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UNITED NATIONS EXPERT ON HUMAN RIGHTS DEFENDERS CONCLUDES VISIT TO THE DEMOCRATIC REPUBLIC OF THE CONGO

3 June 2009

The Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, issued the following statement on the preliminary findings of her official visit to the Democratic Republic of the Congo today:

"The Special Rapporteur on the situation of human rights defenders conducted an official mission to the Democratic Republic of the Congo, at the invitation of the Government, from 21 May to 3 June 2009. The purpose of the visit was to assess the situation of human rights defenders in the light of the principles set forth in the Declaration on Human Rights Defenders adopted by the United Nations General Assembly in 1998.

The Special Rapporteur thanks the Government of the DRC for its ongoing cooperation with Special Procedures of the Human Rights Council by extending to her the invitation and for its collaboration during the mission. During the mission, the Special Rapporteur visited Kinshasa, Kananga (Western Kasai) and Bukavu (South Kivu). She was unable, due to logistic constraints, to visit Kisangani (Oriental Province) as initially planned. She met with the Prime Minister, the Minister for Human Rights, other senior Government officials, members of the judiciary, members of the National and Provincial Assemblies, heads of security services, and representatives of institutions concerned with the protection of human rights in the capital and in the two provinces. However, she regrets she was unable to meet the Minister of Justice in Kinshasa.

The Special Rapporteur also held meetings with representatives of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), United Nations agencies, and diplomatic missions. The Special Rapporteur thanks the Special Representative of the Secretary-General in the Democratic Republic of the Congo of the United Nations Mission (MONUC), his Deputy for Rule of Law, the Head of the United Nations Joint Office of the United Nations High Commissioner for Human Rights (OHCHR)-MONUC Human Rights Office, his Deputy, OHCHR staff in Kinshasa, Kananga, and Bukavu, and Heads of MONUC in Kananga and Bukavu, for their excellent support provided in organizing the visit.

Finally, she met a broad segment of the civil society and human rights defenders engaged with a wide range of civil, political, economic, social and cultural rights. These included members of non-governmental organizations, women human rights defenders, journalists, lawyers, trade unionists, church workers, land activists, health workers, teachers, development actors and defenders promoting good governance.

Following decades of dictatorship, the Democratic Republic of the Congo is engaged in a political, economic and social transition. However, a conducive environment in which human rights defenders can operate has yet to emerge. The Special Rapporteur commends the political will of the Government to build a modern democratic society, and in particular the efforts of the Ministers for Human Rights and Gender, Family and

Children, who, despite meagre resources, are trying to improve the prospects for the promotion and protection of human rights.

The Special Rapporteur pays tribute to human rights defenders for their courage while operating under very difficult conditions, especially in the eastern part of the country. Defenders face numerous challenges that seriously impede their legitimate activities. The first concern lies in the ongoing stigmatization by authorities in the capital and in provinces, as well as by non-State actors, of defenders who are seen as 'enemies' or 'opponents'. This misconception fuels mistrust and suspicion, and is the prime source of insecurity for defenders. Pascal Kabungulu, Polycarpe Mpoy, Franck Ngycke and his wife Hélène Mpaka, Bapua Mwanmba, Serge Maheshe, Didace Namujimbo and Georges Kateta have paid the highest price for their peaceful engagement in promoting and defending human rights. Defenders are particularly exposed to threats and attacks when supporting victims of grave violations, most notably sexual violence; when fighting impunity and supporting the work of the International Criminal Court (ICC); and when denouncing the illegal exploitation of natural resources. Defenders have been victims of judicial harassment when denouncing human rights violations. The Special Rapporteur stresses that human rights defenders are crucial and play a major role in the democratization process in the Democratic Republic of the Congo.

Another cause of great concern is the widespread impunity for violations committed against human rights defenders. Perpetrators of violations against defenders range from police, military and intelligence officers to members of armed groups. Complaints filed by human rights defenders are seldom thoroughly investigated, and trials often fall short of international standards on fair trial, such as the trial on the killing of Serge Maheshe. The forthcoming trial on the killing of Didace Namujimbo should be seen as a test case for the Democratic Republic of the Congo of its will to put an end to impunity. Human rights defenders can only be protected if the justice system is fully resourced, effective, independent and accountable.

The Special Rapporteur is particularly concerned about the current joint military operation Kymia II between the Armed Forces of the Congo (FARDC) and MONUC against the Rwandan Democratic Liberation Forces (FDLR) in the East of the country, which makes human rights defenders more vulnerable to attacks and reprisals by both parties to the conflict.

The Special Rapporteur further raises concern that the boundaries between the powers and prerogatives of the police, military and intelligence services (e.g. the *Agence nationale de renseignements* (ANR)) are not clear. Human rights defenders are often held incommunicado in ANR detention facilities, with no access by the MONUC and with no judicial oversight.

Human rights defenders also face illegitimate restrictions of their right to core freedoms, i.e. freedoms of opinion and expression, peaceful assembly and association. Defenders, in particular journalists, who report on human rights abuses committed by State and non-State actors are killed, threatened, tortured or arbitrarily arrested and their offices are raided. The media are sometimes suspended, and journalists often censor themselves in fear of reprisals. Journalists are also denied access to information by authorities. The exercise of the right to peaceful assembly also proves to be problematic: the regime of notification introduced by the 2006 Constitution of the Democratic Republic of the Congo is often not respected in practice and defenders need to seek the authorization of the authorities to hold demonstrations. Finally, despite meeting all administrative requirements, several non-governmental organizations (NGOs) have not been granted legal personality and therefore are unable to file complaints before courts and receive funding from donors.

The Special Rapporteur expresses specific concern at the plight of women human rights defenders whose activities are often hindered by the authorities and who may face discrimination from their male colleagues.

In addition to insecurity and impunity, human rights defenders suffer from a chronic lack of resources and funding, especially defenders operating outside the capital and the eastern provinces where the international community mostly concentrates its efforts in assisting civil society.

The absence of a legal framework protecting human rights defenders contributes to the precarious situation of defenders in the Democratic Republic of the Congo. The adoption of a national law on the protection of defenders will certainly enhance and give legitimacy to their work. The Special Rapporteur welcomes the acknowledgement by the President of the National Assembly and the President of the Senate of the necessity to adopt such legislation and is encouraged by their willingness to examine a draft law during their next session. The Special Rapporteur further welcomes the recent attempt to adopt a similar law in the South Kivu province and calls on the provincial parliamentarians to adopt a revised text in the near future. Such adoption at the provincial level will be a landmark and set an example, not only for the whole country, but for the African continent. The Special Rapporteur hopes to be in a position to report favourably to the Human Rights Council in March 2010 on the adoption of both laws.

The Special Rapporteur also notes that the draft law on the establishment of a national human rights commission has been approved by the Senate and is pending before the National Assembly. She urges the National Assembly to finalize the adoption of this important law for the Democratic Republic of the Congo.

The Special Rapporteur commends the work of the United Nations Joint OHCHR-MONUC Human Rights Office, in particular the Protection Unit, which runs the Protection of Victims, Witnesses and Human Rights Defenders programme. Since its inception in June 2007 (a unique initiative in United Nations peacekeeping missions), the programme has assisted 487 victims, witnesses and defenders. However, she is concerned that the programme, presently funded by the European Commission, could close.

The Special Rapporteur further welcomes the work of the follow-up committees established jointly by MONUC, the police and the military to look at complaints brought regarding violations committed by the security forces. These platforms are good opportunities for defenders to raise their concerns directly with the authorities. The Special Rapporteur also supports the proposal of the Minister for Human Rights to formalize and reinvigorate the *entités de liaison*.

Finally, the Special Rapporteur welcomes the role played by the diplomatic missions and other United Nations agencies in supporting human rights defenders in the Democratic Republic of the Congo. She calls upon them to intensify their efforts in empowering civil society.

The Special Rapporteur wishes to make the following recommendations:

To the Government and provincial authorities:

Trust

- Take concrete steps to give legitimacy to the work of human rights defenders, including women defenders, and acknowledge it as human rights work;
- Support and foster the emergence of a confident and coordinated civil society that can only prosper in a state of democracy, rule of law and full government commitment to individual freedoms and liberties;
- Engage in a constructive and sustained dialogue with civil society actors for purposes of improving the situation of defenders on the ground;
- Recognize human rights work and criticism of the Government and its

officials as natural part of a democratic society;

- Lift illegitimate restrictions on the exercise of the right to freedom of association by immediately granting legal personality to NGOs which comply with all administrative requirements;
- Respect the regime of notification governing the exercise of the right to freedom of peaceful assembly without any arbitrary interference from the executive;
- Enable human rights defenders to access information in order for them to report accurately;
- Translate the Declaration on Human Rights Defenders in the main local languages and disseminate it within the State organs and civil society;
- Deliver sensitization training to the police, military, intelligence, and judicial officials on the role and activities of human rights defenders, including women defenders, with technical advice and assistance from the Joint Office for Human Rights and NGOs;
- Fully involve human rights defenders in the monitoring of the 2011 presidential elections;

Response to violations

- Condemn publicly the killing and other serious human rights violations against human rights defenders;
- Investigate all human rights abuses against defenders, hold fair trials of alleged perpetrators and sentence them if convicted;
- Take proactive measures to ensure the physical and psychological integrity of human rights defenders;
- Make the fight against impunity for violations against human rights defenders a priority;
- Conduct an in-depth and independent investigation into the killing of Didace Namujimbo; start as soon as possible a trial which fully meets international standards on fair trial and ensure that lawyers and observers of the trial can carry out their activities safely;
- Ensure that the re-trial of the killing of Serge Maheshe will fully meet international standards on fair trial, and open investigations into the threats received by lawyers and observers of the trials at the first and appeal levels;
- Domesticate the Rome Statute ratified by the Democratic Republic of the Congo, and implement the provision pertaining to the protection of witnesses and victims;
- Grant access for MONUC to ANR detention facilities;

Structures

- Adopt national and provincial laws on the protection of human rights defenders, with a specific reference to the work of women human rights defenders, developed in consultation with civil society and on the basis of technical advice from relevant international agencies;
- Increase drastically the capacity of the justice system, especially in the provinces, so as to enable it to deliver justice in an independent, effective and accountable manner;
- Expand the justice system in the rural territories;
- Speed up the adoption of the law establishing a national human rights

commission, which fully complies with the Paris Principles; establish a human rights defenders focal point whose tasks would include: investigating human rights violations against defenders; raising awareness on international and regional human rights instruments pertaining to the work of human rights defenders; ensuring that national legislation is in conformity with these instruments; making recommendations to the Government, Parliament and other State institutions with regard to the situation of human rights defenders, and following up on these recommendations; and offering legal assistance to human rights defenders;

- Adopt the draft bill on the organization and functioning of the Superior Council of Audiovisual and Communication, as well as the two draft bills contributing to the better exercise of the right to freedom of opinion and expression (notably by decriminalizing press offences);

- Empower the Ministry for Human Rights to identify human rights trends – in consultation with civil society – and ensure that they are taken into account in the policy-making process at the national level; reactivate and strengthen local human rights committees to make them a channel of communication for defenders on the ground;

- Set up parliamentary networks on human rights in all provinces;

- Reform the justice and security sectors as laid down in the report of the Human Rights Council seven thematic procedures of March 2009 on technical assistance to the Government of the Democratic Republic of the Congo and the urgent examination of the human rights situation in the East of the country;

- Adopt a legal framework for the activities and prerogatives of the intelligence services (ANR), in accordance with the rule of law;

- Organize as soon as possible national consultations with the civil society in the framework of the Universal Periodic Review which will be held in Geneva in December 2009;

- Continue collaborating with Special Procedures of the Human Rights Council, including by extending invitations for country visits and through the implementation of resolution 10/33 of the Council;

- Respond in a timely manner to all communications sent by Special Procedures.

To MONUC and OHCHR:

- Increase the staffing and financial capacity of the Joint Human Rights Office, and ensure the continuity of the programme on the protection of witnesses, victims and human rights defenders;

- Continue training, especially through training of trainers, of human rights defenders on international and regional human rights mechanisms, on security measures, and ethics;

- Train the Ministry for Human Rights on drafting methodology to meet in a timely manner its reporting obligations before United Nations treaty bodies;

- Assist the Government in organizing national consultations with the civil society in the framework of the Universal Periodic Review.

To the international community and donors:

- As soon as legislation on an independent National Human Rights Commission is adopted, provide adequate technical advice and assistance to establish the Commission, and integrate it into regional and international networks of national human rights institutions;

- Assist the Ministry for Human Rights with funding to re-establish local offices in the provinces and enable them to deal with complaints of the population against Government officials regarding human rights issues;
- Continue supporting the Joint Human Rights Office's programme on the protection of witnesses, victims and human rights defenders;
- Continue empowering the civil society, including human rights defenders operating outside the eastern provinces, by increasing their capacity, notably their means of communications (funding Internet connections, mobile phones, etc.);
- Support the Human Rights section of the Plan for the Reform of the Justice System;
- Implement on a systematic basis the European Union Guidelines on Human Rights Defenders.

To human rights defenders:

- Improve coordinating networks aimed at strengthening the protection of defenders, particularly those outside the capital;
- Strategize on the adoption of national and provincial laws on the protection of human rights defenders;
- Make full use of existing international and regional human rights mechanisms, including United Nations Special Procedures and the mechanisms of the African Commission on Human and Peoples' Rights (in particular the Special Rapporteur on Human Rights Defenders);
- Participate more actively in existing human rights structures, i.e. the follow-up committees on violations committed by the police and the army, the synergy on sexual violence, and the protection cluster;
- Collaborate actively with the National Human Rights Commission once it is established;
- Participate actively in the national consultations to be organized by the Government in the framework of the Universal Periodic Review;
- Enhance their credibility by demonstrating continuous professionalism and respecting ethics in the course of their human rights activities.

To all stakeholders:

- Carry out countrywide civic education, particularly through the introduction of human rights in the school curriculum, to enhance the appreciation of the activities of human rights defenders;
- Disseminate the Declaration on Human Rights Defenders and the Universal Declaration on Human Rights within the context of their tenth and sixtieth anniversary respectively."

The Special Rapporteur will present her report to the United Nations Human Rights Council at its thirteenth session in March 2010, and will make further recommendations for the consideration of the Government and other stakeholders.

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