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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General
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 13/22, invited the United Nations High Commissioner for Human Rights to report to the Council at its sixteenth 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 in the country.

Following the example of the previous report, submitted to the Human Rights Council at its thirteenth session in March 2010 (A/HRC/13/64), this report reiterates a number of recommendations that the High Commissioner and several human rights mechanisms have made in the past. The report assesses the response of the Government of the Democratic Republic of the Congo to these recommendations since the last report. In the course of the universal periodic review at the thirteenth session of the Council, the Government made a commitment to implement several of these recommendations. The High Commissioner welcomes this commitment and reiterates that she stands ready to assist the Government in its efforts in this direction.

While welcoming the Government's efforts to implement these recommendations, the High Commissioner notes that the human rights situation has not improved since her last report and remains a matter of the utmost concern, especially in the east of the country, where the United Nations Joint Human Rights Office continues to report serious violations of human rights and international humanitarian law by national security forces and armed groups. Progress in combating impunity has been weak, and cases of serious obstruction of justice continued to be reported during the period under review. No significant progress has been made in the structural reforms that are essential to improving the human rights

* Late submission.

situation in the Democratic Republic of the Congo. There was also a rise in serious violations of the rights of human rights defenders, journalists and opposition party members during the reporting period.

The High Commissioner encourages the Government of the Democratic Republic of the Congo to implement all the recommendations contained in this report as soon as possible. The United Nations Joint Human Rights Office in the Democratic Republic of the Congo will continue its efforts to support the Government, including through the plan of action that the Government has been invited to implement in accordance with resolution 13/22. The High Commissioner calls on the international community to assist the Congolese Government in addressing the major challenges facing it, and in particular in implementing the structural reforms that are essential if there is to be sustainable change for the better in the human rights situation in the Democratic Republic of the Congo.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 13/22, entitled “Situation of human rights in the Democratic Republic of the Congo and the strengthening of technical cooperation and consultative services”, adopted by the Council at its thirteenth session in March 2010. Following the example of the previous report, submitted to the Human Rights Council at that session (A/HRC/13/64), this report takes up again a number of recommendations made by myself and by several United Nations human rights mechanisms.¹ It also assesses the Government’s follow-up to the recommendations since my last report. In the course of the universal periodic review at the thirteenth session of the Council, the Government undertook to implement several of these recommendations. I welcome this undertaking and reiterate that I stand ready to support its efforts in this regard.

II. Main human rights developments

2. The key challenges to be met in the area of human rights are as follows: arbitrary and illegal arrests and detentions; prison conditions, torture and ill-treatment in detention; sexual violence; violations of economic and social rights and exploitation of natural resources; the situation of journalists, human rights defenders, victims and witnesses; the administration of justice; and ending the impunity of Congolese security forces. These challenges reflect the priority areas that are being addressed by my office in the Democratic Republic of the Congo, the United Nations Joint Human Rights Office,² with a staff of 119 officers posted in 19 branches throughout the country. This report lists examples of the measures taken by the Joint Human Rights Office, often in collaboration with other partners, to help the Government to meet its commitments.

¹ The recommendations referred to are drawn from the following documents: Conclusions and recommendations of the Committee against Torture (CAT/C/DRC/CO/1); Report of the Human Rights Division of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo on the human rights situation in the Democratic Republic of the Congo (January–June 2007); Report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/7/6/Add.4); Report submitted by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin (A/HRC/8/6/Add.3); Concluding observations of the Committee on the Rights of the Child (CRC/C/COD/CO/2); reports 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 and A/HRC/13/64); and the 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). The High Commissioner also refers 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, the recent concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/COD/CO/4) and the recommendations made under the universal periodic review. In order to avoid repetition, the sources of the recommendations will not be cited again in the report, as most of the recommendations have been made by several mechanisms, as indicated above.

² The Human Rights Division of the United Nations Mission in the Democratic Republic of the Congo (MONUC) and the OHCHR country office combined to form the Joint Human Rights Office in the Democratic Republic of the Congo.

3. Since my last report, the Joint Human Rights Office has continued to register numerous human rights violations throughout the Democratic Republic of the Congo. Most of them remain tied to the conflict that still rages in the eastern part of the country. Such violations were committed during military operations led by the Forces armées de la République démocratique du Congo (FARDC) against armed groups and/or by armed groups in retaliation for those operations. In Orientale province and North and South Kivu, the Lord's Resistance Army and Forces démocratiques de libération du Rwanda (FDLR) combatants, in some cases in coalition with other Congolese armed groups, including Mai-Mai groups, have stepped up attacks on the civilian population, killings, sexual violence, looting and abductions. Several of these violent acts could constitute international offences, including crimes against humanity and war crimes, as the recent convictions handed down by Congolese courts against the perpetrators of similar acts of violence in the eastern part of the country show.

4. Sexual violence remains a major concern in the conflict taking place in the east, as in the rest of the country. The reporting period was particularly marked by the systematic rape of at least 380 women, men and children in 13 villages between Mpopfi and Kibua in Walikale territory, North Kivu, between 30 July and 2 August 2010 by FDLR and Mai-Mai Cheka combatants and combatants affiliated with Colonel Emmanuel Nsengiyumva, a former FARDC soldier who established his own armed group in early 2010. The security forces also committed numerous rapes during the reporting period. For example, 10 women were reportedly raped by FARDC soldiers from the 431st Battalion in Katalukulu, South Kivu, on 6 August 2010.

5. Human rights violations due to structural shortcomings of State institutions continued to be reported throughout the country. The situation remains marked by human rights violations that are the result of recurring weaknesses of these institutions. Many other cases of human rights violations stem from the personal conduct of State officials, who often take advantage of their office and use their authority for personal ends with impunity.

6. The reporting period has also seen a rise in serious violations of the rights of human rights defenders, journalists and opposition party members. The murder during the night of 1–2 June 2010 of Mr. Floribert Chebeya, Executive Secretary of the Réseau national des ONG des droits de l'homme de la République démocratique du Congo and President of the Congolese non-governmental organization Voix des Sans Voix pour les droits de l'homme, attests to the seriousness of the attacks on human rights defenders in the Democratic Republic of the Congo. These new incidents are particularly troubling as the presidential and national legislative elections draw near in 2011.

7. On 1 October 2010, my Office issued a report providing an extensive account of the most serious violations of human rights and international humanitarian law committed in the country between 1993 and 2003. The report notes that the vast majority of the 617 serious incidents that it describes point to the commission of multiple violations of human rights and/or international humanitarian law, which may constitute crimes against humanity or war crimes, and often both at the same time. The report also concludes that the apparently systematic and widespread attacks on Hutus (refugees and others) in 1997 and 1998 reveal a number of inculpatory elements which, if proven before a competent court, could be characterized as crimes of genocide. There are, however, a number of countervailing factors that could lead a court to find that the requisite intent was lacking, and hence that the crime of genocide was not committed. The report analyses various options for dealing with impunity in the Democratic Republic of the Congo, including the establishment of judicial mechanisms and a truth-seeking mechanism, institutional reform and reparations for victims.

III. Measures and response to recommendations

A. Arbitrary and illegal arrests and detentions

8. Several recommendations have been put forward to the Government in the past, including on restricting the security services' powers, giving the police sole responsibility for maintaining order, protecting the rights of persons who have been arrested, ensuring that the Joint Human Rights Office has free access to places of detention, prosecuting the perpetrators of arbitrary detention and providing full compensation to persons detained arbitrarily.³

Actions taken by the Government and the current situation

9. Arbitrary and illegal arrests and detentions are still a common practice in the Democratic Republic of the Congo, and the steps needed to put an end to them are not being taken. Arbitrary and illegal arrests and detentions occur so frequently throughout the country that many victims consider them to be normal. They are all too often used by police officers to extort money from civilians. Members of the national police, FARDC and other security forces frequently arrest and detain civilians in an arbitrary and/or illegal manner with complete impunity and release them only after they pay a ransom. Victims rarely file a complaint with either the perpetrators' superiors or with the courts.

10. The National Intelligence Agency (ANR) continues to detain persons for offences under ordinary law that have no connection with the offences under its jurisdiction. During the reporting period, persons were detained by the agency in "security-related cases" without being charged. Public officials continue to deny the Joint Human Rights Office any access to detention centres, mainly ANR detention centres and some military camps. Unfortunately, despite Security Council resolutions⁴ and a presidential directive in 2005, the Government has not responded positively to the recommendation⁵ made during the universal periodic review aimed at ensuring that the Joint Human Rights Office enjoyed free access to detention centres run by ANR or the Republican Guard.

Actions taken by the United Nations Joint Human Rights Office

11. The Joint Human Rights Office increased the number of visits to detention centres throughout the country in the reporting period, often in the presence of judicial officials, with a view to strengthening observance of international and national standards. Cases of illegal and arbitrary detention observed during these visits were referred to the authorities, leading to the release of a large number of victims. Further efforts are needed to reduce the number of such detentions.

12. The Office took a number of steps to raise awareness among the police and other authorities about the rules on arrest and detention. For example, between September 2009 and September 2010, at least 120 human rights training and awareness-raising sessions, relating in particular to the rules on arrest and detention, were organized throughout the country for members of the security and defence forces. The Office also supported victims who wished to file a complaint with the competent authorities, in collaboration with local NGOs.

³ See footnote 1.

⁴ See Security Council resolutions 1925 (2010) and 1906 (2009).

⁵ A/HRC/13/8, para. 97, recommendation 1.

Obstacles to the implementation of existing recommendations

13. The difficulties highlighted in my previous report (A/HRC/13/64, para. 8) have persisted in the period under review. They include a failure on the part of judicial authorities and senior security force officials to grasp the seriousness of the arbitrary and/or illegal arrests and detentions that can be largely attributed to corruption and structural weaknesses of the State.

B. Prison conditions, torture and ill-treatment in detention

14. It was previously recommended that the Government should take immediate steps to improve detention and safety conditions in all establishments and give effect to the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its domestic law. The Government was also invited to take effective measures to ensure that all persons reporting torture or ill-treatment are protected from threats or intimidation.⁶

Actions taken by the Government and the current situation

15. I welcome the commitments made by the Democratic Republic of the Congo during the universal periodic review,⁷ including to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to introduce a national preventive mechanism and to improve prison conditions. On 4 April 2010, the Senate adopted the bill on the criminalization of torture, making it a separate offence severely punished by law. Even though this bill and the strategic prison reform plan have not yet been adopted by the National Assembly, they are encouraging signs nevertheless.

16. Despite these advances, I remain concerned at the deplorable detention conditions in the Democratic Republic of the Congo and the prevailing insecurity in places of detention. The number of deaths in custody remains high, with about 119 deaths registered between January and June 2010. Several physical assaults on detainees, including rapes, were also reported during the period under review. With the support of the Joint Human Rights Office, the Chief Justice of the Military High Court drew up two directives on 23 June 2010, on torture⁸ and death in detention.⁹ These directives require judges to step up monitoring of places of detention with a view to detecting cases of torture and deaths in detention, and to submit monthly reports. However, to date, no such reports have been submitted.

17. Prison escapes have also continued in the past months, often with the use of violence and sometimes with the complicity of staff working in the facility. For example, between 9 and 13 October 2010, 27 detainees, including several soldiers and a former Mai-Mai chief sentenced to long prison terms, the death penalty or life imprisonment, escaped from Osio prison in Orientale province. Little progress has been made on prison reform, which the State had undertaken during the universal periodic review to make a priority through the allocation of adequate resources.¹⁰

⁶ See footnote 1.

⁷ A/HRC/13/8, para. 94. See, *inter alia*, recommendations 2 and 53.

⁸ Directive No. AG/0793/10 on torture.

⁹ Directive No. AG/0794/10 on death in detention.

¹⁰ A/HRC/13/8, para. 94. See, *inter alia*, recommendation 54.

Actions taken by the Joint Human Rights Office

18. The strategy adopted by the Joint Human Rights Office to prevent torture and death in detention involves monitoring and following up on detention conditions, collecting data on human rights violations during detention and defending the rights of persons detained by the authorities. Pending the adoption of a law that punishes torture, the Office has entered into consultations with judicial officials to develop a legal framework to combat torture.

19. The Office has also conducted sessions to train and raise awareness among police officers about the issue of torture and the rights of detainees. The United Nations International Day in Support of Victims of Torture, on 26 June, was an opportunity to launch a media campaign on this topic and organize conferences attended by specialists and civil society organizations.

Obstacles to the implementation of existing recommendations

20. The difficulties highlighted in my previous report (A/HRC/13/64, para. 15) remain topical in that no significant measure has been taken to bring conditions in places of detention into line with international standards. The Government should, *inter alia*, allocate a specific budget for prisons and detention centres. Although efforts have been made to protect individuals against acts of torture and ill-treatment, they are still not sufficient.

C. Sexual violence and impunity

21. Several recommendations were made to the Government in the past, particularly to abolish all provisions of Congolese law that discriminated against women, to denounce publicly and unequivocally all forms of violence against women, including domestic violence, and to ensure that the judicial system brings the perpetrators of such violations to justice promptly and impartially. Furthermore, the Government should establish and promote an effective mechanism to receive complaints of sexual violence, including in custodial facilities, to investigate every complaint and to 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.¹¹

Actions taken by the Government and the current situation

22. Sexual violence remains widespread despite the authorities' efforts to stop it. The phenomenon is rampant throughout the country and affects thousands of women and children in particular. The recent mass rapes committed in Walikale territory exemplify this scourge and are proof that rape continues to be used as a weapon of war in the Democratic Republic of the Congo.¹²

23. There is no question that the State has become aware that sexual violence poses a problem. However, the measures announced, such as tightening the requirements for granting bail to persons convicted of sexual violence, have not been adopted formally. To the judicial system's credit, increasingly severe sentences have been handed down, including against members of security forces implicated in cases of sexual violence.¹³ For example, on 30 October, the Uvira military court sentenced five FARDC soldiers accused

¹¹ See footnote 1.

¹² Report of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo, published on 24 September 2010.

¹³ See section G of this report, on the fight against impunity for the Congolese security forces.

of crimes against humanity for the rape of seven women in Mulenge on 8 August 2009 to life in prison and ordered them to pay damages.

24. The Government renewed its promise to honour the many commitments it made during the universal periodic review to combat sexual violence,¹⁴ including its commitment to implement the 2006 laws and national strategy and allocate more resources to prevention, training, the suppression of sexual violence and assistance to victims. I hope that these commitments will be translated as soon as possible into practical measures on the part of the Government.

Actions taken by the Joint Human Rights Office

25. The Joint Human Rights Office continued its efforts to combat sexual violence during the reporting period. It continued to monitor and follow up on cases of sexual violence perpetrated in the country and to give its support to the judicial authorities to help them prosecute the perpetrators of such acts. For example, between January and October 2010, the Office supported the judicial authorities by helping them investigate more than 100 rape cases.

26. A project to shore up the campaign against the impunity of perpetrators of sexual violence in the Democratic Republic of the Congo was inaugurated officially on 1 May 2010. The project is funded by the Swedish International Development Cooperation Agency and implemented by the Joint Human Rights Office. It covers the provinces of Kasai-Occidental, Kasai-Oriental, Bas-Congo, Bandundu, Katanga and Kinshasa for a two-year period. To stop impunity, it seeks to facilitate access by victims of sexual violence to the justice system and to train workers in the judicial system and members of civil society.

27. In the east, the Joint Human Rights Office has continued to implement the judicial and legal facets of the “Fight against Sexual Violence” project funded by the Canadian International Development Agency since 2006. Under this project, 11 legal clinics are now running in the Kivus. Other capacity-building activities are organized under this project. The Office has also helped to train criminal investigators to follow up on the mass rapes and other human rights violations committed by a coalition of rebel groups in Walikale territory from 30 July to 2 August 2010.

28. In addition to the efforts made by my Office in the Democratic Republic of the Congo, I sent a high-level panel to hear the victims of sexual violence between 30 September and 10 October 2010. The panel’s aim was to consider how victims of sexual violence and the local people involved perceived the responses provided to victims, and in particular to examine the pertinence of the remedies and compensation. To do this, the panel travelled to South Kivu, Orientale province and the province of Equateur. The panel consisted of Ms. Kyung-wha Kang, Deputy High Commissioner for Human Rights and chair of the panel, Ms. Elisabeth Rehn, former Minister of Defence of Finland and currently Chairperson of the Board of Directors of the Trust Fund for Victims of the International Criminal Court, and Dr. Denis Mukwege, director of the Panzi Hospital in Bukavu. The panel members held talks with authorities at the national level (the Ministry of Justice and Human Rights and the Ministry of Gender, Family and Children’s Affairs) and local level in the provinces visited. The members noted the call from the victims and other parties concerned for new measures to give victims more direct and targeted access to compensation. Following their visit, panel members will draft a report with

¹⁴ A/HRC/13/8, para. 94. See, inter alia, recommendation 50.

recommendations, which they will submit to the Government of the Democratic Republic of the Congo and other local partners.¹⁵

Obstacles to the implementation of existing recommendations

29. Besides the obstacles to the implementation of the recommendations on sexual violence listed in my previous report (A/HRC/13/64, para. 23), which have persisted during the last reporting period, some Congolese courts do not make full use of the judicial arsenal available to them.¹⁶ In some cases, the law has been misinterpreted and mitigating circumstances misunderstood.¹⁷ The situation of women will remain precarious as long as the State fails to tackle in earnest the social roots of sexual violence, i.e. women's inferior social, economic and political status in Congolese society.

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

30. It was recommended previously that the State party should take sufficient comprehensive measures to address the illegal exploitation of natural resources in the country, to increase transparency in its revenue collection and to allocate its receipts with a view to the progressive realization of human rights, particularly to guarantee free primary education to all children, ensure access to affordable basic health care and ensure that health centres and hospitals have the necessary human, medical and financial resources.¹⁸

Actions taken by the Government and the current situation

31. The submission by the Democratic Republic of the Congo of its combined second to fourth periodic reports to the Committee on Economic, Social and Cultural Rights following a 21-year delay was a positive development. The Committee considers that impunity for human rights violations and the illegal exploitation of the country's natural resources, including by foreign companies, constitute major obstacles to the enjoyment of economic, social and cultural rights. In its concluding observations adopted in November 2009 (E/C.12/COD/CO/4), the Committee requested the State party to take immediate steps, including legislative measures, to create and ensure effective domestic remedies for all economic, social and cultural rights. In this respect, I commend the commitment made by the Democratic Republic of the Congo during the universal periodic review to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.¹⁹

32. The standard of living of the Congolese people hardly corresponds to the country's natural wealth, as is shown, inter alia, by the human development index, which measures the average level of human development in a given country from three key angles: health and life expectancy, access to education and a decent standard of living. The United Nations Development Programme has reported a decrease in this indicator for the country

¹⁵ See the press release issued on 13 October 2010 by the United Nations panel chaired by the Deputy High Commissioner for Human Rights.

¹⁶ This has also been assessed in the report of the mapping exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003 (sect. III, paras. 799–840 and 848–883).

¹⁷ For example, on 7 July 2010 the Bukavu military court considered that the victim's subsequent consent to marry the accused in a rape case was a mitigating circumstance.

¹⁸ See footnote 1.

¹⁹ A/HRC/13/8, para. 94, recommendation 7.

in the past two years, which now puts the Democratic Republic of the Congo in 168th place in a list of 169 countries.²⁰

33. This situation is explained by inadequacies in the management of revenue from natural wealth, bad governance and the illegal exploitation of natural resources. Such exploitation remains a matter of concern in the Democratic Republic of the Congo in that it leads to serious human rights violations by security forces and armed groups alike. In the provinces of Maniema, North Kivu and South Kivu, mining operations were suspended on 20 September 2010 by ministerial order.²¹ This decision was justified by the “interference of foreign agents and persons in the mineral exploitation and marketing services recognized by the Mining Code”. The implementation of this decision also causes many problems.

34. The policies set up by the Congolese State are not liable to contribute effectively to fulfilling the commitments that it has entered into under the International Covenant on Economic, Social and Cultural Rights and its commitment to combating poverty. Not enough budgetary resources have been allocated to ensuring that universal access to education, health and drinking water is gradually achieved. The share of the budget allocated to investment in social infrastructure is very low compared to other sectors such as defence and institutional overheads. Moreover, it has been steadily declining for several years.

Actions taken by the Joint Human Rights Office

35. The Joint Human Rights Office has continued to monitor and follow up on violations of economic and social rights and human right violations relating to the illegal exploitation of natural resources.²² It has also taken measures to build the capacity of government and non-governmental players in this area. For example, the Office organized a round table for the network of deputies for the protection and promotion of human rights on 25 and 26 October 2010, which took up, among other things, the issue of economic, social and cultural rights and the illegal exploitation of natural resources.

36. In collaboration with the International Conference on the Great Lakes Region, the Office organized an expert workshop on the illegal exploitation of natural resources and economic, social and cultural rights in the Democratic Republic of the Congo on 17 and 18 August 2010. The workshop enabled the experts who met in Kinshasa to assess national policies and put forward recommendations to the various players concerned. During the Conference, emphasis was put on the link between the illegal exploitation of natural resources and the armed conflict in the east of the country. It was recommended that the Government should step up its campaign against impunity, accede to various certification and traceability protocols and take human rights into consideration in the exploitation of natural resources.

Obstacles to the implementation of existing recommendations

37. The difficulties highlighted in my previous report (A/HRC/13/64, para. 29) are still valid. The Government has yet to set up a system that would allow for the certification of

²⁰ <http://hdrstats.undp.org/fr/pays/profils/COD.html>.

²¹ See ministerial order No. 0705/CAB.MIN/MINES/01/2010 of 20 September 2010 on the suspension of mining operations in the provinces of Maniema, North Kivu and South Kivu.

²² See para. 22. The report of the fact-finding mission into mass rapes in Walikale shows this connection. “Under the false pretext of advancing political and social claims these armed groups have taken control of several communities in Walikale territory, province of North Kivu. Walikale territory is a mineral-rich area and armed groups are able to finance their movements through control of mining operations.”

origin and ensure the traceability of minerals so as to update its monitoring systems and increase its share of revenue from mining. Tax collection also remains inadequate. State officials do not have the means to cover the entire territory and their low salaries make them susceptible to corruption. The Government is also confronted by a lack of security in the provinces of the east, where most of the exploitation of natural resources is concentrated.

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

38. A number of recommendations have been made in the past, including that State institutions should encourage the democratic process and that the State should respect its international obligations related to freedom of expression and freedom of the press. During her visit in May 2009, the Special Rapporteur on the situation of human rights defenders also recommended that the Government should adopt laws on the protection of human rights defenders, respect the regime of notification governing the right to peaceful assembly and grant legal personality to NGOs that met the administrative requirements.²³

Actions taken by the Government and the current situation

39. In my last report on this subject, I drew a very bleak picture of the situation of journalists, human rights defenders, victims and witnesses. The situation has barely improved in the period under review. In fact it is getting worse. The most telling recent case was the murder of Mr. Floribert Chebeya Bahizire.²⁴ On 2 June 2010, a day after he had been summoned to the office of the Inspector-General of Police in Kinshasa, his body was found in his car. The chauffeur who was with him is still missing. The trial in the case opened on 12 November 2010 at the Gombe military court in Kinshasa. Of the eight police officers charged with murder, kidnapping, misappropriation of munitions, conspiracy and terrorism, five — all of whom were being held in Makala prison in Kinshasa — appeared before the court. The other three are still on the run and will be tried in absentia. The hearings resume on 3 December 2010, giving the defendants time to prepare their defence.

40. During the universal periodic review,²⁵ the Government of the Democratic Republic of the Congo undertook to adopt an effective legal framework for the protection of human rights activists in line with the Declaration on Human Rights Defenders (General Assembly resolution 53/144). Despite this undertaking, however, at the time of writing no bill or proposal for a national law has been put forward, and cases of violence, harassment and threats against human rights defenders continue to be observed. My Office is ready to provide the Government with all the technical assistance it needs to implement a suitable legal framework.

41. Journalists' working conditions have deteriorated in the last few months and could get even worse as the presidential and parliamentary elections draw near in 2011. Journalists covering supposedly sensitive events or issues such as the exploitation of natural resources or public procurement are at greatest risk of threats, intimidation and other violations of their rights.

42. Within the framework of the universal periodic review,²⁶ the Congolese Government pledged to take further steps to create an environment conducive to the freedom and independence of the media. Some progress has been made. In the period under review, new

²³ See footnote 1.

²⁴ See High Commissioner's press release of 3 June 2010.

²⁵ A/HRC/13/8, para. 94, recommendation No. 106.

²⁶ Ibid.

operating licences were granted to the media, and on 12 October 2010 Radio France Internationale was allowed to broadcast throughout Congolese territory again after a year's suspension. However, developments like this — encouraging though they may be — are pointless if the press is not absolutely free and independent in its work.

43. The protection of victims and witnesses, especially those who dare to file a complaint or testify in cases involving State officials or powerful individuals, is also weak. I am concerned about the reports of threats against the dozens of women raped in Walikale who agreed to cooperate with the military courts,²⁷ and call on the authorities to provide, with the help of the international community, protection for all victims and witnesses in the investigations.

Actions taken by the United Nations Joint Human Rights Office

44. The Joint Human Rights Office has closely followed the cases of journalists, human rights defenders and the victims and witnesses of rights violations. For example, between January and September 2010, it dealt with over 120 cases of protection from all over the country. Some individuals received assistance under the protection programme for victims and witnesses of human rights violations, while some journalists and human rights defenders who had received threats in the course of their work received assistance financed by the fund managed by the Joint Human Rights Office and *Avocats sans frontières*. With help from NGOs, a protection network takes protective measures, defends the people concerned, publicly reports threats, alerts the authorities, gives practical advice on protection and relocates victims inside the country.

45. The Joint Human Rights Office has continued to train NGOs and journalists in the field of human rights and individual protection. Awareness-raising activities for officials have also been carried out, to draw the authorities' attention to the intimidation of victims, witnesses, journalists and human rights defenders, and to highlight the need to protect them.

Obstacles to the implementation of existing recommendations

46. The obstacles to improving the situation are the same as those mentioned in my previous report (A/HRC/13/64, para. 36). Human rights defenders, journalists, victims and witnesses whose rights have been violated often do not wish to file a complaint for fear of reprisals, which encourages further violations. They will remain vulnerable until a law specifically aimed at their protection is adopted and followed up with practical measures. As the presidential and parliamentary elections draw near in 2011, it is vital that the role of the media and human rights defenders, and their contribution to the democratic process in the Democratic Republic of the Congo, is understood and respected by all parties, from government and opposition alike.

F. Administration of justice and impunity

47. It was previously recommended that the Democratic Republic of the Congo should strengthen its judicial system and law enforcement and that Parliament should bring legislation into line with international standards, giving priority to the adoption of fundamental laws to reform the judicial system. It was also recommended that the Government should ensure that the military courts restrict themselves to trying members of the military for military offences, in accordance with the applicable international norms.²⁸

²⁷ See para. 4 of this report.

²⁸ See footnote 1.

Actions taken by the Government and the current situation

48. Some progress can be observed in the administration of justice, including efforts to strengthen the judicial system. Pursuant to a Presidential Order of 30 July 2010, 984 judges were appointed as deputy public prosecutors, and on 31 July 2010 the Minister of Justice and Human Rights announced the creation of 85 magistrates' courts. One thousand new judges are being trained and should be in post in 2011. It should be stressed that by the end of the present and forthcoming recruitment drive, 400 women will have been recruited, raising the proportion of women in the judiciary from 5 per cent to 25 per cent. Of these women, 100 will be trained in issues related to sexual violence and will be assigned to work in the east of the country. I welcome this initiative and can only encourage the Government to do more in this direction.

49. Judges will only be able to do their job effectively if they have adequate resources. This means, among other things, allocating a reasonable budget to the judicial system to bring it up to international standards, modernizing infrastructure and recruiting sufficient judicial officials. Judges assigned to work in the provinces face non-payment of their post allowance and the absence of an office or accommodation on arrival at their place of work. Given that the training course for new judges is so short, it would be a good idea to set up a mechanism to monitor and evaluate their skills in order to improve their performance and, more generally, the administration of justice.

50. The political and administrative authorities, as well as the security forces, continue to interfere in judicial procedures, not to mention that investigations rarely lead to a proper prosecution or conviction. Interference occurs at every step of the proceedings, as evidenced by refusals to open an inquiry, to bring military personnel suspected of human rights violations to justice or to release people who have been arrested. Judges often receive threats when they try to open a criminal investigation. To give one example, on 12 August 2010, a group of FARDC soldiers who had formerly been members of the Congrès national pour la défense du peuple (CNDP) surrounded the judge advocate's office in Goma and obtained the release of a major of the 212th Brigade stationed in Walikale who had been arrested earlier in the day.

51. The obstacles described above undermine efforts to combat impunity. A classic case of impunity in the Democratic Republic of the Congo concerns General Bosco Ntaganda. Although the International Criminal Court has issued an arrest warrant for him and the Democratic Republic of the Congo is cooperating with the Court, Mr. Ntaganda is not only still at large but also continues to play an important role in the armed forces. Moreover, during the universal periodic review the Government did not accept the recommendations that it should uphold its treaty obligations by arresting Mr. Ntaganda and transferring him to the International Criminal Court in The Hague.²⁹

52. During the universal periodic review, the Congolese Government reiterated its commitment to incorporate the Rome Statute of the International Criminal Court into domestic legislation as soon as possible.³⁰ It also undertook to accelerate the process of establishing the national commission for the promotion and protection of human rights, in accordance with the Paris Principles.³¹ Reforms that would give effect to these commitments have not yet been implemented. A bill on the establishment of a national human rights commission has been before Parliament since June 2008. As regards the incorporation of the Rome Statute of the International Criminal Court into domestic legislation, the submission on 4 November 2010 of a bill on the subject to the political,

²⁹ A/HRC/13/8, para. 97, recommendations 5 and 6.

³⁰ A/HRC/13/8, para. 94, recommendation 97.

³¹ A/HRC/13/8, para. 94, recommendation 13 among others.

administrative and legal committee is a step towards the adoption of a proposal that has been before Parliament since 2003. It is to be hoped that it will be adopted within a reasonable time frame, as it would give the Congolese judicial system more weapons in the fight against impunity.

53. As regards the establishment of the human rights liaison body recommended by the Human Rights Council,³² this body is not yet working effectively. It was established by order of the Prime Minister on 12 August 2009³³ and officially inaugurated on 17 April 2010, and held its first expert meeting on 24 August 2010. Nevertheless, the Government will have to demonstrate real commitment if this mechanism is to function effectively.

Actions taken by the United Nations Joint Human Rights Office

54. The Joint Human Rights Office has stepped up its assistance to the judicial system in several areas, in cooperation with the Rule of Law Section of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Development Programme and other partners. The judicial authorities continued to receive assistance with the conduct of inquiries. Between January and October 2010, the Office helped the authorities to conduct 28 inquiries into human rights violations in Goma, Beni, Butembo, Bukavu, Uvira, Bunia, Kisangani, Kindu, Dungu, Kananga and Mbandaka. It also stayed in regular contact with the authorities for the duration of the follow-up to the cases, and trained a number of judicial officials in human rights principles and the rule of law. In an effort to make the judicial system more effective and accountable, the Office also helped develop a code of ethics for judges.

55. In addition to my Office's work in the Democratic Republic of the Congo, I implemented a "mapping exercise", which resulted in the publication of the "Report of the mapping exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003".³⁴ The report contains descriptions of over 600 incidents that took place in the country during that period, as well as numerous serious acts of violence committed by foreign and Congolese forces or armed groups. The vast majority of the incidents concern multiple violations of human rights or humanitarian law, and could constitute crimes against humanity or war crimes, and often both at the same time. The report also concludes that the apparently systematic and widespread attacks on the Hutu (refugees and others) in 1997 and 1998 reveal a number of inculpatory elements which, if proven before a competent court, could be characterized as crimes of genocide. There are, however, a number of countervailing factors that could lead a court to find that the requisite intent was lacking, and hence that the crime of genocide was not committed.

56. One important aspect of the terms of reference for the mapping exercise was the assessment of the resources available to the Congolese justice system to deal with the numerous crimes committed between 1993 and 2003, as well as afterwards. The report concludes that the capacity of the Congolese justice system to bring an end to impunity for crimes under international law is severely limited. It goes on to list the options for combating impunity in the Democratic Republic of the Congo, including the establishment of judicial mechanisms and a truth-seeking mechanism, institutional reform and reparations for victims.

³² A local mechanism for cooperation between the Government of the Democratic Republic of the Congo, the Joint Human Rights Office and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) (see Human Rights Council resolution 7/20).

³³ Decree No. 095/35.

³⁴ Published on 1 October 2010.

57. As noted in the report, it is essential that the authorities carry out prior national consultations to ensure that the Congolese people are fully involved in assessing needs, establishing priorities and finding solutions – in short, to ensure that they assume ownership of these new mechanisms and understand their function and scope. I welcome the cooperation of the Government of the Democratic Republic of the Congo in this respect, and invite the international community to support efforts to strengthen the justice system and to implement a strategy that will guarantee transitional justice.

Obstacles to the implementation of existing recommendations

58. The obstacles identified in my previous report are still valid (A/HRC/13/64, para. 42). The administration of justice in the Democratic Republic of the Congo continues to be severely hampered by inadequate resources. The living and working conditions of judges are such as to discourage respect for the principle that judicial cases should be dealt with in a reasonable time. This lack of resources also hampers the fight against impunity, as it leaves judges and judicial officials more open to corruption. Courts that do not receive sufficient funding to cover their operating costs tend to finance themselves by charging exorbitant fees. This situation calls into question the impartiality and independence of the courts and makes them seem distant from the people.

G. Fight against impunity for the Congolese security forces

59. A number of recommendations have been put to the Congolese Government in the past, including that it should firmly implement a zero tolerance policy for all human rights violations and that it should carry out thorough background checks on candidates for official posts to ascertain their record on respect for international humanitarian law and human rights, especially when they are applying for key posts in the armed forces, national police or other security services. It has also been recommended that the Government should take appropriate action to remove army officers or units involved in serious human rights violations and to bring those concerned to justice.³⁵

Actions taken by the Government and the current situation

60. Much more needs to be done to put the President's policy of zero tolerance into practice.³⁶ As far as the judicial system is concerned, the duty to systematically investigate all human rights violations and to effectively prosecute and punish the perpetrators must be acted upon. In recent months, proceedings against law enforcement officers have resulted in convictions and the payment of compensation to victims. In general, however, many officers have evaded justice, victims are rarely compensated and the sentences handed down are not actually served by the offenders.

61. In May 2009, a list of five army officers involved in serious human rights violations, including sexual violence, was handed to the President by a Security Council delegation on a visit to Kinshasa. Three of the five are now in pretrial detention in Makala central prison in Kinshasa and requests for judicial assistance have been sent by the chief military prosecutor to the relevant judge advocates asking for investigations to be carried out. The fourth officer on the list was located in the province of Equateur, where he is in charge of a battalion. On 14 June 2010, the FARDC chief of staff sent a letter to the commander of the

³⁵ See footnote 1.

³⁶ On 5 July 2009, President Kabila announced that he would be following a policy of zero tolerance in cases of indiscipline and human rights violations, including sexual and sexist violence.

third military region asking for this officer to be handed over to the judge advocate. So far no action has been taken on this request. The fifth officer is still on the run.

62. Within the framework of Operation Amani Leo, which succeeded Operation Kimia II in January 2010, the Joint Human Rights Office continued to collect information on human rights violations committed by soldiers from battalions not supported by MONUSCO as well as from battalions supported by MONUSCO under its “conditionality policy”.³⁷ The Joint Human Rights Office has observed, on the basis of documented cases, a fall in the number of human rights violations committed by soldiers from battalions supported by MONUSCO.³⁸ This is partly down to the screening of battalion commanders and their deputies, carried out with the help of the Joint Human Rights Office.

63. Screening is also carried out in other operations, such as Rudia II (in Orientale province), Western Thrust (in Equateur province) and Iron Stone (in Ituri). The conditionality policy is applied to all operations supported by MONUSCO. My Office took part in the inter-agency mission to the Democratic Republic of the Congo in May 2010 to assess the implementation of the conditionality policy. The mission concluded that MONUSCO had made a real effort to integrate the policy into its general protection work, but that serious problems persisted. Several recommendations were made in this respect.

64. The Joint Human Rights Office continued to collect evidence of human rights violations by soldiers in unilateral operations conducted by FARDC.³⁹ For example, the Office received allegations that between 18 and 22 September 2010 FARDC soldiers from Pinga (115 km north-west of Masisi) had pillaged many villages between Pinga and Kibua, in Walikale territory, North Kivu, while on their way to operational zones.

65. The Government of the Democratic Republic of the Congo invited the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country in October 2009. Following his visit, the Special Rapporteur made six recommendations for combating the prevailing impunity in the country. Noting in particular that FARDC members enjoyed impunity thanks to their anonymity, he suggested that they should be required to display their name on a uniform identifying their military unit. This measure would make it easier to identify and investigate members of the security forces responsible for serious human rights violations.

66. The cases mentioned above demonstrate how urgent it is to take action in the longer term to introduce some mechanism for vetting members of the security forces, so as to rid these forces of anyone responsible for serious human rights violations.⁴⁰ As FARDC

³⁷ Under the conditionality policy, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) does not take part in or support the operations of FARDC units if there are substantial reasons for believing that the units might violate international humanitarian law, international human rights law or international law on refugees in the course of the operation. For more details on the implementation of this policy, see the reports of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo (S/2009/623, S/2010/164 and S/2010/512).

³⁸ At the time of writing, 18 battalions involved in Operation Amani Leo are receiving support from MONUSCO.

³⁹ Operations Rwenzori and Nord Omaté, for example.

⁴⁰ The Security Council has asked the Congolese authorities on several occasions to set up, with MONUC assistance, an effective vetting mechanism, in accordance with international standards, for the FARDC and the national security forces, to ensure the exclusion of those persons associated with violations of international humanitarian law and human rights abuses (Security Council resolution 1906 (2009), para. 32). In its resolution 1925 (2010), establishing MONUSCO, the Security Council “emphasizes that the Government of the Democratic Republic of the Congo bears primary responsibility for security, peacebuilding and development in the country, and encourages the

continues to be responsible for a significant number of human rights violations in the country, such a measure is essential to guarantee a sustainable peace and stability. I understand the difficulties the Government faces in this respect and welcome its commitment during the universal periodic review to set up such a mechanism.⁴¹ I invite the members of the international community involved in the security reform to support the Congolese Government in its efforts to integrate human rights principles in this reform.

Actions taken by the United Nations Joint Human Rights Office

67. The Joint Human Rights Office pays particular attention to allegations of human rights abuses by Congolese security forces. An investigation is launched and followed up with the Congolese authorities whenever there is reason to believe that a member of the security forces has been involved in a violation of human rights.

68. As regards Operation Amani Leo, the Joint Human Rights Office continues to vet officers to exclude from operations anyone against whom there is evidence of involvement in serious human rights violations.

69. Funding has been raised from the Government of the United States of America to pay for 10 internationally recruited human rights experts to bolster the joint protection teams deployed in the east of the country. These teams were established by MONUSCO at the end of 2008 to improve the protection and information mechanisms that liaise between the force and local communities.

Obstacles to the implementation of existing recommendations

70. The shortcomings identified in my previous report (A/HRC/13/64, para. 48) persist. Policies of zero tolerance for human rights violations committed by the security forces and forces receiving conditional support continue to come up against protective military superiors and ill-disciplined troops. In the absence of background checks on anyone wanting to join FARDC and measures to modernize the payment of soldiers' wages and enforce discipline, initiatives by the Government and its partners to prevent human rights violations are bound to end in failure.

IV. Conclusions and recommendations

71. **Since the publication of my previous report, and despite the efforts of the Congolese Government and support of the international community, little observable progress has been made in implementing the recommendations addressed to the Government of the Democratic Republic of the Congo by United Nations human rights mechanisms, including the special procedures and human rights treaty bodies. There are still, it must be said, numerous obstacles to their implementation which preclude any significant improvement in the human rights situation.**

A. Recommendation to the Government of the Democratic Republic of the Congo and the international community

72. **I welcome the fact that the Government of the Democratic Republic of the Congo has taken on board some of the recommendations addressed to it by**

Government of the Democratic Republic of the Congo to remain fully committed to protecting the population through the establishment of professional and sustainable security forces" (para. 5).

⁴¹ A/HRC/13/8, para. 94, recommendation 44.

international human rights mechanisms — including those reiterated in this report — and voluntarily accepted by it during the universal periodic review. I hope that this commitment will be reflected, in the short term, in practical steps to alleviate the suffering of so many Congolese people and, in the long term, in practical solutions to overcome the obstacles identified in this report. I reiterate my support and the support of the Joint Human Rights Office for the Government, including to help it implement the plan of action called for by the Human Rights Council. I call on the international community to back the Government's efforts and the work of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo.

B. Recommendation to the Human Rights Council

73. The Human Rights Council should continue to be seized of the human rights situation in the Democratic Republic of the Congo and to ensure that the situation is continuously monitored, including by calling on the Government to interact more closely with the various human rights mechanisms and to keep it regularly apprised of progress in formulating and implementing its plan of action. I stand ready to submit a report on the situation of human rights in the Democratic Republic of the Congo to the Council at its nineteenth session.
