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## Human Rights Council

### Nineteenth session

Agenda items 2 and 10

### 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 human rights situation and the activities of her Office in the Democratic Republic of the Congo\*

### *Summary*

The Human Rights Council, in its resolution 16/35, invited the United Nations High Commissioner for Human Rights to submit a report to its nineteenth session. In line with her two previous reports, the present report outlines the main human rights developments and describes the activities of her Office in the Democratic Republic of the Congo. It reiterates some of the most important recommendations made by several United Nations human rights mechanisms and assesses the progress made by the Government of the Democratic Republic of the Congo in implementing these recommendations.

The High Commissioner commends the Government's efforts to implement some of the recommendations made by her Office and by other human rights mechanisms with a view to fighting impunity, strengthening State institutions and improving the human rights situation in the country. However, she regrets that, throughout 2011, there was little improvement in the situation of the population. Her Office continues to document serious human rights violations, in particular in the east of the country.

The report highlights the root causes for the persistence of human rights violations within the Democratic Republic of the Congo. The structural weaknesses of State institutions, in particular the judicial system and security forces, together with practices of corruption and the presence of armed groups, result in impunity and foster systemic human rights violations. These include arbitrary and summary executions, arbitrary and illegal arrests and detentions, ill-treatment, torture, sexual violence and looting. Prisoners are often

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\* Late submission.

detained in conditions susceptible to ill-treatment and torture, and the death rate in detention continues to be high. The High Commissioner further notes with particular preoccupation that the number of cases of sexual violence remains high and that several incidents of mass rapes took place during the reporting period. The enjoyment of socio-economic rights is also structurally impeded.

In the run-up to the presidential and legislative elections of 2011, the High Commissioner's Office noted a concerning number of human rights violations committed against political opponents, journalists and human rights defenders, who continue to face various threats and are victims of human rights violations, including arbitrary and illegal arrest and detention. The Office found that the majority of these violations were committed by security forces, manipulated by political actors. However, the High Commissioner welcomes the initiatives taken by the Government to protect public liberties, such as through the establishment of the Conseil Supérieur de l'Audiovisuel et de la Communication (CSAC) and the announcement of the creation of a protection cell for human rights defenders. She hopes that such mechanisms become fully operational and effective as soon as possible.

The High Commissioner notes with satisfaction that there has been some improvement in bringing soldiers, agents and officers of the Armed Forces of the Democratic Republic of the Congo (FARDC) and of the Congolese National Police (PNC) to justice. She notes with grave concern the staggering number of cases of sexual and gender-based violence and calls for a doubling of efforts to ensure continued progress in this area. She also commends the adoption of the law explicitly criminalizing torture. However, other necessary reform initiatives in the penitentiary and judicial systems have either stalled or are poorly and inconsistently implemented. In this respect, the High Commissioner observes that the root causes of human rights violations impede, at the same time, the implementation of the recommendations made in her previous reports.

The High Commissioner therefore stresses the urgent need to implement a coherent series of measures for the implementation of all the recommendations. Throughout this process, the Government should actively cooperate with the international community and Congolese civil society. The High Commissioner and her Office in the Democratic Republic of the Congo will continue to support the Government in this undertaking.

## Contents

|                                                                                                                      | <i>Paragraphs</i> | <i>Page</i> |
|----------------------------------------------------------------------------------------------------------------------|-------------------|-------------|
| List of acronyms.....                                                                                                |                   | 4           |
| I. Introduction.....                                                                                                 | 1–3               | 5           |
| II. Measures and response to recommendations .....                                                                   | 4–61              | 6           |
| A. Arbitrary and illegal arrests and detentions .....                                                                | 4–7               | 6           |
| B. Prison conditions, torture and ill-treatment in detention.....                                                    | 8–14              | 7           |
| C. Sexual violence .....                                                                                             | 15–23             | 8           |
| D. Violation of economic and social rights and illegal exploitation of natural<br>resources .....                    | 24–29             | 10          |
| E. Situation of journalists, human rights defenders, victims and witnesses .....                                     | 30–35             | 12          |
| F. Public liberties and elections .....                                                                              | 36–43             | 13          |
| G. Administration of justice and fight against impunity.....                                                         | 44–51             | 15          |
| H. Fight against impunity for Congolese security forces.....                                                         | 52–61             | 17          |
| III. Conclusions and recommendations .....                                                                           | 62–64             | 18          |
| A. Recommendation to the Government of the Democratic Republic of<br>the Congo and the international community ..... | 63                | 19          |
| B. Recommendation to the Human Rights Council.....                                                                   | 64                | 19          |

## List of acronyms

|         |                                                                                     |
|---------|-------------------------------------------------------------------------------------|
| APCLS   | Alliance des patriotes pour un Congo libre et souverain                             |
| ANR     | National Intelligence Agency                                                        |
| ASADHO  | Association africaine de défense des droits de l'homme                              |
| CNDP    | Congrès national pour la défense du peuple                                          |
| CIDA    | Canadian International Development Agency                                           |
| CSAC    | Conseil Supérieur de l'Audiovisuel et de la Communication                           |
| DGM     | Direction générale de migration                                                     |
| FARDC   | Armed Forces of the Democratic Republic of the Congo                                |
| FDLR    | Democratic Forces for the Liberation of Rwanda                                      |
| IDP     | Internally displaced person                                                         |
| IMF     | International Monetary Fund                                                         |
| MLC     | Mouvement de libération du Congo                                                    |
| MONUC   | United Nations Organization Mission in the Democratic Republic of the Congo         |
| MONUSCO | United Nations Stabilization Mission in the Democratic Republic of the Congo        |
| NGO     | Non-governmental organization                                                       |
| OHCHR   | Office of the High Commissioner for Human Rights                                    |
| PNC     | Congolese National Police                                                           |
| SIDA    | Swedish International Development Cooperation Agency                                |
| STAREC  | Programme de stabilisation et de reconstruction des zones sortant de conflits armés |
| UDPS    | Union pour la démocratie et le progrès social                                       |
| UNJHRO  | United Nations Joint Human Rights Office                                            |
| UNPOL   | United Nations Police                                                               |
| UPR     | Universal Periodic Review                                                           |
| USAID   | United States Agency for International Development                                  |

## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 16/35 entitled “The human rights situation in the Democratic Republic of the Congo and the strengthening of technical cooperation and advisory services.” In line with the High Commissioner’s two previous reports,<sup>1</sup> this report, which covers the reporting period January to October 2011, gives an overview of the current human rights situation and the activities of the United Nations Joint Human Rights Office<sup>2</sup> (UNJHRO) in the Democratic Republic of the Congo. It reiterates some of the most important recommendations made by several United Nations human rights mechanisms and assesses the progress made by the Government in implementing those recommendations.<sup>3</sup> The Office of the High Commissioner for Human Rights (OHCHR), particularly through UNJHRO, stands ready to support the Government with the implementation of these recommendations which are aimed at improving the human rights situation throughout the country.

2. During the period under review, in the run-up to the presidential and legislative elections, UNJHRO documented election-related human rights violations involving political party members, journalists and human rights defenders. Their fundamental freedoms of expression and assembly and their right to liberty and security were most affected. The violations were often committed by State security forces and intelligence agencies instrumentalized by political actors.

3. The High Commissioner is particularly concerned by the situation in the east of the country, especially in Orientale and Kivu provinces, where soldiers of the Armed Forces of the Democratic Republic of the Congo (FARDC) continued to subject the local population to arbitrary executions, sexual violence, arbitrary and illegal arrests and detentions, torture and ill-treatment, extortion, looting and forced labour. Combatants of various armed groups also continued to commit serious human rights abuses against civilians, including murders,

<sup>1</sup> A/HRC/13/64 and A/HRC/16/27.

<sup>2</sup> The Human Rights Division of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and OHCHR in the Democratic Republic of the Congo merged on 1 February 2008, creating the United Nations Joint Human Rights Office (UNJHRO) which functions according to their respective mandates.

<sup>3</sup> 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, 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); 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, A/HRC/13/64 and A/HRC/16/27); joint reports of seven United Nations experts on the situation in the Democratic Republic of the Congo (A/HRC/10/59, A/HRC/13/63, A/HRC/16/68); Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions - Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3); Concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/COD/CO/4); recommendations in the Report of the Working Group on the Universal Periodic Review (A/HRC/13/8) and in the UNJHRO report on human rights during the pre-electoral period in the Democratic Republic of the Congo, 9 November 2011. In order to avoid repetition, the sources of the recommendations will not be cited again in the report.

rapes and abductions. Sexual violence continued to be a major source of concern throughout the reporting period.

## **II. Measures and response to recommendations**

### **A. Arbitrary and illegal arrests and detentions**

#### **Existing recommendations**

4. The powers of arrest of the various State security services should be restricted and the State should ensure that the Congolese National Police (PNC) is the primary law enforcement agency. Moreover, the State should investigate all cases of arbitrary arrest, prosecute those responsible and provide compensation to the victims. UNJHRO should be granted unfettered access to all prisons and detention centres in the country.<sup>4</sup>

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

5. Since the High Commissioner's last report, the Government has still not taken significant action to reduce arbitrary arrests and detentions. On a regular basis, civilians are arrested for actions that do not constitute criminal offences, such as unpaid debts or alleged sorcery. Agents of the National Intelligence Agency (ANR) and the Direction générale de migration (DGM) arrest people for reasons outside the scope of their respective mandates. Moreover, civilians arrested are often denied their constitutional right to have a judge decide the lawfulness of their detention. The absence of judicial control over these detainees and the perceived normality of these unofficial procedures, especially in security-related cases, enable the powers of intelligence and security officers to go unchecked and renders the officers highly susceptible to corruption. Throughout 2011, civilians were also frequently arrested for political reasons, resulting in intimidation and limits on the right to freedom of expression.<sup>5</sup> Arbitrary arrests and detentions are often used by police officers to extort money from civilians.

#### **Action taken by the Joint Human Rights Office**

6. In cooperation with national prosecutors, UNJHRO has continued its efforts to visit detention centres throughout the country to ensure that international and Congolese laws regulating the deprivation of liberty are respected. In this way, UNJHRO has brought numerous cases of arbitrary arrest or illegal detention to the attention of the judicial authorities, which in turn has led to the release of a large number of victims. During the reporting period, UNJHRO also organized several awareness-raising activities and training sessions for Congolese security forces to increase their knowledge of and respect for the laws on the subject. It should be recalled that, despite several Security Council resolutions<sup>6</sup> and a presidential directive of 5 July 2005, UNJHRO human rights officers are still denied the right to access the large majority of detention facilities of the National Intelligence Agency (ANR) and the Republican Guard.

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

7. The obstacles mentioned in the High Commissioner's previous reports persisted throughout the period under review. Premeditated arbitrary and illegal arrests and

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<sup>4</sup> See footnote 3.

<sup>5</sup> See paras. 42 and 43 below.

<sup>6</sup> Security Council resolutions 1906 (2009), 1925 (2010) and 1991(2011).

detentions tend to be either financially motivated or political in nature. Both kinds of arbitrary arrests are facilitated and perpetuated by the structural weaknesses of the criminal justice system, including the lack of resources.

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

### **Existing recommendations**

8. Immediate steps should be taken to improve penitentiary conditions and to reduce overcrowding. Moreover, it was recommended that the State adopt a law and take effective measures to protect persons reporting torture or ill-treatment from threats or intimidation. The High Commissioner further called on the Government to allocate adequate resources to the penitentiary system, inter alia, to guarantee food and health-care supplies.<sup>7</sup>

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

9. Albeit diminishing since 2010, the number of deaths in prison remains high. Between January and September 2011, UNJHRO documented 41 cases of death in detention as a result of chronic malnutrition, severe ill-treatment or lack of access to basic health care. This decrease is largely due to initiatives taken at the local level by prison personnel and NGOs. The State is obliged to provide food to the inmates; however, no prison in the Democratic Republic of the Congo has been allotted a sufficient budget for this purpose and prisoners remain almost completely dependent on food brought by families or charities. Besides the scarcity of food, prison conditions are rendered even harsher by the lack of basic infrastructure, abject sanitary conditions and the heavily overcrowded environment. Moreover, inmates remain vulnerable to torture and ill-treatment by penitentiary personnel.

10. The deplorable living conditions of the detainees and the dilapidated prison infrastructure continue to prompt riots and prison escapes. These escapes are undermining efforts of the judiciary to fight impunity. For example, on 7 September 2011, 967 inmates, including 271 accused of sexual violence and rape, escaped from Kasapa prison in Lubumbashi, Katanga, following an attack on the prison by unidentified armed men.

11. Despite legislative progress, the overall implementation of reform initiatives remains weak. On 20 July 2011, a law was promulgated by the President explicitly criminalizing torture.<sup>8</sup> Throughout the reporting period, some steps were made towards restructuring the management and human resources allocated to the penitentiary system. However, these efforts were not accompanied by sufficient budget efforts. As a result, penitentiary staff remain severely underpaid, undedicated and susceptible to corruption.

12. Prison administration continues to be highly dysfunctional. Consequently, pre-trial detainees are frequently forgotten and the legislation on conditional release remains highly underused. Overall, the lack of coherence and consistency in the implementation of reform initiatives undermines their efficiency. In this respect, the encompassing Strategic Prison Reform Plan, devised in 2009 by the Ministry of Justice in cooperation with MONUSCO,<sup>9</sup> has still not been introduced in Parliament.

<sup>7</sup> See footnote 3.

<sup>8</sup> Loi du 20 juillet 2011 portant criminalisation de la torture.

<sup>9</sup> As of 1 July 2010, MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

**Action taken by UNJHRO**

13. During the period under review, UNJHRO continued to organize frequent visits to detention facilities all over the country, in collaboration with the Congolese authorities and other partners, although it was denied access to some detention facilities, as mentioned in paragraph 11 above. UNJHRO continued to conduct prison visits and monitor individual cases of detainees. In cooperation with the corrections unit of MONUSCO, UNJHRO advised prison directors on human rights-related issues. Also in collaboration with this unit and with funding from the Canadian International Development Agency (CIDA), UNJHRO is rehabilitating Kangbayi prison in Beni, North Kivu, and the central prison in Kalehe, South Kivu.

**Obstacles to the implementation of existing recommendations**

14. As few significant measures have been taken since the High Commissioner's last report, there is little improvement in the situation.<sup>10</sup> The penitentiary system is poorly funded and corruption networks have taken root. These networks are resisting reform initiatives that might render their activities less profitable or tend to capitalize on them. Although the law penalizing torture has been adopted, its consistent application remains a significant challenge, given the lack of capacity and the need to train penitentiary, judicial and security personnel.

**C. Sexual violence****Existing recommendations**

15. The Democratic Republic of the Congo should abolish all provisions of national law that discriminate against women. State institutions should denounce publicly and unequivocally all forms of violence against women, including marital violence and rape. Custom, traditions or religious considerations must not be invoked to temper these denunciations. The Government should establish and promote an effective mechanism to receive complaints of sexual violence, including at custodial facilities. The High Commissioner, among others, has called on the Government to provide victims with psychological and medical care. Furthermore, the Government has to ensure that members of the State security forces know and comply with the laws on sexual violence and that perpetrators are brought to justice without delay. 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>11</sup>

**Action taken by the Government and current situation**

16. The number of victims registered by UNJHRO remained high over the course of 2011. The High Commissioner is particularly preoccupied by the high incidence of rape of minors and by several grave cases of mass rapes committed by FARDC soldiers and various armed groups. For instance, between the end of April and the beginning of May 2011, UNJHRO conducted, with judicial authorities, several missions to camps of internally displaced persons (IDPs) in Katanga province. During these missions, UNJHRO documented allegations of rape, including gang-rape, of at least 102 women and one girl by combatants of the Democratic Forces for the Liberation of Rwanda (FDLR) between November 2010 and January 2011. In July 2011, UNJHRO published two reports on mass

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<sup>10</sup> A/HRC/13/64 para. 15 and A/HRC/16/27 para. 20.

<sup>11</sup> See footnote 3.

rapes and other human rights violations committed between 30 July and 2 August 2010 in the Kibua-Mpofi axis, Walikale territory, North Kivu, and on 31 December 2010 and 1 January 2011 in Bushani and Kalambahiro, Masisi territory, North Kivu, respectively.<sup>12</sup>

17. Between January and July 2011, mobile hearings of the military courts and tribunals made an essential contribution to the fight against impunity for sexual offences. For example, from 10 to 21 February 2011, mobile hearings were held in Baraka, South Kivu, in the case of mass rapes and other human rights violations which took place on 1 and 2 January 2011 in Fizi, South Kivu. These hearings enabled the conviction by the South Kivu military court of nine accused officers, including Lieutenant-Colonel Kibibi Mutware. The High Commissioner especially welcomes the efforts made by the Congolese judicial authorities in this regard.

18. Despite progress in holding perpetrators of rape to account, relatively few rape cases result in conviction of the perpetrators. Moreover, alleged perpetrators often benefit from provisional release, causing impediments in the judicial procedure. In cases where the perpetrators are condemned to pay damages to their victims, who very rarely – if ever – receive them. Not only are the perpetrators often insolvent, but the execution of awards requires the payment of additional fees that often prohibit follow up by victims. Even when the State is condemned to pay damages *in solidum*, the victims rarely receive them because of a general lack of legal assistance, despite programmes developed with the support of the international community, including UNJHRO, and because the State has not allocated funds for this purpose.

19. In order to redress this situation, the Minister of Justice and Human Rights devised a draft law concerning the creation of a fund to enable the State to pay such damages. Although this draft law was written in 2009, it has yet to be introduced in Parliament.

#### **Activities of the Joint Human Rights Office**

20. During the reporting period, UNJHRO continued to closely monitor incidents of and investigate cases of sexual violence as well as support judicial authorities in the prosecution of those responsible. UNJHRO provides technical advice and logistical support to mobile hearings, as well as to judicial authorities in their investigations. Currently, a project is being prepared to train and deploy 25 women in Prosecutor's offices nation-wide to strengthen their respective sexual violence units. The criminal justice system is also receiving office equipment, including computers, to strengthen its capacity. This support is funded by CIDA and the Swedish International Development Cooperation Agency (SIDA). UNJHRO is also raising awareness about sexual violence and conducting campaigns to disseminate the 2006 law on sexual violence.

21. In order to lower the barriers for victims of sexual violence to seek judicial redress, UNJHRO is implementing two projects in partnership with CIDA and SIDA to establish legal clinics that will assist victims free-of-charge throughout the judicial process. Between January and October 2011, 15 additional legal clinics were established, bringing the total to 25 clinics operating in all provinces of the country, except for Orientale.

<sup>12</sup> Report on the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, Masisi territory, North Kivu, on 31 December 2011 and 1 January 2011; and Final report of the fact-finding missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed by a coalition of armed groups along the Kibua-Mpofi axis in Walikale territory, North Kivu, from 30 July to 2 August 2011.

22. In March 2011, a high-level panel that went to the Democratic Republic of the Congo in October 2010, at the request of the High Commissioner, to examine remedies and reparations provided to victims of sexual violence, presented an elaborate report containing recommendations to the Government.<sup>13</sup> In follow-up to that report, UNJHRO, in close cooperation with UN Women and with funding from the Government of Brazil, is putting in place a project to devise mechanisms that will enable the State to implement the recommendations. Particular attention is paid to mechanisms that would enable the State to fulfil its legal obligation to financially compensate victims of sexual violence committed by State agents and pilot projects on reparation to be implemented in local communities.

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

23. Despite some progress, high-profile perpetrators are still rarely prosecuted and the criminal justice system remains structurally dysfunctional. However, obstacles to the fight against sexual violence go beyond the weakness of State institutions and are related to cultural and socio-economic issues. Victims are often reluctant to disclose what has taken place and to initiate legal processes, fearing rejection by their community. Out-of-court settlements, although prohibited by the 2006 law on sexual violence, are still often pursued by victims and their families. Apart from strengthening State responses to cases of sexual violence, the root causes must be addressed, notably women's precarious and disadvantaged socio-economic position in Congolese society.

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

#### **Existing recommendations**

24. Various recommendations have been made to the Congolese Government to take comprehensive measures to address the illegal exploitation of natural resources in the country and increase transparency in revenue collection, in particular by mapping those actors exploiting natural resources in the east. The High Commissioner also recommended that the Government prioritize the allocation of its resources to progressively realize human rights, in particular economic and social rights, including free access to primary education and affordable basic health care.<sup>14</sup>

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

25. In an effort to curb illegal exploitation of natural resources, the Government decided on 20 September 2010 to suspend mining activities in Maniema, and in North and South Kivu.<sup>15</sup> This suspension had a limited deterrent effect and, in fact, proved to be detrimental to the livelihoods of thousands of artisanal miners and the local economy. The suspension was lifted by the Government on 1 March 2011. In May 2011, the Government also took measures to improve transparency in both the origins of minerals, through developing

<sup>13</sup> OHCHR "Remedies and Reparations for Victims of Sexual Violence in the DRC," 3 March 2011, available at <http://www.ohchr.org/EN/countries/AfricaRegion/Pages/ZRIndex.aspx>.

<sup>14</sup> See footnote 3.

<sup>15</sup> Ministerial Decree No. 0705/CAB.MIN/MINES/01/2010 of 20 September 2010, suspending mining activities in the provinces of Maniema, North Kivu and South Kivu; and Ministerial Decree No.0706/CAB.MIN/MINES/01/2010 of the same date, laying down urgent measures to set the previous decree.

certification mechanisms in cooperation with the international community, and in its dealings with the mining industry.<sup>16</sup>

26. Budget allocations for education and health have been considerably increased in 2011. The High Commissioner commends the Government for this important step. However, health centres and schools continue to depend on user fees for funding, which systematically excludes the poorest households and puts a tremendous strain on the livelihoods of many others. Between 24 July and 5 August 2011, the independent expert on foreign debt and human rights conducted a mission in the Democratic Republic of the Congo, with a particular view to assessing the impact of the country's debt burden on economic, social and cultural rights.<sup>17</sup>

#### **Activities of the Joint Human Rights Office**

27. UNJHRO continued to monitor human rights violations linked to the illegal exploitation of natural resources. In the framework of the STAREC programme,<sup>18</sup> mineral trading centres (*comptoirs*) have been established in the Kivu provinces by MONUSCO, in collaboration with the United Kingdom of Great Britain and Northern Ireland, Canada, the United States Agency for International Development (USAID) and the United Nations Peacebuilding Fund. The project seeks to ensure the legal exploitation of natural resources and to remove armed groups and FARDC battalions from the commodity chain.

28. UNJHRO continues to raise awareness about the illegal exploitation of natural resources and is actively trying to engage civil society in this area. For instance, on 28 and 29 September 2011, in Goma, the Office of the High Commissioner organized, in cooperation with the International Conference on the Great Lakes Region, organized in Goma a series of training sessions for journalists and civil society members on regional initiatives in the fight against the illegal exploitation of resources and on the economic and social rights of the local population.

#### **Obstacles**

29. Economic and social rights and the initiatives taken by the Government in this regard are still hampered by the obstacles highlighted in the High Commissioner's previous reports.<sup>19</sup> For instance, ministries responsible for collecting taxes deriving from natural resource extraction suffer from lack of capacity and endemic corruption, which substantially depletes revenue collection from this activity. Due to the chronic underpayment of civil servants in all Government sectors, corruption practices have taken root, compromising State efficiency in realizing economic and social rights. The budget allocated to basic economic and social rights remains very low.

<sup>16</sup> Presidential Decree No. 11/26 of 20 May 2011 introduced the obligation to publish all contracts concluded by the State or a State-owned enterprise concerning the exploration or exploitation of natural resources.

<sup>17</sup> The report of the independent expert will be presented to the twentieth session of the Human Rights Council in March 2012.

<sup>18</sup> Programme de stabilisation et de reconstruction des zones sortant de conflits armés.

<sup>19</sup> A/HRC/13/64, para. 29; A/HRC/16/27, para. 37.

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

### Existing recommendations

30. State institutions should encourage the democratic process and respect the country's international obligations related to freedom of expression and freedom of the press. The Special Rapporteur on the situation of human rights defenders recommended that the Government adopt laws on the protection of human rights defenders, as well as organize awareness-raising activities for the police, military and judicial officials on the role and activities of human rights defenders, including women, with technical assistance from OHCHR and NGOs. The Government should further remove all obstacles that impede the work of human rights defenders and journalists, protect them from reprisals and take proactive measures to support their work. In particular, the High Commissioner urged the Government to promptly and rigorously investigate the death of Chebeya Bahizire and to spare no efforts to ensure that those responsible are brought to justice.<sup>20</sup>

### Measures taken by the Government and current situation

31. During the period under review, the situation of journalists and human rights defenders remained highly precarious. On 1 and 2 February 2011, the president and vice-president of the Association africaine de défense des droits de l'homme (ASADHO) were threatened with death following a press conference, during which they denounced the constitutional reform and political intolerance of the Government towards the political opposition. Journalists touching on sensitive subjects such as corruption, extortion of the population by security forces or the elections are especially prone to harassment by State authorities.

32. On 23 June 2011, the Military Court of Kinshasa/Gombe rendered its judgment in the emblematic case concerning the killing of human rights defender, Floribert Chebeya, and his driver, Fidèle Bazana. Four policemen were convicted, including three in absentia, and sentenced to the death penalty, and a fifth to life imprisonment. Three of the accused were acquitted for lack of evidence. All those convicted launched an appeal. UNJHRO will continue to closely monitor the appeal case, in particular with a view to verifying the standards of fair trial.

33. The High Commissioner commends the willingness of the Government and the initiatives it has taken to create a legal and institutional framework contributing to the protection of human rights defenders. On 27 May 2011, the Government introduced a draft law in Parliament on the protection of human rights activists.<sup>21</sup> The High Commissioner hopes that it will be adopted without undue delay. By a Ministerial Decision of 13 June 2011, the Minister of Justice and Human Rights established a protection cell for human rights defenders.<sup>22</sup> It will be created within the same Ministry and will liaise with the authorities and non-governmental protection initiatives to follow up on individual cases.

<sup>20</sup> See footnote 3; and OHCHR press release, "UN human rights chief calls for rigorous investigation into killing of top Congolese human rights defender," 3 June 2010.

<sup>21</sup> Projet de loi portant promotion et protection des défenseurs des droits de l'homme et des dénonciateurs d'actes de corruption et de détournement des deniers publics en République démocratique du Congo.

<sup>22</sup> Arrêté ministériel 219/CAB/MIN/J&DH/2011 du 13 juin 2011 portant création, organisation et fonctionnement d'une cellule de protection des défenseurs des droits de l'homme.

### **Activities of the Joint Human Rights Office**

34. UNJHRO continues to closely monitor cases involving journalists, human rights defenders, victims and witnesses, to ensure that their rights are respected and that the judiciary is not used as a tool of repression. Active care was taken to broaden the protection networks established in partnership with local NGOs beyond the cities into territories further afield. In so doing, UNJHRO and its partners were able to offer various forms of protection to six journalists, 36 human rights defenders, three witnesses and 38 victims over the first six months of 2011. The people concerned were offered advice on protective measures, received temporary shelter at MONUSCO field bases or were relocated as necessary. UNJHRO provided technical assistance in the drafting of amendments to the draft law on human rights defenders, and is actively following up the parliamentary procedure in collaboration with the parliamentary network on human rights.

### **Obstacles**

35. The obstacles mentioned in the High Commissioner's previous report remain.<sup>23</sup> Efforts are required to ensure in particular that the judicial and security authorities fully understand and appreciate the value of the work of journalists and human rights defenders. Democratic space is often limited due to the instrumentalization of security and intelligence officials by politicians.<sup>24</sup>

## **F. Public liberties and elections**

### **Existing recommendations**

36. In the past, several recommendations had been made related to the strengthening of democratic space. The regime of information governing the exercise of the right to freedom of peaceful assembly (article 26 of the Constitution) should be respected without any arbitrary interference from the executive. A number of press offences should be decriminalized and the draft law on the Conseil Supérieur de l'Audiovisuel et de la Communication (CSAC) should be adopted. More generally, the Government should encourage and enable public dialogue and scrutiny in order to ensure the sustainability and advancement of the democratic process. The High Commissioner also urged the Government not to prohibit or impede any political demonstration and other public expressions of political opinion that are peaceful and do not incite to violence.<sup>25</sup>

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

37. Between January and October 2011, UNJHRO documented 209 alleged human rights violations directly related to the elections, targeting political opponents and the general population. Almost 70 per cent of the violations were attributed to PNC and ANR agents, who often abused their prerogatives to serve political ends. Supporters of the political opposition were often subjected to arbitrary and illegal arrests and detentions, further limiting their freedom of expression. The High Commissioner is particularly worried by such manipulation of the State's security and intelligence sectors by political actors. Motives related to State security or defamation of the Head of State are regularly evoked by the authorities in an attempt to justify arbitrary arrests and detentions.

<sup>23</sup> See A/HRC/13/64, para. 36; and A/HRC/16/27, para. 46.

<sup>24</sup> See para. 37 below.

<sup>25</sup> See footnote 3.

38. Although the 2006 Constitution abolished the obligation to request authorization for the organization of demonstrations and substituted it with a system of prior notification, authorities still treat demonstrations which appear to be contrary to their interests as prohibited. On 1 September 2011, for example, PNC agents and FARDC soldiers dispersed a demonstration by the Union pour la démocratie et le progrès social (UDPS) in Mbuji-Mayi, Kasai Oriental; they allegedly used tear gas and shot live rounds in the air. Reportedly, 35 civilians were arrested, several of whom were wounded as a result of ill-treatment in detention. During demonstrations, journalists are regularly harassed, beaten and their equipment is confiscated.

39. In several instances, the Government directly interfered with the freedom of the media. On 9 July 2011, for instance, the Minister of Communications and Media prohibited the broadcasting of Radio Lisanga Television, an opposition-owned broadcasting station. The signal was re-established on 14 July 2011, following a new ministerial decision. Since the establishment of the CSAC in August 2011, this media-regulating body is the only institution with the authority to impose administrative sanctions on the media and regulate their deontological ethics.<sup>26</sup> The High Commissioner therefore welcomed its establishment, but was concerned that it was being established too close to the election date to be fully operational during the pre-electoral period.

40. On 9 November 2011, UNJHRO published a report on human rights and fundamental freedoms during the pre-electoral period in the Democratic Republic of the Congo,<sup>27</sup> in which it denounced a number of human rights violations and acts of violence targeting political party members, journalists and human rights defenders since November 2010. The report warned that such incidents could endanger the democratic process and lead to post-electoral violence; it formulated recommendations, including for the Congolese Government, to put an end and prevent the commission of further violations.

#### **Activities of the Joint Human Rights Office**

41. Throughout the entire pre-electoral period, UNJHRO organized activities aimed at strengthening monitoring activities throughout the country, including by human rights NGOs, and preventing elections-related human rights violations. In this respect, UNJHRO held workshops in the provinces to reach officials, political parties and the media. Round tables were organized to bring together judicial and military authorities, journalists and human rights defenders to improve the protection of the latter before, during and after the elections. Police forces were provided training, in cooperation with other United Nations entities, including the United Nations Police (UNPOL).

42. Monitoring activities to document and verify election-related human rights incidents were reinforced in cooperation with national human rights organizations. UNJHRO facilitated coordination and the exchange of information between MONUSCO, international organizations and national NGOs with a view to timely identifying and addressing incitation to violence or hate speech as early as possible. Moreover, trials involving members of political opposition parties and journalists were closely monitored to determine whether the judiciary was being used as a political tool. Once determined, UNJHRO followed up individual cases of human rights violations and tried to find appropriate redress through advocacy for the release of political detainees or supporting judicial authorities.

<sup>26</sup> Loi No. 11/001 du 11 janvier 2011 portant création, attribution et organisation du Conseil Supérieur de l'Audiovisuel et de la Communication; Ordonnance présidentielle No. 11/054 of 12 August 2011.

<sup>27</sup> OHCHR, "Report of the United Nations Joint Human Rights Office on human rights and fundamental freedoms during the pre-electoral period in the DRC," November 2011.

## Obstacles

43. As a result of various factors, including impunity, security forces and law enforcement and intelligence agents remain susceptible to instrumentalization by political actors. Moreover, economically disadvantaged and socially excluded groups, especially youth, are prone to incitation to violence by political leaders, who often do not call on their supporters to abide by the laws and respect public order during demonstrations.

## G. Administration of justice and fight against impunity

### Recommendations

44. It has been recommended that the Government strengthen its judicial and law enforcement systems and that Parliament give priority to the adoption of fundamental laws to reform the judicial system, in order to bring it in line with international standards. The High Commissioner, inter alia, called on the Government to adopt legislation implementing the Statute of the International Criminal Court. It should also enable the judiciary to work independently, inter alia, by improving the working conditions of the judicial personnel. The Government should increase the budget allocated for the functioning of the justice system to at least 2 per cent of the national budget. Moreover, the Government should ensure that the military courts and tribunals only try the military for military offences, in accordance with applicable international norms.<sup>28</sup>

### Measures taken by the Government and current situation

45. In follow-up to the report on the most serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo between March 1993 and June 2003,<sup>29</sup> and its recommendations, the Minister of Justice and Human Rights devised a draft law concerning the creation and organization of a specialized court, composed of national and international judges, to deal with crimes committed during the aforementioned period. On 22 August 2011, the Senate decided to return the draft law to the Government for review. The draft laws on the incorporation of the Statute of the International Criminal Court into national legislation and on the establishment of a national commission for the promotion and protection of human rights in accordance with the Paris Principles are still under discussion in Parliament.<sup>30</sup>

46. By January 2012, the Ministry of Justice and Human Rights planned to have trained and deployed approximately 1,000 additional magistrates all over the country. The judiciary would thus be reinforced by almost 2,000 extra magistrates as compared to the beginning of 2010. However, the general budget of the Ministry of Justice and Human Rights has not been increased correspondingly. As a result, the working conditions of these magistrates in the provinces remain dire.

47. As mentioned in the High Commissioner's previous report, the human rights liaison body (*entité de liaison des droits de l'homme*) is not yet functioning properly,<sup>31</sup> inter alia,

<sup>28</sup> See footnote 3.

<sup>29</sup> OHCHR, *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*, August 2010.

<sup>30</sup> A first draft law to incorporate the Rome Statute in national legislation was submitted to Parliament in 2003, but was never discussed. The current proposal was presented in the National Assembly on 23 April 2008.

<sup>31</sup> A/HRC/16/27, para 53.

due to lack of funding. The High Commissioner welcomes the call made by the Minister of Justice and Human Rights to establish liaison bodies in the provinces; none has yet been created. Parliament has still not adopted the draft law concerning the establishment of a national commission for the promotion and protection of human rights in accordance with the Paris Principles.

#### **Activities of the United Nations Joint Human Rights Office**

48. UNJHRO has developed several tools to assist the Government and judicial authorities in strengthening the criminal justice system. Besides following up on the parliamentary proceedings concerning the draft laws to reform the criminal justice system, such as the draft law on the specialized court, UNJHRO is involved in advising parliamentarians on the content of the draft laws and on possible amendments.

49. The High Commissioner dispatched an OHCHR mission to the Democratic Republic of the Congo from 27 to 31 March 2011 to step up discussions with the Government and other partners to follow-up on the report on the most serious violations of human rights and international law committed in the country between March 1993 and June 2003. The mission discussed the transitional justice options contained in the report and stressed the need for constitutional change in order to abolish the judicial privileges and immunities of high-ranking military and civilian authorities suspected of having committed international crimes. OHCHR also shared comments on the draft law establishing specialized chambers with the Government, members of Parliament and civil society. At the time, OHCHR expressed concerns about some of the provisions of the law, including those related to the lack of independence of the judges, the lack of clarity with regard to the role of the Prosecutor, the applicable legal framework, the unconstitutional nature of some of the provisions, as well as the possibility of applying capital punishment. OHCHR stressed that failure of the law to comply with international standards would undermine the credibility of the specialized court and, consequently, the willingness of key donors and international judges to support and participate in this process. The mission also pointed out that the establishment of a specialized court should also contribute to a broader effort to strengthen national capacity in the area of the rule of law and administration of justice.

50. In cooperation with MONUSCO, United Nations Development Program (UNDP) and other partners, UNJHRO is providing logistical and technical support to the judiciary. In order to enable the Ministry of Justice and Human Rights and the Prosecutor's offices to better monitor and implement improvements in judicial activity, UNJHRO, in partnership with the Government, is developing a database which will increase the efficiency of the administrative processing of cases and enable analysis of the outcome of cases and the performance of the judiciary.

#### **Obstacles**

51. The obstacles mentioned in the High Commissioner's previous reports persist with regard to the administration of justice and the fight against impunity.<sup>32</sup> Inadequate resources prevent cases from being treated promptly and efficiently, make magistrates potentially susceptible to corruption and force them to request user fees from civilians seeking judicial recourse. This renders the justice system inaccessible to the majority of the population, undermines its neutrality and impartiality, and consequently erodes trust in the system. Often, when a judicial decision is issued, justice remains undone due to the systematic failure to enforce these decisions.

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<sup>32</sup> A/HRC/13/64, para. 42; and A/HRC/16/27, para. 58.

## H. Fight against impunity for Congolese security forces

### Existing recommendations

52. The Government should firmly implement its zero-tolerance policy<sup>33</sup> for all human rights violations. Judicial authorities should pursue in-depth investigations of all members of the security forces suspected of having committed human rights violations and hold to account those found responsible. Moreover, superior officers should impose strict rules of discipline. Appropriate action has to be taken to remove army officers and battalions implicated in serious human rights violations from the FARDC, and to bring them to justice.<sup>34</sup>

### Measures taken by the Government and current situation

53. During the period under review, the implementation of the zero-tolerance policy announced by the President in July 2009, including with regard to grave violations of human rights committed by the FARDC, gained momentum. A considerable number of mobile hearings were held by various military courts and tribunals, notably in South-Kivu, where between January and August 2011, hearings led to rape convictions of 52 FARDC soldiers, including several officers.<sup>35</sup> The High Commissioner welcomes this important progress.

54. Many officers, however, still evade justice and are rarely, if ever, prosecuted for their command responsibility. For the zero-tolerance policy to be effective, military commanders must not only impose rigid discipline but also have to be held accountable themselves for not preventing or responding to human rights violations committed by their subordinates.

55. With regard to the five army officers involved in serious human rights violations, including sexual violence, whose name were on a list given to the President by a Security Council delegation in May 2009, two are being detained, one of whom will be brought before a judge. The trial of General Kakwavu for the war crime of rape, which started on 25 March 2011 before the Military High Court, is ongoing, while on 21 October 2011, the Military Court of Kinshasa/Gombe acquitted another Colonel of rape charges for lack of evidence. The whereabouts of the remaining two officers are unknown.

56. An adequate vetting mechanism must be put in place to ensure that those responsible for gross human rights violations are removed from the army and not permitted into the chain of command. Although the Security Council called on the Government to implement such a mechanism in several resolutions,<sup>36</sup> and despite the Government's commitment to do so during the universal periodic review,<sup>37</sup> no steps have been taken to date.

57. In January 2011, the FARDC started an internal reconfiguration of its units in the Kivu provinces. During this process, soldiers were transferred to training centres before being reassigned to restructured regiments. As the soldiers were transferred, entire areas were left without effective military control, creating a power vacuum which provided armed groups, including the FDLR, the opportunity to regain territory and commit

<sup>33</sup> On 5 July 2009, President Kabila issued an edict defining a policy of zero tolerance for violations of human rights, particularly acts sexual violence, committed by members of the armed forces.

<sup>34</sup> See footnote 3.

<sup>35</sup> See para. 20 above.

<sup>36</sup> See, for example, Security Council resolution 1906 (2009), para. 32; and resolution 1991 (2011), para. 16.

<sup>37</sup> A/HRC/13/8, para. 94, recommendation 44.

exactions and human rights violations against the local population. Moreover, as FARDC soldiers were moving to and from the training centres, they could no longer be identified by victims or witnesses for human rights violations committed by them, which contributed to impunity for human rights violations committed by FARDC soldiers during the reconfiguration operation.

#### **Activities of the Joint Human Rights Office**

58. With a view to fighting impunity, UNJHRO continues to conduct several types of monitoring activities. Trials, including mobile hearings, are monitored for fair trial standards and the security of victims and witnesses is continuously followed up. In case of conviction, UNJHRO follows up the enforcement of the rulings and assists the Government in this process, inter alia, through improving prison security and offering support in developing reparation mechanisms.

59. UNJHRO is further continuing to assist judicial authorities by providing support for their investigation of alleged human rights violations. For instance, a team was deployed to investigate allegations of rape of nine women, and torture, cruel and degrading treatment of 17 other civilians, reportedly all committed by FARDC soldiers in Kikozi (45 km south west of Uvira), South Kivu, during the night of 26 to 27 March 2011. The rule of law section of MONUSCO is furthermore establishing prosecution support cells to advise the military prosecutor's offices in prosecuting alleged perpetrators of serious violations of human rights law. With support for the deployment of 12 mobile courts between January and July 2011, military courts and tribunals handled 118 cases on sexual violence and other serious human rights violations.

60. In compliance with the Human Rights Due Diligence Policy on United Nations support to non-United Nations security forces, UNJHRO continued to screen FARDC battalion commanders for past human rights violations before any logistical and other support can be provided in the framework of jointly planned military operations. Since the beginning of 2011, MONUSCO has suspended support to three FARDC units as corrective action had not been taken by FARDC to redress the human rights violations allegedly committed by them. UNJHRO has also played an important role in the development and implementation of modes of intervention to meet protection challenges, such as the support provided, through funding from the Government of the United States of America, in the deployment of international staff to reinforce joint protection teams in the eastern part of the country.

#### **Obstacles**

61. The difficulties mentioned in the previous reports of the High Commissioner regarding the issue of impunity for security forces remain topical. Another important factor for the continued human rights abuses is the absence of background checks for new recruits, such as former combatants of armed groups, and the lack of an established vetting mechanism. Moreover, as long as discipline is not imposed by commanders, impunity will continue to prevail despite initiatives taken by the Government and its international partners. Furthermore, as long as FARDC soldiers are not paid regularly and sufficiently, they will be prone to engage in pillaging and forced labour.

## **II. Conclusions and recommendations**

62. Over the course of the reporting period, despite some important measures taken by the government, little improvement in the human rights situation on the ground was observed. The population remains subject to grave human rights

violations, linked to the various armed conflicts and the weakness of State institutions. The High Commissioner commends the initiatives taken by the Government, such as the draft laws introduced and agencies or entities created towards the protection of human rights. However, the High Commissioner is preoccupied by the often stalled parliamentary process, the difficulties to implement these initiatives and their ill-funding. Beyond budgetary constraints, major and fundamental obstacles to the improvement of the human rights situation remain, notably corruption and impunity.

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

63. The High Commissioner welcomes the steps taken by the Congolese Government to implement some of the recommendations made by the Office of the High Commissioner and other human rights mechanisms, as well as the commitments made by the Government during the universal periodic review. In order for the implementation of the recommendations to be effective, a coherent and consolidated action plan needs to be further developed, and measures included in this plan further specified as previously recommended. The High Commissioner therefore recommends that the Government further enhance its dialogue and cooperation with international human rights mechanisms. The High Commissioner calls upon the international community to assist the Congolese Government in this process.

**B. Recommendation to the Human Rights Council**

64. The Human Rights Council should remain actively seized of the human rights situation in the Democratic Republic of the Congo and ensure that the situation is continuously monitored by human rights mechanisms. The Human Rights Council should also call on the Government to step up its dialogue with the international community to further concretize and implement the plan of action for the implementation of recommendations on human rights. The High Commissioner stands ready to continue submitting a yearly report on the situation of human rights in the Democratic Republic of the Congo.

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