defenders, journalists, victims and witnesses. Moreover, the degree of importance accorded to the need to protect these individuals by the Congolese authorities remains insubstantial and non-institutionalized. Part of the problem is the lack of understanding by all authorities of the crucial role of human rights defenders in a democratic system. At the end of her visit to the Democratic Republic of the Congo in May 2009, the Special Rapporteur on the situation of human rights defenders underlined that the absence of a legal framework contributes to the precarious situation of human rights defenders in the country. No measurable progress has been made since then.

32. During the reporting period, journalists and human rights defenders were singled out by national security forces, armed groups and public authorities and encountered unlawful restrictions on the exercise of their rights to freedom of opinion and expression. On 26 July 2009, the Government temporarily shut down Radio France Internationale (RFI) broadcasts, on the grounds that the radio station was destabilizing the country by broadcasting “untrue and unverified” information. At the end of July 2009, the Minister of Communication labelled three international human rights NGOs, namely Human Rights Watch, Global Witness and the International Federation for Human Rights (FIDH) as “humanitarian terrorists”, accusing them of being driven by a desire to destabilize the country, after they released critical reports on the human rights situation. On 22 August 2009, a journalist at Star, a private local radio station owned by an opposition member of parliament, was stabbed to death in the area of Kasali, Kadutu Commune, Bukavu town, South Kivu Province. This was the third killing of a journalist in Bukavu since 2007 and it has had a chilling impact on other journalists, even if the three dead journalists appear to have been victims of common crimes.

33. An emblematic case demonstrating the limited space for democratic debate and the hostility from the Government towards free expression is the arrest of Golden Misabiko, the President of the NGO ASADHO/Katanga, on 24 July 2009 following the public release of a report on the illegal exploitation of uranium in the Shinkolobwe mine. On 21 September 2009, the *tribunal de paix de Lubumbashi-Kamalondo* sentenced him to 12 months of imprisonment with 8 months suspended. He was found guilty of “inciting the population” under article 199 of the Criminal Code. No evidence was presented at the hearing to support the charge, yet Mr. Misabiko was still convicted. On 1 October 2009, the President

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<sup>12</sup> See footnote 1.

of *Les amis de Nelson Mandela pour la défense des droits humains (AMDH)*, who had been in detention for having denounced what he considered slave-like working conditions in a company in Bas-Congo Province, was provisionally released after close to two months in detention. These cases illustrate that the judiciary is being used as a tool to intimidate those whom the Government perceives as opponents.

34. Activists and journalists face arbitrary arrests, intimidation, ill-treatment and death threats on a daily basis. During the night of 27 to 28 July 2009, in the town of Kanshi, in Mbuji Mayi, a group of five armed individuals, wearing FARDC uniforms, reportedly broke into the premises of a local NGO, *Centre d'étude et de formation populaire pour les droits de l'homme (CEFOP/DH)*, and ordered the guard to provide them with the address of the head of the organization. The guard refused to cooperate and was reportedly tortured. On 18 August 2009, three human rights activists were arrested at Mpemba, Katanga Province. They were allegedly subjected to ill-treatment by two ANR agents and one PNC officer. A similar pattern of repression exists for victims and witnesses.

#### **Actions taken by the United Nations Joint Human Rights Office**

35. As Congolese authorities have been slow to act to increase protection of human rights defenders, both responsive and proactive measures have been taken by other stakeholders. UNJHRO pays special attention to allegations of human rights violations against human rights activists, journalists, victims and witnesses as they are often the target of repression by public authorities for speaking out against government policy or the problematic realities in the country. Besides intervening in these cases, UNJHRO also takes measures to prevent them. Through a project funded by the European Commission, UNJHRO has established a national network of human rights NGOs specialized in the field of protection and provided capacity-building to them in nine provinces. Moreover, NGOs have organized themselves in provincial protection networks. In cooperation with UNJHRO, these networks have taken many protective measures for persons who are threatened by relocating them and providing them with medical, psychosocial, socio-economic and legal assistance thanks to a protection trust funded with the support of Switzerland, Sweden and the United Kingdom of Great Britain and Northern Ireland.

#### **Obstacles to the implementation of existing recommendations**

36. High-ranking government officials sustain a climate of intimidation and repress opposition views rather than encouraging public dialogue and scrutiny of governance. Police, military, judicial and especially political authorities have not always valued the nature and legitimacy of the work done by human rights defenders and journalists. They claim to lack the means to carry out their own protection functions. Moreover, victims and witnesses are often reluctant to testify because they fear acts of retaliation for speaking out or bringing a claim, as they have a right to do.

## **F. Administration of justice and impunity**

#### **Existing recommendations**

37. The existing recommendations in the area of administration of justice and the fight against impunity call for strengthening the justice system and law enforcement. The Congolese parliament should bring existing legislation into conformity with international standards and give priority to the adoption of fundamental laws for the reform of the justice system. It should enact legislation establishing the constitutional court and a credible, independent national human rights commission. The legislative body should also pass the implementing legislation for the Rome Statute of the International Criminal Court. In addition, Congolese State institutions should enable the judiciary to fulfil its constitutional

role in full independence, by improving working conditions of justice officials, and by strengthening the Supreme Council of the Judiciary. Finally, the Government should take the necessary steps to ensure that the military courts are used solely for the purpose of trying military personnel for military offences in accordance with the relevant provisions of international law.<sup>13</sup>

#### **Actions taken by the Government and the current situation**

38. At the time of writing this report, the parliament had not yet adopted the laws crucial to reforming the judicial system, notably legislation creating the *Cour constitutionnelle* (Constitutional Court), the *Cour de cassation* (Court of Cassation) and the *Conseil d'état* (State Council). The independent national human rights commission has not been established, and, while the national implementation legislation for the Rome Statute has been considered on several occasions, it has not yet been passed. Such a law would be instrumental in rendering the Rome Statute effective in the Democratic Republic of the Congo and would contribute to setting coherent criminal justice norms in the area of war crimes, crimes against humanity and genocide. In addition, the Liaison Entity, that brings all relevant government entities together to address human rights violations, has been established but is not functional yet.

39. On 15 July 2009, as part of an anti-corruption drive, the President signed several orders dismissing 86 magistrates, retiring 2 magistrates and appointing 605 new magistrates. They were a disciplinary measure in accordance with article 2 of the Law on the Organization and Functioning of the Superior Council of the Judiciary (*Conseil supérieur de la magistrature* – CSM). These orders violate the law on the functioning and organization of the CSM as they were issued without a hearing for the magistrates concerned in violation of the magistrates' statute and due process principles. In addition, while the "privatization" of the judicial function — where judiciary officials use their position to extort money instead of fulfilling their constitutional mandate — is endemic, as is the interference by political and military authorities in the administration of justice. The action of 15 July did not address these problems directly; instead, it created concerns of arbitrary action and generated accusations of patronage. For example, at least three magistrates who had either disciplinary measures or criminal sentences held against them were promoted, whereas a number of magistrates were dismissed on the same grounds. The ordinances have also thrown some tribunals into dysfunction as magistrates have been removed and, in some cases, not replaced after several months.

40. Due to lack of resources and staff, the judiciary is still unable to fulfil its constitutional role. For instance, in August 2009, the commanding authorities of the Kimia II operation handed over 10 members of the FARDC to the Superior Military Prosecutor of South Kivu, but the prosecutors in the province did not have sufficient staff to handle the cases. Also in Ituri, Orientale Province, the administration of justice has been slow because of the low number of magistrates. In Bandundu Province, the *tribunal militaire de garnison* (military tribunal) of Bandundu did not hold a hearing for approximately five months because the sole judge in Bandundu only returned from vacation in September 2009. One important response to these structural problems is the growing presence of mobile courts. However, these are very costly and draw badly needed resources from other parts of the judicial system. Another solution is to modify the legal competence to allow the *tribunaux de paix* to hear cases related to human rights violations in all territories.

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<sup>13</sup> See footnote 1.

### **Actions taken by the United Nations Joint Human Rights Office**

41. During the period under review, UNJHRO continued to support the justice system to increase the judicial response to human rights violations. It provided technical assistance to draft various laws, as well as to complete judicial reform through the establishment of high courts and the CSM. Several training courses for judicial personnel and members of civil society were also conducted by UNJHRO on, for example, the independence of the judiciary and on the ethics and professional conduct of a magistrate. UNJHRO also gave its technical support to the CSM for the development of a code of professional ethics for magistrates. In an attempt to reinforce the fight against impunity, UNJHRO is supporting the establishment of a working group on impunity led by the Minister of Justice during the justice reform process. This group will function as a technical unit of the Joint Committee for Justice Reform and will feed in ideas and facilitate needed changes. Throughout the country, UNJHRO also works daily with judicial officials. Support runs from sharing information to facilitating transport to allow for investigations needed, to building rehabilitation. As part of its efforts to assist in the fight against impunity, OHCHR also conducted a mapping exercise of the most serious violations of human rights and international law, committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003. The deployment phase took place between October 2008 and May 2009. It will be the first and only comprehensive United Nations report documenting major human rights violations in the country covering this period, with the aim of contributing to a reversal of the trend of endless cycles of impunity.

### **Obstacles to the implementation of existing recommendations**

42. The justice sector remains dysfunctional and many of the human rights violations identified in this report are left unresolved and festering because of an inadequate judicial response. Several major problems underlie the limited progress in the administration of justice. The administration of justice is severely harmed by inadequate funding: the portion of the budget allocated to the justice system has decreased to 0.24 per cent of the 2009 national budget (compared to 0.6 per cent of the 2006 budget). The extremely low salaries and high job insecurity among magistrates make them vulnerable to pressure by political or military authorities and fosters corruption. Other issues that have to be addressed are the lack of access to justice for the majority of the population and the non-enforcement of court decisions. Inadequate offices and housing inhibit magistrates from working in the interior.

## **G. Fight against impunity with regard to the violations committed by Congolese security forces**

### **Existing recommendations**

43. The Congolese Government should firmly implement a zero tolerance policy for all human rights violations. This requires that judiciary authorities carry out thorough investigations and prosecute all members of the security forces accused of having committed serious human rights violations. Moreover, it requires that military commanders impose rigid rules of discipline. The Government should also establish a comprehensive vetting mechanism to take into account candidates' past actions in terms of respect for international humanitarian law and human rights when they apply for official positions, with particular attention being paid to key posts in the armed forces, national police and other security services. Furthermore, to respond to human rights violations perpetrated by the FARDC in the context of military operations in North and South Kivu and Oriental Province, the Government should take appropriate action to remove army officers or units

involved in serious human rights violations and to bring them to justice.<sup>14</sup> The Special Rapporteur on extrajudicial, summary or arbitrary executions visited the Democratic Republic of the Congo in October 2009. After his visit, he made six recommendations for tackling impunity in the country, including on the reform of the penitentiary system and the removal of key members of the military who are alleged to have committed war crimes, crimes against humanity, or other serious offences.

#### **Actions taken by the Government and the current situation**

44. Due to the nature of the successive political agreements, State security forces have integrated within their ranks major perpetrators of human rights violations, who in a number of cases have continued to prey on the civilian population and to commit human rights violations. In the eastern regions of the country in particular, a number of FARDC battalions — notably in the context of the Kimia II operations — have perpetrated attacks and committed human rights violations, accusing civilians of collaborating with rebel groups.

45. National authorities have taken some small steps to implement the Government's zero tolerance policy against the FARDC elements implicated in human rights violations. Some soldiers were removed from active service and there have been convictions of rank and file soldiers for human rights related crimes, but progress has been limited. In July 2009, for example, the *cour militaire opérationnelle* (ad hoc military court) of North Kivu sitting in Rutshuru heard nine different cases. On 27 July 2009, the court sentenced a Colonel Kipanga in absentia to life imprisonment and a Major Lusungu to 10 years' imprisonment, on account of crimes against humanity. Colonel Kipanga escaped from detention and later rejoined the FARDC despite the conviction against him. The Court also ordered the two officers to pay, jointly with the Government, damages to the victims of rape. On 11 September 2009, the *tribunal militaire de garnison* of Bunia, Oriental Province, sentenced an FARDC soldier of the 132nd battalion to life imprisonment for rape and murder. He was also expelled from the FARDC.

46. Despite repeated requests by the Security Council, no tangible steps have been taken by the Government to start a vetting process which could examine current and future security forces on their respect for international humanitarian and human rights law and remove them from active service if appropriate. On the contrary, known perpetrators of human rights violations, including some who have been named in several United Nations public reports have been integrated into the FARDC, the police or intelligence services.

#### **Actions taken by the United Nations Joint Human Rights Office**

47. During the reporting period, UNJHRO provided information to Congolese military justice officials, the Defence Ministry, and the hierarchy of the PNC and FARDC on the human rights violations perpetrated by members of the PNC and FARDC throughout the country. UNJHRO also provided logistical and substantive support for joint investigation missions to Congolese civilian and military justice officials throughout the country. To increase the number of prosecutions, MONUC decided to support joint investigation teams through quick impact projects (QUIPS). UNJHRO also plays an important role in the rapid response early warning cell within MONUC aimed at identifying and holding accountable commanders of military units who have consistently violated human rights since the commencement of the Kimia II operation in the eastern part of the country. Furthermore, several training seminars and workshops on human rights for the FARDC and members of other security forces were organized.

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<sup>14</sup> See footnote 1.



### **Obstacles to the implementation of existing recommendations**

48. The Congolese Government provides the State security forces with insufficient logistical and financial resources. FARDC violations have many structural causes. Security forces are not sufficiently or regularly paid and do not have adequate supplies. They are neither garrisoned, nor trained, nor do they have weapons storage facilities. In South Kivu Province, FARDC soldiers, participating in the Kimia II Operation, organized a series of protests in August 2009, demanding their unpaid salaries. On 27 August 2009, in Lubarika (66 km North of Uvira, South Kivu), soldiers of the 332nd battalion fired their weapons into the air demanding payment of their salaries. They looted homes and erected road blocks, beating up people who refused to pay or who did not have the means to pay. It is essential for the Government to address the root causes of this issue by paying the military on time. It must also provide logistical support to transport military equipment and provide enough food rations so that the FARDC ends its forced labour practices and ceases to loot villages. The army is very heterogeneous and overall ill-disciplined. It is now comprised of 55 rebel and militia groups without any vetting or training. It has become a perpetrator of violations because it lacks the command and control structures and accountability mechanisms needed to prevent abuses from within its ranks.

## **III. Conclusion**

49. **Several obstacles to implementation of the existing recommendations have been identified. They are intertwined with each other and hinder the improvement of the overall human rights situation in the Democratic Republic of the Congo. Poor governance, absence of the rule of law and lack of political will have created a troubling human rights record and continue to impede development and the elimination of poverty. All public sectors are under-resourced, and the Government fails to ensure basic economic and social rights, such as health care and education. A dysfunctional and understaffed justice system contributes to a climate of impunity for human rights violations and undermines the security of Congolese citizens. In addition, the insufficient allocation of funding to civil servants, the penitentiary system and State security forces feeds systemic corruption and fosters the “privatization” of State functions. These challenges should be effectively addressed. The Government must undertake a series of coherent, systematic and human rights-focused measures with the assistance of all relevant local, national and international stakeholders to implement the recommendations that have already been made, in order to protect the human rights of its citizens.**

## **IV. Recommendations to the Government of the Democratic Republic of the Congo**

50. **The High Commissioner urges the Government to fully implement the recommendations previously made by human rights mechanisms, including the seven thematic special procedures, as well as other special procedures and treaty bodies, as assessed in this report.**

## **V. Recommendations to the Human Rights Council**

51. **In light of the multiple human rights challenges in the Democratic Republic of the Congo and the very limited progress made to implement previous recommendations made by different parts of the United Nations human rights system,**

**the Human Rights Council should at its next session fix priorities to be monitored against fixed measurable benchmarks in regard to the recommendations relevant to the seven thematic areas (chapter II, sections A to G) outlined above in this report, in order to evaluate progress made by the Congolese Government.**

**52. The Council should continue to be seized of the human rights situation in the Democratic Republic of the Congo and ensure that the situation is continuously monitored, including by calling on the Government to issue a standing invitation to the special procedures of the Council and to facilitate visits by relevant special rapporteurs. The High Commissioner also stands ready to continue reporting to the Council on the situation of human rights in the Democratic Republic of the Congo on an annual basis.**

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