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Third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo*

Summary

The present report is submitted pursuant to Human Rights Council resolution 13/22.

In the report, the experts reiterate their deep concern at the serious human rights situation in the country, which has reportedly not improved since their initial report (A/HRC/10/59).

While acknowledging with appreciation the willingness of the Congolese authorities to improve its cooperation with the international community in the field of human rights, including with the special procedures of the Council, the experts wish to highlight that, for such cooperation to be fruitful, especially in relation to the global action plan, it needs to be sustained and based on regular and flexible exchange and dialogue. The late responses from the Government of the Democratic Republic of the Congo to letters sent by the experts regrettably do not meet these criteria. Similarly, the Government has responded to less than 7 per cent of the urgent appeals and allegation letters sent by the experts since they were requested to report for the first time on the human rights situation in the country, in March 2008.

The experts are of the view that the current mandate given to a group of seven thematic special procedures mandate holders, who undertake this task in addition to the considerable workload entailed by their respective mandates, does not have the necessary flexibility and reactivity to ensure a regular dialogue with the Congolese authorities, and is therefore not the most suitable mechanism to respond to the specific needs of the country. By visiting the country several times and by elaborating specific recommendations related to their respective mandates, which are still relevant and applicable to the human rights situation in the country, they have made their maximum contribution to the improvement of the situation of human rights in the Democratic Republic of the Congo.

The experts strongly believe that follow-up to the present recommendations (A/HRC/10/59) and assistance to the Democratic Republic of the Congo in this regard, in

* Late submission.

particular regarding the finalization of the global action plan, would be best served by a single mechanism dedicated solely to the situation in the country. Therefore, they reiterate their call on the Council to consider once again the creation of a country-specific special procedures mandate. Such a mandate would provide a reliable mechanism that would focus on the improvement of the human rights situation in the country. In addition to providing focused attention and resources to addressing a situation of grave and long-standing concern, a country-specific mandate would facilitate regular engagement with the Government and regional and international stakeholders, and allow the different actors to work in a concerted and sustainable fashion towards the implementation of both existing and future recommendations.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 13/22, in which the Council invited six special procedures mandate holders and the Special Representative of the Secretary-General for children and armed conflict to report on the development of the situation in the Democratic Republic of the Congo. The report is submitted by the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises; and the Special Representative of the Secretary-General for children and armed conflict. The present report is the third to be submitted by the experts.¹

II. Engagement by the mandate holders with the Government

2. With a view to seek once again follow-up on the recommendations made in their initial joint report on the basis of a visit by one mandate holder (A/HRC/10/59, paras. 117-119) and reiterated in their second joint report (A/HRC/13/63, para. 115) (supported by the findings of two mandate holders following their visits to the country),² on 29 September 2010 the experts addressed a letter to the Congolese authorities reminding them to respond to the letter dated 23 September 2009, in which the experts had requested the then Minister for Human Rights to provide information on the steps taken by the national authorities to implement the recommendations contained in their initial report, as well as on the functioning of Agency to Combat Violence against Women and Girls and the human rights liaison entity. The experts finally received a response on 7 February 2011, for which they thank the Government. The letter was, however, limited to a brief description of the functioning of the above-mentioned institutions and the future establishment of the national human rights commission. A bill on the establishment of a national human rights commission has been pending before the National Assembly since 2008. The experts take note of the commitment of the Government, already expressed to the Special Rapporteur on the situation of human rights defenders during her visit to the country in June 2009, to ensure the prompt examination of the draft law and the subsequent effective establishment of the commission.

3. The above-mentioned letter also announced the sending of the global action plan on the implementation of recommendations for discussion and improvement in accordance with Council resolution 13/22. The plan was received on 11 February 2011, together with the comments of the Government on the report. The experts acknowledge the efforts made by the Government in this regard. However, the late submission of the global action plan does not allow for a thorough analysis and discussion in the spirit of resolution 13/22. Furthermore, the experts wish to highlight the fact that the plan consists merely of a compilation of all the recommendations made by human rights mechanisms with the identification of the departments in charge of implementing them, and a provisory general

¹ See also A/HRC/10/59 and A/HRC/13/63.

² The Special Representative of the Secretary-General for children and armed conflict visited the country in April 2009, and the Special Rapporteur on the situation of human rights defenders in June 2009.

estimate of the costs entailed. In the plan, the Government fails to define, in a concrete manner, measurable targets to be met and actions to be taken to implement the recommendations. While the document contains some benchmarks, these are not specific and action-oriented enough for implementation to be evaluated. In addition, the provisory cost estimates for the implementation of each recommendation are unclear, given that the facts and figures on which these estimates are based are lacking. Finally, the prioritization of the recommendations lacks precision and a specific timeline.

4. The experts also regret that the Government responded to only two of the 29 urgent appeals and allegation letters sent jointly or individually by four of the seven thematic special procedures mandate holders since they were requested to report on the human rights situation in the country in March 2008.³

III. Development of the human rights situation

5. The overall human rights situation in the Democratic Republic of the Congo remains of serious concern, as highlighted in the most recent reports submitted by the United Nations High Commissioner for Human Rights (A/HRC/16/27), the Secretary-General (S/2010/512) and the Group of Experts on the Democratic Republic of the Congo of the Security Council Sanctions Committee (S/2010/596), as well as the 13 communications sent by four of the seven thematic special procedures mandate holders since March 2010.⁴

6. In her report, the High Commissioner noted that the human rights situation in the country had not improved since her previous report. The situation remains extremely worrying, especially in the eastern part of the country, where the United Nations Joint Human Rights Office in the Democratic Republic of the Congo continued to document serious human rights violations and grave breaches of international humanitarian law committed by national security forces and armed groups. Most violations are linked to the conflict and committed in the framework of operations conducted by the national armed forces (Forces armées de la République démocratique du Congo (FARDC)), against armed groups and/or in reprisal against these operations by armed groups, including combatants of the Lord's Resistance Army (LRA), the Democratic Forces of Liberation of Rwanda (Forces démocratiques de libération du Rwanda (FDLR)) and Mai Mai groups.⁵

7. The High Commissioner also stressed that sexual violence remains a cause of major concern not only in the eastern part of the country but throughout the rest as well. From 30 July to 2 August 2010, at least 380 women, men and children were raped in 13 villages in Walikale territory, in North Kivu, by a group of armed men belonging to FDLR, members of Mai Mai Cheka and combatants affiliated with a former FARDC member who founded his own armed group in early 2010. Security forces reportedly also committed many rapes during the reporting period.⁶ The experts note with satisfaction that a number of cases of sexual violence attributed to FARDC members has been investigated and the perpetrators have been prosecuted by military courts. In particular, they welcome the recent decision by a military court in eastern Democratic Republic of the Congo, which, for the first time, sentenced a high-ranking commander for crimes against humanity for having sent his troops to rape, beat and loot the population in Fizi on 1 January 2011. Besides sending a clear signal that sexual violence in conflict would not be tolerated, this verdict shows that accountability for sexual violence is possible when the political will is there.

³ See Human Rights Council resolutions 7/20 and S-8/1.

⁴ See in particular A/HRC/16/44/Add.1.

⁵ A/HRC/16/27; see the summary and para. 3.

⁶ *Ibid.*, para. 4.

8. According to the High Commissioner, human rights violations throughout the country also resulted from structural shortcomings and were linked to deficiencies in State institutions. In addition, the reporting period was marked by an increase in violations against human rights defenders and media representatives, as epitomized by the killing of Floribert Chebeya Bahizire and the enforced disappearance of his driver, Fidèle Bazana Edadi. The experts hope that the trial commenced in relation to this killing will be free from irregularities and that the perpetrators will be held accountable. Finally, the High Commissioner noted that the illegal exploitation of natural resources, despite the Government's condemnation, remains of concern as it is a chief cause of many serious human rights violations.⁷

9. In his report, the Secretary-General noted that serious human rights violations by armed groups and members of the national security forces continued, including acts of arbitrary execution; rape; arbitrary arrest and detention; torture; cruel, inhuman and degrading treatment; and looting. While the most frequent and serious human rights violations continued to take place in the eastern provinces, the situation also remained of concern in some areas in western Democratic Republic of the Congo.⁸

10. The Group of Experts on the Democratic Republic of the Congo of the Security Council Sanctions Committee pointed out cases of direct and command responsibility for the recruitment and use of children by the leaders of Congolese armed groups, as well as two military commanders from FARDC, all of whom had used children as their personal escorts.⁹ The Group of Experts also highlighted the fact that, with regard to the illegal exploitation of natural resources, the conflict between the economic interests of criminal networks within FARDC and the security mandate of the army had led to three critical negative consequences:

- (a) Failure on the part of FARDC to prioritize the protection of civilians;
- (b) Competing chains of command and insubordination within FARDC;
- (c) Distraction from the pursuit of military operations against armed groups, leading to cohabitation and in some cases active collusion with those same groups.

The Group concluded that these developments had directly contributed to the persistent threat posed by armed groups and represented a critical challenge to addressing insecurity in the eastern part of the Democratic Republic of the Congo.¹⁰

11. It must be stressed that the majority of urgent appeals and allegation letters sent by thematic special procedures mandate holders during the reporting period reflect the above-mentioned worsening of the situation of male and female human rights defenders and journalists in the country, despite the recommendations addressed by the Special Rapporteur on the situation of human rights defenders to the Government following her visit to the country in June 2009.¹¹

12. Finally, the experts note the cooperation of the Government in the course of the preparation and follow-up to the report of the mapping exercise of August 2010 (published on 1 October) documenting the most serious violations of human rights and international

⁷ Ibid., paras. 5, 6 and 33.

⁸ S/2010/512, para. 42.

⁹ S/2010/596; see the summary and paras. 131-132.

¹⁰ Ibid., para. 177.

¹¹ A/HRC/13/22/Add.2, paras. 95-97.

humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003.¹²

IV. Conclusions and recommendations

13. The experts reiterate their deep concern at the serious human rights situation in the country, which has reportedly not improved since their initial report.

14. While acknowledging with appreciation the stated willingness of the Government of the Democratic Republic of the Congo to improve its cooperation with the international community in the field of human rights, including with the special procedures, the experts wish to highlight that, for such cooperation to be fruitful, especially in relation to the above-mentioned global action plan, it needs to be sustained and based on regular and flexible exchange and dialogue. The late responses from the Government to the experts' letters regrettably do not meet these criteria. Similarly, the Government has responded to less than 7 per cent of the urgent appeals and allegation letters sent by the experts since they were requested to report for the first time on the human rights situation in the country, in March 2008.

15. The experts are of the view that the current mandate given to a group of seven thematic special procedures mandate holders, who undertake this task in addition to the considerable workload entailed by their respective mandates, does not have the necessary flexibility and reactivity to ensure regular dialogue with the Congolese authorities, and is therefore not the most suitable mechanism to respond to the specific needs of the country. By visiting the country several times and by elaborating specific recommendations related to their respective mandates, which are still relevant and applicable to the human rights situation in the country, they have made their maximum contribution to the improvement of the situation of human rights in the Democratic Republic of the Congo.

16. The experts strongly believe that follow-up to the present recommendations (A/HRC/10/59) and assistance to the Democratic Republic of the Congo in this regard, in particular regarding the finalization of the global action plan, would be best served by a single mechanism dedicated solely to the situation in the country. Therefore, they reiterate their call on the Council to consider once again the creation of a country-specific special procedures mandate. Such a mandate would provide a reliable mechanism which would focus on the improvement of the human rights situation in the country. In addition to providing focused attention and resources to addressing a situation of grave and long standing concern, a country specific mandate would facilitate regular engagement with the Government and regional and international stakeholders, and allow the different actors to work in a concerted and sustainable fashion towards the implementation of both existing and future recommendations.

¹² Available in English version from http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf.