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UK Border Agency

THE DEMOCRATIC REPUBLIC OF CONGO

COUNTRY OF ORIGIN INFORMATION (COI) REPORT

COI Service

9 March 2012

SECURING OUR BORDER CONTROLLING MIGRATION

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Preface

i This Country of Origin Information (COI) Report has been produced by the COI Service, United Kingdom Border Agency (UKBA), for use by officials involved in the asylum/human rights determination process. The Report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. The main body of the report includes information available up to 1 December 2011. The 'Latest News' section contains further brief information on events and reports accessed from 2 December 2011 to 29 February 2012. The report was issued on 9 March 2012.

ii The Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any UKBA opinion or policy. All information in the Report is attributed, throughout the text, to the original source material, which is made available to those working in the asylum/human rights determination process.

iii The Report aims to provide a compilation of extracts from the source material identified, focusing on the main issues raised in asylum and human rights applications. In some sections where the topics covered arise infrequently in asylum/human rights claims only web links are provided. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.

iv The structure and format of the COI Report reflects the way it is used by UKBA decision makers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections. Some repetition is therefore inherent in the structure of the Report.

v The information included in this COI Report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic, it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the Report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented unless stated. Similarly, the absence of information does not necessarily mean that, for example, a particular event or action did not occur.

vi As noted above, the Report is a compilation of extracts produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents though COI6S will bring the discrepancies together and aim to provide a range of sources, where available, to ensure that a balanced picture is presented. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties, etc. COI Reports do not aim to bring consistency of spelling, but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are simply quoted as per the original text. The term 'sic' has been used in this document only to denote incorrect spellings or typographical errors in quoted text; its use is not intended to imply any comment on the content of the material.

6 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

vii The Report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent documents. All sources contain information considered relevant at the time this Report was issued.

viii This COI Report and the accompanying source material are public documents. All COI Reports are published on the RDS section of the Home Office website and the great majority of the source material for the Report is readily available in the public domain. Where the source documents identified in the Report are available in electronic form, the relevant web link has been included, together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from the COI Service upon request.

ix COI Reports are published regularly on the top 30 asylum intake countries. Reports on countries outside the top 30 countries may also be published if there is a particular operational need. UKBA officials also have constant access to an information request service for specific enquiries.

x In producing this COI Report, COI Service has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to UKBA as below.

Country of Origin Information Service
UK Border Agency
Lunar House
40 Wellesley Road
Croydon, CR9 2BY
United Kingdom
Email: cois@homeoffice.gsi.gov.uk
Website: http://www.homeoffice.gov.uk/rds/country_reports.html

INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION

xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Chief Inspector of the UK Border Agency to make recommendations to him about the content of the UKBA's COI material. The IAGCI welcomes feedback on UKBA's COI Reports and other country of origin information material. Information about the IAGCI's work can be found on the Chief Inspector's website at http://www.ociukba.homeoffice.gov.uk

xii In the course of its work, the IAGCI reviews the content of selected UKBA COI documents and makes recommendations specific to those documents and of a more general nature. A list of the COI Reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored UKBA's COI material from September 2003 to October 2008) is available at http://www.ociukba.homeoffice.gov.uk/

xiii Please note: it is not the function of the IAGCI to endorse any UKBA material or procedures. Some of the material examined by the Group relates to countries designated or proposed for designation to the Non-Suspensive Appeals (NSA) list. In

such cases, the Group's work should not be taken to imply any endorsement of the decision or proposal to designate a particular country for NSA, nor of the NSA process itself. The IAGCI can be contacted at:

Independent Advisory Group on Country Information
Independent Chief Inspector of the UK Border Agency
5th Floor, Globe House
89 Eccleston Square
London, SW1V 1PN
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8 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

Latest News

EVENTS IN DEMOCRATIC REPUBLIC OF CONGO FROM 2 DECEMBER 2011 TO 29 FEBRUARY 2012

The latest news provides a non-exhaustive selection of significant events since 2 December 2011. Further information may also be available from the list of useful sources below.

The Home Office is not responsible for the content of external websites.

Aftermath of 2011 elections

14 February 2012 Following the November 2011 Election, deep concerns remain about multiple allegations of human rights abuses by security forces, including illegal and arbitrary detentions throughout the electoral process
US State Department, Ongoing Electoral Process in the Democratic Republic of the Congo (DRC), press statement, 14 February 2012
http://www.state.gov/r/pa/prs/ps/2012/02/183914.htm
Date accessed 15 February 2012

2 February 2012 "Official results from elections in the Democratic Republic of Congo have given President Joseph Kabila and his allies an outright parliamentary majority. The electoral commission released the results two months after November's disputed elections. They were the first Congolese-organised polls since the 2003 end of a war, which left four million dead. Veteran opposition Etienne Tshisekedi - who has declared himself president - has called for a boycott of parliament."
BBC News, DR Congo: Joseph Kabila wins majority in parliament, 2 Ferbruary 2012
http://www.bbc.co.uk/news/world-africa-16851211
Date accessed 17 February 2012

27 January 2011 The Democratic Republic of Congo's main opposition leader has condemned the results of parliamentary elections. Etienne Tshisekedi said his party members, who had won seats, should boycott the parliament as November's general elections were rigged. He also called for a general strike on Monday in protest at his house arrest. President Joseph Kabila's PPRD and their allies say they will be able to muster a parliamentary majority, with 432 of the 500 seats declared.
BBC News, Congo poll: Etienne Tshisekedi condemns results, 27 January 2012
http://www.bbc.co.uk/news/world-africa-16757348
Date accessed 17 February 2012

26 January 2011 "Police in the Democratic Republic of Congo have fired tear gas to disperse supporters of the opposition leader, Etienne Tshisekedi, in the capital, Kinshasa. Mr Tshisekedi was urging his supporters to accompany him to the presidential palace. He declared himself president after refusing to accept last year's elections results. A BBC correspondent says Mr Tshisekedi was prevented from leaving his home. Incumbent Joseph Kabila

was declared the winner in November's elections, but Mr Tshisekedi says he was a victim of fraud - and duly held his own 'swearing-in' process."
BBC News, DR Congo's Tshisekedi under unofficial house arrest, 26 January 2012
http://www.bbc.co.uk/news/world-africa-16749151
Date accessed 17 February 2012

25 January 2012 "At least 24 people have been killed and dozens arbitrarily detained since the publication of the provisional results of the November 28th Presidential election by the Independent National Electoral Commission (INEC). Cases of abduction and harassment targeting the opposition or people alleged to be members of the opposition have been reported in Kinshasa and in several other provinces."
AllAfrica, Congo-Kinshasa: No End in Sight to Post-Election Crisis, 25 January 2012
http://allafrica.com/stories/201201260301.html
Date accessed 27 January 2012

13 January 2012 Catholic bishops in the Democratic Republic of Congo have denounced elections in November which re-elected President Joseph Kabila. A statement from 35 bishops complains of "treachery, lies and terror" and called on the election commission to correct "serious errors". Last week, the archbishop of Kinshasa called for a campaign of disobedience and for the results to be annulled. The poll was heavily criticised by foreign observers and the opposition. International observers said the elections - in which more than 18,000 candidates contested 500 parliamentary seats - suffered from widespread irregularities.
BBC news, Catholic bishops condemn DR Congo presidential poll, 13 January
http://www.bbc.co.uk/news/world-africa-16540780
Date accessed 17 February 2012

24 December 2011 "Troops in the Democratic Republic of Congo blocked entry to a stadium where the main opposition leader (Etienne Tshisekedi) planned to inaugurate himself as president. His supporters were prevented from from entering the stadium n Kinshasa, which was ringed by security forces who used tear gas to disperse the crowds and made several arrests."
BBC News, DR Congo police block Tshisekedi inauguration, 24 December 2011
http://www.bbc.co.uk/news/world-africa-16324184
Date accessed 17 February 2012

22 December 2011 "At least 24 people have been killed by police in the Democratic Republic of Congo since last month's disputed elections, a US rights group has said."
BBC News, DR Congo police 'killed 24 civilians' after elections, 22 December 2011
http://www.bbc.co.uk/news/world-africa-16297258
Date accessed 17 February 2012

10 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

Other news

24 February 2012 **"**The US believes its military intervention in central Africa in pursuit of Joseph Kony's Lord's Resistance Army (LRA) is having the desired effect, reducing attacks and improving civilian protection - although analysts have reservations."
Security: Questions over progress against the LRA,dated 24 February 2012
http://www.irinnews.org/Report/94941/SECURITY-Questions-over-progress-against-the-LRA
Date accessed 29 February 2012

15 February 2012 **Ireland: Refugee Documentation Centre**
Democratic Republic of Congo: Information on the treatment of failed asylum seekers, including children, by the Congolese authorities on their return to Democratic Republic of Congo?
published 15 February 2012, dated 2 December 2011
http://www.unhcr.org/refworld/country,,,,COD,,4f4241e32,0.html
Date accessed 29 February 2012

12 February 2012 "A senior adviser to the President of the Democratic Republic of Congo, Joseph Kabila, has been killed in a plane crash in the east of the country. Augustin Katumba Mwanke died when the private jet came down near the town of Bukavu, a statement read out on national TV said. The pilot also died. Finance Minister Matato Ponyo Mapo and a provincial governor were among other passengers who were seriously injured."
BBC News, DR Congo: President Kabila's aide dies in plane crash, 12 February 2012
http://www.bbc.co.uk/news/world-africa-17004512
Date accessed 17 February 2012

24 January 2012 "Up to 120,000 refugees from the Democratic Republic of Congo (DRC) will be helped to return home from the north of neighbouring Republic of Congo after more than two years. An agreement on the voluntary repatriation beginning in April was reached during a recent meeting between officials from the two countries and the UN Refugee Agency (UNHCR)."
IRIN, DRC-CONGO: Refugee returns to start in April, 24 January 2012
http://www.irinnews.org/report.aspx?reportid=94712
Date accessed 17 February 2012

20 January 2012 "In North Kivu, an estimated 35,000 people have been displaced as a result of raids on villages and clashes between rival militia groups in Walikale and Masisi territories… At least 22 people have reportedly been killed and an unknown number of women raped…In the district of Shabunda in South Kivu, some 70,000 people have been displaced. According to local sources, 4,400 civilians are thought to have fled attacks over the past two weeks alone. Many of those fleeing are reported to be moving towards the neighbouring provinces of Maniema and Katanga."
UN News, DR Congo: UN concerned over new displacement of thousands of civilians, 20 January 2012
http://www.un.org/apps/news/story.asp?NewsID=40985&Cr=Democratic&Cr1=Congo

Date accessed 24 January 2012

17 January 2011 "The Democratic Republic of Congo became the 145th country in the world to introduce value added tax on the 1st of January in an effort to modernise its fiscal system. The new tax has an impact on consumer prices and was due to replace an older duty, but many businesses seem to be charging both taxes.This has led to a huge spike in inflation in the past few days and growing frustration among Congolese consumers."
BBC News, The Democratic Republic of Congo has introduced VAT, 17 January 2012
http://www.bbc.co.uk/news/world-africa-16596707
Date accessed 17 February 2012

16 January 2012 "A partnership of humanitarian organizations working with community volunteers in South Kivu, eastern Democratic Republic of Congo (DRC), has helped demobilize thousands of children formerly associated with armed groups in the province, says the UN Children's Fund (UNICEF)."
IRIN, DRC: Rebuilding the lives of children associated with armed groups, 16 January 2012
http://www.irinnews.org/report.aspx?reportid=94655
Date accessed 17 February 2012

9 January 2012 About 45 civilians were killed and at least 50 were wounded during a raid in South Kivu's Shabunda territory by the fighters of the Forces Démocratiques de Libération du Rwanda (FDLR) in two attacks. The attacks are also believed to have resulted in the displacement of people, the mission said in a press release.
IRIN, DR Congo: UN mission condemns killing of dozens of civilians in South Kivu, 9 January 2012
http://www.un.org/apps/news/story.asp?NewsID=40907&Cr=democratic&Cr1=congo
Date accessed 24 January 2012

21 December 2011 "Amid rising measles and polio cases, tens of thousands of children are being targeted for immunization in health campaigns in affected regions of the Democratic Republic of Congo (DRC), according to the UN Children's Fund (UNICEF). At least 128,965 measles cases, with 1,573 deaths, have been recorded in the DRC in 2011, and 89 wild polio-virus type 1 cases had been reported up to 13 December."
IRIN, DRC: Measles immunization campaign targets 1.7 million children, 21 December 2011
http://www.irinnews.org/report.aspx?reportid=94516
Date accessed 17 February 2012

16 December 2011 "War crimes judges in The Hague have dismissed charges against a Rwandan rebel leader accused of murder and rape in the Democratic Republic of Congo. The judges at the International Criminal Court ordered the release of Callixte Mbarushimana because of lack of evidence to back up the charges. Prosecutors said they would appeal, requesting to halt the release. Mr Mbarushimana, a Hutu rebel leader, has denied ordering his fighters to kill and rape civilians in 2009."

12 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

BBC News, ICC dismiss Rwanda rebel Callixte Mbarushimana charges, 16 December 2011
http://www.bbc.co.uk/news/world-africa-16227154
Date accessed 17 February 2012

6 December 2011 At least 3,500 people have arrived by boat in recent days in Congo's capital, fearing violence in the run-up to the announcement, due before midnight on 6 December, of the outcome of the presidential election in the Democratic Republic of Congo (DRC).
IRIN, DRC-CONGO: Thousands flee election tension, 6 December 2011
http://www.irinnews.org/report.aspx?reportid=94406
Date accessed 17 February 2012

USEFUL NEWS SOURCES FOR FURTHER INFORMATION

A list of news sources with Weblinks is provided below, which may be useful if additional up to date information is required to supplement that provided in this report. The full list of sources used in this report can be found in Annex E – References to source material.

AlertNet (Thomson Reuters) http://www.alertnet.org/thenews/newsdesk/index.htm?news=all
British Broadcasting Corporation (BBC) http://news.bbc.co.uk
Cable News Network (CNN) http://edition.cnn.com/WORLD/?fbid=i0gUtrVnUAy
Integrated Regional Information Networks (IRIN) http://www.irinnews.org/
MONUSCO http://www.un.org/en/peacekeeping/missions/monusco/
United Nations http://www.un.org/en/
UN News Centre http://www.un.org/news/
Voice of America (VoA) News http://www.voanews.com/english/news/
Crisis Group.Crisiswatch http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx

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REPORTS ON DEMOCRATIC REPUBLIC OF CONGO PUBLISHED OR ACCESSED BETWEEN 2 DECEMBER 2011 AND 29 FEBRUARY 2012

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United Nations Convention on the Rights of the Child
Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed Conflict Concluding observations: Democratic Republic of Congo, 3 February 2012
http://www.crin.org/docs/CRC-C-OPAC-COD-CO-1-1.pdf
Date accessed 13 February 2012

United Nations Security Council
Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 26 January 2012
http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/206/29/PDF/N1220629.pdf?OpenElement
Date accessed 17 February 2012

Human Rights Watch
World Report 2012 - Democratic Republic of Congo, 22 January 2012
http://www.hrw.org/world-report-2012/world-report-2012-democratic-republic-congo
Date accessed 27 January 2012

Central Intelligence Agency (CIA)
World Factbook, Trafficking in Persons, Democratic Republic of Congo, 9 January 2012
https://www.cia.gov/library/publications/the-world-factbook/fields/2196.html
Date accessed 13 February 2012

United Nations Security Council
Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, dated 2 December 2011
http://allafrica.com/download/resource/main/main/idatcs/00030252:0792b4e66e63f29288c1a6dfb4c5d01d.pdf
Date accessed 28 January 2012

Committee to Protect Journalists
Attacks on the Press in 2011 - Democratic Republic of the Congo, 22 February 2012
http://www.unhcr.org/refworld/country,COI,,,COD,,4f4cc9912c,0.html
Date accessed 29 February 2012

Internal Displacement Monitoring Centre (IDMC)
What does the future hold for IDPs living in camps in central Masisi? February 2012
http://www.unhcr.org/refworld/country,COI,,,COD,,4f54a2e52,0.html
Date accessed 29 February 2012
Committee to Protect Journalists
Journalists Killed in 2011 - Motive Unconfirmed: Witness-Patchelly Kambale Musonia, 20 December 2011
http://www.unhcr.org/refworld/country,COI,,,COD,,4f045a7d25,0.html
Date accessed 29 February 2012

14 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

Background Information

1. GEOGRAPHY

1.01 Europa World, in its profile of the Democratic Republic of Congo (DRC), undated, accessed on 14 January 2012, noted that: "The Democratic Republic of the Congo (formerly Zaire) lies in central Africa, bordered by the Republic of the Congo to the north-west, by the Central African Republic and Sudan to the north, by Uganda, Rwanda, Burundi and Tanzania to the east and by Zambia and Angola to the south. There is a short coastline at the outlet of the River Congo." **[1a] (Country Profile-Location, Climate, Language, Religion, Flag, Capital)**

1.02 The same source noted that it covers an "area… [of]… 2,344,885 sq km." **[1b] (Country Statistics, Area and Population)**

1.03 Europa World, undated, accessed on 14 January 2012, noted its population as (UN estimate mid-2010): 67,827,000. Population density (mid-2010): 28.9 per sq km. **[1b] (Country Statistics, Area and Population)**

1.04 In relation to geographical location, the UN Economic and Social Council stated in a report 'Implementation of the International Covenational Archives of the Congo Cultural Rights Combined second, third, fourth and fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant Democratic Republic of the Congo', dated 21 January 2009:

"Since 1993, 60% of the population has been in rural areas and 40% in urban centres with 5,000 or more inhabitants; the degree of concentration in urban centres varies considerably from province to province;

"In Maniema the proportion of the population in urban areas is low; in Kinshasa it is high (about one tenth of the entire population);

"Rapid growth of the urban population (7- 8%), the concentration of 28% of the entire urban population in Kinshasa, and the high rate of emigration from rural areas;

"The uneven geographical distribution of the population - the highest population densities are in the city of Kinshasa and the provinces of Bas-Congo, Nord Kivu, Sud Kivu and Maniema." **[43a]**

1.05 The Foreign and Commonwealth Office, Country Profile, DRC, (FCO DRC profile 2011) updated 16 June 2011, noted that there are "Over 200 African ethnic groups of which the majority are Bantu; the 4 largest tribes – Mongo, Luba, Kongo (all Bantu), and the Mangbtu-Azande (Hamitic) make up about 45% of the population." [4a] With regard to languages, Europa World Online, undated, accessed 14 January 2011, observed that: "French is the official language. More than 400 Sudanese and Bantu dialects are spoken; Kiswahili, Kiluba, Kikongo and Lingala being the most widespread." **[1a] (Country Profile-Location, Climate, Language, Religion, Flag, Capital)**

1.06 The DRC Government's submission to the UN Committee of the Rights of the Child, as part of the Consideration of Reports Submitted by States Parties under 44 of the Convention , dated 28 June 2008 noted:

"In the Democratic Republic of the Congo the official language is French. Some 250 languages and dialects are in use. Of these, 90 per cent are of Bantu origin. Four languages are referred to as 'national languages', namely:

- "Swahili (40 per cent) in the east, in Nord-Kivu, Sud-Kivu, Katanga, Maniema an Orientale province;
- "Lingala (27.5 per cent) in Kinshasa, the capital, and the neighbouring region, and in Equateur and in Orientale province;
- "Kikongo (17.8 per cent) in Bas-Congo and Bandundu;

"Chiluba (15 per cent) in the provinces of Kasaï-Oriental and Kasaï-Occidental." **[91a] (p5)**

1.07 Europa World noted that: "An estimated 50% of the population is Roman Catholic, and there is a smaller Protestant community. Many inhabitants follow traditional (mostly animist) beliefs. The national flag (proportions 2 by 3) is light blue, with a yellow star in the upper left corner and a diagonal red stripe edged in yellow." **[1a] (Country Profile-Location, Climate, Language, Religion, Flag, Capital)**

1.08 Europa World, undated, accessed on 14 January 2012, noted that:

"In October 1997 a statutory order redesignated the regions as provinces. Kivu was divided into three separate provinces, and several of the other provinces were renamed. The Constitution of February 2006 increased the existing 11 provinces to 26: Bas-Uele, Équateur, Haut-Lomami, Haut-Katanga, Haut-Uele, Ituri, Kasaï, Kasaï Oriental, Kongo Central, Kwango, Kwilu, Lomami, Lualaba, Lulua, Mai-Ndombe, Maniema, Mongala, Nord-Kivu, Nord-Ubangi, Sankuru, Sud-Kivu, Sud-Ubangi, Tanganyika, Tshopo, Tshuapa and Kinshasa (city)." **[1b] (Country Statistics-Area and Population).**

1.09 The US Department of State, Background Note: Democratic Republic of Congo, dated 30 September 2011, stated that: "… the capital is Kinshasa and the regional capitals are Bandundu, Bukavu, Goma, Kananga, Kindu, Kisangani, Lubumbashi, Matadi, Mbandaka, Mbuji-Mayi." **[8a] (Geography)**

1.10 The Economist Intelligence Unit, in the Country Report on DRC, dated March 2011, noted that the public holidays are: "January 1st; January 4th, Martyrs of Independence Day; January 16th-17th, Heroes' Day; Easter Day; May 1st, Labour Day; May 17th, Liberation Day; June 30th, Independence Day; August 1st, Parents' Day; December 25th." **[22b] (basic data)**

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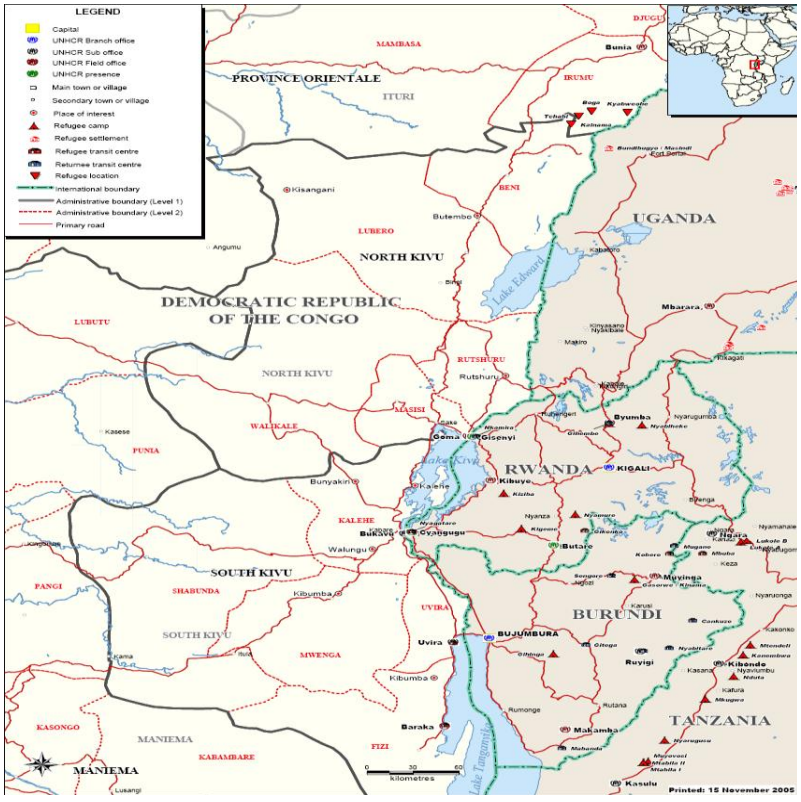
MAP

1.11 Map of the Democratic Republic of Congo, dated July 2004, obtained from the UN Department of Peacekeeping Operations Cartographic Section:

[3a]

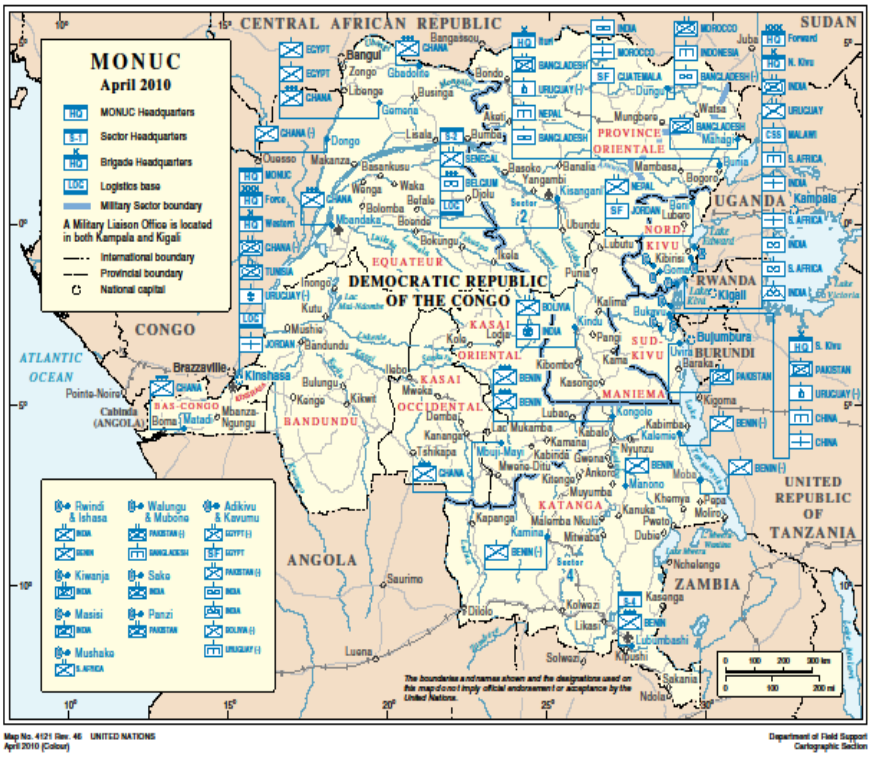
1.12 Map of Kivu Region, dated November 2005, obtained from the website of the United Nations High Commissioner for Refugees (UNHCR):



[48b]

For more maps issued by a variety of sources can be accessed via Reliefweb here.

1.13 The map below is provided by Monusco, dated April 2010.



[9b]

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2. ECONOMY

2.01 The US Department of State Background Note:Democratic Republic of Congo (DRC), updated 30 September 2011, stated that:

"Sparsely populated in relation to its area, the Democratic Republic of the Congo is home to vast natural resources and mineral wealth. Nevertheless, the DRC is one of the poorest countries in the world, with per capita annual income of about U.S. $189 in 2010. This is the result of years of mismanagement, corruption, and war. Agriculture is the mainstay of the Congolese economy, accounting for 42.5% of GDP in 2007.

"The main cash crops include coffee, palm oil, rubber, cotton, sugar, tea, and cocoa. Food crops include cassava, plantains, maize, groundnuts, and rice. However, commercial agricultural production or processing remains limited, with many producers engaged in subsistence food production. Industry accounted for 28.4% of GDP in 2007, of which 6.4% was from manufacturing, and services accounted for 29.1% of GDP in 2007. The export of goods and services constituted 28.2% of GDP in 2007. The DRC's formal economy is dominated by the mining sector. Minerals account for the vast majority of the DRC's exports and represent the single largest source of foreign direct investment (FDI). Copper, cobalt, gold, coltan, tin, and zinc are the big metals being mined and produced in the DRC. The DRC's main copper and cobalt interests are

dominated by Gecamines, the state-owned mining giant. Gecamines' independent production capacity has been severely affected by corruption, civil unrest, world market trends, and failure to reinvest profits toward routine maintenance and innovation. Gecamines is now most often a state partner in public-private mining partnerships with foreign companies. The diamond sector currently accounts for about 10% of the DRC's export revenue. This is from both gem and industrial-grade diamond sales that were around $875 million in 2008 and were projected to approach an estimated $1 billion in 2009. Production by the DRC parastatal, La Societe Miniere de Bakwanga (MIBA), has significantly declined from past decades; operations stopped during 2009 due to technical and financial difficulties. MIBA is currently working to restructure its operations and administration. Nearly all diamond production in the DRC is artisanal and takes place in the Kasai regions.

"For decades, corruption and misguided policy have fostered a clandestine economy in the DRC Individuals and businesses in the formal sector operated with high costs under arbitrarily enforced laws. As a consequence, the informal sector now dominates the economy." **[8a] (Economy, overview)**

2.02 The United States Agency International Development (USAID) noted its report USAID Office of Food for Peace Democratic Republic of Congo Bellmon Estimation, published September 2010, that:

"Approximately 21 million people in the DR Congo are food insecure… An estimated 71 percent… of the DR Congo's total population of 68 million… lives below the poverty line. Life expectancy is 46 years of age… The significant number of food insecure people and the country's high poverty head-count are largely the result of decades of poor political, economic, and social policies. These have resulted in under-investment in basic infrastructure and nearly non-existent social services. The majority of Congolese households practice subsistence agriculture, and some rely on informal employment opportunities for income, such as the sale of agricultural products, petty trade, and contract work... The high levels of poverty and food insecurity have been greatly exacerbated by ongoing conflict, particularly in the east." **[50a] (2.1 p 11)**

2.03 The Foreign and Commonwealth Office (FCO) Country Profile updated on 16 June 2011, provided some basic economic data:

"[Gross Domestic Product] GDP: US$9.1 bn

"GDP growth: over 7% (2010 est).

"Inflation: 15.1% (2010/11 est)." **[4a] (Economy)**

2.04 The website Oanda recorded the exchange rate on 15 February 2012 as follows:

1 Congolese Franc (CDF) equalled 0.00067 British Pounds (GBP)

1 GBP equalled 1,420.73 Congolese Franc (CDF)

1 CDF equalled 0.00105 US Dollars (USD)

1 USD equalled 904.176 Congolese Franc CDF **[5a] [5b]**

CORRUPTION

2.05 Freedom House stated in its report 'Freedom in the World 2011': Democratic Republic of Congo, covering the events of 2010 and published May 2011: "Corruption is rampant in the DRC, particularly in the mining sector. The country ranked 182 out of 183 countries in the World Bank's 2010 Doing Business survey, and 164 out of 178 countries surveyed in Transparency International's 2010 Corruption Perceptions Index." **[14a] (Overview)** The Transparency Index 2011 Report ranked DRC 168 (with a score of 2.0) out of a total of 182 countries in terms of corruption. **[7a]** (The Corruption Perceptions Index ranks countries/territories based on how corrupt their public sector is perceived to be. A country/territory's score indicates the perceived level of public sector corruption on a scale of 0 - 10, where 0 means that a country is perceived as highly corrupt and 10 means that a country is perceived as very clean. A country's rank indicates its position relative to the other countries/territories included in the index.)

It would also be helpful to see Section 19: Corruption in conjunction with the above.

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3. HISTORY (1960 TO 2010)

This section provides a brief recent history of the DRC since independence, with the focus on recent events in the last 10 to 15 years. More detailed accounts of the DRC's history can be found in the following: Africa Studies Centre, University of Pennsylvania; Insight on Conflict.

Additionally, Annex A provides a timeline of major events.

3.01 Encyclopedia Britannica Online, Democratic Republic of the Congo, 2011, accessed 1 August 2011, stated:

"The country that began as a king's private domain (the Congo Free State), evolved into a colony (the Belgian Congo), became independent in 1960 (as the Republic of the Congo), and later underwent several name changes (to the Democratic Republic of the Congo, then to Zaire, and back again to the Democratic Republic of the Congo) is the product of a complex pattern of historical forces. Some are traceable to the precolonial past, others to the era of colonial rule, and others still to the political convulsions that followed in the wake of independence. All, in one way or another, have left their imprint on Congolese societies." **[62a] (History)**

INDEPENDENCE AND THE MOBUTU ERA (1960 – 1997)

3.02 The US Department of State Background Note: Democratic Republic of Congo, updated on 30 September 2011, noted that: "… the Belgian Congo was granted its independence on June 30, 1960. Parliamentary elections in 1960 produced Patrice Lumumba as prime minister and Joseph Kasavubu as president of the renamed Democratic Republic of the Congo" **[8a]**

3.03 The same source stated that

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"Within the first year of independence, several events destabilized the country: the army mutinied; the governor of Katanga Province attempted secession; a UN peacekeeping force was called in to restore order; Prime Minister Lumumba died under mysterious circumstances; and Col. Joseph Desire Mobutu (later Mobutu Sese Seko) took over the government and ceded it again to President Kasavubu.

"Unrest and rebellion plagued the government until 1965, when Mobutu, by then a lieutenant general and commander-in-chief of the national army, again seized control of the country and declared himself president for 5 years. Mobutu quickly centralized power into his own hands and was elected unopposed as president in 1970.

"Embarking on a campaign of cultural awareness, Mobutu renamed the country the Republic of Zaire and required citizens to adopt African names. Relative peace and stability prevailed until 1977 and 1978 when Katangan rebels, staged in Angola, launched a series of invasions into the Katanga region. The rebels were driven out with the aid of Belgian paratroopers.

"During the 1980s, Mobutu continued to enforce his one-party system of rule. Although Mobutu successfully maintained control during this period, opposition parties, most notably the Union pour la Democratie et le Progres Social (UDPS), were active. Mobutu's attempts to quell these groups drew significant international criticism." **[8a]**

The end of the cold war and democratisation (1990 – 1993)

3.04 Encyclopedia Britannica Online, Democratic Republic of the Congo, 2011, updated 13 April 2011, accessed 1 August 2011, stated:

"Circumstances changed dramatically with the end of the Cold War in the early 1990s. Former supporters on the international scene, such as the United States, France, and Belgium, pressed for democratic reforms; some even openly supported Mobutu's rivals. In April 1990 Mobutu did decide to lift the ban on opposition parties, but he followed that liberalizing act with the brutal repression of student protests at the University of Lubumbashi in May—resulting in the death of 50 to 150 students, according to Amnesty International. In 1991 France reduced its monetary aid to the country, U.S. diplomats criticized Mobutu before the U.S. Congress, and the World Bank cut ties with Mobutu following his appropriation of $400 million from Gécamines, the state mining corporation.

"Mobutu grudgingly agreed to relinquish some power in 1991: he convened a national conference that resulted in the formation of a coalition group, the High Council of the Republic (Haut Conseil de la République; HCR), a provisional body charged with overseeing the country's transfer to a multiparty democracy. The HCR selected Étienne Tshisekedi as prime minister. Tshisekedi, an ethnic Luba from the diamond-rich Kasaï-Oriental province, was known as a dissident as early as 1980, when he and a small group of parliamentarians charged the army with having massacred some 300 diamond miners. Tshisekedi's renewed prominence highlighted the key role that natural resources continued to play in national politics.

"Meanwhile, Mobutu, resistant to the transfer of authority to Tshisekedi, maneuvered to pit groups within the HCR against each another. He also ensured the support of military units by giving them the right to plunder whole regions of the country and certain sectors of the economy. Eventually these maneuvers undermined Tshisekedi and resuscitated

the regime; Mobutu reached an agreement with the opposition, and Kengo wa Dondo became prime minister in 1994. Mobutu agreed to government reforms set forth in the Transitional Constitutional Act (1994), but real reforms and promised elections never took place." **[62a] (History)**

Rwandan crisis, civil war and the end of Mr Mobutu (1993 – 1997)

3.05 Encyclopedia Britannica Online, Democratic Republic of the Congo, 2011, updated 13 April 2011, accessed 1 August 2011, stated:

"The Rwandan crisis of 1993–94 – rooted in long-running tensions between that country's two major ethnic groups, the Hutu and the Tutsi – and the ensuing genocide (during which more than 800,000 civilians, primarily Tutsi, were killed) afforded Mobutu an opportunity to mend his relationships with the Western powers. Following the late-1993 invasion of Rwanda by the forces of the Rwandan Patriotic Front (Front Patriotique Rwandais; FPR), a Tutsi-led Rwandan exile organization, Mobutu offered logistical and military support to the French and Belgian troops who intervened to support the Hutu-led Rwandan government. This move renewed relations with France and ultimately led Belgium and the United States to reopen diplomatic channels with Mobutu. Business ventures that promised foreign firms privileged access to the country's resources and state enterprises further bolstered external support.

"Mobutu also encouraged attacks against Zairians of Rwandan Tutsi origin living in the eastern part of the country; this was one of the maneuvers that ultimately sowed the seeds of his downfall. The attacks, coupled with Mobutu's support of a faction of Hutu (exiled in Zaire) who opposed the Rwandan government, ultimately led local Tutsi and the government of Rwanda to join forces with Mobutu's opponent Laurent Kabila and his Alliance of Democratic Forces for the Liberation of Congo-Zaire (Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre; AFDL). Kabila's opposition forces also gained the backing of the governments of Angola and Uganda, as Mobutu had supported rebel movements within those countries. (Mobutu's associates had engaged in diamond trafficking with National Union for the Total Independence of Angola [UNITA] rebels; Mobutu also had allowed supplies for Ugandan rebels to be transported via a Zairian airport.)

"In October 1996, while Mobutu was abroad for cancer treatment, Kabila and his supporters launched an offensive from bases in the east and subsequently captured Bukavu and Goma, a city on the shore of Lake Kivu. Mobutu returned to the country in December but failed to stabilize the situation. The rebels continued to advance, and on March 15, 1997, Kisangani fell, followed by Mbuji-Mayi and Lubumbashi in early April. South African-backed negotiations between Mobutu and Kabila in early May quickly failed, and the victorious forces of the AFDL entered the capital on May 17, 1997. By this time, Mobutu had fled. He died in exile a few months later." **[62a] (History)**

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LAURENT KABILA AND A SECOND WAR (1997 - 2001)

3.06 The US Department of State Background Note, DRC, 30 September 2011, observed that in May 1997 Laurent-Desire Kabila declared himself president. "He consolidated power around himself and the AFDL and renamed the country the Democratic Republic

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of the Congo (DRC). Kabila's Army Chief and the Secretary General of the AFDL were Rwandan, and RPA units continued to operate tangentially with the DRC's military, which was renamed the Forces Armees Congolaises (FAC)." **[8a](Government and Political conditions)**

3.07 The same source also stated that:

"Over the next year [1997-98], relations between Kabila and his foreign backers deteriorated. In July 1998, Kabila ordered all foreign troops to leave the D.R.C. Most refused to leave. On August 2, nationwide fighting erupted as Rwandan troops in the D.R.C. 'mutinied,' and fresh Rwandan and Ugandan troops entered the country. Two days later, Rwandan troops flew to Bas-Congo, with the intention of marching on Kinshasa, ousting Kabila, and replacing him with the newly formed Rwandan-backed rebel group called the Rassemblement Congolais pour la Democratie (RCD). The Rwandan campaign was thwarted at the last minute when Angolan, Zimbabwean, and Namibian troops intervened on behalf of the D.R.C. Government. The Rwandans and the RCD withdrew to eastern D.R.C., where they established de facto control over portions of eastern D.R.C. and continued to fight the Congolese army and its foreign allies." **[8a]**

3.08 The Armed Conflict Database, History, Background of DRC, in an undated posting, (ACD background), accessed 18 January 2011, noted that:

"Many advisers from Rwanda joined Kabila in the Kinshasa government. This arrangement angered many Congolese and Kabila was forced to end the relationship with the Rwandans. When Kabila fell from favour, Uganda and Rwanda backed a coalition of rebel groups, the Congolese Rally for Democracy (RCD), dominated by members of the Tutsi ethnic minority that accused Kabila of nepotism and mismanagement of the country. Kabila's former allies turned against him and offered their support to the rebel group. By the end of 1998, the government lost control of more than one-third of the country to the RCD. Garrisons from the Rwandan and Ugandan armies and three rebel movements occupied the northeast of the country. Burundi also had troops in the Congo allied to the Rwandans, but these stayed closed to the Burundian border. " **[6a]**

3.09 The USSD Background Note observed that: "In February 1999, Uganda backed the formation of a rebel group called the Mouvement pour la Liberation du Congo (MLC), which drew support from among ex-Mobutuists and ex-Zairian soldiers in Equateur Province (Mobutu's home province). Together, Uganda and the MLC established control over the northern third of the D.R.C." **[8a]**

3.10 The ACD background stated that:

"… the government managed to maintain control over the western part of Congo. Kabila also allied himself with tens of thousand of Hutu militiamen, allegedly responsible for the Rwandan genocide of 1994, as well as with Mayi-Mayi, local Congolese warlords opposed to the Tutsis. The continuation and intensity of the conflict was often blamed on the Congo's abundance of diamonds, oil, uranium, gold, copper, coltan, and cobalt. All sides have were accused of having commercial interests and ulterior motives in the war. But there were also other reasons for which outside actors were drawn in. Rwanda wanted to track down the perpetrators of ethnic cleansing and safeguard its border from new threats by Hutus in the DRC. Uganda appeared to want to control economic

linkages between Central and East Africa through eastern Congo. Angola probably entered the war mainly to halt UNITA's use of Congolese territory as a supply route and rear base. Namibia, which has often accused UNITA of aiding a Namibian insurgency, was by all accounts supporting Angola's cause in the Congo. Zimbabwe's intervention was motivated in part by President Robert Mugabe's longing to be the ranking regional leader, and by economic interests granted to him by Kabila that aided Mugabe's regime survival." **[6a]**

3.11 The ACD background added "In July 1999 a peace accord was signed in Lusaka by the government of the [DR]Congo, three rebel groups and the five intervening nations." **[6a]** The USSD Background Note stated that:

"The Lusaka Accord called for a cease-fire, the deployment of a UN peacekeeping operation, the withdrawal of foreign troops, and the launching of an 'Inter-Congolese Dialogue' to form a transitional government leading to elections. The parties to the Lusaka Accord failed to fully implement its provisions in 1999 and 2000. Laurent Kabila drew increasing international criticism for blocking full deployment of UN troops, hindering progress toward an Inter-Congolese Dialogue, and suppressing internal political activity." **[8a]**

3.12 Encyclopedia Britannica Online, Democratic Republic of the Congo, 2011, updated 13 April 2011, accessed 1 August 2011, stated the accord was eventually signed by most parties but "… was not fully implemented, and fighting continued. Meanwhile, long-standing ethnic tensions between the Hema and the Lendu peoples erupted into violence in the Ituri district in the eastern part of the country [Orientale province]; this was further complicated by rebel involvement and other political and economic factors, spawning an additional conflict in a region already mired in the civil war." **[62a] (History)**

JOSEPH KABILA, END OF CIVIL WAR AND TRANSITIONAL GOVERNMENT (2001 – 2005)

3.13 The USSD Background Note stated that:

"On January 16, 2001, Laurent Kabila was assassinated, allegedly by a member of his personal bodyguard corps who was in turn killed by an aide-de-camp. Kabila was succeeded by his son Joseph, who reversed many of his father's negative policies. Over the next year, the UN peacekeeping mission in the D.R.C. (United Nations Organization Mission in the Democratic Republic of the Congo, known by its French acronym MONUC) deployed throughout the country, and the Inter-Congolese Dialogue proceeded. By the end of 2002, all Angolan, Namibian, and Zimbabwean troops had withdrawn from the D.R.C. Following D.R.C.-Rwanda talks in South Africa that culminated in the Pretoria Accord in July 2002, Rwandan troops officially withdrew from the D.R.C. in October 2002. However, there were continued, unconfirmed reports that Rwandan soldiers and military advisers remained integrated with the forces of an RCD splinter group (RCD/G) in eastern D.R.C. Ugandan troops officially withdrew from the D.R.C. in May 2003." **[8a]**

3.14 Encyclopedia Britannica Online, Democratic Republic of the Congo, 2011, updated 13 April 2011, accessed 1 August 2011,

"Finally, in December 2002, an agreement reached in Pretoria, S.Af., provided for the establishment of a power-sharing transitional government and an end to the war; this

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agreement was ratified in April 2003. A transitional constitution also was adopted that month, and an interim government was inaugurated in July [2003], with Kabila as president. UN peacekeeping troops continued to maintain a presence in the country.

"Although the civil war was technically over, the country was devastated. It was estimated that more than three million people had been killed; those who survived were left to struggle with homelessness, starvation, and disease. The new government was fragile; the economy was in shambles; and societal infrastructure had been destroyed. With international assistance, Kabila was able to make considerable progress toward reforming the economy and began the work of rebuilding the country. However, his government was not able to exercise any real control over much of the country; he had to cope with fighting that remained in the east, as well as two failed coup attempts in 2004." **[62a] (History)**

3.15 The ACD background stated that:

"By the end of 2004, the new transitional government of the DRC was operating relatively smoothly. The majority of the country had attained some level of stability, with previous armed groups co-operating with the political and military re-integration. However, the newly created Congolese armed forces, FARDC, proved unstable. Various units allegedly supported by foreign governments attacked both civilians and loyal members of the new army. The security situation in the Ituri district deteriorated considerably, to the point where the UN Emergency Relief Co-ordinator declared eastern DRC a worse, and more neglected, humanitarian tragedy than Darfur. Tensions were also heightened in Nord and Sud Kivu... In May [2004], a new constitution was adopted by the National Assembly." **[6a]**

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A NEW CONSTITUTION AND NATIONAL ELECTIONS (2005 - 2007)

3.16 The Freedom House report, Freedom in the World 2011, DRC, (FH Report 2011) released in May 2011, covering events in 2010, stated that:

"A new constitution was passed by the transitional legislature, approved by referendum in 2005, and officially promulgated in 2006. Presidential and legislative elections – the first multiparty polls since independence – followed that year. Despite daunting logistical challenges, the elections were largely peaceful and drew a voter turnout of over 70 percent. Kabila's People's Party for Reconstruction and Democracy (PPRD) gained the most seats in the National Assembly, the legislature's lower house, but fell short of an outright majority. In a field of 33 presidential candidates, Kabila won approximately 45 percent of the first-round vote, and went on to defeat MLC leader and transitional vice president Jean-Pierre Bemba in the runoff.

"Following the elections, two broad alliances emerged in the 500-seat National Assembly: the Alliance of the Presidential Majority (AMP), comprising 332 seats, and the opposition Union for the Nation (UpN), comprising 116 seats. Eleven provincial assemblies voted in the January 2007 Senate elections, granting the AMP 58 seats and the UpN 21. Gubernatorial polls that year handed 10 governorships to AMP-affiliated candidates and one to the UpN. In March 2007, fighting broke out in Kinshasa between

the authorities and Bemba loyalists. Bemba went into exile in Europe, raising doubts as to whether Kabila would allow genuine political pluralism." **[14a]**

RAPPROCHMENT WITH RWANDA AND REBEL CONFLICT IN THE EAST (2008 – 2010)

3.17 The FH Report 2011 noted that:

"In January 2008, a peace agreement was signed between the government and 22 armed groups operating in the east. Notably, the agreement did not include the Rwandan government or the Democratic Forces for the Liberation of Rwanda (FDLR), an ethnic Hutu–dominated militia group led by perpetrators of the 1994 Rwandan genocide who had fled to the DRC. Heavy fighting broke out in August 2008 between government troops and the ethnic Tutsi rebel leader Laurent Nkunda's National Congress for the Defense of the People (CNDP), which allegedly received backing from the Rwandan government. The clashes resulted in further civilian displacement and an increase in human rights abuses.

"Relations between the DRC and Rwanda began to improve significantly in late 2008, and the two governments signed an agreement to begin a joint military operation against the FDLR. The operation, which lasted from January to February 2009, coincided with the surprise arrest of Nkunda in Rwanda and led to a peace accord with the CNDP. The agreement provided an amnesty for acts of war committed by members of the CNDP and transformed the rebel group into a political entity under the leadership of Desire Kamandji. The DRC also embarked on a joint military operation with Uganda from December 2008 to March 2009 to pursue the Lord's Resistance Army (LRA), a Ugandan rebel group.

"In March 2009, Congolese and UN forces began a new military operation against the FDLR. As with previous campaigns, it led to severe civilian suffering, including reprisal killings by the rebels. The operation concluded in December, but was succeeded in early 2010 by an additional offensive. While the number of deliberate killings of civilians by the FDLR declined in 2010, the group was believed to be partly responsible for a series of mass rapes in the Walikale region of North Kivu in July and August. Separately, in July, the Armed Forces of the Democratic Republic of Congo (FARDC) launched a campaign against the Allied Democratic Forces–National Army for the Liberation of Uganda (ADF-NALU), an Islamic Ugandan rebel militia based in North Kivu. The ADF-NALU responded by attacking civilian and military targets in the north of the province, forcing at least 90,000 people to flee their homes. In addition, as violent LRA incursions into the DRC continued throughout 2010, the DRC announced in October that it was joining forces with the Central African Republic, Sudan, and Uganda to pursue militants." **[14a]**

UN PEACEKEEPING FORCE CHANGES (2010)

3.18 The FH Report 2011 observed that:

"In May [2010], the UN Security Council approved a one-year extension of its mandate in the country, with increased emphasis on development, particularly in the eastern part of the country. However, UN efforts have been hampered by the remarkably difficult terrain of the eastern DRC, and marred by several allegations of corruption.While the government exerted pressure on the United Nations throughout the year to pull out of

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the country entirely by the end of 2011, the Security Council approved the removal of just 2,000 soldiers from a total of over 20,500." **[14a]**

3.19 The USSD Background Note, DRC, 30 September 2011, stated that:

"After operating in the D.R.C. as MONUC for 10 years, the UN, at the Congolese Government's insistence, altered its mission as of July 1, 2010, renaming it the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). Established under UN Security Council Resolution 1925, MONUSCO differed from MONUC in its enhanced cooperative relationship with the D.R.C. Government, its coordinated, regional approach to counter threats posed by armed groups in the country, and its stated logistical role in assisting the D.R.C. in its electoral activities, all designed to stabilize what MONUC's peacekeeping operations had accomplished. On June 30, 2010, MONUSCO was inaugurated on the 50th anniversary of the D.R.C.'s independence from Belgium with a largely symbolic drawdown of some 1,500 troops from MONUC's forces." **[8a]**

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PREPARATIONS FOR ELECTIONS (2010)

3.20 The USSD Background Note, DRC, 30 September 2011, reported that: "In July 2010, President Kabila signed into law the establishment of a permanent National Independent Electoral Commission (CENI) to replace the transitional CEI. The CENI formally succeeded the CEI in February 2011. Presidential elections are scheduled for November 27, 2011. Parliamentary and provincial assembly elections are slated for April 2012. Local elections have been tentatively scheduled for late 2012 and early 2013." **[8a]**

3.21 The Electoral Institute for Sustainable Democracy in Africa (EISA) in EISA DRC Programme Activities, 2008-2011, undated, accessed 31 November 2011 noted:

"EISA has been implementing a number of activities as part of the project Deepening Democracy, Peace & Governance in Post-Election DRC which aims to:

"Support the process leading to the holding of delivery of free, fair and peaceful local government elections through technical assistance to:

- "the Commission Electoral Indépendante (CEI)
- "political parties and
- "civil society organisations.

"Strengthen institutional capacity ofParliament, provincial legislatures, local councils, political parties, civil society organisations, the CENI and other specialist agencies in the democracy and governance fields in order for them to deliver on their respective mandates.

"Facilitate interaction between citizens and representatives in the national and provincial parliaments and local government councils in order to enhance participatory democracy at all levels.

"Develop mechanisms for the prevention, management and peaceful resolution of social conflict for the consolidation of peace at grassroots level." **[60a]**

See also the section on National political developments in the United Nations Security Council report Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 24 October 2011.**[9i]**

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4. RECENT DEVELOPMENTS (JANUARY – DECEMBER 2011)

4.01 The BBC stated in the article 'DR Congo soldiers arrested for rape', 13 January 2011: "At least eight government soldiers have been arrested on suspicion of rape and looting in the Democratic Republic of Congo, says the UN mission there. The men, including a senior officer, are accused of having raped at least 13 women in Fizi town in the east of the country earlier this month. The army has been accused of rights abuses before, but arrests are rare." **[65f]**

4.02 IRIN commented on 19 January 2011 in the article, Analysis: Jury still out on ICC trials in DRC,:

"Almost two years into the trial of Thomas Lubanga for war crimes by the International Criminal Court (ICC), several international justice experts and observers say the court has had a largely positive impact on the ground in the Democratic Republic of Congo, but some differ.

"Indicted for enlisting, conscripting and engaging children in armed hostilities in eastern DRC in 2002 and 2003, Lubanga, alleged leader of the Union of Congolese Patriots and of the Patriotic Forces for the Liberation of Congo, was detained by the ICC in 2006. His trial began in January 2009." **[45c]**

4.03 Then BBC noted in the article 'DR Congo army commander 'led mass rape' in Fizi', 19 January 2011, that:

"An army commander in eastern Democratic Republic of Congo has been accused of leading the recent mass rape of at least 50 women. One of the victims, as well as sources quoted in a UN report, all accuse Lt Col Kibibi Mutware of links to New Year's Day rapes in the town of Fizi. There have been numerous cases of mass rape in DR Congo's conflict but this is believed to be the largest single incident allegedly involving the army." **[65g]**

For more information about similar atrocities it would be helpful to look at Section 9: Security Forces, Human rights violations by government forces and Section 23: Women, Violence against women.

4.04 The same source noted in the article 'New DR Congo centre for rape victims opens', 4 February 2011, that "… a new centre has opened designed to help some of the thousands of people who have been raped in the Democratic Republic of Congo. The UN-funded City of Joy is intended to help women become activists and community leaders." The article also noted that "… both rebels and government troops have been accused of mass rapes…The whole idea is to create a place where women who have been through gender violence, who have survived, and are often the strongest women, become the next leaders of the Democratic Republic of Congo." **[65h]**

28 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

See also Section 23: Women, Violence by government security forces and armed groups and Assistance and protection to women.

4.05 IRIN noted in the article 'DRC: Rights activists decry threats', 21 February 2011:

"Direct threats, anonymous telephone calls and intimidating mobile-phone text messages are among the tactics human rights activists in the Democratic Republic of Congo (DRC) say are being used to undermine their work amid a deteriorating security climate. Human rights groups, of which some 50 signed a communiqué on 17 February to publicize their concerns, have been particularly wary since the June 2010 killing of Floribert Chebeya, head of a group called La Voix des sans voix (Voice of the Voiceless, VSV), who was never seen alive again after attending a meeting at police headquarters in Kinshasa.

"The activists cited the case of Jean Claude Katende and George Kapiamba, respectively president and vice-president of the African Association for the Defence of Human Rights, who allegedly received death threats via text messages after giving a press conference where they spoke of 'political intolerance', government restrictions on the right to peaceful assembly and illegal detention of opposition figures." **[45d]**

See also section 18: Human rights institutions, organisations and activists.

4.06 The same source noted in the article 'DRC: Mass rapes escalate in Fizi, South Kivu', 28 February 2011:

"More than 200 women, men and children have been treated for rape by the Médecins sans Frontières (MSF) since January 2011 in the Fizi region, South Kivu. While large-scale attacks on civilians, in which rape is used as a weapon of war, are a permanent feature of the conflict in eastern DRC, MSF said such repeated large-scale attacks on the same locations were unusual.

"The most recent incidents occurred between 12 and 13 February, and 18 and 19 February respectively, involving at least 56 people, around the villages of Misisi/Milimba, and Bwala/Ibindi, at the exit of a market.

"The survivors told MSF they were taken hostage, undressed and tied up with ropes. Women, men and children were systematically beaten and raped. All their belongings were stolen.

"Witnesses said the attackers were armed men who appeared to be members of the Forces Démocratiques pour la Libération de Rwanda (FDLR), a group founded by ringleaders and other perpetrators of Rwanda's 1994 genocide, which has been holed up in eastern DRC more or less ever since." **[45e]**

See also Sections 11: Security Forces, Human rights violations by armed groups, Rape, 23: Women, Violence by government security forces and armed groups, Assistance and protection to women, 24: Children, Violence and discrimination against children

4.07 The BBC in the article Unesco: Conflict robs 28 million children of education, 1 March 2011 noted that "warfare is stopping 28 million children worldwide from receiving an education because of sexual violence and attacks on schools... One third of the rapes reported in DR Congo involve children…In the eastern part of the Democratic Republic

of Congo probably about half of all primary school-aged children are out of school…the school attendance figures for Congolese girls were the lowest in sub-Saharan Africa." **[65i]**

See also Sections 24: Children, Violence and discrimination against children and Education.

4.08 The same source in the article 'DR Congo Joseph Kabila 'coup bid': Mass arrests', 8 March 2011, noted:

"Police in Democratic Republic of Congo have paraded 126 people, and weapons, they accuse of links to last month's 'coup bid' against the president. At least 19 people - 11 attackers and eight members of the security forces - were killed in the raid on Joseph Kabila's residence, police say… The BBC's Thomas Hubert in Kinshasa says many of the prisoners appeared to be severely wounded and only two or three had visibly received treatment. Journalists were not allowed to interview the prisoners, but many of them shouted out to protest their innocence… The government has described the events of 27 February as an attempted coup, then as a terror attack." **[65j]**

4.09 IRIN noted in the article 'DRC: Security deteriorates in Uelé districts', 11 March 2011:

"The presence of Lord's Resistance Army (LRA) rebels has led to deteriorating security conditions for aid workers and civilians in the northern Democratic Republic of Congo's two Uelé districts, where 31 attacks took place in January alone – as many as in the last three months of 2010. LRA fighters attacked Dungu, in Haut Uelé, a week before Valerie Amos, the UN Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, visited the town on 10 March… A few days earlier, the village of Bambangana, in the same area, was the target of an attack in which several DRC soldiers were killed, one woman publicly immolated and a number of women raped… Dungu is now temporary home to 56 percent of the 293,400 IDPs in Haut and Bas Uelé." **[45f]**

See also Sections 8: Security Situation, 11: Non-government armed groups, Lord's Resistance Army (LRA), 23: Women, Violence by government security forces and armed groups and 28: Internally Dispaced Persons (IDPS)

4.10 The same source noted in the article 'DRC: New rules for miners', 17 March 2011:

"Various stakeholders in the Democratic Republic of Congo's mining sector have signed a code of conduct designed to reduce fraud and increase transparency in an industry that has played a key role in the armed violence that has ravaged the east of the country for years, but there is still concern about illegal mining and the military's role.

"The adoption of the code coincides with the lifting of a mining ban slapped on the eastern provinces of North Kivu, South Kivu and Maniema by President Joseph Kabila in a purported effort to rid the industry of the "mafia-like networks" that run much of it. It also comes before stringent legislation against the importation of conflict minerals due to be introduced by the US in April.

"About 1.7 million people are displaced in DRC, mostly because of conflicts involving domestic and foreign armed groups in the east, a region rich in minerals such as gold,

coltan, lithium, cassiterite and wolframite. Armed groups, including the DRC national army (FARDC), are heavily implicated in the industry." **[45g]**

See also Sections 9: Security forces, Human rights violations by government forces, 19: Corruption, 24: Children, Child labour/The mining industry, 28: Internally Dispaced Persons (IDPS)

4.11 IRIN noted in the article 'New laws have little impact on sexual violence in DRC', 7 June 2011: "Five years after the Democratic Republic of Congo (DRC) revised its laws against sexual and gender-based violence (SGBV), these crimes continue to go unpunished because of judicial inaction and a legal culture at odds with the changes. The laws, ignored and misinterpreted, have left escalating numbers of sexual violence survivors unprotected, and perpetrators free to violate again." **[45h]**

See also Sections 12: Judiciary and 23: Women, Violence by government security forces and armed groups.

4.12 IRIN also noted in the article 'DRC: Militias and the displaced', 20 June 2011:

"Bandits, militias, and alleged abuses by the army are causing access problems for aid workers trying to help large concentrations of internally displaced persons (IDPs) in the territory of Irumu, part of the Ituri region in northwestern Democratic Republic of Congo (DRC).

"Among the 130,000 IDPs in the Ituri region, 89,864 (69 percent) are in the territory of Irumu, about 40km southwest of Bunia, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA).

"Remnants of militia groups which fought for control of Irumu until 2007 remain active, carrying out sporadic attacks against civilians." **[45h]**

See also Sections 9: Security forces, Human rights violations by government forces and 28: Internally Dispaced Persons (IDPS)

4.13 IRIN stated in the article 'Fragile peace holding in Ituri', 6 July 2011:

"Almost eight years after an estimated 50,000 people perished in a four-year conflict that also displaced 500,000 from their homes in northeastern Democratic Republic of Congo (DRC), a tenuous calm prevails in the area. The 1999-2003 Ituri conflict was between the Lendu and Hema ethnic groups. In Nioka, Mahagi territory, about 90km northeast of the district capital, Bunia, the violence sucked in the Alur ethnic community, with the Lendu accusing them of supporting the Hema…Three of the major players in Ituri's conflict are on trial at the International Criminal Court (ICC), including the founder of the Hema-backed militia, the Union of Congolese Patriots (UPC), Thomas Lubanga; the leader of the Lendu-backed militia, National Integrationist Front (FNI), Mathieu Ngudjolo Chui; and the commander of its allied group, the Front for Patriotic Resistance in Ituri (FRPI), Germain Katanga. Both the FNI and UPC are now registered political parties with offices in Bunia. But neither is willing to accept responsibility for massacres against civilians**." [45i]**

See also Section 28: Internally Dispaced Persons (IDPS)

4.14 The BBC noted in the article 'Congo prison mass escape after attack by gunmen', 7 September 2011 that:

"… nearly 1,000 prisoners have escaped from a jail in eastern Democratic Republic of Congo after it was attacked by armed men, officials say. The attackers wanted to free a militia leader, Katanga province Information Minister Dkianga Kazadi said. Escapes and mutinies are common in DR Congo's prisons, analysts say, with the east largely lawless as rival militias battle for power. Nearly 200 prisoners escaped from a jail in the north-west last year." **[65m]**

See also Section 14: Prison conditions.

4.15 IRIN noted in the article 'Rape as a "weapon of war" against men', 13 October 2011:

"Sexual violence against men, including rape, is under-reported, poorly addressed and has a severe impact on both men and their families, according to a presentation at the annual Sexual Violence and Research Initiative (SVRI), held in Cape Town, South Africa. A study by Mervyn Christian, of the US-based Johns Hopkins School of Nursing, using community focus groups and in-depth interviews with seven male rape survivors in Bukavu, in South Kivu Province, eastern Democratic Republic of Congo (DRC), found that armed combatants had anally or orally raped men in a nearby forest, while at least two were raped in their homes in front of their families." **[45b]**

See also Section 9: Security forces. Male rape.

4.16 The United Nations Security Council in its Resolution 2021 (2011) Adopted by the Security Council at its 6671st meeting, on 29 November 2011, "… reaffirmed its commitment to the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo…" **[9h]**

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2011 ELECTIONS

4.17 The British Broadcasting Corporation (BBC) noted in the article 'DR Congo opposition anger over electoral changes', 10 January 2011:

"Opposition parties in the Democratic Republic of Congo have strongly criticised government plans to elect the president in one round of voting. The parties said the proposal had "the sole aim of organising electoral fraud on a grand scale" to keep President Joseph Kabila in power in November.

"'President Joseph Kabila's initiative to revise the constitution and consequently the electoral law... is inappropriate,' AFP news agency quotes Francois Mwamba of the Movement for the Liberation of the Congo (MLC) as saying…As the electoral law stands at the moment, if no candidate wins with more than 50% of the vote in November, a second round will be held in February 2012, the agency reports." **[65e]**

4.18 The BBC also noted in the article 'DR Congo police fire tear gas at opposition protesters',1 September 2011:

 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

"Police in the Democratic Republic of Congo have fired tear gas at opposition protesters accusing the electoral commission of fraud. Hundreds of protesters were stopped as they approached the commission's headquarters in the capital, Kinshasa. Etienne Tshisekedi is due to stand against President Joseph Kabila in November polls. His Union for Democracy and Social Progress claims some voter registration has been fraudulent. Mr Tshisekedi has called for an audit of the electoral register. Police chief Charles Bisengimana said two demonstrators were arrested and two police officers were injured. The UDPS said there had been injuries and arrests, denouncing the 'violent repression of a non-violent protest'." **[65k]**

4.19 IRIN stated in the article 'DRC: Women politicians "key to promoting rights"', 2 September 2011, that :

"Political parties in the Democratic Republic of Congo are struggling to recruit women into their ranks to run for parliament, despite a legal requirement to do so and a belief that greater numbers of female parliamentarians are critical to advancing women's rights… The Electoral Commission began registering candidates to contest for seats on 4 August. Parties that fail to persuade women to run for office on their ticket will be violating an electoral law designed to take gender representation into account when compiling a list of candidates. Small parties are especially concerned about their ability to comply.

"But parties will not be barred from elections if they fail to put forward an equal number of men and women. The law aimed to have between 30 and 35 percent of various national offices filled by women by 2011, and 47.5 percent by 2015. According to a 2010 study by Peace Women, women occupy only 7.2 percent of the higher positions in government and parliament. The proportion of female parliamentarians is highest in Kinshasa (17 percent) and lowest in Equateur province (5 percent) and the eastern province of South Kivu (3 percent)." **[45j]**

See also Section 23: Women, Political rights.

4.20 The BBC also reported in 'Activist dies in Democratic Republic of Congo unrest', 6 September 2011 "… an opposition activist has been shot dead in Democratic Republic of Congo during clashes with police in Kinshasa. The fighting came after the offices of the opposition Union for Democracy and Social Progress were set alight, and an opposition TV station was attacked." **[65l]**

See also Sections 16: Political affiliation and 17: Freedom of speech and media.

4.21 The Foreign and Commonwealth Office (FCO) noted in its quarter three update: 30 September 2011, of the Country Profile, Democratic Republic of Congo:

"With presidential and legislative elections due in November, the period between July and September saw an increase in election-related violence. During protests by the opposition UDPS party against the National Independent Electoral Commission in July one person is reported to have died from an asthma attack after the police fired tear gas at protestors. A second died several weeks later from injuries caused by a petrol bomb. Protests continued in September, with the worst outbreak of violence leading to two further fatalities. In the same wave of incidents, buildings belonging to both the ruling PPRD and opposition UDPS parties were set alight, as was the headquarters of pro-

opposition television channel RLTV. Together with the EU we condemned all such violent incidents and called on all those responsible to ensure free, transparent, democratic and peaceful elections in the DRC.

"This period has also seen a number of attacks against media freedom. NGOs report an increase in the number of arrests and threats made against journalists, as well as the temporary closures of a number of media sources." **[4d]**

4.22 A BBC News article, 'DR Congo votes amid delays and violence', 28 November 2011 noted:

"At least four people died after gunmen attacked polling stations in the second city, Lubumbashi, officials say. In the opposition stronghold of West Kasai, polling stations were reportedly set on fire by voters angry at long delays but the capital, Kinshasa was generally peaceful… At least three people were killed on Saturday in election clashes, leading to a police ban on final campaign rallies… Some 19,000 UN peacekeepers are stationed around the country and are expected to help prevent any outbreaks of violence… Election officials scrambled to get ballot papers distributed to all 60,000 of the polling stations in the country - which is two-thirds the size of Western Europe and has little transport infrastructure. In many inaccessible areas, voting material was delivered by helicopter." **[65o]**

4.23 Another BBC report 'DR Congo election: Kabila guards 'shot UDPS supporters', 2 Deceember 2011 noted that "... guards loyal to Democratic Republic of Congo President Joseph Kabila shot opposition protesters, killing 14, ahead of Monday's election, a human rights group says." **[65q]**

4.24 Then same source also noted in relation to the elections, in the article 'DR Congo election hailed a success by African observers', 30 November 2011:

"African observers say the Democratic Republic of Congo's elections have been 'successful', despite opposition calls for the polls to be annulled. Five observer groups said that despite logistical problems, the political parties should accept the results. Earlier, four opposition candidates said Monday's polls should be cancelled because of widespread rigging. Voting was extended into Wednesday in some areas where people have not been able to vote. More than 18,000 candidates contested 500 parliamentary seats. In a joint statement, observer missions of the African Union, the Southern African Development Community (SADC) and three other groups said they had noted the logistical difficulties but welcomed the 'successful holding of the elections'. Voter turnout was high, the observers said, adding that they regretted 'isolated' incidents of violence." **[65p]**

See also Sections 6: Political system and 16: Political affiliation. The Latest news section also includes information about the Election results.

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5. CONSTITUTION

5.01 The Constitution and Government section of the country profile for DRC in Europa World, undated, accessed 25 January 2011 stated:

34 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

"According to the new Constitution, which entered into effect in February 2006, the President is the Head of State and Commander-in-Chief of the armed forces and is elected by direct universal suffrage for a term of five years, which is renewable once. Legislative power is vested in a bicameral Parlement, comprising a lower chamber, the Assemblée nationale, and an upper chamber, the Sénat. The 500 members of the Assemblée nationale are elected by direct universal suffrage for a renewable term of five years, while the 108 members of the Sénat are indirectly elected by the Assemblies of each of the country's 26 provinces for a renewable term of five years." **[1d]**

5.02 The website of Electoral Institute for the Sustainability of Democracy in Africa, updated January 2007, stated: "The Constitution was adopted by the transitional legislature of the DRC on May 5, 2005 and was ratified by the electorate in a referendum on December 18 and 19, 2005. It came into effect with the swearing in of Joseph Kabila as the newly elected president on 6 December 2006." **[12a]**

5.03 U.S Department of State (USSD) Background Note on the DRC under the heading Government and Political Conditions, stated on 30 September 2011:

"This constitution entered into force in February 2006. Extensive executive, legislative, and military powers are vested in the president. The legislature does not have the power to overturn the government through a vote of no confidence. The judiciary is only nominally independent. The president, due to the absence of the as-yet-unestablished Conseil Superieur de la Magistrature (supreme judicial council; CSM), has the power to dismiss and appoint judges. The president is head of a cabinet of ministers. The current cabinet, appointed in February 2010, has 37 ministers". **[8a]**

5.04 The Democratic Republic of Congo Ministry of Human Rights, Eighth, Ninth and Tenth Periodic Reports to the African Commission on Human Rights and Peoples Rights, Implementation of the African Charter on Human and Peoples Rights (Period – From July 2003 to July 2007), dated June 2007, describes various aspects of the Constituion in some detail.

In particular, see IV. Measures taken to guarantee the effective enjoyment of the rights protected by the African Charter on human and people's rights, page 13 onwards.

See also Section 12: Judiciary in connection with the above. Also see Political affiliation for information about political rights in practice.

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6. POLITICAL SYSTEM

6.01 The Central Intelligence Agency (CIA) World Factbook, Democratic Republic of Congo profile, updated 13 January 2012, described the political system of the DRC as follows:

"**Government type**: Republic…

"**Administrative divisions**: 10 provinces (provinces, singular - province) and 1 city (ville) [Kinshasa]; Bandundu, Bas-Congo, Equateur, Kasai-Occidental, Kasai-Oriental, Katanga, Kinshasa, Maniema, Nord-Kivu, Orientale, Sud-Kivu note: according to the

Constitution adopted in December 2005, the current administrative divisions will be subdivided into 26 new provinces by 2009 but this was yet to be implemented…

"**Exexcutive branch**

"[C]hief of state: President Joseph KABILA (since 17 January 2001);

"[H]ead of government: Prime Minister Adolphe MUZITO (since 10 October 2008)

"Cabinet: Ministers of State appointed by the president

"Elections: under the new constitution the president elected by popular vote for a five-year term (eligible for a second term); elections last held on 30 July 2006 and on 29 October 2006 (next to be held on 27 November 2011); prime minister appointed by the president

"Election results: Joseph KABILA elected president; percent of vote (second round) - Joseph KABILA 58%, Jean-Pierre BEMBA Gombo 42%

"Note: Joseph KABILA succeeded his father, Laurent Desire KABILA, following the latter's assassination in January 2001; negotiations with rebel leaders led to the establishment of a transitional government in July 2003 with free elections held on 30 July 2006 and a run-off on 29 October 2006 confirming Joseph KABILA as president

"Legislative branch:

"[B]icameral legislature consists of a Senate (108 seats; members elected by provincial assemblies to serve five-year terms) and a National Assembly (500 seats; 61 members elected by majority vote in single-member constituencies, 439 members elected by open list proportional-representation in multi-member constituencies to serve five-year terms)

[E]lections: Senate - last held on 19 January 2007 (next to be held on 13 June 2012); National Assembly - last held on 30 July 2006 (next to be held on 27 November 2011)

"[E]lection results: Senate - percent of vote by party - NA; seats by party - PPRD 22, MLC 14, FR 7, RCD 7, PDC 6, CDC 3, MSR 3, PALU 2, independents 26, others 18 (political parties that won a single seat); National Assembly - percent of vote by party - NA; seats by party - PPRD 111, MLC 64, PALU 34, MSR 27, FR 26, RCD 15, independents 63, others 160 (includes 63 political parties that won 10 or fewer seats)". **[2a]** [For party names in full, see following subsection]

6.02 The United States Department of State (USSD) Background Note: Democratic Republic of Congo, dated 30 September 2011, explained:

"In December 2005, roughly two-thirds of eligible Congolese voters participated in a referendum that resulted in approval of a new constitution. This constitution entered into force in February 2006. Extensive executive, legislative, and military powers are vested in the president. The legislature does not have the power to overturn the government through a vote of no confidence. The judiciary is only nominally independent. The president, due to the absence of the as-yet-unestablished Conseil Superieur de la Magistrature (supreme judicial council; CSM), has the power to dismiss and appoint

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judges. The president is head of a cabinet of ministers. The current cabinet, appointed in February 2010, has 37 ministers." **[8a]**

POLITICAL PARTIES

6.03 The CIA World Factbook, updated 13 January 2012, listed political parties and their leaders:

"**Political Parties and Leaders**

"Christian Democrat Party or PDC [Jose ENDUNDO];

"Congolese Rally for Democracy or RCD [Azarias RUBERWA];

"Convention of Christian Democrats or CDC;

"Forces of Renewal or FR [Mbusa NYAMWISI];

"Movement for the Liberation of the Congo or MLC [Jean-Pierre BEMBA];

"People's Party for Reconstruction and Democracy or PPRD [Joseph KABILA];

"Social Movement for Renewal or MSR [Pierre LUMBI];

"Unified Lumumbist Party or PALU [Antoine GIZENGA];

"Union for Democracy and Social Progress or UDPS [Etienne TSHISEKEDI];

"Union of Mobutuist Democrats or UDEMO [MOBUTU Nzanga] **[2a]** See Annex B

Union for the Congolese Nation or UNC [Vital Kamerhe] (BBC) **[65d]** See Annex C – Prominent people

6.04 The Economist Intelligence Unit, DRC Country Report – Main Report, 2 March 2011, stated that:

"Parti du peuple pour la reconstruction et la démocratie (PPRD), Mr Kabila's party, dominates the government, but also represented are Parti lumumbiste unifié (Palu), which holds the post of prime minister and several other ministries, Forces du renouveau, Mouvement social pour le renouveau and Union des démocrates mobutistes; the opposition coalition, Union pour la Nation, is dominated by Mouvement de libération du Congo (MLC); Union pour la démocratie et le progrès social (UDPS) is a prominent opposition party but boycotted the 2006 elections." **[22b]**

6.05 The USSD Background Note, DRC, 30 September 2011, stated:

"Political parties: President Joseph Kabila's party is Parti du Peuple pour la Reconstruction et le Developpement (PPRD). Two main coalitions, the Alliance pour la Majorite Presidentielle (AMP) and the Union pour la Nation (UN), respectively represent President Kabila and former Transitional Vice President Jean-Pierre Bemba. Bemba was Kabila's principal opponent in the 2006 presidential election (see "Government and

Political Conditions" section below), and despite his May 2008 arrest by Belgian authorities and transfer to the International Criminal Court in The Hague, is still the official president of the largest single opposition party, Mouvement pour la Liberation du Congo (MLC)." **[8a]**

6.06 The same source reported that:

"Another important opposition party is the Union pour la Democratie et le Progres Social (UDPS), led by aging Mobutu opponent Etienne Tshisekedi. Although the UDPS boycotted the 2006 elections, the party nominated Tshisekedi in December 2010 as its presidential candidate; UDPS will participate in the 2011 presidential and 2012 parliamentary and local elections. In 2010, former National Assembly Speaker Vital Kamerhe announced that he had left the PPRD and had formed his own Congolese National Union (UNC) party, which was expected to nominate Kamerhe as its presidential candidate for 2011." **[8a]**

6.07 The Background Note also listed a number of other parties:

"Other parties include Forces du Futur (FDF), Forces Novatrices pour l'Union et la Solidarite (FONUS), Parti Democrate Social Chretien (PDSC), Mouvement Social Democratie et Developpement (MSDD), Mouvement Populaire de la Revolution--Fait Prive (MPR-FP), Union des Nationalistes et des Federalistes Congolais (UNAFEC), and Mouvement National Congolais/ Lumumba (MNC/L). Former rebel movements-turned-political parties include the Rassemblement Congolais pour la Democratie (RCD), Mouvement pour la Liberation du Congo (MLC), and independent splinter groups of the RCD (RCD/ML, RCD/N, RCD/G). The former rebel group Congres National pour la Defense du Peuple (CNDP) received official status as a political party in May 2009 and joined the AMP in September 2010." **[8a]**

For information about political rights in practice, see Annex B: Political Organisations

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Human Rights

7. INTRODUCTION

7.01 The United Nations Security Council Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 24 October 2011, noted:

"The overall situation in most of the Democratic Republic of the Congo remained relatively stable. Preparations for the presidential and legislative elections scheduled for 28 November continued to gather pace with the completion of the voter and candidate registration processes. According to provisional figures released by the Independent National Electoral Commission, over 32 million voters registered. Eleven candidates registered for the presidential elections, while some 19,000 candidates registered for the legislative elections. As part of its mandated responsibilities to provide good offices and technical and logistical support for the elections, MONUSCO engaged in ongoing dialogue with Congolese electoral and Government authorities and with a wide range of political parties in support of preparations for the polls.

"The security situation in the Kivus deteriorated owing to decreased military pressure on armed groups as a result of the ongoing reconfiguration of the Forces armées de la République démocratique du Congo. The reconfiguration process, which required the withdrawal of the armed forces from a number of areas, was also accompanied by new desertions from the armed forces, including of recently integrated elements, some of whom had committed human rights violations. At the same time, the Mission's efforts to protect civilians were seriously constrained by a lack of military helicopters." **[9i] (II Major developments)**

7.02 The Humanitarian Policy Group report 'Democratic Republic of the Congo, Humanitarian action, early recovery and stabilisation in the Democratic Republic of Congo', dated July 2011,commented:

"The recent history of the Democratic Republic of Congo (DRC) has been marked by conflict, misgovernment and a massive and sustained humanitarian crisis. Decades of misrule by President Mobutu Sese Seko finally came to an end in 1997, when rebels backed by Rwanda seized the capital, Kinshasa. The conflict that followed involved an array of Congolese groups and regional actors, including Rwanda, Uganda, Zimbabwe, Namibia and Angola. While it is very difficult to judge the human toll, a mortality survey by the International Rescue Committee estimates that, between August 1998 and April 2007, conflict and state collapse led to over 5 million excess deaths (Lilly and Bertram, 2008). A peace deal signed in 2002 led to the installation of a transitional government, a new constitution was agreed in 2005 and the DRC held its first free elections the following year. Fresh elections are due later in 2011, though preparations are behind schedule and the polls may be postponed.

"This is the usual summary of the DRC, but such descriptions do little justice to its complexity. Although officially a 'post-conflict' context, fighting and displacement persist in eastern parts of the country. The situation in the eastern provinces of North Kivu, South Kivu and Orientale remains dire, with an estimated 1.7m people displaced, and even in relatively stable areas the humanitarian situation is very poor, with indicators of health and wellbeing as bad as or worse than areas affected by conflict. Corruption is

rampant, and the security sector is in desperate need of reform. Police and soldiers routinely prey on the population, who have little trust in their government. Widespread poverty and under-development going back decades is a problem throughout the country; according to one estimate, as things currently stand it will take the DRC 50 years to reach the level of per capita GDP it had at independence in 1960." **[56b]**

7.03 The United Nations General Assembly noted in the 'Third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo', dated 9 March 2011:

"The overall human rights situation in the Democratic Republic of the Congo remains of serious concern, as highlighted in the most recent reports submitted by the United Nations High Commissioner for Human Rights (A/HRC/16/27), the Secretary-General (S/2010/512) and the Group of Experts on the Democratic Republic of the Congo of the Security Council Sanctions Committee (S/2010/596), ... as well as the 13 communications sent by four of the seven thematic special procedures mandate holders since March 2010." **[37c] (summary)**

7.04 The same source continued:

"In her report, the High Commissioner noted that the human rights situation in the country had not improved since her previous report. The situation remains extremely worrying, especially in the eastern part of the country, where the United Nations Joint Human Rights Office in the Democratic Republic of the Congo continued to document serious human rights violations and grave breaches of international humanitarian law committed by national security forces and armed groups. Most violations are linked to the conflict and committed in the framework of operations conducted by the national armed forces (Forces armées de la République démocratique du Congo (FARDC)), against armed groups and/or in reprisal against these operations by armed groups, including combatants of the Lord's Resistance Army (LRA), the Democratic Forces of Liberation of Rwanda (Forces démocratiques de libération du Rwanda (FDLR)) and Mai Mai groups. The High Commissioner also stressed that sexual violence remains a cause of major concern not only in the eastern part of the country but throughout the rest as well. From 30 July to 2 August 2010, at least 380 women, men and children were raped in 13 villages in Walikale territory, in North Kivu, by a group of armed men belonging to FDLR, members of Mai Mai Cheka and combatants affiliated with a former FARDC member who founded his own armed group in early 2010. Security forces reportedly also committed many rapes during the reporting period. The experts note with satisfaction that a number of cases of sexual violence attributed to FARDC members has been investigated and the perpetrators have been prosecuted by military courts. In particular, they welcome the recent decision by a military court in eastern Democratic Republic of the Congo, which, for the first time, sentenced a high-ranking commander for crimes against humanity for having sent his troops to rape, beat and loot the population in Fizi on 1 January 2011. Besides sending a clear signal that sexual violence in conflict would not be tolerated, this verdict shows that accountability for sexual violence is possible when the political will is there. **[37c] (p5-6)**

7.05 The same source observed that:

"According to the High Commissioner, human rights violations throughout the country also resulted from structural shortcomings and were linked to deficiencies in State institutions. In addition, the reporting period was marked by an increase in violations

40 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

against human rights defenders and media representatives, as epitomized by the killing of Floribert Chebeya Bahizire and the enforced disappearance of his driver, Fidèle Bazana Edadi. The experts hope that the trial commenced in relation to this killing will be free from irregularities and that the perpetrators will be held accountable. Finally, the High Commissioner noted that the illegal exploitation of natural resources, despite the Government's condemnation, remains of concern as it is a chief cause of many serious human rights violations.

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

"The Group of Experts on the Democratic Republic of the Congo of the Security Council Sanctions Committee pointed out cases of direct and command responsibility for the recruitment and use of children by the leaders of Congolese armed groups, as well as two military commanders from FARDC, all of whom had used children as their personal escorts. The Group of Experts also highlighted the fact that, with regard to the illegal exploitation of natural resources, the conflict between the economic interests of criminal networks within FARDC and the security mandate of the army had led to three critical negative consequences: (a) Failure on the part of FARDC to prioritize the protection of civilians; (b) Competing chains of command and insubordination within FARDC; (c) Distraction from the pursuit of military operations against armed groups, leading to cohabitation and in some cases active collusion with those same groups.

"The Group concluded that these developments had directly contributed to the persistent threat posed by armed groups and represented a critical challenge to addressing insecurity in the eastern part of the Democratic Republic of the Congo." **[37c] (p6)**

7.06 The 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo', (A/HRC/16/27), 10 January 2011, noted:

"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 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." **[37d]**

See also Section 8: Security Situation.

7.07 The US Department of State's Country Report on Human Rights Practices 2010, DRC (USSD 2010), released on 8 April 2011, in the introductory section, reported:

"In all areas of the country, state security forces continued to act with impunity throughout the year [2010], committing many serious abuses, including unlawful killings, disappearances, torture, rape and engaging in arbitrary arrests and detention. Severe and life-threatening conditions in prison and detention facilities, prolonged pretrial detention, lack of an independent and effective judiciary, and arbitrary interference with privacy, family, and home also remained serious problems. Members of the state security forces continued to abuse and threaten journalists, contributing to a decline in press freedom. Internally displaced persons remained a major problem, and the integration of ex-combatants and members of rebel and militia groups (RMGs) into state security forces and governance institutions was slow and uneven. Government corruption remained pervasive, and some corporations purchased minerals from suppliers who financed mining activities by armed entities that committed serious human rights abuses. Elements of the state security forces were charged in the death of one of the country's leading human rights defenders and at times beat or threatened local human rights advocates and obstructed or threatened UN human rights investigators. State security forces retained and recruited child soldiers and compelled forced labor by civilians. Societal discrimination against women and ethnic minorities, trafficking in persons, child labor, and lack of protection of workers' rights continued to be widespread throughout the country. Enslavement of and discrimination against Pygmies occurred.

"Internal conflicts, mainly in the east, continued to significantly affect the human rights situation and challenged the government's limited ability to effectively control its territory, which was particularly the case in North and South Kivu provinces. The conflicts permitted armed entities to commit violent abuses against civilians, with little chance that the government would be able to hold the perpetrators accountable. These entities included RMGs, such as the Democratic Forces for the Liberation of Rwanda (FDLR) and the Mai-Mai (community-based self-defense groups), as well as dissident elements of the state armed forces, including former members of the National Congress for the Defense of the People (CNDP) and some 'regular' units of the Armed Forces of the DRC(FARDC). During the year RMGs continued to commit numerous, serious abuses--some of which may have constituted war crimes--including unlawful killings, disappearances, and torture. RMGs also recruited and retained child soldiers, compelled forced labor, and committed widespread crimes of sexual violence. The situation was complicated the incomplete implementation of the March 2009 peace agreements involving the government and several RMGs that operated in North and South Kivu. In October the UN Office of the High Commissioner for Human Rights (UNOHCHR) detailed allegations of serious abuses, including potential war crimes and crimes against humanity, committed in the country by foreign militaries and other armed entities between 1993 and 2003... In the eastern provinces of North and South Kivu, the illegal exploitation of natural resources continued to contribute to conflict. Many armed entities in the east, including some FARDC units, engaged in the illegal exploitation and trade of natural resources. Some RMGs, have cooperated with criminal networks within the FARDC that have militarized the mineral trade and continued to compete for control over mineral-rich areas. In September, President Joseph Kabila imposed an indefinite suspension of all mining activity in North and South Kivu and Maniema provinces, which remained in effect at year's end. A separate conflict involving the Lord's Resistance Army (LRA) in the Haut Uele and Bas Uele districts of Orientale Province in the northeast continued to have an extremely negative effect on human rights during the

42 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

year, resulting in deaths, injuries, abductions, forced labor, looting, and general insecurity. Interethnic conflict in Equateur Province resulted in numerous refugees and internally-displaced persons (IDPs). While the security situation in Equateur stabilized during the year, the IDPs did not return." **[8b]**

7.08 Human Rights Watch (HRW) in its World Report 2011 (HRW 2011), covering events January to November 2010, released in January 2011, noted:

"The United Nations peacekeeping mission was renamed the UN Organization Stabilization Mission in Congo (MONUSCO) following calls for its withdrawal by the Congolese government, which was eager to claim security improvements ahead of the 50th anniversary of Congo's independence. The new name made little difference in the struggle to protect civilians. Some perpetrators were arrested on war crimes charges, but many others remained in positions of power, most notably Bosco Ntaganda, a general sought on an arrest warrant from the International Criminal Court (ICC). Violent attacks on journalists and human rights defenders increased." **[10b]**

7.09 The Amnesty International Annual Report 2011: the state of the world's human rights, DRC, released May 2011, covering events in 2010, stated that:

"Civilians in eastern Democratic Republic of the Congo (DRC) were subjected to serious human rights violations throughout the year by government forces and armed groups. An armed group besieged Mbandaka in April; the town returned to government control after two days of fighting during which soldiers allegedly committed extrajudicial executions, rapes and arbitrary detentions. Foreign and Congolese armed groups committed abuses, including the mass rape of more than 300 people in July and August in North Kivu. The security services were also responsible for politically motivated human rights violations. Prominent human rights defender Floribert Chebeya was killed in June." **[16a]**

7.10 The Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo to the UN Security Council, 12 May 2011, commenting on events in the period 17 January to 5 May 2011, observed that:

"The period under review [17 January to 5 May 2011] was marked by the persistent violations of human rights and international humanitarian law by armed groups and national security forces, and by an increase in human rights violations against opposition party members and supporters… The situation facing political opponents, human rights defenders and journalists prior to the general elections, is of concern. As indicated in paragraph 7, the United Nations Joint Human Rights Office at MONUSCO has since January recorded over 100 reported incidents, particularly in Kinshasa, Maniema, South Kivu and Orientale provinces, targeting political opponents and, to a lesser extent, journalists and human rights defenders. The incidents mostly affected the right to liberty and security of person, to freedom of expression and to peaceful assembly. Several human rights defenders were also threatened and harassed in connection with advocacy related to human rights issues and the illegal exploitation of natural resources.

"The United Nations Joint Human Rights Office continued to investigate alleged violations of human rights and international humanitarian law committed by both armed groups and national security forces…" **[9d] (p1)**

7.11 The same source observed that:

"While progress has been made following the successful completion of the country's transition in 2006, the situation in the eastern Democratic Republic of the Congo remains fragile. A number of challenges continue to hinder efforts to establish durable stability in the country, including the continued presence of armed groups in North and South Kivu and Orientale provinces; serious acts of violence against civilians; limited progress in building professional and effective national security and rule of law institutions; and competition over the illegal exploitation of natural resources, which fuels conflict and instability in the absence of an effective State presence." **[9d] (p14)**

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INTERNATIONAL TREATIES AND AGREEMENTS

7.12 The United Nations General Assembly noted in the National Report Submitted in Accordance with Paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1*, dated 3 September 2009:

"Once duly ratified, international treaties and agreements become part of the country's array of regulatory instruments. They take precedence over domestic laws, provided that those treaties and agreements are reciprocally applied (article 215 of the Constitution of 2006). Following the transitional period governed by the Constitution which was adopted on 4 April 2003 upon completion of the inter-Congolese dialogue, a constitutional referendum was held. That referendum resulted in the promulgation of a new Constitution on 18 February 2006. The 2006 Constitution now governs the organization and exercise of power in the Democratic Republic of the Congo and guarantees the rights and fundamental freedoms of its citizens. Over 60 of the Constitution's 229 articles are devoted to human rights, including civil and political rights, economic, social and cultural rights, collective rights and the rights of specific groups.

"…There are also numerous ordinances, decrees and regulations governing various matters in accordance with the Constitution.

"The Democratic Republic of the Congo has ratified or signed most of the existing international and regional human rights and humanitarian instruments, including the following:

"

- Convention on the Rights of the Child and its two Optional Protocols
- Convention on the Political Rights of Women
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
- Convention on the Elimination of All Forms of Discrimination against Women

- International Convention on the Suppression and Punishment of the Crime of Apartheid
- Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Geneva Conventions of 12 August 1949 and the two Additional Protocols of 1977
- Convention relating to the Status of Refugees and its Protocol
- International Covenant on Civil and Political Rights and its First Optional Protocol
- International Covenant on Economic, Social and Cultural Rights
- Convention Governing the Specific Aspects of Refugee Problems in Africa
- African Charter on Human and Peoples' Rights and its two Protocols concerning the establishment of an African court on human and peoples' rights and the rights of women in Africa
- African Charter on the Rights and Welfare of the Child
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Labour Organization (ILO) Convention concerning the Minimum Age for Admission to Employment (No. 138)
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)
- Rome Statute of the International Criminal Court." **[37e] (Secion A, Normative framework, p5-7)**

See also Human Rights Conventions.

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8. SECURITY SITUATION

Crisiswatch by the International Crisis Group, provides a useful update of the security stuation in the country.

8.01 The International Center for Transitional Justice (ICTJ) noted in an undated article 'The Democratic Republic of Congo, Background: Ongoing Carnage', accessed 1 November 2011:

"Laurent Kabila's 1996-1997 campaign to depose the dictator Mobutu Sese Seko set off a violent civil war and the extended presence in eastern Congo by Rwandan and Ugandan armies. The conflict involved over a dozen African countries to a greater or lesser extent. While the conflict officially ended with a peace agreement in 2002, human rights violations and international crimes continues at very high levels in complex conflicts in the country's east.

"The successive wars in Congo have been described as the deadliest since World War II. An estimated 5.4 million people died from war-related causes between August 1998 and April 2007.

"In addition to the country's immense mineral wealth, the dynamics in the east include local land disputes, inter-ethnic tensions, and widespread unemployment. These factors drive continued conflicts in the region, where the state fails to protect the Congolese people amidst widespread insecurity.

"Members of government forces, foreign and national armed groups and armies have all targeted civilians in flagrant violations of international humanitarian and human rights law. These include murder, rape and other forms of sexual violence, forced displacement, recruitment of child soldiers, and forced labor. But for a handful of cases, perpetrators remain unpunished." **[85a]**

8.02 Insight on Conflict noted in an undated posting on DR Congo, accessed 28 June 2011: "The Democratic Republic of Congo is almost as large as Eastern Europe and the third biggest country in Africa. The four Eastern provinces – South Kivu, North Kivu, Ituri [a district in Orientale province], and Maniema – and the countries they border (Uganda, Rwanda, and Burundi) have been the scene of multiple conflicts at local, national and regional levels for at least a decade." **[42a]**

8.03 The Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo to the UN Security Council, 12 May 2011, commenting on events in the period 17 January to 5 May 2011, observed that:

"With the exception of the eastern provinces of Orientale and North and South Kivu where violence has persisted, the overall situation in the Democratic Republic of the Congo remained relatively stable. Pre-electoral activities intensified across the country, including voter registration and actions by the Commission electorale nationale indépendante (CENI). Constitutional amendments were also promulgated, including the change of the presidential poll to a single round. Delays in voter registration and the adoption of essential electoral legislation, however, are expected to pose continued challenges to the timely conduct of the polls. Although the formal campaign period has not yet begun, opposition parties and civil society expressed concern over the disruption of their political activities by national authorities, particularly the police." **[9d] (p1)**

8.04 The US Department of State Country Report on Human Rights Practices 2010, Democratic Republic of Congo (USSD 2010), dated 13 April 2011, stated:

"Internal conflict continued in rural and mineral – rich parts of the east, particularly in North Kivu and South Kivu, Bas Uele and Haut Uele Districts of Orientale, and to a lesser degree, the Ituri District of Orientale. According to a countrywide International Rescue Committee mortality survey released in 2008, conflict and related humanitarian crises, including the destruction and deterioration of essential infrastructure such as

health centers, resulted in the deaths of an estimated 5.4 million Congolese between 1998 and 2007, or the equivalent of 45,000 per month throughout the survey period.

"Despite the integration of former National Congress for the Defense of the People (CNDP) rebels into the Forces Armées de la République Démocratique du Congo (FARDC) in 2009, the Democratic Forces for the Liberation of Rwanda (FDL), Lord's Resistance Army (LRA), and some Mai-Mai groups increasingly formed coalitions during the year and continued to battle government forces and attack civilian populations. Military preparations during the year, and the fighting itself, led to further depredations against civilians by members of state security forces and armed entities. This continuation of fighting in the east, which impeded humanitarian aid in some areas kept the figure of internally displaced persons at approximately 1.7 million by the end of the year, exacerbating an already severe humanitarian crisis.

"The UN peacekeeping mission, MONUC, continued to maintain several thousand soldiers and civilian personnel in the country to assist the government in establishing and maintaining peace and security, particularly in the east. In May [2010] the UN Security Council extended MONUC's mandate for 12 months, changing the name from MONUC to MONUSCO (UN Organization Stabilization Mission in the Congo), with an emphasis on the eastern part of the DRC and retaining protection of civilians as the Mission's top priority, and authorizing a drawdown of 2,000 peacekeeping soldiers troops by June 30 from areas where the security situation permits. At the end of the year, approximately 19,000 MONUSCO peacekeepers, military observers, and police continued efforts to effectively implement the mission's mandate, most notably with regard to its top priority of protecting civilians.

"Despite the presence of MONUSCO, armed entities, including ex-CNDP FARDC units in the east, continued to kill, abduct, torture, and rape civilians and burn and destroy villages.

"All parties continued to use mass rape and sexual violence with impunity, often as weapons of conflict, and to humiliate and punish individuals, victims, families, and communities. The UN Population Fund (UNFPA) reported 12,838 cases of sexual violence for both adults and children in North and South Kivu and Province Orientale in 2009. According to HRW, between January 2009 and September 2009, the total number of sexual violence cases registered at health centers in North and South Kivu exceeded 7,500, a near doubling of the total for the same period in 2008. In 2009 the International Rescue Committee, which registered approximately 1,200 cases of rape in South Kivu, found that up to 80 percent of survivors identified their assailants as members of either the FARDC or RMGs. While the actual number of cases was likely much higher, lack of data, social stigma, lack of confidence in the judiciary, and fear of reprisals prevented many rape survivors from coming forward." **[8b] (section 1g)**

8.05 Human Rights Watch's World Report 2011 (HRW 2011), covering events between January and November 2010, released in January 2011, noted that:

"Attacks on civilians and other human rights abuses continued with disturbing frequency in 2010. The Congolese army sustained its military campaigns against foreign and national armed groups in the east and north, and launched a new campaign in the west to quell a local insurgency. As in the past, all sides targeted civilians, who were killed, raped, arbitrarily arrested, pressed into forced labor, and looted. The ongoing violence

left nearly 2 million people displaced and a further 145,000 as refugees in neighboring countries." **[10b]**

8.06 The Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo to the UN Security Council, 12 May 2011, commenting on events in the period 17 January to 5 May 2011, observed that:

"Progress made towards the neutralization of foreign and Congolese armed groups in the Kivus remained limited. The Forces armées de la République démocratique du Congo (FARDC) began internal restructuring in the Kivus while intensifying negotiations with the residual Congolese armed groups on their integration into FARDC. There were continued attacks against civilians, including acts of sexual violence, by foreign and Congolese armed groups and some FARDC elements. In an encouraging development, trials of FARDC officers accused of human rights violations were conducted in South Kivu. In Orientale Province, the Lord's Resistance Army (LRA) continued to attack and abduct civilians." **[9d] (p1-2)**

8.07 A UN public information document, 'Security Council Told Upcoming Elections in Democratic Republic of Congo of 'Critical Importance', as it meets to consider UN Mission's mandate, reported a briefing provided by Roger Meese, the UN Secretary-General's Special Representative in the DRC to members of the UN Security Council', dated 9 June 2011, stated:

"In regard to the security environment and the related threats to the civilian population, which he [Mr Meese] said remained the [UN] Mission's greatest concern, there was still much to be done, but the situation must be viewed on a localized basis to obtain a full understanding of the remaining threats, the relevant factors affecting the problem and the options available to address it… the primary threat in Orientale province was the Lord's Resistance Army (LRA), which was limited in size and poorly supplied, but yet continued to use very brutal tactics. Joint MONUSCO, Congolese and Ugandan operations were ongoing, but the only strategy that could eliminate the threat was one that focused on the LRA leadership — three of whom were under indictment by the International Criminal Court. That went beyond MONUSCO's mandate, but the Mission was ready to support that process to the maximum extent possible." **[9e]**

8.08 The Office of the High Commissioner for Human Rights stated on 2 June 2010 in a news article, Democratic Republic of the Congo: UN expert expresses grave concern for civilian security:

"The human rights situation in key parts of the Democratic Republic of the Congo remains extremely serious, according to a report by a UN expert. Philip Alston, the UN Special Rapporteur on extrajudicial executions, warned that killings, rapes, mutilation, village burnings, and displacement would continue to take place unless civilian protection measures are urgently improved. He noted an increase in 2010 of attacks on civilians by the Lord's Resistance Army (LRA) rebel group, continued reprisal attacks by the Forces Démocratiques de Libération du Rwanda (FDLR) rebel group, as well as abuses by the Congolese army itself. Alston conducted a fact-finding mission to the DRC in October 2009, and the UN released his final mission report today (2 June 2010)." **[19a]**

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EASTERN DEMOCRATIC REPUBLIC CONGO (DRC)

Orientale Province

8.09 In respsect of the Orientale Province, the United Nations Security Council noted in the 'Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo', dated 24 October 2011:

"Attacks by the Lord's Resistance Army (LRA) against civilians in Haut- and Bas-Uélé districts decreased in August. Several reports indicated that LRA elements, including those operating in the Democratic Republic of the Congo, might be regrouping in the Obo area in the Central African Republic.

"The armed forces continued military operations against LRA with the support of MONUSCO and in coordination with the Ugandan People's Defence Force. Eight separate military operations aimed at protecting the population were conducted in Haut-Uélé, with a particular focus on the areas of Dungu, Doruma and Bangadi. On 3 June, MONUSCO facilitated the deployment of a Congolese army battalion trained by the United States of America to Haut-Uélé. Further support was provided in accordance with the human rights due diligence policy on United Nations support to non-United Nations security forces, formerly referred to as the conditionality policy. MONUSCO has also offered to support the African Union planning process to develop a regional strategy to address LRA in response to a request by the African Union Commission." [9i](Orientale Province, p5)

8.10 The UN reported briefing by Roger Meese, dated 9 June 2011 noted "In the Ituri District of Orientale province, there was some residual militia activity, but apparent recent attempts to recruit new militia elements or form new groups had not been very successful, and increased cooperation by the population with Congolese security forces and MONUSCO was an encouraging sign." **[9e]**

North and South Kivu, Maniema and Katanga provinces

8.11 In respect of North and South Kivu, Maniema and Katanga provinces, the same source also noted:

"In North Kivu, the Forces démocratiques de libération du Rwanda and Congolese armed groups remained active. The Ugandan Allied Democratic Front consolidated its presence in Beni and Lubero territories. The reconfiguration of the armed forces in the Kivus, scheduled to end in June, was extended. Related desertions and the refusal of some elements of the former Congrès national pour la défense du peuple and the Patriotes résistants congolais that had integrated into the armed forces and the national police to deploy outside their areas of operation continued during the reporting period. A former member of the Patriotes résistants congolais, Colonel Zabuloni, refused redeployment orders issued on 11 August and continued to run parallel command-and-control structures within the national police in Lushebere, Masisi territory, North Kivu. However, on 6 October, Colonel Zabuloni participated in the ceremony to install a new national police commander in Masisi territory. The local population, protesting his human rights record, prevented the ceremony on 8 October to install Colonel Zabuloni as Commander of the national police for Rutshuru territory from taking place.

"On 15 September, the electoral commission registered the candidacy for national legislative elections of Mayi-Mayi leader Colonel Cheka in Walikale territory, North Kivu. Colonel Cheka is wanted for arrest and prosecution for his alleged involvement in mass rapes and other human rights violations committed by a coalition of armed groups along the Kibua-Mpofi axis in Walikale territory between 30 July and 2 August 2010.

"In South Kivu, the reconfiguration process led to significant desertions by some former armed group elements that had integrated into the armed forces, particularly from the Patriotes résistants congolais, the Congrès national pour la défense du peuple and the Forces républicaines fédéralistes. They, along with some elements of the armed forces, were involved in the increasing incidents of violence observed throughout the province.

"Mayi-Mayi Yakutumba elements were also reported to be reinforcing their collaboration with the Burundian Forces nationales de libération, who have retreated into the Democratic Republic of the Congo, and the Forces démocratiques de liberation du Rwanda, in southern South Kivu. The Yakutumba alliance carried out a number of destabilizing and criminal activities, including repeated ambushes of vehicles on the Misisi-Uvira axis, the abduction of two local Congolese officials, the theft of cattle, acts of piracy on Lake Tanganyika and attacks on naval and land positions of the armed forces and civilian vehicles. The alliance was also reportedly involved in the exploitation and smuggling of gold, copper and cassiterite mined around the Ubwari peninsula and near the border with northern Katanga while perpetrating human rights violations.

"Between 31 May and 13 June, and from 5 to 29 September, MONUSCO conducted five separate military operations aimed at filling security vacuums and enhancing the protection of civilians in Kalehe, Walungu, Mwenga and Uvira territories in South Kivu. Between 24 August and 13 September, the armed forces launched a military operation against Mayi-Mayi Yakutumba aimed at containing their activities, which yielded only limited results.

"Limited progress was registered with regard to the implementation of the 23 March 2009 peace agreements between the Government and Congolese armed groups, including the Congrès national pour la défense du peuple. On 21 June, the Government convened a meeting of the National Follow-up Committee in Kinshasa, which was followed by consultations with stakeholders by the Vice-Prime Minister and Minister of Interior and Security in his capacity as Chair of the Committee. Provincial authorities established seven pilot local permanent reconciliation committees in Rutshuru, Nyiragongo and Masisi territories." **[9i] (North and South Kivu, Maniema and Katanga provinces, p5)**

8.12 The UN reported briefing by Roger Meese, dated 9 June 2011 noted:

"In North and South Kivu provinces, the weakened state of the Democratic Forces for the Liberation of Rwanda (FDLR) had encouraged repatriation of more senior cadres. The recent arrest by Congolese authorities of Bernard Munyagishari and his pending transfer to the International Criminal Tribunal for Rwanda was a further encouraging step. MONUSCO, together with Congolese authorities, was exploring other means to address the FDLR threat.

"Another remaining challenge in the Kivu provinces was completing the integration of armed groups into the Congolese Army, particularly members of the National Congress for the Defence of the People (CNDP), which had retained parallel structures. The

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threats of some Mayi-Mayi, Ugandan and other armed groups remained, but at a much smaller level than that of the FDLR." **[9e]**

The Report of the Special Rapporteur on extrajudicial, summary on arbitrary executions, Philip Alston, Addendum. Mission to the Democratic Republic of the Congo, dated 1 June 2010, based on a visit to DRC at the end of 2009 to explore allegations of extrajudial killing can be accessed here.

It would also be helpful to look at Section 18: Human rights institutions, organisations and activists and Section 27: Freedom of movement in conjunction with the above.

In addition, in relation to the security of returnees, please the Justice First report Unsafe Return.

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9. SECURITY FORCES

9.01 The US Department of State Country Report on Human Rights Practices 2010: Democratic Republic of Congo (USSD 2010), 8 April 2011, noted that:

"Among other elements, the state security forces consist of the PNC [Congolose National Police], which operates under the Ministry of Interior and has primary responsibility for law enforcement and public order. The PNC includes the Rapid Intervention Police and the Integrated Police Unit. The ANR [National Intelligence Agency], overseen by the president's national security advisor, is responsible for internal and external security. Other agencies include the military intelligence service of the Ministry of Defense; the DGM [Directorate General of Migration], responsible for border control; the GR [Republican Guard], which reports directly to the presidency; and the [DRC armed forces] FARDC, which is part of the Ministry of Defense and generally responsible for external security, but which also carries out an internal security role.

"State security forces generally remained undisciplined, corrupt, lacked training, were grossly underfunded, and received little pay." **[8b] (Section 1d)**

9.02 The USSD 2010 also noted "Created in 2007, the Inspection General d'Audit (IGA) is the internal discipline system within the PNC. As an internal oversight mechanism, it aims, among other things, to address police corruption and other types of police misconduct and human rights violations perpetrated by the police force... Members of the FARDC, police, and intelligence sectors continued to commit the majority of the country's human rights abuses." **[8b] (Section 1d Arbitrary Arrest or detention)**

9.03 The USSD 2010 continued "Embezzlement of soldiers' salaries by FARDC commanders was common and appeared to contribute to extortion, looting, and other abuses by soldiers against citizens…State security forces generally remained undisciplined, corrupt, lacked training, were grossly underfunded, and received little pay **[8b] (Section 1d)**

[To note: the full titles of the security organisations are the English translations from French]

9.04 The same source noted in its introduction that "There were many instances in which state security forces acted independently of civilian control and of military command." **[8b]**

9.05 The Freedom House report Freedom in the World 2011, DRC, covering events in 2010, released 16 May 2011, stated:

"Civilian authorities do not maintain effective control of the security forces. Soldiers and police regularly commit serious human rights abuses, including rape. Low pay and inadequate provisions commonly lead soldiers to seize goods from civilians, and demobilized combatants have not been successfully integrated into the civilian economy. The rapid and chaotic incorporation of former rebel groups into the military has resulted in competing chains of command and factional conflicts**." [14a]**

For additional information, see the Security Sector Reform Resource Centre Country Profile: DR Congo, undated, accessed 29 December 2011. **[84a]**

POLICE

9.06 The International Crisis Group (ICG) commented in the report 'Congo: A Stalled Democratic Agenda', published 8 April 2010, that "The police force... did not have a clear idea of its own manpower and instead of an operating budget had to rely on 'envelopes' of operational funds. It was divided into numerous specialised services, including the mines police, the judicial police, municipal police, the national park guard service, etc." **[18b] (p5)** The same source continued:

"The governance of the security sector, including the… army and police, also has to be rapidly reorganised on a democratic basis… to ensure the security services are no longer tools for oppression, acting at the behest of the president – as was the case under Mobutu – and that their activities are subject to parliamentary and judicial control. Moreover, it is necessary to rebuild security structures that are currently as damaged as the rest of the Congolese state apparatus." **[18b] (p5)**

9.07 AlertNet noted in the article 'DRC: New law a boon for police reform', dated 16 December 2010:

"Legislation has been passed in the Democratic Republic of Congo (DRC) national assembly aimed at reforming the country's police force, which, staffed by ex-soldiers and former rebels, riddled with corruption, poorly trained and lacking basic equipment, is widely seen as more of a threat to the population than a guarantor of its security.

"The legislation, due to go before the senate, is the fruit of three years of committee work by seven government ministries, senior police managers, donors, the UN and the European Police Mission in DRC (EUPOL).

"The law will clarify the role and responsibilities of the police as a unified, civilian, republican force that is demilitarized, apolitical and financially and administratively autonomous, whose main duties are to ensure public security, protect people and their goods and to maintain public order.

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"The law also calls for an overhaul of the police administration and for competitive recruitment." **[57a]**

9.08 The same source noted that:

"A key step in the reform process has been taken by Gen. Charles Bisengimana, who recently took over command of the general inspectorate of the police force and launched a nationwide, six-month census of its staff and the training they have undergone.

"According to Bisengimana, the force numbers 110,000, a figure some experts believe to be unrealistically large… With a salary of barely US$30 a month, police in DRC often abuse their power by extorting money from civilians.

"'The system is rotten to the core with senior officers who take a share of what the lower ranks rip off from people. And since salaries are always paid in cash, there is a lot of room for 'leakage',' explained a source from the UN mission in DRC's police unit (UNPOL).

"'Given our post-conflict situation, we need around 150,000 officers to have an adequate ratio with civilians,' noted Gen. Patrick Sabiti, a senior police officer. He added that the census and new legislation would lead to better training and living conditions." **[57a]**

9.09 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo published 30 March 2010 stated "The National Police…suffer from a legacy of integration of armed groups which has contributed to a lack of cohesion and significant differences in, or the absence of, vetting and training. The operational capability of the police is also greatly constrained by a lack of vehicles, communications equipment, supplies and related equipment. The system of allowances is also beset with weaknesses and gaps." **[9a] (paragraph 46)**

9.10 The same source further noted:

"Despite these challenges, the technical assessment mission noted that some progress has been made with regard to the reform of the police, including the adoption by Congolese authorities on 26 October 2009 of a 15-year strategic plan and a three-year action plan to build the capacity of the National Police. During the second half of 2009, MONUC police, with assistance provided by the Government of Japan, trained 8,625 National Police officers, including 666 women, and 230 more were trained and deployed by MONUC along strategic axes in the east in the context of the International Security and Stabilization Support Strategy. A total of 709 police officers were also trained in Ituri by UNDP and MONUC, in addition to the training of 210 judiciary police officers." **[9a] (paragraphs 46-48)**

9.11 Reliefweb noted on 12 January 2011 in the article 'DR Congo/North Kivu: Congolese National Police Officials trained to secure the electoral process', that:

"More than a hundred Congolese National Police (PNC) officers including three female from the Mobile Intervention Group (GMI: Groupement mobile d'intervention) received training from MONUSCO police on crowd control, restoration of public order, police code of ethics and human rights. MONUSCO Electoral Division played an active role in

this training which is particularly important given the fact that they will soon enter a period of intense electoral activities as next month will start review of the voters' list for the general elections scheduled to be held by the end of the year." **[56a]**

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Armed forces

9.12 Jane's Sentinel Security Assessment – DRC, reported that the estimated strength of the army was 63,000+ (Army, updated 22 July 2011), the air force was 1,800 (Air Force, updated 3 November 2011) and navy of 6,700 (Navy, updated 22 July 2011). **[58a]**

9.13 Human Rights Watch report, 'Always on the Run', published in September 2010, noted:

"The Congolese national army, created in 2003, has an estimated strength of 120,000 soldiers, many from former rebel groups that incorporated following various peace deals. About half of the Congolese army is deployed in eastern Congo. Since 2006 the government has twice attempted, and failed, to integrate the 6,000-strong rebel CNDP. In early 2009 a third attempt was made to incorporate the CNDP and remaining rebel groups in a process known as 'fast track accelerated integration.' However, many of those who agreed to integrate remained loyal to former rebel commanders, raising serious doubts about the sustainability of the process." **[10a]**

9.14 The USSD 2010 noted:

"The [Armed Forces of the DRC] FARDC consisted of between 130,000 and 155,000 soldiers, including 60,000 who have reached or are close to retirement age. Approximately half of the force was deployed during the year in the conflict-affected east. The FARDC was ineffective, due in part to weak command and control, poor operational planning, low administrative and logistical capacity, and questionable loyalty on the part of some of its soldiers. Other serious obstacles to the formation of a coherent national army included lack of equipment and barracks.

"In addition, in October 2009 UN Special Representative of the Secretary-General Alan Doss reported to the UN Security Council that 'the fast-track integration of up to 20,000 elements of former armed groups, some with very bad human rights records, into the FARDC has aggravated existing problems of indiscipline and crimes committed against the population.'" **[8b] (Section 1d)**

See also sub section 9: Male rape and Section 24: Children in connection with the above.

9.15 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, published 30 March 2010, stated:

"FARDC still face structural weaknesses and a lack of capacity which will continue to limit the Government's ability to adequately protect its citizens, if not effectively addressed. The national army remains an amalgamation of unvetted, untrained former militia groups and former Forces armées zaïroises personnel. The overall strength of

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FARDC is estimated to be from 130,000 to 155,000 troops, including some 60,000 who have reached or are close to retirement. Successive waves of integration of armed groups have resulted in poor loyalty, indiscipline, and disruptions in the chain of command. This has been compounded by an inadequate budget, a lack of equipment and garrisons, major weaknesses in the pay system, a weak military justice system and insufficient measures to address and prevent indiscipline and human rights violations." **[9a] (Military Aspects, paragraph 40)**

9.16 The source continued:

"To address these shortcomings, the Ministry of Defence has developed an army reform plan which was presented to international partners on 26 January 2010. The plan, which is being reviewed by Parliament, involves strengthening FARDC by reorganizing the territorial and operational chains of command. It includes three phases and foresees a total force of about 141,000. Phase 1 (2009-2011) involves the reorganization, training, equipping, and predeployment of FARDC units in key areas across the country to respond to contingencies such as the recent events in Equateur Province. One of the objectives during this phase is to prepare FARDC to take over from MONUC. Phase 2 (2011-2016) continues the deployment of territorial coverage units and establishes rapid reaction units and defence units. In phase 3 (2016-2025), the plan foresees the optimization of the FARDC military capacity and the possible participation of the force in African Union or United Nations peacekeeping operations." **[9a] (Military Aspects, paragraph 41)**

9.17 The same report also noted:

"Despite their shortcomings, FARDC were able to successfully and rapidly deploy troops to Equateur Province to neutralize the conflict that erupted in the Dongo area. FARDC and national police elements were deployed using the Government's air assets, and included highly effective battalions newly trained by Belgium and South Africa. The soldiers were also well equipped, trained and disciplined; carried ready-to-eat meals for several days; and were specially outfitted for operations with advanced communication equipment including satellite telephones. After the initial deployment, the establishment of a staging base, and the initial surge operation to secure Gemena and regain the initiative over the insurgents, FARDC requested support from MONUC so as to conduct further combat operations to secure population centres. In that context, MONUC provided FARDC with ground and air tactical mobility, fuel, medical and casualties evacuation, and rations for 2,350 FARDC and National Police elements." **[9a] (paragraph 42)**

9.18 The International Crisis Group (ICG) observed in the report 'Congo: A Stalled Democratic Agenda', published 8 April 2010, that reform was needed in the security sector "The army was in an even more troubling condition. Following the comprehensive and inclusive agreement of 2002, the various Congolese belligerents agreed to integrate into the new national army, the Armed Forces of the DRC (Forces armées de la RDC, FARDC). Initially, 340,000 soldiers were listed on the payroll, but observers estimated the true manpower figure at 130,000." **[18b]**

9.19 The same source continued:

"During the transition, FARDC soldiers continued to take their orders from parallel chains of command driven by corruption and political calculations. Paid erratically and

lacking effective training or a shared military doctrine, they survived by extracting unofficial levies from local people. Many went unpunished for war crimes and human rights abuses. Thus, in the aftermath of the 2006 elections, the Congolese state lacked an army that was 'political', 'subject to the civil authorities' or capable of 'defending the nation's territorial integrity and frontiers' as provided for under the constitution." **[18b]**

9.20 The ICG went on to say "Faced with these problems, the new constitution required the complete redrafting of the legal framework for the security forces. Two organic laws were envisaged for the armed forces, one for the police and six for the judicial system. The Governance Contract stresses their obligation to respect the law, the demilitarisation of the police, the struggle against impunity and the development of policies in all three sectors." **[18b]**

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Integration of former rebels into the armed forces

9.21 The USSD 2010 stated that "In addition, in October 2009 UN Special Representative of the Secretary-General Alan Doss reported to the UN Security Council that 'the fast-track integration of up to 20,000 elements of former armed groups, some with very bad human rights records, into the FARDC has aggravated existing problems of indiscipline and crimes committed against the population.'" **[8b] (Section 1d)**

9.22 The Amnesty International Report 2010: the state of the world's human rights: DRC (AI Report 2010) covering events in 2009 and published on 27 May 2010, noted:

"In January, Congolese and Rwandan government forces launched a joint military offensive against the FDLR in North-Kivu province. Rwandan forces withdrew in February. A second offensive against the FDLR, known as Kimia II, was launched by the national army (FARDC) in March, with the support of the UN peacekeeping mission to the DRC, MONUC. Kimia II was extended to South-Kivu province in July and continued in both provinces at the end of the year. In October, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions described military operations against the FDLR as 'catastrophic' from a human rights perspective. The military operations followed a rapprochement between the governments of the DRC and Rwanda and a peace deal in early 2009 to end the rebellion by the Rwanda-backed National Congress for the Defence of the People (CNDP) armed group in North- Kivu. As part of the peace deal, large numbers of CNDP and other armed group fighters were hurriedly integrated into the FARDC and took a leading role in anti-FDLR operations. The government failed to vet, train or properly pay these newly integrated forces. Former armed group chains of command were left intact. Lack of effective government control over these forces contributed to poor respect for human rights by the FARDC." **[16a] (DRC: armed conflict, p122)**

9.23 The HRW 2011 noted:

"The Congolese army continued military operations in North and South Kivu provinces of eastern Congo against the Democratic Forces for the Liberation of Rwanda (FDLR), a predominantly Rwandan Hutu rebel group, some of whose leaders participated in the 1994 genocide. At the same time the army sought to integrate nearly two dozen former armed groups into its ranks, a condition of the peace accords signed in March 2009.

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The integration process was fraught with problems. A number of the armed groups dropped out, angry that their enemies received higher ranks or more lucrative posts. Other groups, such as the National Congress for the Defense of the People (CNDP), conducted their own military operations under the guise of the Congolese army, but without approval from the military hierarchy. The confusion affected chains of command and control of the troops." **[10b]**

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OTHER GOVERNMENT FORCES

9.24 There are a number of security agencies in addition to the police and armed forces. Janes Sentinel Security Risk Assessment: Security and Foreign Forces: security forces - organisation, of 26 January 2011, listed a some:

- "The National Security Council which is found within the office of the president and was supposed to be the umbrella organisation for all the security services. Its actual influence over the services is often in doubt.

- "The National Intelligence Agency (Agence Nationale de Renseignement: ANR), which is thought to be the most professional of the different security services. Many of its personnel were recruited and trained under the Mobuto government. It is divided between branches responsible for internal and external security.

- "The Military Directorate on Anti-state Activities (Direction Militaire des Activités Antie-Patrie: DMIAP), which is the military intelligence service. It was organised in the same fashion as the ANR. Its activities were focused on protecting the regime from its internal enemies rather than providing the army with battlefield intelligence.

- "The Directorate General of Immigration (Direction Générale des Migrations: DGM), which is the immigration service. This agency is officially in charge of all movements in and out of the country. It also includes an intelligence wing…

- "The Capital Intervention Force (Force d'Intervention de la Capital: FIC), which is the military intervention force for Kinshasa. The force was created in 1999 with a merger between the presidential guard force, and the Kinshasa based 7th army brigade.

- "The Rapid Response Police (Police d'Intervention Rapide: PIR), which is the paramilitary force responsible for policing the streets of Kinshasa." **[58a] (Security and Foreign Forces)**

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INTERNATIONAL FORCES

9.25 MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo) noted in an undated posting on its website, accessed 20 July 2011, that:

"MONUSCO took over from an earlier UN peacekeeping operation – the United Nations Organization Mission in Democratic Republic of the Congo (MONUC) – on 1 July 2010. It was done in accordance with Security Council resolution 1925 of 28 May to reflect the new phase reached in the country. The new mission has been authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts." **[53a]**

9.26 The same source continued:

"Unanimously adopting resolution 1925 (2010) under Chapter VII of the United Nations Charter, the Security Council decided that MONUSCO would be deployed until 30 June 2011, authorizing it to concentrate its military forces in eastern DRC while keeping a reserve force capable of redeploying rapidly elsewhere. The Council decided that MONUSCO would comprise, in addition to the appropriate civilian, judiciary and correction components, a maximum of 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 members of formed police units." **[53a]**

9.27 The current strength of the force as at 31 May 2011 was as follows:

"18,970 total uniformed personnel

"16,986 military personnel

"729 military observers

"1,255 police (including formed units)

"978 international civilian personnel

"2,783 local civilian staff

"607 United Nations Volunteers" **[53a]**

9.28 The UN News Service noted on 28 June 2011 in the article 'Security Council extends mandate of UN mission in DR Congo', that the Security Council had extended MONUSCO's mandate for a further year with the force now scheduled to stay until 28 June 2012. **[54b]**

For more information about MONUSCO visit the website here.

HUMAN RIGHTS VIOLATIONS BY GOVERNMENT FORCES

9.29 The USSD 2010 stated:

"In all areas of the country, state security forces continued to act with impunity throughout the year, committing many serious abuses, including unlawful killings, disappearances, torture, rape and engaging in arbitrary arrests and detention… According to the UNJHRO, high-ranking military officers continued to adjudicate cases in which their own soldiers were implicated. Their alleged interference resulted in several out-of-court settlements regarding rape cases. However, there were some encouraging prosecutions during the year. For example, on July 22, the military tribunal in Goma condemned Lieutenant Bahati, Warrant Officer Kambere, Sergeant-Major

Bandoa, and Balume to 20 years in prison for rape and armed robbery." **[8b] (section 1g)**

9.30 The Voice of America (VoA) concurred in the article 'Domestic Rape in Congo a Rapidly Growing Problem', dated 30 May 2011:

"... in the regular Congolese Army, rape is considered a crime, with the first-ever high-ranking officer sentenced to 20 years in jail in February. The following month, 11 other officers were convicted, all given at least the maximum sentence of 20 years for rape. Activists and army officers say the prosecutions appear to have reduced the incidents of rape considerably, but rape is still common… Attorney and victim's rights activist Gilbert Kasereka said that while soldiers do rape because they are isolated, poor or as part of an attack, many rapes also occur in Congo for more unusual reasons. With the absence of regular, informed medical care, many people believe they can gain power or good health by raping the young. Kasereka said some people believe military prowess can be derived from raping a teenager or someone who is an ethnic minority, like Congolese Pygmies. Others believe the rape of a baby will cure AIDs." **[44b]**

9.31 The USSD 2010 also observed: "The use and treatment of child soldiers by FARDC elements-particularly fasttrack integrated brigades composed mainly of ex-CNDP members-remained a problem…The FARDC showed what the UN secretary general called 'a dramatic increase' in the number of children within its ranks in 2009." **[8b] (Section 1g)**

9.32 The same source also noted:

"State security forces arrested, illegally detained, raped, tortured, and summarily executed or otherwise killed civilians and looted villages during military actions against nongovernmental armed entities during the year, according to reports by UN agencies and NGOs. Impunity remained a severe problem, and several individuals in the state security forces continued to hold high positions despite credible evidence of their involvement in serious human rights abuses or despite failing to hold their subordinates accountable for committing serious abuses…" **[8b] (Section 1g)**

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Impunity

9.33 The HRW 2011 noted:

"The vast majority of crimes committed in Congo have gone unpunished and, in many cases, perpetrators are rewarded rather than brought to justice…In Congo the government increased military prosecutions against soldiers accused of human rights violations, including crimes of sexual violence, although the majority of those prosecuted held junior ranks. In one notable exception, following pressure from the UN Security Council and human rights organizations, judicial authorities in Kinshasa arrested General Jerome Kakwavu in April 2010 on war crimes charges for rape and torture. Kakwavu is the first general arrested on rape charges in Congo's history.

"In another important landmark, the Office of the UN High Commissioner for Human Rights published on October 1 its report of a human rights mapping exercise in Congo, which documented 617 incidents of serious violations of international humanitarian law

between 1993 and 2003. The report described the role of the main Congolese and foreign parties responsible-including military or armed groups from Rwanda, Uganda, Burundi, and Angola-and suggested options to pursue justice for the crimes, including the proposed establishment of a mixed chamber in Congo with Congolese and international judges. Rwanda and Uganda, among others, rejected the report. In an important statement, the Congolese government welcomed it and said it would support the option of a mixed chamber." **[10b] (Justice and Accountability)**

9.34 The USSD 2010 stated "In all areas of the country, state security forces continued to act with impunity throughout the year, committing many serious abuses, including unlawful killings, disappearances, torture, rape and engaging in arbitrary arrests and detention…" **[8b] (Section 1g)**

9.35 The Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Mission to the Democratic Republic of the Congo [conducted between 5 to 15 October 2009], to the UN Human Rights Council, dated 1 June 2010, observed, specifically in regard to extrajudicial killings and the justice system generally:

"The Government's failure to hold perpetrators to account is the central factor driving continued human rights abuses in the Democratic Republic of the Congo. The justice system is in a shambles, and impunity is widespread for all forms of killings. Alleged war criminals continue to hold senior command positions in the armed forces, massacres are committed without sanction or investigation, and nearly all extrajudicial executions remain unpunished.

"Corruption and political interference are key problems. Accused individuals with money or connections can escape punishment with relative ease. Corruption extends through the entire justice system: police request money to arrest or release alleged perpetrators; judges take bribes to decide cases; and registrars and other officials request money to enforce judgements… Many victims are justifiably afraid to complain to police or prosecutors. There is a very real risk that doing so would open them up to retaliation, especially because there is no witness protection programme. MONUC itself provides for witness protection for a small number of individuals and their families, but its limited resources and reach, and small staff size, mean only a small number are protected." **[19b] (p21-22, Impunity for Killings – systemic problems)**

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Arbitrary arrest and detention

9.36 The USSD 2010 stated: "The law prohibits arbitrary arrest or detention; however, state security forces routinely arbitrarily arrested and detained persons. **(Section 1d)**

Authorities at times arrested or beat a relative or associate of a person they sought to arrest." (Section 1f) The same source continued: "For example, on August 24, FARDC units comprised of ex-CNDP members kidnapped Sylvestre Bwira, president of the civil society in Masisi, North Kivu, and held and severely beat him in an underground prison for six days. The abuses occurred after he had sent an open letter to President Kabila on August 2, denouncing abuses committed with impunity by General Ntaganda's troops and the parallel CNDP administration in Masisi Territory. Authorities had taken no action by year's end." **[8b] (Section 1c)**

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9.37 The same source noted that:

"Security personnel arrested and detained without charge perceived opponents and critics of the government during the year, sometimes under the pretext of state security, often denying due process, such as access to an attorney… Police often arbitrarily arrested and detained persons without filing charges, often to extort money from family members.

"The military intelligence agency, DEMIAP, arbitrarily arrested persons and subjected them to prolonged arbitrary detention..." **[8b] (Section 1d)**

9.38 The 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 to the UN Human Rights Council, dated 10 January 2011, observed that:

"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.

"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 recommendation 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." **[37d] (p6, Actions taken by the Government and the current situation)**

9.39 Amnesty International commented in the document 'Incommunicado detention/Fear of torture and other ill-treatment/health concern: Bernardin Mbandi (m)', dated 2 March 2009:

"The ANR (National Intelligence Agency), which is run by the President's office, is empowered only to investigate crimes against the security of the state. However, it regularly acts outside these powers, making arbitrary arrests of opposition supporters, civil society activists and journalists, and also people suspected of criminal offences with no impact on state security. Lawyers, national human rights groups and UN human rights monitors are routinely prevented from visiting ANR detainees." **[16d]**

Please also refer to sub section on International Forces

Torture and ill-treatment

9.40 AI stated in its 2011 Report:

"In September [2010], the DRC ratified the Optional Protocol to the UN Convention against Torture, which requires it to grant access to places of detention to national and UN observers. In March, during the UN Universal Periodic Review, the government opposed a recommendation to grant UN observers access to detention centres, including those of the National Intelligence Agency (Agence nationale de renseignements, ANR) and the National Guard." **[10a] (background)**

9.41 The USSD 2010 stated:

"At the beginning of the year, the law did not specifically criminalize torture; however, during the parliamentary session between March and June lawmakers adopted a law criminalizing torture. Despite this reform, the government did not effectively enforce the law, and during the year there were many credible reports by informed sources that security services tortured civilians, particularly detainees and prisoners, and employed other types of cruel, inhuman, and degrading punishment. Most cases of torture were perpetrated by members of the police, the ANR, and the FARDC, according to credible sources. There were very few reports of government authorities taking action against members of state security forces responsible for these acts." **[8b] (Section 1c)**

9.42 The same source continued:

"The UNJHRO reported several cases of torture and cruel, inhuman, and degrading treatment. For example, on August 21, FARDC soldiers arrested five persons, including two minors, suspected of involvement in an attack on a MONUSCO peacekeeping base in Kirumba, in the Lubero Territory in North Kivu, which killed three peacekeepers. During their detention at the headquarters of the 12th FARDC Sector in Kasando, Lubero Territory, soldier's allegedly tortured them, giving them between 40 and 120 lashes each and burning and mutilating their feet and hands to obtain confessions. The five were transferred on August 22 to the Goma military court. There were no reports that authorities had investigated or disciplined the accused FARDC soldiers, and no additional information was available." **[8b] (Section 1c)**

9.43 The USSD 2010 added:

"During the year the incidents of men being raped continued as a result of the violence between nongovernmental armed entities and the FARDC. The number of male rape cases may have numbered in the hundreds during the year, but statistics for male rape were even more difficult to compile than those for female rape, as social stigma prevented many male survivors from coming forward. According to the American Bar Association, which ran a legal aid clinic in North Kivu for survivors of sexual violence, 10 percent of its cases during June 2009 were men. NGOs and medical workers reported that the humiliation was often so severe that male rape survivors came forward only if they had urgent health problems." **[8b] (Section 1c)**

9.44 The Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Mission to the Democratic Republic of the Congo [conducted between 5 to 15 October 2009], to the UN Human Rights Council, dated 1 June 2010 concurred "There is anecdotal evidence that male rape is increasingly being used by both the FARDC and the FDLR, but because of the stigma and associated lack of formal reporting, I was not able to obtain exact numbers. Based on credible reports, at

62 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

least two male rape victims have died as a result of their injuries." **[19b] (Appendix III: Endnotes, no, 22)**

9.45 The USSD 2010 also noted that: "There were continuing reports, including many from the UNJHRO, of rape of civilians by members of the state security forces, both in the context of the conflict in the east... and elsewhere." **[8b] (Section 1c. Extra-judicial killings)**

9.46 The same source continued:

"There were reports of state security forces engaged in summary executions, extrajudicial killings, rape and other abuses of civilians in the east and in other parts of the country during clashes with RMGs…Despite the presence of MONUSCO, armed entities, including ex-CNDP FARDC units in the east, continued to kill, abduct, torture, and rape civilians and burn and destroy villages. All parties continued to use mass rape and sexual violence with impunity, often as weapons of conflict, and to humiliate and punish individuals, victims, families, and communities." **[8b] (Section 1a. Arbitrary or Unlawful Deprivation of Life)**

9.47 The USSD 2010 noted: "In addition, during the year dissident elements of the FARDC, which were comprised of ex-CNDP members poorly integrated into the FARDC and led by General Bosco Ntaganda, were allegedly implicated in at least eight politically motivated killings, as well as the arbitrary arrest and temporary detention of seven other individuals, and the abduction and disappearance of another." **[8b] (Section 1a)**

Please refer to USSD 2010 for further and more detailed information.

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Male rape

9.48 The 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights', published March 2010, stated:

"There are a number of male victims of sexual violence in the DRC, and it is difficult for them to come forward and speak about what happened to them. Like the women who have been raped, men who have been raped suffer from stigmatization, which can take a somewhat different form. The male victims interviewed by the panel talked of being raped as being treated 'like a wife,' and they are humiliated by others for identifying or being identified with a group of victims who are virtually all women." **[19c]**

9.49 The Panel went on to say:

"When asked about justice, many of the victims noted that their perpetrators were difficult to identify or no longer around. In a number of cases, where the perpetrators were FARDC soldiers, the victims seemed very reluctant to pursue legal remedies against them, or their commanders. One victim said he was too weak to file a complaint after his abuse and couldn't even walk. He said he didn't know the names of the perpetrators and the incident happened at night when it was dark. When asked whether he might have tried to contact their commander, he told the panel he was afraid that he would be put in jail for nothing if he went to report the incident. The victim who had been

abused by a female FARDC soldier also said initially that he did not file a complaint with the military because he was suffering after the incident and unable to take action. He said he didn't know the name of his perpetrator, and when it was pointed out to him that it might not be difficult to identify a woman soldier as there probably were not too many, he noted that people were frightened during the war." **[19c]**

For accounts of specific incidents which took place during the reporting year refer to The Final Report of the Experts on the DRC, published by the United Nations on 26 November 2010 [9c] (p38-40) and the Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, dated 2 December 2011, accessible via **Reports on DRC.** **[9g]**

AVENUES OF COMPLAINT

9.50 The USSD 2010 stated:

"In January 2009 parliament created a human rights body, composed of members from both legislative chambers, to investigate abuses by state security forces. It was not clear how active, effective, or independent the body was. During the year the government cooperated in some aspects with the ICC, which continued investigations into war crimes and crimes against humanity committed in the country since 2003. However, despite the ICC indictment of General Ntaganda, the government did not arrest and transfer Ntaganda to the ICC during the year." **[8b] (Section 5)**

9.51 USSD 2010 continued:

"There were mechanisms available to investigate abuses by state security forces and address internal discipline problems, although the mechanisms remained weak and ineffective, particularly for addressing misconduct by mid- and high-ranking officials. However, some progress was made during the year related to internal discipline of the PNC, as authorities charged eight PNC officers following the disappearance of human rights defender Fidele Bazana Edadi and the killing of his colleague, long-time activist Floribert Chebeya, who was last heard from just before entering PNC headquarters in Kinshasa after being summoned by the head of the national police, John Numbi. Nevertheless, several rule of law experts in the country and almost 80 local and international human rights NGOs have expressed serious concerns about the credibility and independence of the investigation and the trial." **[8b] (Section 1d)**

9.52 The same source continued:

"In December 2009 the UN secretary-general reported to the UN Security Council about 'extraordinary' military justice mechanisms established in the Kivus, including the Operational Military Court. He expressed concern that, 'while contributing to discipline within the FARDC, there continued to be serious doubts regarding the legal basis of the mechanisms and their respect of fair trial standards, particularly since they do not contemplate a right of appeal.' In addition, in its report to the UPRWG, a coalition of international NGOs criticized the newly created Operational Military Court for disrespecting basic due process rules. Of particular concern was the lack of an appeals process. However, on February 13, the Operational Military Court in North Kivu sentenced five FARDC soldiers to death for murder, one soldier to 20 years of imprisonment for rape, and two soldiers to five years of imprisonment for arbitrary

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arrest. The law requires that a defendant can be tried only by a judge in the military justice system who is of equal or higher rank than the accused. In practice, this provision continued to provide senior military suspects with protection from prosecution." **[8b] (Section 1e)**

For more information about the Military justice system see Amnesty's The Time for Justice is Now, New strategy needed in the Democratic Republic of the Congo. [16g] (p10).

See also Section 12: Judiciary.

9.53 A report of the United Nations General Assembly published on 17 May 2011 cited a response from the Government:

"By letter dated 30 March 2011, the Government informed that an Inter-ministerial committee coordinated by the Ministry of Foreign Affairs and integrated by the Ministries of Home Affairs, Defense, Justice and the Office of the Attorney General of the Republic has been formed to look into the allegations of human rights violations by the National Army and police against citizens of the DRC. The Government mentioned that the final results of the investigations will be communicated as soon as the Inter-ministerial committee has completed its work." **[37a]**

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10. MILITARY SERVICE

10.01 The US Central Intelligence Agency (CIA) World Factbook, last updated 2009, stated that voluntary military service age was 18-45 years; there was no distinction between men and women. **[2b] (Military)** The Child Soldiers Global Report 2008 reported that the voluntary recruitment age was 18, and that there was no conscription to the armed forces in the Democratic Republic of Congo. **[23b]**

DESERTION

10.02 A response by researchers in the Belgian country of origin information (COI) research nit (in the Office of the Commissioner General for Refugees and Stateless Persons (CEDOCA)) and the French COI research unit, La division de l'information, de la documentation et des recherché (DIDR), part of the Office Francais de Protection des Refugies et Apatrides) provided under the European Country of Origin Sponshorship project titled 'Treatment of Army Deserters', dated 26 May 2011, noted information on the enforcement of the Military Penal Code was scarce. There were incidents in which deserters faced no punishment, however, "… in the recent case of general Munene, an ex-FARDC general who was presumably involved in an attempt to organize a coup d'Etat, 28 FARDC soldiers were arrested in December 2010, in the Bas-Congo Province. They were charged with desertion and participation in a rebellion movement and condemned to 20 years imprisonment, as well as to the payment of 1 million Congolese francs." **[59a] (Annex Fi)**

Section 11: Human rights violations by armed groups; Section 21: Ethnic groups; Section 24: Children associated with armed groups; and Section 28: Internally displaced people (IDPs)

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11. NON-GOVERNMENT ARMED GROUPS

11.01 Amnesty International (AI) noted in its World Report 2011 (AI 2011), covering events in 2010, that non state armed groups known or believed to be active in the Democratic Republic of Congo included:

- Democratic Forces for the Liberation of Rwanda (FDLR),
- Lord's Resistance Army (LRA)
- Mai Mai community-based militia groups such as Sheka Mayi-Mayi
- Alliance Pour le Congo Libre et Souverain (APCLS)
- Coalition of Congolese Patriotic Resistance (PARECO)
- Allied Democratic Forces/National Army for the Liberation of Uganda (ADF/NALU),
- Forces Républicaines Fédéralistes (FRF)
- Front de Résistance Patriotique d'Ituri (FRPI)
- Front Populaire pour la Justice au Congo (FPJC)
- Mouvement de libération indépendante des alliés (MLIA) **[16a]**

DEMOCRATIC FORCES FOR THE LIBERATION OF RWANDA (FDLR)

11.02 Human Rights Watch (HRW) stated in its report 'Always on the Run', published in September 2010:

"The FDLR (Forces démocratiques de liberation du Rwanda) is a predominantly Rwandan Hutu militia group based in eastern Congo, some of the leaders of which participated in the genocide in Rwanda in 1994. It seeks to overthrow the Rwandan government and promote greater political representation of Hutus. Despite successive military operations against the group in 2009 and into 2010, the FDLR still has an estimated 3,200 combatants and controls significant areas of North and South Kivu, including some key mining areas. The FDLR's president and supreme commander, Ignace Murwanashyaka, based in Germany, was arrested by German authorities on November 17, 2009, on charges of war crimes and crimes against humanity. The group's military commander in eastern Congo is General Sylvester Mudacumura. The Congolese government often supported, or tolerated, the FDLR until early 2009, when its policy changed and the government launched military operations against the armed group." **[10a] (p3)**

LORD'S RESISTANCE ARMY (LRA)

11.03 IRIN noted in the article 'DRC: Who's who among armed groups in the east', dated 15 June 2010:

"Joseph Kony founded the 'Holy Spirit Mobile Force 2' in northern Uganda in 1987 after a rebel group by the same name was crushed while opposing President Yoweri Museveni's government. In 1989, Kony renamed the militia the Lord's Resistance Army, claiming that his objective was the establishment of a Christian-inspired theocracy in Uganda. The LRA first moved into Southern Sudan in the mid-1990s but the 2005 Sudanese peace agreement and the indictment of Kony by the ICC forced the group to cross into DRC's Garamba National Park. In December 2008, Ugandan, Southern

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Sudanese and Congolese armies launched a joint offensive in Garamba, but failed to wipe out the LRA leadership. The group, which is divided into small groups, move on foot across the Uélés districts of northeastern Congo, the east of the Central African Republic (CAR) and parts of Southern Sudan. Between December 2007 and April 2010, the group is believed to have killed 1,796 civilians and abducted 2,377 in Congo. It is particularly notorious for forced recruitment of child soldiers, turning boys into killers and girls into porters or sex slaves. It also mutilates lips and ears to terrorize the population." **[45c]**

THE PATRIOTS ALLIANCE FOR A FREE AND SOVEREIGN CONGO (APCLS)

11.04 A response by Belgium (CEDOCA – the Belgian Country of Origin Information Service) and France (DIDR – the French Country of Origin Service) under the European Country of Origin Sponsorship (ECS) project (ECS response), dated 4 July 2011, noted:

"[APCLS is] …a breakaway faction of PARECO created in 2008, is largely made up of ethnic Hunde and is led by General Janvier Buingo Karairi, previously Chief of the Hunde branch of PARECO . The APCLC [sic] [also known as Alliance des patriots pour un Congo libre et souverain] is estimated to have between 500 to 1.500 combatants, depending on sources. According to various sources, 'it is allied with the FDLR [Forces démocratiques de libération du Rwanda], and refuses to integrate the Congolese army without guarantees that the combattants will be deployed in their home region and that the newly integrated CNDP soldiers will leave'. According to a report from International Crisis Group (ICG) on the situation in the Kivu (November 2010), APCLS is supported by the rural Hunde population which fears for its land." **[59c] (Annex Fiii)**

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MAI MAI MILITIA

11.05 IRIN noted in the article 'DRC: Who's who among armed groups in the east', dated 15 June 2010:

"Its fighters, who spray themselves with 'magic water to protect themselves from bullets', are essentially self-defence militias formed on an ad-hoc basis by local leaders who arm young men in villages, often along ethnic lines. Some of the larger ones are better known, such as the Congolese Resistance Patriots (PARECO) or Alliance of Patriots for a Free and Sovereign Congo (APCLS), which joined the peace process in March 2009, promising to transform into peaceful political parties. On 2 June, 500 members of the Kifuafua Mai-Mai group returned to their positions in Walikale in North Kivu, claiming that their agreed integration into the army had been delayed for too long. Most Mai-Mai groups are local forces known by the name of their leader. The Yakutumba group, which bears the name of the 'major-general' at their helm, kidnapped eight aid workers in South Kivu in April [2010]." **[45c]**

11.06 The HRW report, 'Always on the Run', noted:

"The Mai Mai militia groups are local defense groups often organized on an ethnic basis. They have traditionally fought alongside the government army against 'foreign invaders,' including the CNDP and other Rwandan-backed rebel groups. In 2009 there were over 22 Mai Mai groups, ranging in size and effectiveness, in both North and

South Kivu. Some joined the Congolese army as part of the rapid integration process in early 2009, while others refused, angry at the perceived preferential treatment given to the CNDP and unwilling to join the army unless they were able to stay in their communities. The various Mai Mai groups are estimated to have some 8,000 to 12,000 combatants." **[10a]**

11.07 Insight on Conflict, undated, accessed 28 June 2011, noted:

"The term Mai-Mai is a generic term that refers to any community-led militia formed with the intention of defending their territory against other armed groups. The term does not describe any particular movement, affiliation or political objective, but groups which can be led by tribal elders, warlords, village heads or politically-motivated resistance fighters. Many were formed to resist the invasion of Rwandan forces and Rwandan-affiliated Congolese rebel groups. However, others have formed simply to exploit the war for their own means, such as by banditry, looting or cattle rustling. The two most powerful and well-organised Mai-Mai groups in the Kivus were led by Generals Padiri and Dunia. They were reported to have received aid from the DR Congo government and are widely viewed by other Mai-Mai groups as the leaders, though not the commanders, of the Kivu Mai-Mai. A number of smaller Mai-Mai groups, such as the Mudundu 40/Front de Résistance et de Défense du Kivu (FRDKI) and Mouvement de Lutte contre l'Agression au Zaïre/Forces Unies de Résistance Nationale contre l'Agression de la Républíque Démocratique du Congo (MLAZ/FURNAC), were reported to cooperate with the Rwandan military and RCD-Goma. This demonstrates how different Mai-Mai groups have allied themselves with a variety of domestic and foreign government and guerrilla groups at different times. Due to their lack of internal cohesion it has been very difficult to get the Mai-Mai involved in peace agreements, and it is often down to programmes of demobilisation, demilitarisation and reintegration (DDR) to get these militia to lay down their weapons." **[42b]**

11.08 The ECS response dated 4 July 2011 listed some of the Mai Mai groups:

"Among the Maï Maï groups which can be listed, but in no way exhaustively, the Maï Maï Kifuafua, the Maï Maï Shikito, the Maï Maï Yakutumba, Mudundu 40/Front de résistance et de défense du Kivu (FRDKI), the Mouvement de lutte contre l'agression au Zaïre/Forces unies de résistance nationale contre l'agression de la République démocratique du Congo (MLAZ/FURNAC), Maï Maï Rwenzori, the Maï Maï Sheka (or Cheka), the Maï Maï PARECO (Coalition des patriotes résistants congolais), the largest of all Maï Maï groups, and the APCLS (Alliance des patriotes pour un Congo libre et souverain)…If they were initially organized mainly along tribal lines, most groups are now mixed, involving different ethnic groups . They are drawn primarily from the Bashi, Bembe, Nande, Bangilima, Hunde, Tembo and Nyanga ethnic groups." **[59c]**

COALITION OF CONGOLESE PATRIOTIC RESISTANCE (PARECO)

11.09 The HRW report, 'Always on the Run', stated:

"PARECO (Coalition des patriotes résistants congolais) is the largest Mai Mai group, created in March 2007 by the joining of various ethnic-based Mai Mai militias, including from Congolese Hutu, Hunde, and Nande ethnic groups. Throughout 2007 and 2008 PARECO collaborated closely with the FDLR and received substantial support from the Congolese army, especially in its battles against the CNDP. In 2009 many PARECO combatants, particularly the Hutu, joined the Congolese army. Its military commander,

Mugabu Baguma, was made a colonel. The Nande PARECO commander, La Fontaine, remained outside the integration process, along with most Nande combatants, until February 28, 2010, when he committed to integrate with 10 of his cadres. A breakaway, largely Hunde PARECO faction, led by General Janvier Buingo Karairi and known as the Patriotic Alliance for a Free and Sovereign Congo (Alliance des patriotes pour un Congo libre et souverain, APCLS), remains outside the integration process. The APCLS is allied with the FDLR and refuses to integrate into the Congolese army without guarantees it will be deployed in its home region and that newly integrated CNDP soldiers will leave." [10a]

11.10 The ECS response dated 4 July 2011stated:

"The PARECO (Coalition des patriotes résistants congolais or Coalition of Congolese resisting patriots) was created in 2007 with the intention to unify the Maï Maï, even though some Maï Maï factions refused to join . The PARECO group includes Congolese Hutu, Hunde and Nande ethnic groups. During 2007 and 2008, the PARECO aligned with the government in opposition to the CNDP. According to Human Rights Watch, in 2009, many PARECO combatants, particularly Hutu, joined the Congolese army and its military commander was made a colonel, whereas the Hunde and Nande commanders were not offered equivalent command positions. As a consequence, they remained outside the integration process, along with a majority of Hunde and Nande combatants." **[59c] (Annex Fiii)**

11.11 The same source also noted:

"On April 2010, the 'Alliance pour la sauvegarde des accords de paix de Goma' or 'Alliance for the Safeguard of the Goma Peace Agreement' was formed. It is com-posed of 17 armed groups, amongst which the Kifuafua Maï Maï, the Mongol, the CNDP and the PARECO. This alliance was created because its members felt that the government was not doing anything in order to apply the Goma Peace Accords signed in March 2009. The Alliance' spokesperson is Didier Bitaki, head of the Kifuafua Maï Maï. Interviewed on this new Alliance, Didier Bitaki declared that the group did not exclude to use violence in order to be heard." **[59c] (Annex Fiii)**

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ALLIED DEMOCRATIC FORCES/ NATIONAL ARMY FOR THE LIBERATION OF UGANDA (ADF/NALU)

11.12 IRIN noted in the article 'DRC: Who's who among armed groups in the east', dated 15 June 2010:

"Ugandan rebel leader Jamil Mukulu founded a Muslim militant group in the early 1990s, despite converting back and forth between Islam and Catholicism. Under pressure from the Ugandan army, he recruited officers from former dictator Idi Amin's regime and amalgamated the NALU, another Ugandan rebel group believed to harbour supporters of former president Milton Obote. The militia crossed into DRC in the mid-1990s and has remained in the Beni area of North Kivu. Analysts consider the group 'dormant' with about 1,300 men. Peace negotiations between ADF/NALU, Uganda and the DRC began in 2009 with UN facilitation, but in April, the Congolese army blamed a deadly

attack on a military training centre near Beni on a coalition of ADF/NALU and local Mai-Mai fighters." **[45c]**

FRONT FOR PATRIOTIC RESISTANCE IN ITURI/POPULAR FRONT FOR JUSTICE IN CONGO (FRPI/FPCJ)

11.13 IRIN noted in the article 'DRC: Who's who among armed groups in the east' dated 15 June 2010:

"FRPI and its splinter group FPJC are active in the southern part of Ituri, where they battle government forces and UN peacekeepers. FRPI's former commander Germain Katanga is on trial at the ICC with two other Ituri militia leaders for war crimes and crimes against humanity, including the recruitment of child soldiers, mass murder and rape. Analysts describe the group as 'residual' yet its humanitarian toll remains high. In 2009, about 5,000 people fled into the Mokato-Ngazi forest after fighting between the DRC army and FRPI/FPJC militants. When government forces and humanitarian agencies accessed the area three months later, an unknown number had starved to death. Jean-Claude Baraka, an FPJC leader, was recently arrested. But FRPI chief 'Colonel Cobra' Matata, who had agreed to integrate the national army, reportedly deserted earlier this month to rejoin his militia in Ituri." **[45c]**

ENYELE/INDEPENDENT MOVEMENT OF LIBERATION AND ALLIES (MILIA)

11.14 IRIN noted on 15 June 2010:

"Ethnic tensions dating back to the colonial era flared up last November in northwestern Equateur province. Members of the Lobala group, known as 'Enyele' after the name of the village where the violence erupted over fishing rights, first attacked the border town of Dongo and defeated police sent to quash them. Civilians fled across the river to the Republic of Congo, and only 20,000 residents have returned. Adopting the acronym MILIA, they moved southwards across the jungle and stormed the provincial capital, Mbandaka, on 4 April. They also disrupted supplies as far as the eastern city of Kisangani. On 5 May, the DRC arrested Ondjani Mangbama, the Enyele leader, but his status remains unclear. The Enyele insurrection began in former Congolese ruler Mobutu Sese Seko's Equateur home province, now a stronghold of Jean-Pierre Bemba's MLC opposition party." **[45c]**

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HUMAN RIGHTS VIOLATIONS BY ARMED GROUPS

11.15 The US Department of State's Country Report on Human Rights Practices 2010, DRC (USSD 2010), released on 8 April 2011, reported "During the year RMGs (rebel and militia groups) continued to commit numerous, serious abuses - some of which may have constituted war crimes - including unlawful killings, disappearances, and torture. RMGs also recruited and retained child soldiers, compelled forced labor, and committed widespread crimes of sexual violence." **[8b]**

11.16 The AI 2011 report stated:

"Attacks on civilians by the LRA were particularly intense in February and March. The LRA abducted civilians and forced them to fight. In the Bas Uélé district of Province

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Orientale, 80 people were reportedly killed by the LRA between 22 and 26 February. As of July, over 300,000 people were displaced in Haut and Bas Uélé as a result of LRA attacks. The FDLR were a constant threat to the civilian population in the Kivus and Maniema province and were responsible for unlawful killings, abductions, looting and burning of homes. An FDLR battalion in Walikale territory, North Kivu, joined forces with the Sheka Mayi-Mayi group and perpetrated a number of abuses in the territory. Shabunda territory in South Kivu was regularly attacked by the FDLR; 40 villagers were abducted in March." **[16a]**

11.17 The same source continued:

"Other local armed groups, including the Mayi-Mayi, the Alliance Pour le Congo Libre et Souverain (APCLS) in Masisi, the Coalition of Congolese Patriotic Resistance (PARECO) in North Kivu, the Forces Républicaines Fédéralistes (FRF) in Fizi in South Kivu, the Front de Résistance Patriotique d'Ituri (FRPI) and the Front Populaire pour la Justice au Congo (FPJC), were also active. Armed groups attacked MONUSCO bases in North Kivu in August and October, and attacked and abducted humanitarian workers on a number of occasions." **[16a]**

11.18 The USSD 2010 noted: "Between January and September 2009, the FDLR destroyed at least 7,051 homes and other structures and perpetrated 290 cases of sexual violence in North and South Kivu in areas affected by military operations." **[8b] (Section 1g)**

See also Section 8: Security Situation, Section 23: Women, Violence against women, Section 24: Children, Violence and discrimination against children and Children associated with armed groups.

11.19 HRW noted in its report 'Always on the Run', that: "Government and rebel forces carried out widespread and vicious attacks on civilians during these operations..." The integration of the CNDP and other smaller groups into the Congolese Army:

"… trigger[ed] renewed and massive displacement. In December 2009, Human Rights Watch reported that at least 1,400 civilians were killed between January and September 2009 and over 7,000 women and girls raped – numbers that no doubt represent only a fraction of the actual total. Government forces and FDLR also abducted and pressed thousands of civilians into forced labor, including carrying weapons and supplies, as they moved about. Since January 2010, following a new round of military operations against the FDLR, civilians in many parts of North and South Kivu continue to endure forced labor, arbitrary arrests, illegal taxation, looting, sexual violence, and excessive restrictions on movement." **[10a]**

Arbitrary arrest and detention

11.20 The USSD 2010 stated:

"According to MONUSCO, between July 30 and August 2, 303 women, children, and men were raped in 13 villages in Walikale, North Kivu by a coalition of the FDLR, Mai Mai Cheka, and combatants lead by Colonel Emmanuel Nsengiyumva, a former member of the CNDP and the FARDC. The perpetrators also looted more than 1,000 homes and abducted 116 civilians, whom they subjected to forced labor. The UN reported that from late July to early August, rebel groups raped an additional 260 individuals in several isolated incidents in South Kivu. According to the UN, one of the

villages attacked, Luvungi, where more than 100 persons were raped, was a lucrative target for looting because it was a mining hub located only four miles from gold mines." **[8b]**

Forced recruitment of children

11.21 The Coalition to Stop the Use of Child Soldiers stated in the paper 'Democratic Republic of the Congo (DRC): Coalition calls for end to Mai Mai child soldier recruitment and use', published 26 February 2010:

"Mai Mai militias have been among the most prolific recruiters of children in eastern Congo in recent years, yet virtually nothing has been done to lessen the vulnerability of boys and girls from exploitation by these groups…The imperative of protecting children from involvement with Mai Mai is underscored by the range of abuses that they experience when in the ranks. Children have been sent into frontline combat, subjected to whipping or other violent punishments and, in the case of girls, raped and used for sexual slavery. Young children are also actively recruited by Mai Mai to perform rituals believed to protect their members in battle…The primary responsibility for protecting and promoting the rights of children in eastern Congo rests with the government. However, Mai Mai have often had the tacit support of the authorities, which have sought their support in past military operations in the full knowledge that they have violated national and international law by having child soldiers in their ranks." **[23a]**

11.22 The same source continued:

"Several Mai Mai commanders have been among a handful of people prosecuted for the crime of child soldier recruitment in Congolese courts. However, other suspected child recruiters remain at large or have been integrated into the FARDC. One former Mai Mai commander Jean-Pierre Biyoyo, who was found guilty by a military court in 2006 on charges related to child recruitment, subsequently escaped and is now reported to be serving as deputy commander in the Congolese armed forces." **[23a]**

It would also be helpful to look at Section 24: Children in connection with the above.

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TORTURE AND ILL-TREATMENT

Rape

11.23 The USSD 2010 report noted:

"All parties continued to use mass rape and sexual violence with impunity, often as weapons of conflict, and to humiliate and punish individuals, victims, families, and communities. The UN Population Fund (UNFPA) reported 12,838 cases of sexual violence for both adults and children in North and South Kivu and Province Orientale in 2009. According to HRW, between January 2009 and September 2009, the total number of sexual violence cases registered at health centers in North and South Kivu exceeded 7,500, a near doubling of the total for the same period in 2008. In 2009 the International Rescue Committee, which registered approximately 1,200 cases of rape in South Kivu, found that up to 80 percent of survivors identified their assailants as members of either the FARDC or RMGs. While the actual number of cases was likely

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much higher, lack of data, social stigma, lack of confidence in the judiciary, and fear of reprisals prevented many rape survivors from coming forward." **[8b] (Section 1g)**

11.24 The same source went on to state:

"According to MONUSCO, between July 30 and August 2, 303 women, children, and men were raped in 13 villages in Walikale, North Kivu by a coalition of the FDLR, Mai Mai Cheka, and combatants lead by Colonel Emmanuel Nsengiyumva, a former member of the CNDP and the FARDC. The perpetrators also looted more than 1,000 homes and abducted 116 civilians, whom they subjected to forced labor. The UN reported that from late July to early August, rebel groups raped an additional 260 individuals in several isolated incidents in South Kivu. According to the UN, one of the villages attacked, Luvungi, where more than 100 persons were raped, was a lucrative target for looting because it was a mining hub located only four miles from gold mines. A UN investigation in August found that the perpetrators 'sought to block off the transport of minerals to Goma and Bukavu, as well as force the return of FARDC troops from the mining areas.

"During the year the incidents of men being raped continued as a result of the violence between nongovernmental armed entities and the FARDC. The number of male rape cases may have numbered in the hundreds during the year, but statistics for male rape were even more difficult to compile than those for female rape, as social stigma prevented many male survivors from coming forward. According to the American Bar Association, which ran a legal aid clinic in North Kivu for survivors of sexual violence, 10 percent of its cases during June 2009 were men.NGOs and medical workers reported that the humiliation was often so severe that male rape survivors came forward only if they had urgent health problems, and according to HRW, two men whose penises were cinched with rope died a few days later because they were too embarrassed to seek help." **[8b] (Section 1g. Use of Excessive Force and Other Abuses in Internal Conflicts)**

11.25 The Voice of America (VoA) stated in the article 'Domestic Rape in Congo a Rapidly Growing Problem', dated 30 May 2011, that:

"…armed groups raid and loot villages, raping women, children and sometimes babies or men to control the people though terror… The president of the civil society in the eastern province of North Kivu, Jason Luneno Maene, said neither the government, nor NGOs can provide educational anti-rape programs to rebel militias who live beyond the reach of Congolese law. Even in government-controlled areas, he said, rapists often are caught and then released a few days later. But Luneno said the recent convictions of Congolese Army soldiers and officers could affect the rest of society. If the army stops raping, he said, civilians may follow their lead." **[44b]**

11.26 The same source continued: "Some people were my friends, some were my colleagues – they ask me to tell them how it was that I was raped like a woman. They meet me with other victims of rape, the majority of whom are women, and they look at me and laugh at me. This man had lost his father and was taking care of seven young brothers and his mother when he was abducted by the FDLR in April 2010 and forced to march through the forest carrying loot, during which he was repeatedly gang-raped." **[19c]**

Forced conscription

11.27 Amnesty International's (AI) Annual Report 2011, covering events in 2010, noted: "The LRA abducted civilians and forced them to fight." [16a] (Abuses by armed groups) Human Rights Watch (HRW) also noted in its World Report 2011: "The LRA also carried out widespread abductions in Bas Uele District, deliberately targeting children whom the group forced to serve as soldiers." **[10b] (p103)**

11.28 RwandaNews.Com reported in the article FDRL aiming for war with Congolese children, 20 December 2010:

"Various local militia groups known as the Mai Mai, who remain outside of the integration process in eastern Congo, are also forcibly recruiting young men and boys as well as holding children in their ranks from previous recruitment drives. These include the Alliance des patriotes pour un Congo libre et souverain (APCLS), Mai Mai Kirikicho, Mai Mai Sheka, and Patriotes résistants congolais (PARECO) factions. At least 57 children under 18 have recently been recruited by these armed groups." **[61a]**

11.29 The USSD 2010 concurred:

"The recruitment and use of children by all armed entities active in North and South Kivu and Orientale, including the FARDC (particularly ex-CNDP elements), continued. HRW reported that of approximately 1,000 documented males recruited between September and December in the east, at least 261 were under the age of 18. In July the UN secretary-general reported that joint military operations against the FDLR and the LRA had put children at high risk and made them more vulnerable to recruitment and use as soldiers, sexual slaves, porters or other domestic workers. According to the UNGOE report released in November, during 2009 a significant number of children who had previously been recruited into RMGs were brought into the new FARDC structures during the integration process." **[8b] (Section 1g. Use of Excessive Force and Other Abuses in Internal Conflicts)**

See also Section 8: Security Situation, Section 9: Security Forces, Section 10: Military service, Section 24: Children, Children associated with armed groups and Demobilisation.

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12. JUDICIARY

12.01 The US Department of State 'Country Report on Human Rights Practices 2010': Democratic Republic of Congo (USSD 2010), 8 April 2011, observed: "The law provides for an independent judiciary; however, the judiciary was inefficient, corrupt, and subject to influence. Judges, who were poorly compensated, remained subject to influence and coercion by officials and other influential individuals." **[8b] (section 1e)**

12.02 Amnesty International commented in its report 'The Time for Justice is Now', published 7 August 2011:

"In the DRC, given the scale of the crimes committed, the number victims and the level of impunity, a strong, effective and credible national criminal just system is essential. However, a major obstacle to ensuring truth, justice and reparation for past and current violations is the current weakness of the Congolese criminal justice system and the

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lack of a comprehensive strategy to rebuild and reform it...Few people have access to existing justice mechanisms, and confidence in the justice system is low. Victims and witnesses are reluctant to come forward, as there is no national system to protect them. The only victim and witness protection programmes are provided by the International Criminal Court (ICC) and the United Nations Joint Human Rights Office (UNJHRO), and are limited in scope. Judicial staff also face considerable insecurity. Legal aid services, though guaranteed by law, are scarce, preventing many victims and their families from pursuing justice and limiting defendants' access to lawyers. Awareness of legal rights and the justice system remains low, and outreach attempts to breach this gap inadequate." **[16g]**

ORGANISATION

12.03 The Hauser Global Law School Programm stated in 'The Legal System and Research of the Democratic Republic of Congo (DRC): An Overview' (Hauser Report 2010), updated August/September 2010:

"The Congolese legal system may be divided in three branches: Public law, private law and economic law. Public law regulates legal relationships involving the state; private law regulates relationships between private persons; and economic law regulates interactions in such areas as labor, trade, finance, mining and investment.

"The distinction between public law and private law is fundamental in the Congolese legal system. Public law (droit public) – which includes constitutional law, administrative law, tax law, criminal law and the organization of the judiciary – regulates relationships to which the state, or a subdivision of the state, is a party. Public law thus regulates relationships between public bodies and private persons; and between public bodies inter se.

"Overall, notwithstanding significant government policies and legal reforms, factors such as the lack of infrastructure, weak institutional capacity, and corruption undermine the effectiveness, stability and predictability of the legal system." **[86a] (Part III Judiciary Law. 8. Court system)**

12.04 The same source also described the Court system:

"The organization of the judiciary is in transition. To understand the existing and the projected organization of the judiciary in the DRC, one must distinguish between the judiciary as it currently stands (the 1982 judicial organization code) and as it is contemplated by the 2006 Congolese Constitution.

"The existing court system

"The Supreme Court (Cour Supreme de Justice) is the highest court in the DRC. The Supreme Court has three sections: Administrative, legislation and judiciary. The Supreme Court is connected to the national department of public prosecutions (Parquet General de la République). 'Connected' means that, while the court is independent, the parquet is responsible for instituting prosecutions in criminal cases. Second, the state security court (Cour de la Sûreté de l'État) has jurisdiction to hear and determine questions relating to the security of the state. Third, the Court of Appeals (Cour d'Appel) has two sections: Administrative and judiciary. The Court of Appeals is connected to another department of public prosecutions (Parquet General).

"Fourth, the Tribunal de Grande Instance is a court with a wide jurisdiction and connected to a department of public prosecutions (Parquet de la République). Fifth, magistrates' courts (tribunaux de paix) are the only ones with the power to conduct investigations because they are not connected to any department of public prosecutions. They also have jurisdiction over disputes previously heard and determined by customary courts (tribunaux de zone). Finally, traditional leaders (chefs coutumiers), though not part of the formal judicial system, are involved in the mediation and settlement of disputes in traditional communities. The law allows customary courts to operate in various parts of the country while waiting for the establishment of magistrates' courts. In fact, customary courts mediate and settle two thirds of all disputes in the Congo.

"The 2002 Military Judiciary Code organizes military courts . The highest court is the Military High Court (Haute Cour Militaire). The lower military courts are, in descending order of jurisdictional reach, cours militaires and cours militaires opérationnelles, tribunaux militaires de garnisons, and tribunaux militaires de police. Military courts decide criminal cases brought against members of the national police and army." **[86a] (8.1. The existing court system)**

12.05 The same source stated that:

"The court system as set out in the Constitution

"The 2006 Congolese Constitution dramatically re-arranges the judiciary. In terms of the Constitution, a judicial service council (Conseil Supérieur de la Magistrature) is responsible for the administration of justice. The judicial service council is composed of judicial officers and public prosecutors. Since July 2009, the Chief Justice (premier président de la Cour suprême de justice) is Bemwenzi Kenga and the Prosecutor-General (procureur général de la République) is Floribert Kabange Numbi. In the meantime, the Chief Justice is the chief judge of the Supreme Court; but when the government will launch the Constitutional Court, the Chief Justice will be the chief judge of the Constitutional Court.

"In order to improve effectiveness, specialization, and speedy justice, the Constitution divides the judicial system in three jurisdictions, ordinary or judiciary (i.e. civil and criminal), public law or administrative, and constitutional. The highest court in ordinary, including military, matters is the Court of Cassation (Cour de Cassation); the highest court in public law/ administrative matters is the State Council (Conseil d'État); and the highest court in constitutional matters is the Constitutional Court. Some of these courts, like the Constitutional Court and the State Council, do not yet exist but the ongoing reforms in the judiciary aim at aligning the existing court system with the one contemplated by the Constitution.

"The Constitution connects these courts to certain public prosecutors (procureurs, magistrats de parquet and auditeurs militaires). For instance, the Constitution connects the Constitutional Court, the Court of Cassation and the State Council, to the procureur général près la Cour Constitutionnelle, the procureur général près la Cour de Cassation and the procureur général près le Conseil d'État, respectively." **[86a] (8.2. The court system as set out in the Constitution)**

12.06 The same source also noted:

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"Article 157 of the 2006 Congolese Constitution institutes the Constitutional Court. However, the government has not yet passed an organic law on the Constitutional Court. The Constitutional Court is the highest court in constitutional matters. It is not the highest court in the DRC, but given that, the Constitution is the supreme law of the land the Constitutional Court is practically the court defining and settling the most fundamental issues in the country. Moreover, the Court may hear appeals from the State Council and the Court of Cassation on jurisdictional questions …The Constitutional Court has a mandate as broad and significant as the Constitution itself. The core function of the Constitutional Court is to check the constitutionality of laws and conduct with legal consequences. Anyone may seize the Court to call into question the constitutionality of an act of parliament or regulation. The Court checks the constitutionality of organic laws and the rules of order of the parliament, and the Independent Electoral Commission, the CSAC, before their promulgation. Any act the Court finds inconsistent with the Constitution is null and void. The decisions of the Constitutional Court are final and executory, and bind all courts and persons." **[86a] (8.2.2. The Constitutional Court)**

12.07 The Hauser Report 2010 continued:

"Article 153 of the Constitution creates the Court of Cassation (Cour de Cassation) and puts civil and military courts under its control. The Court of Cassation is the court of last resort. It hears appeals from decisions and judgments made by civil and military courts and tribunals. It has original and appellate jurisdictions in criminal cases against senior government officers. It asserts jurisdiction criminal cases against members of parliament, government members other than the Prime Minister, members of the Constitutional Court, judges of the Court of Cassation and prosecutors connected to that Court, members of the State Council and prosecutors connected to that Council, members of the Audit Court and prosecutors connected to that Court, the chief judges of courts of appeal and the prosecutors connected to those courts, the chief judges of administrative courts of appeal and the prosecutors connected to those courts, governors and vice governors, provincial ministers, and the presidents of provincial assemblies.

"Article 154 of the Constitution unfolds a system of administrative courts, formed by the State Council (Conseil d'État), administrative courts and tribunals. The State Council hears and determines cases brought against the acts, regulations and decisions of national administrative bodies and officials. It hears appeals against decisions of administrative courts of appeal. In the absence of competent courts, the Council adjudicates claims for damages resulting from measures taken or ordered by the state. It bases its decisions on equity taking into account all circumstances relevant to the parties." **[86a] (8.2.3. The Court of Cassation and the State Council)**

12.08 In addition there are also Special Courts, as described by the Hauser Report 2010:

"Commercial courts

"A new law establishes commercial courts in the Congo. Situated within a tribunal de grande instance, a commercial court (tribunal de commerce) bench is composed of three persons, one permanent judge appointed by the Minister of Justice and two business people acting as lay judges, although the judge presides over the court.

Commercial courts sit in judgment of cases involving bankruptcy, partnership, unfair competition and commercial papers.

"Labor courts

"Another law creates labor courts. Situated within each tribunal de grande instance, a labor court (tribunal de travail) bench is composed of three judges, one permanent judge and two lay persons (assessors), one representing employers and the other representing employees. The Minister of Justice chooses among judges of the tribunaux de grande instance those who will preside over labor courts. Labor courts sit in judgment of disputes between employees and employers arising from an employment contract, a collective agreement, labor laws or regulations, and social security." **[86a] (8.2.4. Special courts)**

12.09 International Crisis Group commented in the report 'Congo: A Stalled Democratic Agenda', published 8 April 2010:

"A plan for the reform of the judicial system, approved by both government and donors, was produced as early as 2007 and the laws establishing the Higher Judicial Council and the Constitutional Court were adopted in 2008. However, there have been serious delays in the implementation of the constitutional provisions that reform Congo's judicial structure and guarantee the independence of the justice system. Of the three higher jurisdictions envisaged by the constitution – the State Council/Court, the Appeal Court and the Constitutional Court – only the latter has been established, theoretically at least. Basic laws necessary for the reorganisation of military jurisdictions, as well as the creation of the State Council and the Appeal Court are still at the planning stage. The same is true for the law that gives local effect to the statute of the International Criminal Court, and for the new penal code and procedures. "Moreover, the Higher Judicial Council has had a difficult start. A dispute between the Council and the Ministry of Justice over the interpretation of the powers given to the former only ended with the passage in 2008 of the law providing for the Council's establishment. At issue was the extent to which the government would be able to exercise influence, as well as control over the judiciary's budget. Later, the Council's effectiveness was threatened by the emergence of rifts within its permanent secretariat." **[18b] (p15)**

12.10 The United Nations High Commissioner for Human Rights, in her Report on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, dated 10 January 2011, noted:

"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." (p16, paragraph 58) The same source also stated:

"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

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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." **[19e] (p14, paragraph 50)**

12.11 Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, published 30 March 2010, stated:

"The civilian justice mechanisms of the Democratic Republic of the Congo are still in a dilapidated state, and many of the judicial institutions foreseen in the Constitution, notably the Court of Cassation and the Constitutional Court, have yet to be established. The civilian justice system operates on less than 1 per cent of the national budget and no proper administrative systems, including for finance, personnel, case-tracking, budget, procurement and asset management, are in place. Reports of interference in justice processes by Government officials and corruption are frequent and have prompted the training of 200 magistrates in ethics and anti-corruption practices. There are fewer than 1,400 judges and prosecutors against an assessed need of at least 5,000, and only a limited availability of jurists including defence counsels. A key priority and challenge expressed to the technical assessment mission by the Ministry of Justice and Human Rights was to establish the justice and peace tribunals responsible for managing electoral disputes." **[9a] (paragraphs 49-50)**

12.12 International Crisis Group (ICG) commented in the report 'Congo: A Stalled Democratic Agenda', published 8 April 2010:

"The constitution stipulates that the judiciary is independent from the legislature and the executive, and that the judges are subject to no authority other than the law itself. But to implement this democratic principle the judicial architecture of the Mobutu era will have to be replaced with new higher jurisdictions that are not subject to political authority. The plan was to abolish the Supreme Court of Justice, sharing its responsibilities between a Constitutional Court, a State Council and a Court of Appeal, which all had yet to be created. The constitution also provided for a Higher Judiciary Council composed almost solely of jurists, whose role would be to replace the executive in managing the judicial system." **[18b] (p5)**

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MILITARY COURTS

12.13 Human Rights Watch (HRW), in its World Report 2011 (HRW 2011), noted in respect of justice and accountability within the security forces and armed groups: "The vast majority of crimes committed in Congo have gone unpunished and, in many cases, perpetrators are rewarded rather than brought to justice." **[10b]**

12.14 Africa Legal Brief commented in the article 'Justice still remote for victims of atrocities in DRC', published 11 October 2010:

"Under DRC law only military courts can try international crimes, as the civil criminal code has no provisions relating to war crimes, crimes against humanity or genocide… Military judges have handed down some verdicts in war crimes cases, citing the 1998 Rome Statute of the International Criminal Court, but the system functions poorly and judges reportedly often succumb to political interference. As the UN report points out, the civil system is barely equipped to deliver justice at any level. It lacks adequate funding personnel, transportation, training, professional development, witness protection and judicial independence." **[24a]**

12.15 The USSD 2010 noted:

"Due to the absence of any operational civilian justice component…ilitary courts, which had broad discretion in sentencing and provided no appeal to civilian courts, continued to try military as well as civilian defendants during the year. Some areas of the country, particularly the east, continued to be served only by military justice… Although the constitution limits jurisdiction of military courts to members of the FARDC and PNC, at year's end, the military judicial code and the military penal code of 2002 had not been harmonized with the constitution. In August 2009, the minister of justice initiated a reform process that aimed in part to harmonize military justice with the constitution; however, the military code of justice, in place prior to the adoption of the present constitution, continued in force during the year. It prescribed trial by military courts of all cases involving state security, including offenses related to military personnel, and 'weapons of war' (firearms), whether the defendants were members of the military or civilians." **[8b] (Section 1d)**

12.16 The USSD Report 2010 also noted:

"The Operational Military Court, which the government established during the year to address abuses committed by FARDC officers during military operations, made some progress in prosecuting a small number of low-ranking perpetrators. However, it lacked adequate staff, the ability to conduct its own independent investigations, and the power to undertake high-level prosecutions, and there remained concerns about the court's respect for due process.

"Most of the prosecutions undertaken by the military justice system continued to be lower-ranking officers or soldiers; rarely were mid-level or senior-level officers investigated for having committed acts of sexual violence. Although no general had yet been convicted, either for his own actions or for failing to control histroops, a general (General Jerome Kakwavu) was arrested for rape and other crimes in April. When they were convicted, sentences were rarely carried out. For example, in July 2009 a military court found Lieutenant Colonel Ndayambaje Kipanga guilty of raping four girls in Rutshuru, North Kivu. Prior to the arrest of General Kakwavu, he was the highest-ranking FARDC officer convicted. However, he was convicted in absentia after escaping custody two days after his arrest in May 2009, due to lax detention procedures, and he remained at large at year's end." **[8b] (section 1d)**

12.17 USSD 2010 stated: "In 2007 the UN's resident expert on human rights recommended that the government establish a clearer separation between civilian and military jurisdictions; however, no action was taken by parliament during the year to address this recommendation." **[8b] (Section 1e)**

12.18 HRW 2011 noted:

"In Congo the government increased military prosecutions against soldiers accused of human rights violations, including crimes of sexual violence, although the majority of those prosecuted held junior ranks. In one notable exception, following pressure from the UN Security Council and human rights organizations, judicial authorities in Kinshasa arrested General Jerome Kakwavu in April 2010 on war crimes charges for rape and torture. Kakwavu is the first general arrested on rape charges in Congo's history." **[10b]**

Please see section 9 Security Forces in connection with the above.

12.19 The same source continued:

"In another important landmark, the Office of the UN High Commissioner for Human Rights published on October 1 its report of a human rights mapping exercise in Congo, which documented 617 incidents of serious violations of international humanitarian law between 1993 and 2003. The report described the role of the main Congolese and foreign parties responsible – including military or armed groups from Rwanda, Uganda, Burundi, and Angola – and suggested options to pursue justice for the crimes, including the proposed establishment of a mixed chamber in Congo with Congolese and international judges. Rwanda and Uganda, among others, rejected the report. In an important statement, the Congolese government welcomed it and said it would support the option of a mixed chamber." **[10b]**

12.20 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, published 30 March 2010, stated:

"Military justice institutions continue to face challenges similar to those on the civilian side, including a severe shortage of military judges and prosecutors, only 350 of a required 818 military magistrates being deployed. The military justice system is often subjected to political and command interference and security arrangements for magistrates in conflict-affected areas are inadequate. In this context, MONUC and UNDP trained 665 military justice personnel during the reporting period." **[9a] (paragraphs 49-50)**

INDEPENDENCE

12.21 Freedom House, in its Freedom in the World 2011 report, stated:

"Despite guarantees of independence, the judiciary remains subject to corruption and manipulation, and the court system lacks both trained personnel and resources. In July 2009, the president dismissed 165 prosecutors and magistrates, including the first president of the Supreme Court, for abuse of office. Kabila's role in the replacement process has been a source of concern. Prison conditions are often abysmal, and long periods of pretrial detention are common. In a landmark ruling in March 2009, a military court convicted a Mai Mai militia leader, Gedeon Kyungu Mutanga, and 20 other Mai Mai fighters for crimes against humanity in addition to finding the government responsible for not disarming the Mai Mai. However, most government and government-allied forces still enjoy apparent impunity for even the most heinous crimes." **[14a]**

12.22 The USSD 2010 continued:

"Judicial corruption remained pervasive, particularly among magistrates. The judicial system was funded with less than 1 percent of the national budget and was poorly

staffed, with a very limited presence outside of Kinshasa. A study by an international NGO concerned with justice reform identified a variety of challenges that continued to hinder the planning and execution of the judicial branch budget, including declining annual budgets allocated to the judicial branch; failure to pay salaries of court personnel on a regular basis; failure to allocate costs for court operations; and the lack of transparency in the use of funds allocated to the judiciary…There were fewer than 1,500 magistrates (judges who serve in the lowest level courts) serving the entire population (one magistrate for every 45,000 citizens), and two-thirds of them were located in Kinshasa, Matadi (Bas-Congo), and Lubumbashi (Katanga). There were fewer than 200 courts, of which approximately 50 were functioning during the year." **[8b] (section 1d)**

CORRUPTION

12.23 In terms of the judiciary, the USSD 2010 continued:

"Corruption in the judicial and penal systems continued to be severe.

"In rural areas, where there were often no courts within a 300-mile radius, justice was administered on an ad hoc basis by any available authority, creating extraordinary opportunities for corruption and abuse of power. During the year some observers asserted that members of both the executive and legislative branches were content to keep the judiciary weak and ineffective because it protected their power and allowed them to engage in corruption and abuse of power without consequence. Weak financial controls and lack of a functioning judicial system encouraged officials to engage in corruption with impunity. Many civil servants, police, and soldiers had not been paid in years, received irregular salaries, or did not earn enough to support their families, all of which fostered corruption… across the country, endemic corruption and political interference ensure that anyone with money or connections can escape investigation, prosecution, and judgment. Judges' appointments, removals, and promotions are subjected to frequent political interference." **[8b] (Section 1d, Arbitrary Arrest or detention)**

FAIR TRIAL

12.24 The USSD 2010 stated: "The law provides for an independent judiciary; however, the judiciary was inefficient, corrupt, and subject to influence. Judges, who were poorly compensated, remained subject to influence and coercion by officials and other influential individuals." **[8b] (Section 1e)**

12.25 The same source continued:

"The civilian judicial system failed to dispense justice consistently and was widely disparaged by the international community and citizens as ineffective and corrupt. The constitution provided for new judicial institutions and laid the foundation for an independent judiciary by removing previous presidential powers to appoint and remove magistrates. The constitution divided the Supreme Court's functions into a Constitutional Court, Appeals Court, the Administrative Oversight Agency and the High Council of Magistrates (CSM), the country's supreme judicial oversight body, which is charged with disciplining judges and prosecutors and protecting the judiciary from executive intimidation and manipulation. However, by the end of 2009, the CSM was not fully operational, and no legislation had been promulgated to establish the Constitutional

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Court, the Appeals Court, or the Administrative Oversight Agency. In the absence of the judicial institutions provided for by the 2006 constitution, the existing structures--including the Supreme Court, Appeals Court, Superior Court (Tribunal de Grande Instance), and the misdemeanor courts known as Tribunaux de Paix--continued operating." **[8b] (Section 1e)**

12.26 The USSD 2010 also noted:

"While the new structures provided for in the constitution were designed in part to increase access to justice, the government still had not implemented structures that were introduced by laws promulgated decades ago. For example, the 1982 law establishing the Tribunaux de Paix, which handle cases involving crimes punishable by less than five years' imprisonment, provides for one tribunal in each town and rural zone. According to an August 2009 report by the International Bar Association's Human Rights Institute (IBAHRI) and International Legal Assistance Consortium (ILAC), if this law were carried out, there should be 180 of these tribunals; however, only 58 were in place, and only 45 were functioning." **[8b] (Section 1e)**

12.27 The same source noted:

"Civil courts exist for lawsuits and other disputes, but the public widely viewed them as corrupt. The party willing to pay the higher bribe was generally believed to receive decisions in its favor. Most individuals could not afford the often prohibitive fees associated with filing a civil case. While the law stipulates access to free legal counsel for citizens in civil trials, in practice magistrates remained overburdened by large caseloads in areas outside of Kinshasa. It was difficult to retain the continued services of lawyers, who often spent minimal time outside of the capital. No civil court exists specifically to address human rights violations." **[8b] (Section 1e)**

PENAL CODE

12.28 The Hauser Global Law School Programm stated in 'The Legal System and Research of the Democratic Republic of Congo (DRC): An Overview', updated August/September 2010:

"Congolese criminal law, which is mainly set out in the 1940 Penal Codes, can be divided in two parts: The ordinary Penal Code for civilians and the Penal Code for the military. The corresponding Code of Penal Procedure and the Code for the Military Penal Procedure, respectively, regulate the implementation of the ordinary and the military penal codes. In April 2010, the Penal Codes had been updated so as to incorporate the latest amendments and complementary provisions. Over and above the Penal Codes, specific legislation covers additional acts in branches of Congolese law other than criminal law. Criminal law also covers attempts to commit a crime; recidivism; concurrence; participation of several persons in a crime; justification grounds and grounds of excuse; extenuating circumstances; and extinction of punishments. On 20 July 2006, the Congolese parliament adopted new legislation that modifies the Penal Code and the Code of Civil Procedure by providing for more progressive definitions of sexual offenses (sexual offenses amendments). Those amendments represent the government's reaction to the scourge of sexual violence, which has reached epidemic proportions in the troubled east of the country.

"Unlike Belgian and French law, Congolese law does not differentiate between felonies (crimes), misdemeanors (délits), and contraventions (contraventions). Congolese law refers to violations of the criminal or penal law, whether ordinary or military, as infraction (infraction)." **[86a] (Criminal law, overview)**

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13. ARREST AND DETENTION – LEGAL RIGHTS

13.01 The US Department of State's 'Country Report on Human Rights Practices 2010' (USSD 2010), released on 8 April 2011, stated:

"By law arrests for offenses punishable by more than six months' imprisonment require warrants. Detainees must appear before a magistrate within 48 hours. Authorities must inform those arrested of their rights and the reason for their arrest, and may not arrest a family member instead of the individual being sought. They may not arrest individuals for non-felony offenses, such as debt and civil offenses. Authorities must allow arrested individuals to contact their families and consult with attorneys. In practice, security officials routinely violated all of these requirements. No functioning bail system existed, and detainees had little access to legal counsel if unable to pay. Authorities often held suspects in incommunicado detention, including in illegal facilities run by the ANR and the GR, and refused to acknowledge their detention.

"Security personnel arrested and detained without charge perceived opponents and critics of the government during the year, sometimes under the pretext of state security, often denying due process, such as access to an attorney...Police often arbitrarily arrested and detained persons without filing charges, often to extort money from family members." **[8b] (Section 1d, Arrest Procedures and Treatment While in Detention)**

13.02 The same report also noted:

"… the constitution provides for a presumption of innocence; however, in practice most detainees were treated as already having been convicted. Although the government permitted, and in some cases provided, legal counsel, lawyers often did not have free access to defendants. The public could attend trials only at the discretion of the presiding judge. Juries are not used. During trials defendants have the right to be present and to be provided a defense attorney. However, in practice these rights were not always respected. Defendants have the right to appeal in most cases except those involving national security, armed robbery, and smuggling, which the Court of State Security generally adjudicated. Defendants have the right to confront and question witnesses against them and can present evidence and witnesses in their own defense. The law requires that defendants have access to government-held evidence, but this right was not always observed in practice." **[8b] (Section 1e, Trial procedures)**

13.03 The same source noted: "There were no reports of women or specific ethnic groups being systematically denied these rights." **[8b] (Section 1e, Trial procedures)**

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14. PRISON AND DETENTION FACILITY CONDITIONS

14.01 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, published 30 March 2010, stated:

> "The prison system continued to be characterized by catastrophic conditions of detention, including lack of food, severe overcrowding and lack of medical facilities. In several instances, detainees have died from starvation as no budget is allocated to cover operational costs, including food and other basic needs. Security installations are rudimentary, contributing to high rates of escape across the prison system. Approximately 95 per cent of the personnel working in the correctional facilities are not civil servants, but are self-appointed and lack formal training for the responsibilities of their positions. There is no training institution for prison personnel, including wardens. No formal or practical coordination exists among the Ministries of Justice and Human Rights, Defence and the Interior, which are together responsible for the correction sector. Of approximately 18,000 inmates throughout the Democratic Republic of the Congo, it is estimated that at least 70 per cent are held in pretrial detention. None of the country's military prisons is operational." **[9a] (paragraph 51)**

14.02 Freedom House, in its Freedom in the World 2011Report: DRC, (FH 2011), published 16 May 2011, concurred: "Prison conditions are abysmal, and long periods of pretrial detention are common." **[14a]**

14.03 The US Department of State's Country Report on Human Rights Practices 2010, DRC (USSD 2010), released on 8 April 2011, reported:

> "The country's justice minister called the prisons 'death houses' in a plea to the international community for immediate assistance. According to ASADHO's [L'Association Africaine de défense des Droits de l'Homme] April 2009 report Rule of Law Put to the Test, medical equipment and medicines were absent in virtually all the prisons and detention centers…Guards were few and often unpaid, and some lived in the prisons for lack of homes. According to the UN secretary-general, approximately 95 per cent of the personnel working in the correctional facilities were not civil servants but rather self-appointed and lacked formal training for the responsibilities of their positions. There was no training institution for prison personnel, including wardens. Lack of authority and surveillance resulted in detainee death and abuse. For example, the UNJHRO reported that on January 31, an inmate in Bukavu's central prison was tied up and beaten to death by six co-detainees." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.04 The USSD 2010 commented: "There was no separation of men, women, and children or of civilian and military detainees…Larger prisons sometimes had separate facilities for women and juveniles, but others generally did not." **[8b] (Section 1c, Prison and Detention Center Conditions)**

14.05 The USSD 2010 continued:

> "Even harsher conditions prevailed in small detention centers, which were extremely overcrowded; had no toilets, mattresses, or medical care; and provided detainees with insufficient amounts of light, air, and water. Originally intended to house short-term detainees, they were often used for lengthy incarceration. They generally operated

without dedicated funding and with minimal regulation or oversight. Informed sources stated that detention center authorities often arbitrarily beat or tortured detainees. Guards frequently extorted bribes from family members and NGOs for permission to visit detainees or provide food and other necessities." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

PRE-TRIAL DETENTION

14.06 The USSD 2010 stated:

"Prolonged pretrial detention, often ranging from months to years, remained a problem, as pretrial detainees constituted at least 70 percent of the prison population, according to the UN. In March UN Secretary-General Ban Ki-moon reported that of approximately 18,000 inmates throughout the country, at least 70 percent were pretrial detainees. In July Bandundu civil society leaders reported that inmates at Bulungu prison spent two to three years on average in detention before being tried. Trial delays were due to factors such as judicial inefficiency, corruption, financial constraints, and staff shortages. Prison officials often held individuals after their sentences had expired due to disorganization, judicial inefficiency, or corruption. Prison records remained grossly inadequate, and authorities kept individuals in prison even after their sentences had been served." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.07 The same source continued: "Prison officials held pretrial detainees together with convicted prisoners and treated both groups the same… According to media reports, in Gemena prison, in Equateur, where a growing backlog of pretrial detention cases continued to outgrow the capacity of the prison and the lone prosecutor who served the area, almost 200 pretrial inmates rioted and escaped on November 16 due to lack of food; only a handful were reportedly recaptured." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.08 The same source also noted that "Many children endured pretrial detention without seeing a judge, lawyer, or social worker; for orphaned children, pretrial detention often continued for months or years. In February 2009 the UN Committee on the Rights of the Child (UNCRC) noted that the child protection code, promulgated in January 2009, provides for juvenile courts to become operational by 2011. However, the UNCRC expressed concern over the way in which the justice system continued to handle juveniles and the lack of a juvenile justice system." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.09 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo also noted: "Of approximately 18,000 inmates throughout the Democratic Republic of the Congo, it is estimated that at least 70 per cent are held ikn pretrial detention. None of the country's military prisons is operational." **[9a] (paragraph 51)**

Please refer to section 13: Arrest and Detention – Legal Rights in connection with the above.

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PRISON RECORDS

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14.10 The United Nations Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the DRC, published 14 June 2010, (SR Report 2010), noted:

"The prison system is in such disarray that even the number of prisons and prisoners in the country is unknown. Accurate records of the prison sentences of convicted criminals are not maintained. As judges from the Supreme Court explained, monitoring and record keepingis so poor in the criminal justice system that people can serve years beyond their sentence simply because the authorities do not know to release them, greatly contributing to overcrowding, resentment and prison violence… Almost non-existent records and monitoring mean that it is not known how many deaths in prisons there actually are, although information provided by one source recorded 23 deaths in 2009 at one prison in Kinshasa alone." **[37b] (p19, vi Deaths in prison)**

PRISON CONDITIONS

14.11 The USSD 2010 noted:

"According to MONUSCO, in 2009 fewer than 90 of the country's 230 prisons actually held prisoners; while there were no reports of the government officially closing prisons during the year, dozens of prisons that had not functioned for years remained closed. Most prisons were dilapidated or seriously neglected. [In the same year] the UN secretary-general reported that prison populations exceeded capacity by 600 percent and expressed concern about lack of food and health care, outdated prison laws and regulations, and severe shortcomings in infrastructure and training for prison guards." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.12 The USSD 2010 also stated:

"While evaluating the country's prison system in July 2009 Dimitri Titov, the UN assistant secretary for the rule of law and security institutions in the Department of Peacekeeping Operations, visited the prison in Goma, North Kivu, where he found a prison facility built for 150 prisoners housing 850, 650 of whom had not been tried yet. There was no separation of men, women, and children or of civilian and military detainees, which Titov called unacceptable. Titov said overcrowding was so great in the dilapidated prison that inmates slept in hallways and next to septic tanks, facilitating the spread of disease in what he called inhumane conditions Titov also visited the prison in Bunia, Orientale, where he found the prison population exceeded the facility's capacity by 250 percent." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.13 The same source continued:

"Larger prisons sometimes had separate facilities for women and juveniles, but others generally did not. They generally held individuals detained on state security grounds in special sections. Government security services often clandestinely transferred such prisoners to secret prisons. Civilian and military prisons and detention facilities held both soldiers and civilians, since none of the military's prisons were operational, according to a March report by the UN secretary-general." **[8b] (Section1c. Prison and Detention Centre Conditions)**

14.14 The SR Report 2010 stated: "The central Government provides only one prison in the entire country with a budget. The rest are required to support themselves. Some receive

assistance from the provincial authorities, but many rely completely on private support extracted by individual prison directors." **[37b] (p19, paragraph 82, vi Deaths in prison)**

14.15 The USSD 2010 noted:

"The penal system was underfunded, and most prisons were overcrowded, poorly maintained, and lacked sanitation facilities. In all prisons except the Kinshasa Penitentiary and Reeducation Center (CPRK), the government had not provided food for years. Prisoners' friends and families provided the only available food and necessities. Malnutrition was widespread, and some prisoners starved to death. Prison staff often forced family members of prisoners to pay bribes for the right to bring food to prisoners…According to a nurse at the Bunia Central prison, in 2009 many prisoners were in desperate need of a transfer to the hospital for medical care but were often denied." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.16 The USSD 2010 continued:

"Temporary holding cells in some prisons were extremely small. Many had no windows, lights, electricity, running water, or toilet facilities; access to potable water or temperature-regulated cells was nonexistent… According to ASADHO, sleeping arrangements in prisons and detention centers were hierarchical and corrupt. Due to overcrowding, the best sleeping spots went to those who were able to pay. Those at the bottom of the hierarchy had to sleep on cement floors or outside in the courtyards… Health care and medical attention remained inadequate, and infectious diseases rampant. In rare cases prison doctors provided care; however, they often lacked medicines and supplies. " **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.17 The USSD 2010 also stated:

"Violence, particularly sexual violence, continued to be a serious problem in prisons, along with life-threatening diseases such as HIV/AIDS. Male prisoners raped other prisoners, including men, women, and children. Citing the prison rape cases that it had registered during the year, ASADHO reported in June 2009 that 'women are frequently raped' and that prison rapes 'are sometimes organized in cahoots with prison authorities.' ASADHO also noted that men, especially new inmates, were sodomized by prison gangs. In June 2009, during an attempted prison escape and subsequent riot at the Central Prison in Goma, North Kivu, 24 military detainees raped 23 female prisoners. PNC officers shot and killed one perpetrator." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

DEATHS IN PRISON

14.18 The SR Report 2010 noted: "The atrocious state of prisons across the Democratic Republic of the Congo, however, leads to frequent deaths of detainees. The Minister for Justice acknowledged…that prison conditions are 'horrible' and that many people in detention die of hunger. The Government is failing in its duty to ensure even minimum detention conditions. As a result, prisoners die from preventable causes, and there are regular riots and escapes." **[37b] (p19, paragraph 82, vi Deaths in prison)**

14.19 The USSD 2010 concurred:

"Deaths of detainees were common due to deplorable living conditions, malnutrition, and lack of medical care. For example, on February 12, 191 persons were detained in a 36-by-23-foot cell in Tshikapa's prison, Kasai Occidental Province, without ventilation resulting in the death of three detainees due to suffocation. Also in February the UNJHRO documented seven cases of death in detention throughout the country, mainly due to bad detention conditions. Over a two-week period in July, three inmates died from starvation in Bulungu Prison, in Bandundu Province. On June 26, a detainee died in Idiofa prison in Bandundu, after failing to pay for the medical care he needed, even though health care is a state obligation in the country. On June 8 and 11, two detainees of Kalemie central prison in Maniema Province died from diseases a few days after their admission to the General Hospital of Kalemie." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.20 The USSD 2010 continued:

"In July 2009 the UNJHRO reported that prisoners were dying in Bunia prison, including from malnutrition and tuberculosis. Local NGO Me Lonjiringa reported in July 2009 that the physical and hygienic conditions of Bunia prison were so bad that being detained there was 'a death sentence.' UN High Commissioner for Human Rights Navi Pillay reported that between March 2008 and March 2009, at least 65 prisoners died in prisons. Pillay concluded that confinement in a Congolese prison in itself often amounted to cruel, inhumane, or degrading treatment." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

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ESCAPES

14.21 The USSD 2010 noted:

"Numerous prisoners attempted to escape, sometimes to avoid what they viewed as certain death from starvation, according to the UNJHRO. In June 140 inmates escaped various prisons across the country, and only 23 of them were recaptured, according to the UNJHRO…Prisoners routinely escaped from prisons in all provinces. In some cases, security personnel who were detained or convicted of serious crimes were released from prison by military associates or by bribing unpaid guards…Installations remained rudimentary, contributing to high rates of escape across the prison system. According to a March 2009 report by seven UN special rapporteurs and representatives, 'The disastrous state of the prison system, perhaps the weakest link in the justice chain, facilitates escapes of suspects and convicts, including high profile offenders who sometimes 'escape' with the connivance of the authorities. For this reason, but also in light of the generally appalling prison conditions…penitentiary reform is an absolute necessity'." **[8b] (Section 1c. Prison and Detention Centre Conditions)**

GOMA PRISON

14.22 Although the Special Rapporteur visited the prison in Bunia, Orientale, where he found the prison population exceeded the facility's capacity by 250%, he cited the prison at Goma as being the worst that he had seen. **[37b]** The following provides a snapshot of those conditions which is indicative of prison conditions throughout the country.

14.23 The USSD 2010 commented: "Noting that he [Dimiti Titov, the UN assisitant secretary for the rule of law and security institutions in the Department of Peace Keeping Operations] had toured numerous prisons in post-conflict African countries, he deemed the prison in Goma 'the most terrible I have ever seen'". **[8b] (Section 1c. Prison and Detention Centre Conditions)**

14.24 The Special Rapporteur reported:

"At Goma Central Prison [the Special Rapporteur] interviewed authorities and detainees. Like the vast majority of Congolese prisons, it is controlled by the prisoners themselves; State authorities only act as guards outside the facility. Internal prison violence is thus predictably common. Independent monitoring is heavily restricted since the security of visiting monitors cannot be assured. In June 2009, there was a mutiny and escape attempt at the prison. Security was so poor that male prisoners broke into the female section of the prison, raped some 20 female detainees, and killed a police officer and a prisoner. Before this incident, François Gacaba, a prisoner who had been convicted of rape by a military tribunal, was freed by 60 armed men who attacked the prison." **[37b] (p19, vi Deaths in prison)**

14.25 The Special Rapporteur continued:

"Prison overcrowding is also endemic across the country. The Goma Prison was built for 150, but at the time of my visit there were 793 detainees, including 11 women and 8 children. The prison director stated that there was a permanent shortage of food. Detainees reported the complete absence of medical services, leading to frequent preventable deaths due to illnesses such as diarrhoea. They also reported significant inter-prisoner violence, and stated that, while food was received once a week from the director, the strongest prisoners took the bulk of it. Many of the prisoners had never seen a judge or prosecutor." **[37b] (p19, vi Deaths in prison)**

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15. DEATH PENALTY

15.01 The Foreign and Commonwealth Office (FCO) stated in its 'Human Rights and Democracy the 2010 Foreign and Commonwealth Office Report', published 31 March 2011: "In November (2010) the DRC parliament rejected by a large majority a bill aimed at abolishing the death penalty. In practice, however, there is a moratorium on carrying out the death penalty." **[4b]**

15.02 Amnesty International (AI) noted in its report 'Death Sentences and Executions 2010', published 28 March 2011: "In 2010, the death penalty was used after trials that did not meet international standards of fairness in several countries including [the] Democratic Republic of Congo." **[16f] (p12)**

15.03 The AI Report 2011: the state of the world's human rights: DRC (AI Report 2011) covering events in 2010 and published on 13 May 2011, noted: "Military courts sentenced scores of people to death during the year, including civilians. No executions were reported. On 25 November, the National Assembly rejected the proposal to discuss a draft law on the abolition of death penalty." **[16a]**

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15.04 Hands Off Cain also noted:

"The last executions took place on January 7, 2003, when fifteen people, charged with crimes such as subversion of the State, treason, armed robbery and participation in organized crime, were executed in secret at a military camp close to Kinshasa's Ndjili airport. These were the first executions known to have taken place since the lifting, on September 23, 2002, of a moratorium on executions announced by the Human Rights Minister Leonard She Okitundu on December 10, 1999. The executions of the 15 were ordered by the Court d'Ordre Militaire (COM) a special itinerant tribunal that, since its creation in 1997, had been responsible for the execution of some 200 individuals. The COM was abolished on April 24, 2003.On June 28, 2003 during a meeting with an Hands Off Cain delegation in Kinshasa, President Joseph Kabila declared that he would not authorize any executions, not even those of the men condemned for the assassination of his father Laurent.Since then, numerous death sentences have been handed down by Courts and Military tribunals, but none have been carried out." **[63a]**

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16. POLITICAL AFFILIATION

This section should be read in conjunction with Section17: Freedom of Speech and Media and Section 18: Human Rights institutions, organisations and activists. See also Section 6: Political system for a description and Annex B for detail on parties/groups.

16.01 The Refugee Studies Centre, Forced Migration Policy Briefing 8, article titled 'Stabilising the Congo', published December 2011, noted:

"Following Congo's landmark elections in 2006, the international community took for granted that the newly elected leadership would be a productive stakeholder in building a comprehensive peace throughout the country and particularly in the east. Despite President Kabila's international posturing, the last five years have demonstrated that the government is more interested in preserving and augmenting its own power than in democratic and equitable peacebuilding for the benefit of the country's population. In the absence of meaningful reform, stabilisation has been implemented in a political environment in which governance is structured around similar power dynamics to those which existed at the peak of the Congolese conflict. These dynamics are defined by a lack of accountable leadership at both the local and national level, and the extreme centralisation of formal power in Kinshasa." **[87a] (4. Stabilisation in the Congo: the politics)**

FREEDOM OF POLITICAL EXPRESSION

16.02 The US Department of State Country Report on Human Rights Practices 2010: Democratic Republic of Congo (USSD 2010), 8 April 2011, observed "The constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through credible presidential, parliamentary, and provincial elections based on universal suffrage." **[8b] (Section 3)**

16.03 The same source continued:

"Generally individuals could privately criticize the government, its officials, and private citizens without being subject to official reprisals. However, public criticism of government officials and government conduct or decisions regarding issues such as conflict and insurgencies, management of natural resources, or corruption sometimes resulted in harsh responses, often from the ANR, the intelligence service under the president's control… Authorities took no action against the responsible ANR agents in Goma who, in 2008, arbitrarily arrested, detained, and mistreated for several days a member of the Union for Democracy and Social Progress/Goma for discussing politics with local citizens." **[8b] (Section 2. Respect for Civil Liberties)**

16.04 The same source noted that:

"Presidential and parliamentary elections in June 2006 and a presidential runoff in October 2006 were judged to be credible by the Carter Center and the EU Observer Mission. According to the UN secretary-general's December 2009 report to the UN Security Council, the Senate nominated two members to participate in an ad hoc committee to develop recommendations on constitutional reforms, including a review of presidential term limits, the decentralization process, and the judiciary. As of year's end, there was no further action.

"During the year the voter registration process for planned elections resumed, starting in Bas Congo; however, the national voter registration process was slow and hampered by security problems and lack of resources.

"In July President Kabila promulgated the law on the National Independent Electoral Commission (CENI), adopted under the National Assembly. Under the law, the National Assembly was to nominate seven members of the commission, four from the ruling party coalition, AMP, and three from the opposition. The legislation needed to finalize nominations had not been adopted by year's end.

"In August the Independent Electoral Commission (CEI) published a new electoral calendar. According to the calendar local elections that had been repeatedly postponed were scheduled to take place in 2012-13; the next presidential and legislative elections were scheduled for November 2011." **[8b] (Section 3)**

16.05 The Freedom House report, Freedom in the World 2011– DRC, covering events in 2010, released in May 2011, observed that:

"The DRC is not an electoral democracy. Though the 2006 elections were a significant improvement over previous voting, serious problems remained. The opposition Union for Social Democracy and Progress (UDPS) party did not participate as a result of its call for a boycott of the constitutional referendum, international observers noted voter registration irregularities, and the campaign period included clashes between opposition militants and government forces as well as an attempt on opposition leader Jean-Pierre Bemba's life. The 2007 Senate elections were marred by allegations of vote buying. In August 2010, the outgoing Independent Electoral Commission (CEI) announced a timetable for new elections, with the first round of the presidential vote slated for November 2011. The proposed schedule only slightly exceeded the five-year limit mandated by the constitution. Local elections initially scheduled for 2005 were pushed back until 2013. However, it remained unclear whether the new Independent National Electoral Commission (CENI) – created by President Laurent-Désiré Kabila in July – awould respect the timetable. The CENI's potential for independence has also been

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called into question, as four of its seven members were to be appointed by the presidential coalition. Also in 2010, the government announced that voters would be required to reregister and apply for new electoral cards, causing anxiety among those in the eastern provinces, whose existing electoral cards sometimes serve as their only proof of citizenship." **[14a]**

It would also be helpful to refer to Section 17: Freedom of Speech and Media in connection with the above. For information about the November 2011 elections see the Section on Recent Developments.

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FREEDOM OF ASSOCIATION AND ASSEMBLY

16.06 USSD 2010 stated: "The constitution provides for freedom of association and peaceful assembly; however, the government sometimes restricted this right." **[8b] (section 2, Respect for Civil Liberties)**

16.07 The same source continued: "The government required organizers of public events to register with local authorities in advance; to deny authorization, authorities must do so in writing within five days of being notified of the planned event. State security forces often acted against unregistered protests, marches, or meetings. On occasion, permission to hold demonstrations was denied." **[8b] (section 2, Respect for Civil Liberties)**

16.08 The United Nations Human Rights Office of the Human Rights Commissioner noted in its report of the United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms During the Pre-Electoral Period in the Democratic Republic of Congo, published November 2011:

"During the period under review (November 2010 and September 2011) , the United Nations Joint Human Rights Office (UNJHRO) noted an increase in political activities as well as a concerning number of human rights violations and acts of violence targeting political party members, journalists and human rights defenders. In spite of constitutional guarantees, those seeking to express their opinions and their fundamental freedoms of assembly and association were often subjected to abuse by State agents and saw their right to physical integrity violated. Between 1 November 2010 and 30 September 2011, the UNJHRO documented 188 cases of human rights violations, varying in severity, apparently linked with the electoral process. The situation in the East of the country is of particular concern, as political parties have reportedly been targeted and many of their members have been deprived of their liberty or subjected to ill-treatment and threats. At the same time, some political parties have not imposed sufficient restraint upon their followers, which has contributed to violent acts and the disturbance of public order during political demonstrations." **[19g] (p4, summary)**

16.09 The same source also noted:

"This report acknowledges progress made in some areas of consolidation of democracy in the Democratic Republic of the Congo and improvement, especially in recent months, in the behavior of some police units tasked with maintaining order during political demonstrations. Nevertheless, most of the violations noted in the report targeted

members or supporters of opposition parties, in particular the Union pour la démocratie et le progrès social (UDPS) and the Union pour la nation congolaise (UNC The report also notes worrying trends of manipulation of the State's police, intelligence and justice sectors by political actors." **[19g] (p4, summary)**

For more detailed information about political freedom in the run up to the election, freedom of expression and of association see the report United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms During the Pre-Electoral Period in the Democratic Republic of Congo, published November 2011. **[19g]**

16.10 The USSD 2010 concurred:

"State security forces occasionally arrested demonstrators. For example, on April 12, police arrested five members of the opposition party Union for Democracy and Social Progress (UDPS) who were protesting the anticipated constitutional revision. In addition, on April 24, police beat UDPS members who were gathered to celebrate the 20th anniversary of the government's decision to abolish the one-party system. Also, on September 26, in Kinshasa, police arrested 27 members and supporters of the UDPS, citing public disorder during an unauthorized political gathering. On September 30, all 27 were released." **[8b] (section 2, Respect for Civil Liberties)**

See also Section 17: Freedom of speech and media in conjunction with the above.

OPPOSITION GROUPS AND POLITICAL ACTIVISTS

It would also be helpful to see the United Nations Security Council Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, dated 24 October 2011 in relation to opposition political groups and the 2011 Election. **[9i]**

16.11 Freedom House in its Freedom in the World 2011: DRC Report (FH 2011), covering events in 2010 and published 16 May 2011, stated:

"Opposition politicians and their supporters have increasingly faced violence and harassment. On a number of occasions in 2010, police beat or arrested members of the UDPS who engaged in unauthorized protests. The mounting pressure on opposition figures has raised concerns that Kabila is leading the DRC back toward a highly centralized presidential system that allows for no more than the formalities of representative governance. Well-organized opposition presidential candidates had not emerged by the end of 2010." **[14a]**

16.12 The USSD 2010 noted "The law on the status and rights of the political opposition recognizes opposition parties represented in parliament as well as those outside it and provides for their right to participate in political activities without fear of retribution. During the year political parties were able to operate most of the time without restriction or outside interference; however, there were notable exceptions. Opposition members were sometimes harassed." **[8b] (section 4)**

16.13 The Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo to the UN General Assembly, dated 12 May 2011, covering the period 17 January to 5 May 2011, observed that:

"The situation facing political opponents, human rights defenders and journalists prior to the general elections, is of concern. As indicated in paragraph 7, the United Nations Joint Human Rights Office at MONUSCO has since January recorded over 100 reported incidents, particularly in Kinshasa, Maniema, South Kivu and Orientale provinces, targeting political opponents and, to a lesser extent, journalists and human rights defenders. The incidents mostly affected the right to liberty and security of person, to freedom of expression and to peaceful assembly. Several human rights defenders were also threatened and harassed in connection with advocacy related to human rights issues and the illegal exploitation of natural resources." **[9d] (p10, paragraph 43)**

16.14 The USSD 2010 noted that: "There were reports of political prisoners and detainees. In 2009 the UNJHRO estimated that there were at least 200 political prisoners in detention at the end of the year. The government permitted access to some political prisoners by international human rights organizations and MONUC; however, authorities consistently denied access to detention facilities run by the GR and the ANR." **[8b] (Section 1e)**

16.15 The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the DRC, published by the United Nations General Assembly, 14 June 2010 noted:

"The serious problem of politically motivated human rights abuses in the west of the country, including killings of opposition supporters, receives disturbingly little attention. Hundreds of civilians were killed by the Congolese security forces in 2007 and 2008 in attempts to counter the threat posed by political opposition. It appears that no one has been held criminally responsible for any of these killings, and nothing has been done to reform the security agencies to prevent similar abuses in the future. At the time of my visit, intimidation and arbitrary detentions of presumed opposition supporters were ongoing. There is a very high risk of further violence during the next election period if urgent steps are not taken to reform the security sector." **[37b] (p17, paragraph 69, V. Political killings in Kinshasa and Bas Congo)**

16.16 The Special Rapporteur went on to comment that he had spoken

"… with numerous individuals who had been arrested, accused of being Bemba party supporters and detained for long periods. Some had been released only a few weeks before my mission took place. A number of those I interviewed provided credible evidence of having been tortured during questioning of their political allegiances. They were subjected to lengthy and arbitrary detention in inhumane conditions without access to legal counsel or a judge. These cases are serious violations in their own right. But they also sound alarm bells ahead of the next national elections, because they highlight the security forces' ability to operate outside the law and to intimidate the civilian population. In addition, security and intelligence agencies, including the Republican Guard and army military intelligence, operate detention facilities, although they have no legal authority to detain. Their goal is to suppress political opposition, and their operations are unchecked." **[37b] (p19, paragraph 80, V. Political killings in Kinshasa and Bas Congo)**

16.17 The US Department of State noted in the Country Report on Human Rights Practices 2010, Democratic Republic of the Congo (USSD 2010), covering events in 2010, released 8 April 2011: "There were reports of political prisoners and detainees. In 2009 the UNJHRO estimated that there were at least 200 political prisoners in detention at the end of the year. The government permitted access to some political prisoners by

international human rights organizations and MONUC; however, authorities consistently denied access to detention facilities run by the GR and the ANR." **[8b] (Section 1e)**

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Congolese Rally for Democracy – Goma (RCD-Goma)

16.18 Jane's Sentinel Security Assessment noted in Political Parties, undated, accessed 27 July 2011:

"The Congolese Rally for Democracy - Goma (Rassemblement Congolais pour la Démocratie - Goma: RCD-Goma) is one of several offshoots of the original RCD movement (RCD-Nationale and RCD-ML are the others and also had representation in the transition government). The RCD was established as a Rwandan proxy in 1998 to fight against the government of Laurent Kabila and was initially led by Professor Ernest Wamba dia Wamba, before being taken over by Emile Ilunga. Wamba then set up the RCD-ML. The intrigue continued within the RCD-Goma, with Adolphe Onusumba taking over from Ilunga in late 2000, before former secretary general Ruberwa finally took control in June 2003 at the conclusion of the peace negotiations, when he was appointed vice-president of the Democratic Republic of Congo." **[58a] (political parties)**

16.19 The same source continued: "RCD-Goma remained a significant force, despite divisions within its ranks during 2004, which saw personnel in its North Kivu stronghold take offensive military action against government units in both North and South Kivu (much to the chagrin of most of the Kinshasa-based leadership). Indeed, despite these divisions, Rwanda retained a strong influence over RCD-Goma, including both its Kinshasa-based political leadership and South Kivu-based personnel." **[58a] (political parties)**

16.20 Jane's went on to state:

"During the transition process, military commanders from RCD-Goma headed both North Kivu and Kasai Oriental, with General Gabriel Amisi taking the former and General Obeid Rwibasria the latter. Previously, General Obeid had headed North Kivu, but was rotated out of the province following the December 2004 clash with government loyalists. The party also gained the governorship of two provinces: North Kivu and Orientale. However, the presidential and legislative elections in 2006 saw RCD-Goma perform poorly, in line with expectations, due to the low popularity of the party outside of its largely Tutsi support base. In the eastern provinces, where RCD-Goma built up its power base during the civil war, there was strong support for Kabila during the election." **[58a] (political parties)**

Congo Liberation Movement (MLC)

16.21 Jane's continued:

"The Congo Liberation Movement (Mouvement de Libération du Congo: MLC) was set up in late 1998 to fight Laurent Kabila and was used as a proxy by Uganda on the northern front between Kisangani and Mbandaka. Allied at times with Wamba's RCD-ML, relations became strained from mid-2001 onward, when it backed the RCD-Nationale against the RCD-ML to gain territory in Oriental. The party had General

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Alengbia Nzambe as the military commander of Katanga, the sixth military region. It also held the governorship of Bandundu province." **[58a] (political parties)**

16.22 The same source continued: "Jean-Pierre Bemba, the MLC's presidential candidate in the 2006 elections, emerged as the leading opposition challenger to Kabila, securing 41.95 per cent in the second-round run-off. The MLC won 64 seats in the National Assembly elections in July 2006." **[58a] (political parties)**

16.23 The Bemba Trial Website (The Hague) accessed via AllAfrica, 27 July 2011, commented:

"While the International Criminal Court (ICC) strives to get into its custody the two indicted heads of state, one of the inmates in the court's detention center is bent on becoming his country's president. How he [Jean-Pierre Bemba] plans to manage his presidential campaign from his cell in Scheveningen, the Netherlands, remains to be seen. Equally uncertain is whether Congolese electoral officials would permit him to stand in the November poll." **[66a]**

16.24 The same source continued:

"For now, Jean-Pierre Bemba is set on being the presidential candidate for the Movement for the Liberation of Congo (MLC). At the weekend, the political party gave him its nod, after he wrote to its top officials beseeching them to name him the flag-bearer. However, there are seeming insurmountable odds stacked against his candidature. Mr. Bemba, 48, is on trial at the ICC over the rape, murder, and pillaging carried out by his MLC troops against civilians of the Central African Republic during 2002 and 2003. His trial commenced last November." **[66a]**

16.25 The same source continued:

"Mr. Bemba's defense lawyer, Nick Kaufman, said on July 26 that the law under which the Congolese opposition leader is being tried does not bar him from standing for elections. 'There is nothing in the Rome Statute which prevents Mr. Bemba from being the flag bearer for his party in the November 2011 presidential elections. This is even more so the case since - until determined otherwise - Mr. Bemba is an innocent man,' stated the Mr. Kaufman." **[66a]**

See also Section 9: Human Rights Violations by Government Forces; Section 11: Human Rights violations by armed groups; Section 17: Freedom of speech and media; Section 20: Freedom of Religion; Annex B: Political organisations and Annex C: Prominent people

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POLITICAL GROUPS OUTSIDE OF THE DRC

Alliance of Patriots for the Reform of Congo (APARECO)

16.24 A response by researchers in the Belgian country of origin information (COI) research nit (in the Office of the Commissioner General for Refugees and Stateless Persons (CEDOCA)) and the French COI research unit, La division de l'information, de la documentation et des recherché (DIDR), part of the Office Francais de Protection des Refugies et Apatrides) provided under the European Country of Origin Sponshorship

project, titled 'Apareco & 'fake' Apareco?' dated 18 July 2011, on the issue of the United Kingdom (UK) based Apareco stated: "Two press articles, referring to an APARECO (Alliance des patriotes pour la re-fondation du Congo led by Honoré Ngbanda) communiqué dated October 27th 2009, mention the creation of a 'second APARECO' in London which is, nothing else, according to the official APARECO, than an organization created by the government and led by the Congolese ambassador in London, Kikaya Bin Karubi." **[59d] (Annex F iv)**

16.25 The same source added:

"According to [an APARECO communiqué, dated 27 October 2009], a fake APARECO, holding the same acronym than [sic] APARECO, but standing for 'Alliances des patriotes et résistants congolais' (Congolese Patriots and Resisting Fighters Alliances) was created, in London, by the Congolese authorities in order to create 'confusion', 'doubt' and 'chaos'. In this document, APARECO argues that, while creating an organization which holds the same initials, the government is trying to undermine the efforts of the Congolese opponents living in exile. The communiqué mentions that it is not the first time that such strategy is being used, as other groups, with the names 'PARECO' or 'PAREC' have also emerged. According to this communiqué, London was not chosen randomly as a basis for this new organization as the United Kingdom is 'considered as the most dreadful of all Congolese diasporas, provoking insomnia to the impostor Joseph Kabila'. Finally, APARECO denounces the abusive and fraudulent use of the APARECO acronym which it considers to be a 'private property protected by French law' and urges all members, in particular those based in the UK, to be cautious regarding this new group. It seems worthwhile to underline that, according to the 'official' APARECO (Alliance des patriotes pour la refondation du Congo) web site , APARECO has several commit-tees throughout the world, amongst which an 'APARECO-UK' whose regional president is Amisi Kilosho…No further information could be found on the second APARECO or 'Alliance des patriots et résistants congolais' led by Kikaya Bin Karubi. It should be mentioned, however, that Kikaya Bin Karubi was designated as the Congolese ambassador in the UK in May 2009. He presented his accreditation letter to Queen Elizabeth II of England on October 22nd 2009." **[59d] (Annex F iv)**

16.26 The APARECO website, undated, accessed 26 August 2011, noted:

"APARECO, otherwise known as L'Alliance des Patriotes pour la Refondation du Congo (Alliance of Patriots for the Reform of Congo) is a political opposition organisation with various branches throughout the world including the UK. Its headquarters is located in Paris. The party presents itself as being a political framework for dialogue and action between political parties, NGOs, and Congolese key figures who share the same patriotic vision." **[74a]**

16.27 DigitalCongo in the article 'The Congolese State is Completely Dead', 14 August 2007 (a French website but with an English option), stated that: "The President of APARECO is Honoré Ngbanda Nzambo Ko Atumba." **[74b]** The DigitalCongo website noted on 7 November 2009 "He has been living in exile in France." **[88a]**

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17. FREEDOM OF SPEECH AND MEDIA

98 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

This section should be read in conjunction with Section 16: Political Affiliation and Section 18: Human Rights Institutions, Organisations and Activists.

17.01 Freedom House noted in Freedom of the Press DRC 2011 report (FH Press 2011), dated 1 September 2011:

"The population of DRC largely relies on radio broadcasts for the news due to high rates of illiteracy and the relatively high costs of newspapers and television. Many private newspapers are nonetheless published, particularly in Kinshasa, and although they are not always objective, they are often highly critical of the government. Private newspapers must pay a license fee of 250,000 Congolese francs ($280) and meet other administrative requirements before operating. There are several hundred privately owned radio and television stations, in addition to three state-owned radio stations and a state-owned television station. The state broadcasters reportedly favor Kabila's party, though other political parties represented in the government are occasionally granted access. The UN peacekeeping mission in DRC, known as MONUC, operates the only nationwide independent radio network, Radio Okapi, which has set new standards for reporting and media objectivity in a volatile political scene. Many media outlets are reportedly owned by public figures and businessmen, and are used for political propaganda rather than objective reporting. Journalists at major outlets are usually poorly paid and lack sufficient training, leaving them vulnerable to bribery and political manipulation." **[14b]**

It would also be helpful to read section 16.02: Freedom of political expression in relation to the above.

MEDIA LAWS

17.02 The United Nations Human Rights Office of the Human Rights Commissioner noted in its report of the United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms During the Pre-Electoral Period in the Democratic Republic of Congo, published November 2011:

"Freedom of expression is essential during an electoral period, as people can only effectively exercise their right to vote if they can make informed decisions. Freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association and the exercise of the right to vote. In order to make decisions, it is important to be free to receive and seek opinions or information. These liberties are protected by both the ICCPR (International Covenant on Civil and Political Rights) and the ACHPR (African Charter on Human and Peoples Rights).

"Any restriction on the freedom of expression of political ideas thus has to be rigorously scrutinized. According to the ICCPR, limitations to freedom of expression are only permissible if necessary and proportionate on the grounds of protecting the rights and reputation of others, public security or public order, or public health or morals. The UN Human Rights Committee has extensively dealt with the limitative areas of restrictions on the right to freedom of expression in the context of elections.

"Freedom of expression is also guaranteed by the Congolese Constitution. Moreover, the Constitution contains an obligation for the State to foster a pluralist media environment. Consequently, the DRC has effectively set up the Conseil Supérieur de

l'Audiovisuel et de laCommunication in August 2011. This Council replaces the Haute Autorité des Médias and has the duty to guarantee freedom of the press, journalistic deontology and the equitable access of political parties to the media. The Council also has a regulatory function through which it can define limits of freedom of expression and address potential issues such as incitement to hatred or to ethnic violence. Freedom of the press is moreover specifically guaranteed by Law No. 96-002 of 22 June 1996, which spells out the modalities of the exercise of such freedom.

"Congolese legislation also includes a potential impediment to freedom of expression, especially for journalists and human rights defenders in Ordonnance-loi No. 300, which outlaws insults against the Head of State and dated 16 December 1963." **[19g] (p9, 1.Freedom of expression,)**

17.03 Freedom House in its Freedom in the World 2011: DRC Report (FH 2011), covering events in 2010 and published 16 May 2011, stated:

"Although guaranteed by the constitution, freedoms of speech and expression are limited. Members of the state security apparatus threatened, detained, and attacked journalists whose reporting was critical of government officials or decisions regarding conflict and insurgencies, management of natural resources, or corruption. In July 2010, for example, the editor of Le Monitor, Pascale Mulunda, was arrested on charges of libel and held for three weeks for reporting alleged corruption by an official at the Ministry of Mines. In May, Etienne Maluka, chief technician of Radio Communautaire de Moanda, was jailed for 32 days in Matadi for allegedly 'attacking international state security.' Fidèle Mwe, a journalist and technician at Radio Bandundu FM, was detained for 24 days in October after the station was closed on the orders of the provincial governor. In separate cases in November, two other journalists were sentenced to prison in absentia for defamation. In the year's only reported killing of a journalist, freelance cameraman Patient Chebeya Bankome was murdered in North Kivu; a military court sentenced two Congolese soldiers to death for the crime just 12 days later." **[14a]**

17.04 The FH Press 2010 also noted:

"The law provides for freedom of speech and of the press, but these rights are limited in practice by President Joseph Kabila's government and various nonstate actors. Officials used an array of regulations and laws to restrict free speech and suppress political criticism in 2009 by bringing criminal charges against journalists, shutting down broadcast operations, and seizing copies of newspapers that were critical of the authorities. No progress was reported in local journalists' efforts to initiate reforms of the penal code and the 1996 press law, according to the Committee to Protect Journalists (CPJ). Several Congolese journalists spent time in jail in 2009. For example, Nsimba Embete Ponte, a Kinshasa-based newspaper director, was arrested in late 2008 and sentenced to 10 months in prison for 'insulting the head of state' in connection with reporting on Kabila's health. Local media outlets are also subject to regulation by the High Authority on Media (HAM). The agency's mandate is to ensure freedom of expression, but it has the power to temporarily suspend outlets for hate speech and other serious ethical transgressions, and its decisions have at times been criticized as politically biased. In October 2009, the National Assembly passed a bill establishing a new regulatory agency, the High Council for Broadcasting, though its independence has yet to be established." **[14b]**

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17.05 The US Department of State's Country Report on Human Rights Practices 2010, DRC (USSD 2010), released on 8 April 2011, reported:

"The law provides for freedom of speech and of the press; however, the government restricted these rights in practice, and freedom of the press declined during the year. The government intimidated journalists and publishers into practicing self-censorship. In September, 29 members of a worldwide coalition of press freedom groups expressed concern about the 'constant decline in the climate for journalists and steadily shrinking space for free expression' in the country in advance of the 2011 presidential election. In an open letter, the 31 members of the International Freedom of Expression Exchange (IFEX), including the Media Institute of Southern Africa and Congolese NGO Journalist in Danger, called on President Kabila to declare a moratorium on imprisoning journalists on charges of defamation or insulting the authorities. IFEX also called for the rapid creation of the proposed Higher Council for Broadcasting and Communication (CSAC) to ensure candidates would have equitable access to state-owned media in 2011." **[8b] (Section 2 Respect for Civil Liberties, a. Freedom of speech and press)**

RADIO AND TELEVISION

17.06 The FH 2011 noted:

"Radio is the dominant medium in the country due to low literacy rates and limited access to television. The United Nations and Swiss-based Fondation Hirondelle launched Radio Okapi in 2002 to provide a source of independent news. The station draws nearly 2 million listeners each day, but remains dependent on external support. Radio France Internationale resumed broadcasts in October after its signal was suspended indefinitely in 2009, and it was allowed to open a local office with a foreign journalist." **[14a]**

17.07 The British Broadcasting Corporation (BBC) Country profile of May 2011, last updated 17 May (MEDIA) included information on the Congolese press: "…a handful of stations, including state-run RTNC, broadcast across the country. Three TV channels have near-national coverage…The BBC is available on FM in Kinshasa (92.6), Lubumbashi (92.0) and Kisangani (92.0). Listeners in the capital can hear Radio France Internationale broadcasts from neighbouring Brazzaville." **[65a]**

17.08 The BBC also noted however: "In addition, there are dozens of private TV stations and more than 100 private radio stations, some of which broadcast news." **[65a]**

17.09 The USSD 2010 also noted:

"Generally individuals could privately criticize the government, its officials, and private citizens without being subject to official reprisals. However, public criticism of government officials and government conduct or decisions regarding issues such as conflict and insurgencies, management of natural resources, or corruption sometimes resulted in harsh responses, often from the ANR, the intelligence service under the president's control. For example, on April 11, ANR officials arrested Antenne A-TV journalists Jean-Denis Bankonga and Jean-Louis Miasuekama at their office and held them in detention for three hours. Officials had wanted to arrest the station's information director for announcing that the government had set up a commission to negotiate with the Enyele insurgents on April 8." **[8b] (Section 2 Respect for Civil Liberties, a. Freedom of speech and press)**

17.10 Human Rights Watch (HRW) noted in its World Report 2011: Democratic Republic of Congo (HRW 2011), covering events in 2010: "Freelance cameraman Patient Chebeya Bankome was shot dead by soldiers outside his home in Beni on April 5. Radio France Internationale (RFI) began broadcasting again in Congo on October 12, after being off the air since June 2009. Other radio stations, including in Bandundu and Kisangani, were shut down or interrupted by authorities when they criticized government policy." **[10b]**

17.11 The Committee to Protect Journalists noted in the article 'DRC's Kabila government bans broadcaster favorable to rival', 13 July 2011:

"The Committee to Protect Journalists (CPJ) condemns the Democratic Republic of Congo's ban of a private broadcaster favorable to opposition presidential candidate Etienne Tshisekedi. The blocking and ban of the broadcaster since Saturday is in violation of the country's press laws...RLTV (Radio Lisanga Télévision)has drawn the ire of the government with a nightly talk show called 'Support Etienne Tshisekedi,' where presenters and guests are critical of incumbent President Joseph Kabila, who is seeking a second five-year term in November presidential elections, according to JED (Journaliste en Danger) and local journalists. A presenter for the program, Baby Balukuna, was injured in a June 19 attack by unidentified men armed with machetes as he exited the station's studios, U.N.-sponsored station Radio Okapi reported." **[64a]**

17.12 The same source continued: "'The summary banning of RLTV is nothing but political censorship,' said CPJ Africa Advocacy Coordinator Mohamed Keita. The government suppressed RLTV's signal a day after the station extensively covered a July 9 march by militant members of Tshisekedi's Union for Democracy and Social Progress party who were carrying the body of one of their members, Serge Lukusa, according to local journalists." **[64a]**

17.13 The United Nations High Commissioner for Human Rights (UNHCR 10.01.2011) in her Report on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, dated 10 January 2011, commented: "Some progress has been made. In the period under review, new 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." **[19e] (p27)**

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PRINT MEDIA

17.14 The British Broadcasting Corporation (BBC) noted:

"There are several daily newspapers and many more sporadic publications…The Congolese media operate against a backdrop of political power struggles and violent unrest. Media watchdog Reporters Without Borders says media workers face arrest, threats and violence. Reporters exposing corruption are at particular risk. Nonetheless, the press has been able to criticise government bodies, and some publications serve as mouthpieces for opposition parties." **[65a]**

17.15 The Armed Conflict Database (ACD), of the International Institute for Strategic Studies, noted in DRC, Human Security Developments, covering the period between May and October 2010:

"DRC state and non-state parties continued to threaten press freedom. Pascal Mulunda, a leading newspaper editor, was arrested in late July under stringent defamation laws. Jullson Eninga, editor of Le Journal, was imprisoned between May and September after publishing a communiqué from the Forces démocratiques de libération du Rwanda(FDLR). Finally, in July and August, Reporteurs sans Frontieres (RSF) recorded more than twenty life-threatening incidents against journalists. Overall, the human security situation was extremely troublesome." **[6b]**

17.16 The Committee to Protect Journalists (CPJ) noted in its report 'Attacks on the Press 2010: Democratic Republic of Congo', 15 February 2011: "Given the government's record of press harassment, local journalists and the Kinshasa-based press freedom group Journaliste En Danger (JED) expressed fears that the government would ratchet up repression in the year before presidential elections scheduled for November 2011." **[64b]**

INTERNET

17.20 FH Press 2011commented: "While internet access has spread in urban areas thanks to the proliferation of private internet cafes, only 0.72 percent of the population accessed the internet in 2010. The government does not engage in internet censorship." **[14b]** The FH 2011 noted: "The government does not monitor online communications or restrict access to the internet, but internet use is limited by poor infrastructure." **[14a]**

JOURNALISTS

17.21 Reporters Without Borders noted in a response dated 15 December 2010, accessed via Refworld, referring to the Annual Report 2010 by Journalist in Danger (JED), published 15 December 2010 in French:

"Journalist in Danger, partner organisation of Reporters Without Borders, on 10 December published its annual report revealing the disturbing state of press freedom in the Democratic Republic of Congo and the plight of journalists working in the country.

"The report, released on International Human Rights Day, records in minute detail every attack on the right to be informed and to inform the public throughout the year - 87 cases in 2010 compared to 75 in 2009. The state of press freedom has deteriorated and journalists are working in a climate of fear following the murder of a cameraman in the east of the country and the killing in the capital, Kinshasa, of prominent human rights activist, Floribert Chebeya, director of La Voix des Sans Voix (Voice of the Voiceless)." **[89a]**

17.18 The United Nations General Assembly, Human Rights Council commented in the 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, dated 10 January 2011:

"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. Within the framework of the universal periodic review, the Congolese Government pledged to take further steps to create an environment conducive to the freedom and independence of the media." **[19d] (p12)**

17.19 FH Press 2010 noted:

"Government officials and security agents throughout the country frequently harassed critical journalists and media outlets, often via the national intelligence agency, known as the ANR. At least 23 local journalists were detained without due process in 2009 in connection with their work, according to the press freedom group Journaliste en Danger (JED). Nonstate actors, including armed groups, also subjected local journalists to threats and abuse. In June, UN Special Rapporteur Margaret Sekaggya stated that in the Democratic Republic of Congo (DRC), journalists 'who report on human rights abuses committed by state and nonstate actors are killed, threatened, tortured, or arbitrarily arrested and their offices raided.' JED documented fewer individual cases of press freedom abuses – such as assault, arbitrary arrest, threats, and censorship – in 2009 than in 2008; however, the organization concluded that this was attributable not to an improvement in media freedom, but to self-censorship stemming from a fear of reprisals. Journalists working in the east, where the military has launched a year-long offensive against rebels of Rwandan origin, were particularly vulnerable to threats and censorship. Three journalists have been murdered in the past three years in Bukavu, capital of the eastern province of South Kivu. The most recent victim, radio presenter Bruno Koko Chirambiza, was stabbed to death in August 2009 as he was walking home from a wedding. No arrests were reported in connection with the killing. In July 2009, the government barred FM broadcasting by Radio France Internationale (RFI), though it remained accessible on shortwave; authorities accused the French station of 'demoralizing' the Congolese armed forces and 'attempting to destabilize the country' in connection with its reporting on the civil conflict. Several months earlier, the government had banned RFI broadcasts in the eastern cities of Bunia and Bukavu. In September 2009, three prominent women journalists in South Kivu, where mass rape has been employed by multiple armed groups, received anonymous death threats via mobile-telephone text messages after producing a series of radio programs spotlighting women's issues." **[14b]**

The following websites provide updates on the ill-treatment of the media/journalists:

- Reporters sans frontiers.
- IFEX.
- Committee to Protect Journalists.

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18. HUMANITARIAN, HUMAN RIGHTS INSTITUTIONS, ORGANISATIONS AND ACTIVISTS

This section should be read in conjunction with Sections 16: Political affiliation and 17: Freedom of speech and media

18.01 The US Department of State Country Report on Human Rights Practices 2010: Democratic Republic of Congo (USSD 2010), 8 April 2011, observed:

"A wide variety of domestic and international human rights organizations investigated and published findings on human rights cases. However, state security forces continued to harass, beat, intimidate, and arbitrarily arrest and detain local human rights advocates and NGO workers, and government intimidation of domestic human rights defenders worsened. In addition prison officials consistently denied access by NGOs and UN officials to detainees in certain types of facilities. The government continued to allow international humanitarian agencies access to conflict zones, permit many UN human rights officers to investigate abuses, and invite UN special rapporteurs and representatives to visit the country during the year to assess the human rights situation and provide technical assistance. However, the government took no significant steps to implement their recommendations. In addition there was an increase in instances in which authorities, particularly state security forces, obstructed the work of UN human rights monitors and special rapporteurs, and – in some instances – FARDC units in North Kivu made death threats against UN personnel.

"The main independent Kinshasa-based domestic human rights organizations included ASADHO, Voice of the Voiceless, Committee of Human Rights Observers, JED, and the Christian Network of Human Rights and Civic Education Organizations. Prominent independent organizations operating in areas outside Kinshasa included Heirs of Justice in Bukavu, Lotus Group in Kisangani, and Plus.in Bunia, Ituri District." **[8b] (Section 5)**

18.02 The USSD 2010 also noted "Officials from the Ministry of Justice and Human Rights met with domestic NGOs and sometimes responded to their inquiries. On March 29 [2010], the minister announced the creation of a liaison organization for consultation between the government and human rights NGOs to monitor human rights and devise strategies to improve the situation. Scheduled to meet every two weeks, the first session was convened in September." **[8b] (section 5)**

18.03 The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the DRC, published by the United Nations General Assembly, 14 June 2010, noted:

"… human rights defenders have been routinely harassed and intimidated because of their work on human rights violations and impunity. Those working in the eastern part of the Democratic Republic of the Congo appear to be particularly vulnerable to attack, as are those supporting the work of the International Criminal Court. Government officials have stigmatized human rights defenders for their advocacy, especially where it concerns violations by State actors, and officials have been implicated in a number of cases of harassment, death threats and killings of activists. The intimidation aims to silence individual activists, prevent investigations and instil widespread fear among civil society. Threats and attacks against human rights defenders have gone largely unpunished, as local authorities often fail to adequately investigate and prosecute those responsible." **[37b] (viii, para 92-93)**

18.04 The USSD 2010 noted:

"There were reports that local officials required domestic NGOs seeking to register to pay bribes. During the year several domestic NGOs were denied authorization to operate, and NGOs needed authorization to hold demonstrations, despite constitutional provisions providing for freedom of peaceful assembly. Domestic human rights NGOs

were particularly vulnerable to harassment, arbitrary arrest and detention, and other abuses by state security forces when reporting on-- or supporting victims of--abuses by the FARDC, ANR, or other state security forces and when spotlighting the illegal exploitation of natural resources in the east." **[8b] (Section 5)**

18.05 The same source went on to say: "The government generally cooperated with international NGOs that published reports on human rights and humanitarian issues and permitted their investigators access to conflict areas; however, the government did not take adequate steps to protect international human rights NGOs from violence or harassment in the east. In January FARDC soldiers attacked a UN vehicle; however, no additional information was available." **[8b] (Section 5)**

HUMAN RIGHTS CONVENTIONS

18.06 The Democratic Republic of Congo Ministry of Human Rights, Eighth, Ninth and Tenth Periodic Reports to the African Commission on Human Rights and Peoples Rights, Implementation of the African Charter on Human and Peoples Rights (Period – From July 2003 to July 2007), dated June 2007, stated:

"The Democratic Republic of Congo is signatory to several international human rights instruments and to some of their optional protocols, notably:

- the International Convention on Economic, Social and Cultural Rights (accession on the 1st November 1976),
- the International Convention on Civil and Political Rights and the 1st Optional Protocol to the International Convention on Civil and Political Rights (accession on the 1st November 1976),
- the International Convention on the elimination of all forms of racial discrimination (accession on the 21st April 1976),
- the Convention on the Elimination of all forms of Discrimination Against Women (ratified on the 17th October 1986),
- the Convention against Torture and other cruel, inhuman or degrading punishment or treatment (ratified on the 18th March 1996),
- the Convention on the Rights of the Child (ratified on the 28th September 1990),
- the Optional Protocol to the Convention on the Rights of the Child relative to the involvement of children in armed conflicts (ratified on the 12th November 2001),
- the Optional Protocol to the Convention on the Rights of the Child relative to child trafficking, child prostitution and pornography featuring children (accession on the 12th November 2001),
- the African Charter on Human and Peoples' Rights (ratified on the 20th July 1987),
- the African Charter on the Rights and Welfare of the Child, (ratified on the 28th March 2001).

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Furthermore, the Democratic Republic of Congo ratified:

- the Statutes of Rome of the International Criminal Court (on the 30th March 2002),
- the four Geneva Conventions of 1949 on International Humanitarian Law and the Optional Protocols I and II of 1977 (accession on the 20th February 1961 and 30th March 2001 respectively) etc." **[75a]**

18.07 The same source also noted:

"The Democratic Republic of Congo has a monistic legal regime. The International Agreements and Treaties to which it has adhered or ratified have greater command than the domestic laws. In effect, Article 215 of the Constitution of the 18th February 2006 stipulates that: 'All the international agreements and conventions which have been lawfully concluded have, on publication, a higher authority than the laws governing each agreement or convention without prejudice to its application by the other party'.

"Where the African Charter on Human and Peoples' Rights is concerned, it was ratified by virtue of the Decree-Law no 87/027 of 20th July 1987, and had been published in the special edition of the Democratic Republic of Congo's Official Gazette of September 1987.

"Moreover, the Constitution of the 18th February 2006, in its Article 16 of Chapter II devoted to human rights, fundamental freedoms and the responsibilities of the citizen and the State, stipulates as follows: 'The human being is sacred. The State has an obligation to respect and protect it. Every individual has the right to life, to physical integrity as well as the free development of his personality subject to respect for the law and public law and order, the right of others and good behaviour. No individual shall be held in slavery or in analogous conditions. No individual shall be subjected to cruel, inhuman or degrading treatment. No individual shall be obliged to engage in forced or compulsory labour'." **[75a] (p11-12, III. General legal framework relative to the application of the African Charter on Human and Peoples' Rights)**

Also see, for a list of the of the conventions and International Covenants ratified by DRC, the E-Mine Electronic Mine Infornmation Network, Human Rights Treaties: Democratic Republic of Congo, undated, accessed 31 November 2011. **[67a]**

HUMAN RIGHTS DEFENDERS AND HUMANITARIAN WORKERS

18.08 The USSD 2010 stated:

"In several reports submitted in September 2009 to the UPRWG [Working Group on the Universal Periodic Review], international human rights NGOs underscored concerns for the treatment of human rights NGOs in the country. The International Foundation for the Protection of Human Rights Defenders (Front Line) criticized the government for rarely conducting serious investigations of attacks against human rights defenders. Front Line also noted that a national plan for the protection and security of human rights defenders did not exist. Front Line and Amnesty International recommended that the government protect the right of human rights defenders and lawyers to conduct their work without

hindrance, intimidation, or harassment; ensure that abuses of activists or journalists were fully and promptly investigated; and prosecute those found responsible." **[8b] (section 5)**

18.09 The same source continued: "The government cooperated with multilateral organizations in many instances. However, there were some notable problems. While authorities continued to permit international humanitarian agencies access to conflict areas, authorities denied the agencies access to certain prisons located in these areas. They also continued to consistently deny UNJHRO officers access to detainees in facilities run by the ANR and the GR in numerous areas." **[8b] (section 5)**

18.10 The same article also noted: "In addition, there was an increase in cases of members of state security forces obstructing human rights work by MONUSCO and the UN human rights country team. During the year FARDC units in the east, comprised mainly of ex-CNDP members, consistently denied UNICEF child protection officers access to children in their ranks and sometimes threatened them." **[8b] (section 5)**

18.11 Amnesty International (AI) noted in its article 'Democratic Republic of Congo must end persecution of human rights defenders', published 17 February 2010:

"Amnesty International has called on the government of the DRC to protect human rights defenders, who continue to be arbitrarily detained by security agencies and subjected to an alarming number of death threats. In its briefing Human Rights Defenders under attack in the Democratic Republic of Congo, Amnesty International documents the persecution faced by eight prominent human rights defenders in the DRC, harassment the organization fears will intensify in the build-up to 2011 presidential and national elections." **[16b]**

18.12 The same source continued:

"'The government of the DRC must uphold the right to freedom of expression and ensure that Congolese human rights defenders are protected from threats, arbitrary arrests and assault', said Andrew Philip, Amnesty International's researcher on the DRC. 'Many human rights defenders are detained simply because they speak out on behalf of others'. Philip continued: 'The ANR (Agence Nationale de Renseignments, the National Intelligence Agency), in particular, frequently arrests, detains and intimidates human rights workers in the DRC. Amnesty International receives regular reports of torture and other ill-treatment taking place in ANR detention facilities. Human rights defenders in the DRC play a crucial role in drawing attention to human rights abuses but intensifying harassment makes it increasingly difficult for them to carry out this important work'." **[16b]**

18.13 The same source continued: "The DRC has since indicated that it supports the UPR recommendations to 'take further measures to protect the rights of human rights defenders…'; to 'ensure that crimes and violations against human rights defenders and journalists are effectively investigated and prosecuted' and to 'adopt an effective legal framework for the protection of human rights activists in line with the Declaration on Human Rights Defenders'." **[16b]**

It would be helpful to read the recommendations made by the Congress of the International Federation for Human Rights (FIDH) in its report: Resolution on the Human

Rights Situation in Democratic Republic of Congo (DRC) adopted by FIDHs Congress in Yerevan (6 – 10 April 2010) in conjunction with the above.The report provides an indication of human rights abuses and what should be done to remedy them. **[21a]**

18.14 The Amnesty International Report 2010: the state of the world's human rights: DRC (AI Report 2010) covering events in 2009 and published on 27 May 2010, noted:

"Any help humanitarian organizations might have been able to offer people was hampered by the difficult working environment in the country, partly due to the general insecurity and partly because they were often targeted by parties to the conflict or bandits. This was also the case in the DRC [where] UN and AU peacekeepers, often with a mandate to protect the civilian population, were also attacked." **[16a] (p3, Regional overview: Africa: conflict)**

18.15 The USSD 2010 also stated:

"Fighting between the FARDC and nongovernmental armed entities continued to displace populations and limit humanitarian access to conflict areas. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), between January and June there were 105 attacks on humanitarian agencies working in the country, which represented a significant increase, compared with the 84 attacks between January and October of 2009, and the 36 attacks during the first 10 months of 2008." **[8b] (Section 1g. Use of Excessive Force and Other Abuses in Internal Conflicts)**

18.16 The United Nations High Commissioner for Human Rights, in her Report on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, dated 10 January 2011, recalled in her 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. 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." **[19e] (p12-13, paragraphs 41-42)**

18.17 The same source continued:

"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. 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...They will remain vulnerable until a law specifically aimed at their protection is adopted and followed up with practical measures." **[19e] (paragraph 46)**

See also the Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, dated 2 December 2011, accessible via Reports on Country. **[9g]**

18.18 Frontline Defenders noted in its 'Overview of Democratic Republic of Congo', dated 13 August 2010:

"The situation in the Democratic Republic of the Congo (DRC) remains volatile and human rights defenders remain at grave risk. In the post-conflict transition in the DRC, human rights defenders (HRD) continue to operate at extreme personal risk in an atmosphere of violence, hostility and instability. Absence of the rule of law and a climate of impunity prevail. As a consequence of carrying out activities such as investigating and exposing atrocities, combating sexual violence, advocacy with respect to the elections, and independent journalism, many human rights defenders have been subject to threats and attacks, which have increased since the beginning of 2008.

"Congolese human rights defenders are frequent targets of intimidation, judicial proceedings, stigmatisation, death threats, incommunicado detentions, arbitrary arrest, gender based violence, ill treatment in prison including refusal of access to lawyers and medical care, physical assault and in some cases torture or even killing by DRC government agents or armed groups. Many defenders have been forced into hiding or exile as a result of the threats against their security and the safety of their families.

"The situation of defenders in Eastern DRC is especially precarious. A number of human rights defenders and journalists have been killed in the last few years. Since July 2005, in Bukavu and Goma only, at least five human rights defenders and journalists were murdered, including Pascal Kabungulu Kibembi, Serge Maheshe, Wabiwa Kabisuba, Patrick Kikuku Wilungula and Didace Namujimbo. The killings and persistent threats have instilled a climate of fear among local defenders, who are made more vulnerable by the ongoing violence, ethnic tensions, and the unstable political and military situation in the region.

"Attacks against defenders are political in nature and directly related to their professional human rights activities. However, defenders are also at greater risk of acts of robbery because they are believed to be in contact with the international community and recipients of international financial support, even when this is not the case.

"With very few exception [sic], serious investigations of attacks against defenders have not been conducted by the DRC authorities, even in the most serious cases including murders. The government has taken no action to support and promote the work of human rights organisations, or to protect organisations or individual activists from attacks. Human rights defenders are not protected by the national authorities and a

110 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

national plan for the protection and security of human rights defenders does not exist, particularly in the eastern part of the country.

"Human rights defenders are often involuntarily trapped in the political struggle between the government and rebel forces. When they report on violations committed by the regular army (FARDC), they are targeted by elements of the FARDC and depicted as unpatriotic and supporters of the armed groups. When they report on abuses committed by the armed faction groups they are under attack by the same armed groups. One leading activist commented 'we are between a hammer and a nail'. Indeed, the government and armed groups regard HRDs with a mixture of deep suspicion and outright hostility. On some occasions the authorities have sought to forment popular anger against human rights NGOs, in apparent retaliation for legitimate NGO denunciations of official abuses." **[90a]**

18.19 Human Rights Watch (HRW), in its World Report 2011, concurred:

"Congolese human rights defenders and journalists were increasingly targeted in 2010. A prominent human rights defender, Floribert Chebeya Bahizire, executive director of Voice of the Voiceless, was found dead on June 1, following a visit to police headquarters in Kinshasa, the capital. His driver, Fidele Bazana Edadi, remains missing at the time of writing. The national police chief was suspended and other senior police officers were detained following the murder, though none was charged at the time of writing. In eastern Congo, on June 30, a human rights defender working for Le Bon Samaritain was killed by armed men in uniform near Beni, North Kivu. Sylvestre Bwira Kyahi, civil society president of Masisi territory, was abducted by army soldiers on August 24 and held for a week in an underground prison, where he was repeatedly beaten for writing a public letter denouncing abuses by soldiers under Ntaganda's command and calling for his arrest." **[10b]**

18.20 Armed Conflict Database of the International Institute for Strategic Studies noted in their Human Security Developments between May and October 2010, accessed 20 January 2011:

"Two suspect deaths in this period underlined the extremely problematic work conditions faced by civil-society activists, journalists and critics of the government. On 1 June Floribert Chebeya, a well-known journalist and head of human-rights organisation La Voix des sans-voix (VSV), was found dead in suspicious circumstances. Almost immediately the national police head, Gen John Numbi, widely known to be close to President Kabila, was suspended, and Col Daniel Mukakay, secret service chief, was arrested. However, despite the arrival of Dutch forensic specialists and the demands of 200 local NGOs for an international investigation, the murder case was transferred to a lower military court, where it currently remains, unresolved and slipping under the radar." **[6b]**

18.21 The USSD 2010 also noted:

"According to the Office for the Coordination of Humanitarian Affairs, humanitarian workers in the eastern part of the Democratic Republic of the Congo continue to be victims of armed robbery, looting and other violent security incidents, including occasional abductions: since January 2010, a total of 98 such incidents have been reported in North Kivu, compared to 144 in 2009, and 46 in South Kivu, compared to 32 in 2009.148. In addition to the inevitable insecurity linked to ongoing military operations

and the presence of tens of thousands of armed elements in the eastern part of the Democratic Republic of the Congo, the poor state of the roads is a major factor limiting access to those assessed to be in need of humanitarian assistance.149. The Group's conclusion from available evidence is that the majority of security incidents affecting humanitarian operations are opportunistic acts of banditry by armed actors who usually remain unidentified. The Group has not found evidence of intent on the part of individual commanders systematically to prevent the distribution of humanitarian assistance." **[8b]**

18.22 Michel Shakodi, a Human Rights defender commented on Frontline Defenders, 23 July 2010: "Neither the Congolese government, nor the international community represented by the United Nations mission in DRC, MONUC, provide protection for human rights defenders in DRC. For the crimes committed against us, justice is limited to messages of condolence and/or promises to investigate that will never materialise, and if they did place, the results would never be made known by the Congolese leaders." **[90b]**

For further information on the humanitarian situation in the country and the work of a humanitarian organisation see the report by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA): OCHA in 2012 & 2013, Democratic Republic of Congo, Context Analysis. **[46a]**

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19. CORRUPTION

19.01 The United Kingdom Foreign and Commonwealth Office (FCO) in its report 'Human Rights and Democracy: The 2010 Foreign &Commonwealth Office Report', published 31 March 2011 noted:

"The judicial system in the DRC remained flawed with a culture of impunity for perpetrators of even the most serious crimes. It lacks both resources and capacity in all areas. As a result, few cases reached court, with corruption a major problem within all areas of the legal system. However, the UN reported an improvement in the number of convictions for human rights offences in the latter part of 2010, particularly cases processed through the military justice system." **[4a]**

19.02 The same source continued: "Weaknesses within the judicial system are compounded by problems within the national police force, which is poorly resourced, trained and equipped. The UN reported that members of government security services, including the army and national police force, are involved in incidents of summary execution, sexual violence, pillaging and forced labour." **[4a]**

19.03 Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo published 30 March 2010 stated:

"Decades of misgovernment have significantly eroded State authority in the Democratic Republic of the Congo, particularly in the east, and State presence and capacity remains weak throughout the country. These challenges continue to be compounded by widespread corruption, which impedes the capacity of central authorities to deliver services, effectively collect revenues and restore the rule of law. The envisaged decentralization process and planned redefinition of provincial boundaries remains pending, and could exacerbate tensions between central and provincial authorities and heighten local conflicts." **[9a]**

112 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

19.04 The same source continued:"The prolonged conflict and instability in various parts of the east, and the absence of effective State administration there, continue to perpetuate conditions that allow the illegal exploitation of natural resources to flourish. Few economic and educational opportunities exist. Despite some improvements, the continuing poor condition of basic infrastructure, especially roads, impedes trade and denies State authorities access to vast areas of the country." **[9a] (Paragraphs 75-76)**

19.05 In an Overview of The Amnesty International Report 2010: the state of the world's human rights: Africa, covering events in 2009 and published on 27 May 2010, it was noted:

"The lack of corporate accountability resulted in a range of human rights abuses. In eastern DRC, the exploitation of natural resources, specifically in the mining industry, continued to fuel the conflict. Armed groups as well as the national army were involved in the exploitation of natural resources and were trading with private economic actors. Children were working in some of the mines." **[16e] (Regional overviews: Africa, Economic Concerns – Corporate Accountability)**

19.06 Freedom House in its Freedom in the World 2011 report on the Democratic Republic of Congo (FH 2011), published 16 May 2011, noted:

"Corruption is rampant in the DRC, particularly in the mining sector. The country ranked 182 out of 183 countries in the World Bank's 2010 Doing Business survey…In an apparent bid to improve the investment climate, the DRC became an Extractive Industries Transparency Initiative (EITI) candidate country in 2008. The release of the DRC's initial EITI report in March 2010 marked the first time that figures on tax revenues from the country's natural resources had been made public. However, in June the government awarded two oil-drilling blocks in Lake Albert to companies owned by a nephew of South African president Jacob Zuma, despite claims that a rival bid by Ireland's Tullow Oil, which had already paid a signature bonus, had been the better deal. In September, a presidential ban on artisanal mining in North and South Kivu and Maniema was declared in an attempt to stem the flow of mining revenues to armed groups, though the actual impact of the ban remained unclear at year's end." **[14a]**

19.07 The U.S Department of State in its Country Report on Human Rights Practices 2010, stated: "There continued to be an Ethics and Anticorruption Commission, but it had little effect during the year and lacked resources, independence, and credibility. It last convened in 2007 without any significant results or findings." **[8b] (Section 4 Official Corruption and Government Transparency)**

19.08 The USSD 2010 also went on to say: "The law provides criminal penalties for official corruption. However, the authorities did not implement the law, and corruption remained endemic throughout the government and state security forces. The public perceived the government to be widely corrupt at all levels. According to the World Bank's Worldwide Governance Indicators, official corruption was a severe problem." **[8b] (Section 4 Official Corruption and Government Transparency)**

19.09 In its 2010 Corruption Perceptions Index (CPI), Transparency International ranked Democratic Republic of Congo 164 in the world corruption ranking, out of 178 countries, giving it a CPI score of 2.0. (CPI Score relates to perceptions of the degree of corruption

as seen to exist among public officials and politicians by business people and country analysts. It ranges between 10 (highly clean) and 0 (highly corrupt). **[7b]**

To read about corruption in the Judiciary, see Section 12: Judiciary, Corruption in the Judiciary. It was also be helpful to see Section 16: Political Affiliation in conjunction with the above.

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20 FREEDOM OF RELIGION

20.01 Freedom House in its 2011 Freedom in the World: DRC Report, covering events in 2010 (FH 2011) and published 16 May 2011 stated:

"Freedom of religion is guaranteed by the constitution and generally respected in practice. Although religious groups must register with the government in order to be recognised, unregistered groups operate unhindered.In April 2010, police arrested three members of the Church of the Lord Jesus Christ in Congo; political involvement by the church's leader was cited as possible reason for the arrests. The government has failed to investigate or prosecute police officials responsible for a 2008 crackdown on the politico-religious movement Bundu Dia Kongo that killed at least 100 adherents and destroyed houses and temples. Academic freedom is restrcted by fears of government harassment, which often lead university professors to engage in self-censorship." **[14a]**

RELIGIOUS DEMOGRAPHY

20.02 The USSD July – December 2010 Report on International Religious Freedom - Democratic Republic of the Congo (USSD IRF 2010), covering the period from July 1, 2010, to December 31, 2010, published 13 September 2011, stated:

"The country has an area of 905,000 square miles and a population of 70.9 million. The population is 50 percent Roman Catholic, 20 percent Protestant (including evangelicals), 10 percent Kimbanguist (a Christian-inspired Congolese church), and 10 percent Muslim. Other religious groups represented in much smaller numbers include Jehovah's Witnesses, The Church of Jesus Christ of Latter-day Saints (Mormons), Orthodox Christians, and Jews. The remainder generally practices animist indigenous religious beliefs. Nearly 90 percent of the population attends religious services each week.

"Most religious groups are scattered throughout the country and are widely represented in cities and large towns. Muslims are mainly concentrated in the provinces of Maniema, Orientale, and Kinshasa. Members of the ethnically based spiritual and political movement Bundu dia Mayala (BDM), formerly Bundu dia Kongo (BDK), reside predominantly in the Bas-Congo Province. After significant persecution in 2008, the organization was forced to change its name and purpose; BDM has not been able to gain official recognition as a political association, although the religious branch of the group continued to meet in secret." **[8d]**

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LEGAL FRAMEWORK

20.03 The USSD IRF 2010 continued:

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"The constitution and other laws and policies protect religious freedom and, in practice, the government generally enforced these protections. The constitution specifically forbids discrimination based on religion.

"All organizations, including religious organizations, businesses, unions, and charitable or nonprofit societies, must register with and be approved by the government. There were no reports of discrimination against religious groups when applying for registration; however, the process is time-consuming. Penalties for failure to register include fines and potential confiscation of goods, invalidation of contracts, and deportation for foreigners. There were no reports of religious groups being singled out in this process during the reporting period.

"Religion is not taught in public schools; however, private religious schools devote class time to religious studies.

"The government observes the following religious holidays as national holidays: Easter Monday, Ascension, Pentecost, All Saints' Day, and Christmas. The government does not observe Islamic holy days nationally; however, it respects them. Employers typically grant leave for those who wish to observe holy days not on the national calendar." **[8d]**

20.04 On restrictions the USSD IRF 2010 stated: "The government generally respected religious freedom in law and in practice. There was no change in the status of respect for religious freedom by the government during the reporting period. There were no reports of abuses, including religious prisoners or detainees, in the country." **[8d]**

20.05 USSD IRF 2010 continued:

"There were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice, and prominent societal leaders took positive steps to promote religious freedom.

"The government grants Christians and Muslims access to public facilities for religious worship in connection with Christmas and Ramadan. An interfaith committee composed of leaders of the Ecumenical Council, Islamic Council, and Evangelical Council worked to prepare and deliver a unified interfaith prayer service in conjunction with the country's celebration of 50 years of independence during the year.

"The U.S. government discusses religious freedom with the government as part of its overall policy to promote human rights. These discussions included highlighting the importance of religious freedom with the Ministry of Foreign Affairs, the president, nongovernmental organizations, and members of the National Assembly." **[8d]**

BUNDU DIA KONGO (BDK)/ BUNDU DIA MAYALA (BDM)

See paragraph 20.02: Bundu Dia Kongo changed its name in 2008 to Bundu Dia Mayla (BDM).

20.06 GlobalSecurity.org, accessed on 3 April 2009, recorded the following information about the Bundu dia Kongo (BDK):

"The Bundu dia Kongo (Kingdom of Kongo) is a political-religious group centred in the Bas-Congo province (west of Kinshasa) which has campaigned for the independence of

the Bas-Congo region from the rest of the DRC. Its adherents have to renounce western and eastern religions. It seeks the restoration of the ancient Kongo Kingdom with its pre-colonial boundaries, which encompass parts of today's Angola, Republic of Congo and Gabon. The centre of the kingdom was located in Bas-Congo Province and in neighbouring Bandundu Province in the DRC. Bundu dia Kongo adherents have protested in the past against former presidents Mobutu and Laurent Kabila. These protests have occasionally ended in the deaths of the groups' adherents, who have themselves sometimes been armed." **[78a]**

20.07 The US Department of State (USSD) International Religious Freedom Report 2008, released on 19 September 2008, covering the period from 1 July 2007 to 30 June 2008, noted:

"In response to acts of violence by BDK members, the Government conducted operations to restore its authority in the province of Bas-Congo in February 2008. According to a June 2008 report by the United Nations Organization Mission to the DRC (MONUC), at least 100 persons were killed in the course of these operations. The report concluded that police used excessive or unwarranted force against BDK adherents and destroyed more than 200 houses and every BDK temple they encountered. The report noted that BDK houses, shops, and hospitals were looted during the operation. It cited police for arbitrary and illegal detentions and cruel, inhuman, and degrading treatment of detainees. Although BDK ideology and practice contains spiritual elements, the BDK is primarily a political organization and was registered as a nonprofit rather than religious organization. In March 2008 the Ministry of Social Affairs rescinded the BDK's status as a nonprofit organization for noncompliance with rules governing nonprofits." **[8e] (Section II. Status of Freedom of Religion)**

20.08 Human Rights Watch's (HRW) World Report 2009, covering events in 2008, also reported on the violence in Bas Congo, noting that:

"Some 200 BDK supporters and others were killed, and BDK meeting places were destroyed. The police attempted to hide the extent of the carnage by dumping dozens of bodies in the Congo River and hastily burying others in mass graves. Police arrested over 150 persons suspected of supporting the BDK and tortured or ill-treated some of them. On March 21 [2008], the government revoked the authorization of the BDK to operate as a social and cultural organization, effectively making it illegal." **[10c] (Violence in Bas Congo)**

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21. ETHNIC GROUPS

21.01 Freedom House stated in its Freedom in the World 2011 - Congo, Democratic Republic of (Kinshasa), covering the events of 2010 and published 16 May 2011: "Societal discrimination based on ethnicity is practiced widely among the country's 200 ethnic groups, particularly against indigenous Pygmy tribes and the Congolese Banyamulenge Tutsis. The ongoing fighting in the eastern Kivu region is driven in part by ethnic rivalries." **[14a]**

21.02 The US Department of State's Country Report on Human Rights Practices 2010 (USSD 2010), released on 8 April 2011, stated: "The constitution prohibits discrimination based on ethnicity… however, the government did not enforce these prohibitions effectively, in

part because it lacked appropriate institutions." **(Section 6 Discrimination, Societal Abuses, and Trafficking in Persons)** "Members of the country's more than 400 ethnic groups practiced ethnic discrimination, and discrimination was evident in hiring patterns in some cities. The government took no reported actions to address this problem." **[8b] (section 6 National/Racial/Ethnic Minorities)**

ETHNOGRAPHY

21.03 The DRC Government's submission to the UN Committee of the Rights of the Child, as part of the Consideration of Reports Submitted by States Parties under 44 of the Convention, dated 28 June 2008, noted:

"The population is divided into over 450 tribes, which can be classified in major groups, each firmly established in a particular territory. The Luba or Baluba in south central Congo (18 per cent) outnumber the Kongo living in Bas-Congo (16.6 per cent). The north-west region is inhabited by the Mongo (13.5 per cent) and the Zande (6.1 per cent), the north-east by the Mangbetu, the Hema, the Lendu and the Alur (3.8 per cent). The east is inhabited by the Nande, the Hunde, the Bashi, the Bafulero, the Tutsi and many other ethnic groups. The Chokwe and Lunda are found along the frontier with Angola. The pygmies (less than 0.5 per cent) are found in Equateur and Orientale provinces." **[91a] (p5)**

DISCRIMINATION AND HARASSMENT

21.04 The USSD 2010 continued:

"State security forces in Kinshasa sometimes harassed, arbitrarily arrested, or threatened members of ethnic groups from Equateur, according to the UNJHRO. State security forces in North and South Kivu sometimes harassed, arbitrarily arrested, or threatened members of many different ethnic groups

"Discrimination against persons with albinism was widespread and limited their ability to obtain employment, health care, and education, or to marry. Persons with albinism were frequently ostracized by their families and communities. According to a 2007 survey conducted in Kisangani by the UN Development Program, 83 percent of parents of albinos stated that their children were successful in school, but 47 percent said they felt humiliated by having albino children." **[8b] (section 6)**

21.05 The same source continued: "Many ethnic groups, including Pygmies, were not represented in the Senate, the National Assembly, or provincial assemblies. The lack of political participation of some ethnic groups may have been a result of continuing societal discrimination. The enslavement and discrimination of Pygmies continued in some areas of the country." **[8b] (Section 3 Respect for Political Rights: The Right of Citizens to Change)**

It would also be helpful to look at Section 8: Security Situation on conjunction with the above.

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INDIGENOUS PYGMY TRIBES

21.06 The USSD 2010 noted:

"The country had a population of between 200,000 and 500,000 Pygmies (Twa, Mbuti, Aka, and others), believed to be the country's original inhabitants; the government did not effectively protect their civil and political rights, and societal discrimination against them continued. Most Pygmies took no part in the political process and continued to live in remote areas. During the year fighting in the east between nonstate armed entities and government security forces caused displacement of some Pygmy populations. Since 2003 many Pygmies who had lived in IDP camps in the east were forced outside the camps by other IDPs, removing their access to humanitarian relief provided to camp residents." **[8b] (section 6)**

21.07 The same source continued:

"In some areas traditional leaders (mwami) and wealthy persons captured Pygmies and forced them into slavery. For 2009-2010, the World Peasants/Indigenous Organization reported 644 new cases of enslavement of Pygmies. Those captured were known as 'badja' and were considered the property of their masters. During 2008 the World Peasants/Indigenous Organization conducted a three-month campaign to free such individuals. In 2008, 96 Pygmy slaves were released; 46 of the group belonged to families that had been enslaved for generations." **[8b] (section 6)**

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BANYARWANDA/BANYAMULENGE

21.08 The term 'Banyarwanda' means, in effect, 'people from Rwanda', whereas the term 'Kinyarwanda' refers to the spoken language; both the Hutu and Tutsi ethnic labels are subsumed by the term Banyarwanda. (The Evaluation Report of the Independent Advisory Group on Country Information (IAGCI) on the Country of Origin Information Report on the Democratic Republic of Congo 2008 by Claudia Seymour, dated 12 August 2010, (IAGCI Review 2010)) **[79a] (footnote 26)** 'Banyamulenge' refers to Banyarwandans who arrived in Congo towards the end of the nineteenth century settling in the Itombwe plateau lands of South Kivu. (IAGCI Review) **[79a]**

Background

21.09 The IAGCI Review 2010 stated:

"The political and military conflict in the Kivu provinces has long been heavily ethnicised, as military and political leaders have used identity politics to contend for power, land ownership and access to resources. This contention for power is deeply rooted in history; until the 1885 Berlin Conference, the Kivu region of eastern Congo was under the influence of the Rwandan kingdom. This Rwanda-Congo inter-connectedness was beneficial for the Belgian colonial administration, which regularly forced large displacements of Rwandan farmers into the Congolese territories of Masisi and Rutshuru. Through the 1920s and 1930s, Belgian immigration policies forced tens of thousands of Banyarwanda into Congo in order to work on the farms and in the mines, and to ease population pressures caused by drought and land scarcity in Rwanda. Between 1937 and 1955 an additional estimated 85,000 Banyarwanda were forcibly displaced to the Kivus." **[79a]**

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21.10 The IAGC Review 2010 continued:

"To facilitate their system of indirect rule, the Belgians created identifying labels that laid the foundations for today's identity-based conflict. According to the colonial authorities, anyone already living in Congo at the time of colonisation was considered 'native', and thus eligible to own land under the Native Authority acts. Anyone who had arrived after 1885 was considered to be non-native, or immigrant, and was thus unable to hold land. It is thus that the Hutu living in Rutshuru were considered to be native Congolese, while any other Banyarwanda arriving to work in North Kivu were considered to be foreign migrants. Later on, the term 'refugee' was added to this native/non-native discourse, as, from 1959 onwards, the pogroms in Rwanda forced at least another 120,000 Rwandan Tutsis to find refuge in the Kivus." [79a]

21.11 The same source continued: "Like the transitions of power that would follow, Congo's independence from Belgium in 1960 was rapid and ill-prepared. The creation of a strong and united nation was uncertain from the beginning, and this state of instability learnt to thrive on ethnic divisions. As early as 1960, local Mayi-mayi groups such as the Simba began targeting Banyarwanda communities, while a 1963- 1965 uprising in North Kivu saw identity-based fighting between residents of Masisi and Rutshuru territories." **[79a]**

21.12 The same source added:

"With his ascension to power in 1965, Mobutu Sese Seko began to strengthen his political base in eastern DRC. One of his key advisors, Barthelemy Bisengimana, was a Tutsi refugee from Rwanda who used his influence to advance the interests of the Tutsi community within Mobutu's Movement Populaire de la Révolution (MPR). Previously disenfranchised and alienated from land ownership, Mobutu accorded all Rwandan immigrants citizenship in 1972. In 1973, Mobutu nationalised Belgian farms in Masisi and Rutshuru and proceeded to allocate large tracts of land to elite Tutsis." **[79a]**

21.13 The same source continued:

"Mobutu's policies increasingly alienated other ethnic groups in the region. The non-Tutsi groups united in strong protest against Mobutu's land and citizenship policies. In 1981, Mobutu finally gave in to this pressure and repealed the citizenship rights he had previously accorded. Returning to the colonial concepts of 'native' and 'foreigner', he passed the 1981 law that defined citizenship on proof of ancestral connection to the Congo from before 1885. This distinction created a split among the Banyarwanda community; those like the Banyamulenge in South Kivu sought to dissociate from the more recently arrived Banyarwandas, while local Hutus in Rutshuru territory created their own self-defense militia (e.g. the MAGRIVI, or Mutuelle Agricole de Virunga)." **[79a]**

21.14 The IAGCI Review 2010 went on to state:

"As the democratic process began taking root in Congo, clashes over land soon translated into competition over political representation. Land-holding Hunde allied with the commercially successful Nande to prevent the participation of Banyarwanda individuals in the 1985 provincial elections. In 1987, North Kivu was created as a separate province; this new demographic alignment further magnified competition between ethnic groups. The North Kivu anti-Banyarwanda alliance lobbied extensively against the inclusion of any Banyarwanda in the electoral rolls or in the 1991-1992

Conférence Nationale Souveraine (CNS). During the CNS, pronunciations against the 'Rwandan foreigners' rallied national anti-Tutsi sentiment." **[79a]**

21.15 The same source continued:

"As the democratic process gathered pace, it was accompanied by an escalation of inter-ethnic violence in the Kivus. Fearful that Banyarwanda demographic strength could upset their hold on power, other ethnic groups in the Kivus increasingly marginalised the Banyarwandans. Particularly concerned with the democratic weight of the large Hutu population in the planned 1993 local elections, the governor of North Kivu province encouraged Hunde and Nyanga youth militias to kill Banyarwanda Hutu in Walikale, Rutshuru and Masisi. The violence peaked in Masisi, with estimates of between 6,000-10,000 people killed and more than 250,000 people displaced by the fighting. The situation de-escalated following the intervention of Kinshasa, but inter-communal tensions were only temporarily mediated." **[79a]**

21.16 The same source also noted:

"The 1994 genocide in Rwanda had dramatic consequences on the situation in eastern DRC. Prior to the genocide, approximately half of the more than four million people in North Kivu were of Banyarwandan descent, of which the majority were Hutu concentrated in the territories of Masisi and Rutshuru. With the arrival of more than one million Rwandan refugees in the Congo, the tenuous ethnic balance became dangerously destabilised. Among the refugees were approximately 30-40,000 ex-FAR and Interahamwe forces, who used the ethnic disequilibrium obtaining in the Kivus to their advantage. Under the protection of Mobutu and the international community, the ex-FAR and Interahamwe were able to regroup, train, and launch attacks into Rwanda. Importing their Hutu-power ideology, the Rwandan militias gathered local support in their attacks on the Tutsi population living in Rutshuru and Masisi territories, killing their cattle and occupying their land..." **[79a]**

21.17 The same source continued:

"As this brief account shows, the ongoing conflict in eastern DRC is deeply embedded in a complex history that should not be overly-simplified. Contrary to the tendency of international policy actors and journalists, the conflict in the Kivus cannot be blamed only on the Rwandan genocide and should instead be seen in its historic context. It should also be noted that democratic process which began in the early 1990s had a significant influence on the emergence of violent conflict, another relevant point for international actors. As a final note, it is important to correct a common mistake made by policy-makers, aid actors and journalists: The term Banyamulenge refers to Banyarwandans who arrived in Congo towards the end of the nineteenth century, settling in the Itombwe plateau lands of South Kivu; the terms 'Tutsi' and 'Banyamulenge' cannot be used interchangeably." **[79a]**

It would also be useful to see the article A Crisis of Belonging, published by Harvard International Review, 21 March 2009, which discusses the fragility of the east in relation to ethnic tensions. **[41a]**

Discrimination and harassment

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21.18 The Australian Government Refugee Review Tribunal commented in its Country Advice Democratic Republic of Congo (Ex-Zaire), dated 29 March 2010: "Reports indicate that Banyamulenge and ethnic Tutsis are subject to discrimination in the DRC. The Banyamulenge suffer more generally due to their residence in the Eastern DRC, an area of ongoing violent conflict and civilian casualties." **[93a]**

21.19 Freedom House concurred in its Freedom in the World 2011 – Congo, Democratic Republic of (Kinshasa), published 16 May 2011: "Societal discrimination based on ethnicity is practiced widely among the country's 200 ethnic groups, particularly against the various indigenous Pygmy tribes and the Congolese Banyamulenge Tutsis. The ongoing fighting in the eastern Kivu region is driven in part by ethnic rivalries." **[14a]**

21.20 Refugees International noted in its report, 'Nationality for All', published March 2009:

"Despite a 2004 citizenship law granting citizenship to the Banyamulenge community, it is unclear whether the 300,000 to 400,000 of them living in Congo can obtain nationality documents or their rights as citizens in the ongoing conflict in eastern Congo. The Banyamulenge are ethnic Tutsis who came to the territory of what is now the Democratic Republic of Congo from Rwanda centuries ago and settled in the hills called Mulenge, found between the towns of Uvira and Bukavu in what is now South Kivu.

"In the name of defending Tutsis against oppression in North Kivu, a rebel army consisting primarily of Banyamulenge and commanded by General Laurent Nkunda has been fighting the government. Violence from this conflict has displaced hundreds of thousands of people. In early 2009, General Nkunda was arrested, a development with uncertain implications for conflict in the region." **[92a]**

21.21 Jason Stearns, an expert on Congo who blogs for Congo Siasa, guested for the Christian Science Monitor with the article 'Congo's army reaches breakthrough with Kivus' rebel group', dated 2 February 2011:

"This past week there was a breakthrough in peace negotiations between the national army and the Forces Républicaines Fédéralistes (FRF), a mostly Banyamulenge armed group based in the High Plateau in South Kivu above Uvira and Fizi…The terms appear to be favorable to the Banyamulenge insurgency. Bisogo (previously a colonel in the RCD rebellion) and Rukunda (who I believe was a major, but a stanch critic of Rwanda) will be able to keep their ranks of general and their troops will be integrated into 431st brigade that is deployed in the hills close to where their families are. A key condition of their integration (and that of the CNDP before them) had always been that their troops remain in the Kivus …However, the FRF apparently had to drop their demands for back pay and has agreed to hand over all of their stocks of weapons and ammunition. In addition, the contentious status of Minembwe has been deferred for the moment and it seems unlikely - if the peace deal holds - that it will be brought up again. The FRF, along with many other Banyamulenge, had been pushing for the creation of a territory of Minembwe, so they could have had their own administrative services (land and marriage registry, etc.) and electoral district." **[15a]**

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22. LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS

LEGAL RIGHTS

22.01 The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) report 'State-sponsored Homophobia', published May 2011, listed the Democratic Republic of Congo as being one of a number of African countries in which homosexual acts are legal and never have been criminalised. It also stated that the country has an equal age of consent for both homosexual and heterosexual acts. **[25a]**

22.02 The US Department of State's Country Report on Human Rights Practices 2010 (USSD 2010), released on 8 April 2011, stated:

"There are no known laws specifically prohibiting homosexuality or homosexual acts; however, individuals engaging in public displays of homosexuality were subject to prosecution under public decency provisions in the penal code and articles in the 2006 law on sexual violence. On October 22, a law was proposed in the national assembly that would impose significant fines and jail terms on individuals engaging in homosexuality or groups promoting or protecting homosexual behavior. No action had been taken on the draft legislation by the end of the year." **[8b]**

22.03 Human Rights Watch noted in its World Report 2011: Democratic Republic of Congo, published : "In October [2010] a private member's bill was introduced in the National Assembly proposing a punishment of three to five years' imprisonment for 'homosexual relations' and to outlaw all publications and films that highlight 'sexual practices against nature.' The bill also seeks to criminalize members and financers of associations that promote or defend 'sexual relations against nature' with six months to one year in prison." **[10b]**

22.04 Behind the Mask commented in an online statement posted 3 November 2010: 'Groups Mobilise Against DRC's Anti Gay Bill':

"Lesbian, gay, bisexual, transgender and intersex (LGBTI) rights organisations and activists have expressed concerns over the Sexual Practices Against Nature Bill presented before the national parliament of the Democratic Republic of aiming to criminalise homosexuality and zoophilia as sexual practices against nature. Jean Bedel Kaniki, President of Groupe Hirondelles Bukavu, an LGBTI organisation in the DRC confirmed that on the 22 October 'the bill was judged admissible by the majority of the parliament and was sent to the socio-cultural committee that will discuss its permissibility in terms of the provisions and principles of the constitution before its promulgation'." The same source continued:

"Section 2 of the proposed Bill singles out zoophilia (sex with animals) and homosexuality as sexual practices against nature. It also criminalises any activities that directly or indirectly aim to promoting the rights LGBTI persons, therefore, in accordance with section 174h3 of the Bill, 'all publications, posters, pamphlets, (or) films highlighting or likely to arouse or encourage sexual practices against nature are forbidden within the territory of the DRC (Section 174h3)' and 'all associations that promote or defend sexual relations against nature are forbidden within the territory of the DRC'." **[32a]**

22.05 Behind the Mask also noted; “Those who go against the stipulations of this Bill will be punished by 3 to 5 years in prison and a fine of 500,000 Congolese francs (Section 174h1). Kaniki explained that the Bill is most likely to be passed next year. ‘I do not think that the bill will be passed before the next parliamentary session in March next year; in the next few weeks the budget will be the most pressing issue debated’, he said.” **[32a]**

22.06 The proposed Bill was also noted by other LGBT groups based in DRC - the African Activist stated on 29 October 2010 in the article Proposed Congolese Law Criminalising Homosexuality Violates Individual Freedoms:

“Afrol News confirms that the Congolese Parliament has a bill under discussion to criminalise homosexuality. The bill, introduced into parliament by Bishop Ejiba Yamapia, has been met with some resistance in parliament on the grounds that it violates the individual freedoms guaranteed by the Congolese constitution. Mr Yamapia is also finding resistance to his proposal in the Kinshasa parliament.'La République' reports that several MPs strongly opposed criminalising homosexuality as this would ‘violate individual freedoms dearly proclaimed by the Constitution and goes against the current trend’ of wider individual and human rights in the DRC.” **[30a]**

22.07 The same source continued:

“Contrary to media in neighbouring East Africa, Congo's 'La République' reported about the proposal to criminalise homosexuality in a balanced way. The newspaper took note of arguments favouring and discouraging the new legislation. It also took note of the fact that ‘the current global trend is towards tolerance towards sexual practices’ that were considered ‘immoral’ among most Congolese. The newspaper concluded that, if approved, the implementation of the law would be difficult and questionable, because it ‘aims to punish the behaviour of individuals usually done in private.’ The bill was referred to the Socio-Cultural Committee on 22 October 2010 for further consideration.” **[30a]**

22.08 Afrol News noted in the original article ‘Congo Kinshasa discusses criminalising gays’, published 29 October 2010:

“The Kinshasa parliament is in the process of discussing legislation that will prohibit homosexuality, or ‘unnatural sexual practices.’ But the debate climate in Congo is much calmer than in neighbouring Uganda. According to reports in the government-close Kinshasa newspaper 'La République', Congolese MP Ejiba Yamapia is currently gathering support for a bill formulated by him that would forbid certain "unnatural sexual practices," including same-sex relations. Congo Kinshasa (DRC), along with most Central and West African nations, does not have any legislation regarding the country's sexual minorities. This is mostly due to the fact that homosexuality is an issue not known to the general population, as same-sex relations typically find other manifestations in traditional cultures.” **[31a]**

22.09 The same source continued:

“However, according to pro-gay activists in the region, the loud anti-homosexuality debate in neighbouring countries such as Uganda has also been noted in Kinshasa, with local politicians taking interest in the ‘exotic’ issue. Deputy Yamapia told 'La République' that his proposal would imply so’ such as same-sex and man-animal

relations as illegal and 'immoral' conduct. Mr Yamapia foresees prison penalties and fines for practicing homosexuals. The deputy says that he has gathered increased support for his proposal to criminalise homosexuality, 'especially among female deputies' in the Kinshasa parliament. The deputies agreed that homosexuality was 'contrary to African culture, agreeing with statements by leading politicians in countries like Zimbabwe, Malawi, Uganda and Kenya. However, Mr Yamapia is also finding resistance to his proposal in the Kinshasa parliament.'La République' reports that several MPs strongly opposed criminalising homosexuality as this would 'violate individual freedoms dearly proclaimed by the Constitution and goes against the current trend' of wider individual and human rights in the DRC." **[31a]**

22.10 Afrol News also noted:

"Contrary to media in neighbouring East Africa, Congo's 'La République' reported about the proposal to criminalise homosexuality in a balanced way. The newspaper took note of arguments favouring and discouraging the new legislation. It also took note of the fact that 'the current global trend is towards tolerance towards sexual practices' that were considered 'immoral' among most Congolese. The newspaper concluded that, if approved, the implementation of the law would be difficult and questionable, because it 'aims to punish the behaviour of individuals usually done in private'." **[31a]**

22.11 The African Activist also commented in a later article dated 8 March 2011, titled 'Democratic Republic of Congo (DRC) Bill Criminalising Homosexuality Will Likely Die in Committee':

"... it does not appear that the bill will be considered by this session of Parliament ending 15 March 2011. Kaniki predicts that it will be debated in Parliament in June. If nothing is done, considering the support the bill has received in the public opinion, the parliament will probably pass the law that criminalizes homosexuality. Elections are around the corner; therefore the vote of the parliament will depend on the role that law could play in political campaign and calculation." **[30b]**

22.12 An information response by the Immigration and Refugee Board of Canada, titled 'Democratic Republic of the Congo: Situation of homosexuals, including legislation and support services; treatment of homosexuals by society and government authorities (2008 - February 2011)', dated 3 March 2011, observed that:

"Homosexual activity is not prohibited by law in the Democratic Republic of the Congo (DRC) (ILGA May 2010, 49; Belgium 12 Oct. 2009; Africultures 5 May 2009; US 11 Mar. 2010, sec. 6). However, some sources indicate that homosexual relationships can be criminalized under the public decency provisions in the Congolese Penal Code (Code pénal congolais) (ibid.; Africultures 5 May 2009; ILGA et al. n.d.). Article 176 of the Congolese Penal Code reads as follows: [translation] 'A person who engages in activities against public decency will be liable to a term of imprisonment of eight days to three years and/or fined twenty-five to one thousand zaires [former currency]' (DRC 1940). According to a written response by the Minister of Development Cooperation (Coopération au développement) in Belgium to a question from a member of the Senate (Sénat), [translation] 'in practice, prosecution for homosexuality is very rare' in the DRC (Belgium 12 Oct. 2009). Corroborating information could not be found among the sources consulted by the Research Directorate.

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"However, in October 2010, a bill that would criminalize homosexuality was presented in the Parliament of the DRC (BTM 3 Nov. 2010; Jeune Afrique 22 Oct. 2010; AFP 25 Oct. 2010). The National Assembly (Assemblée nationale) deemed the bill admissible (ibid.; BTM 3 Nov. 2010). Behind the Mask (BTM) reports that, according to the President of Groupe Hirondelles Bukavu (GHB), an organization that defends the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the DRC, the bill was sent to the socio-cultural committee (comité socioculturel), which is responsible for ensuring that it does not violate the Constitution (ibid.). BTM is a non-governmental organization (NGO) founded in Johannesburg in 2000, and its website covers news about LGBTI people in Africa (ibid. n.d.). In correspondence sent to the Research Directorate on 28 February 2011, the President of GHB said that the bill could be examined during the June 2011 parliamentary session. Under this bill, people who engage in homosexual activity could be sentenced to 3 to 5 years in prison (Human Rights Watch Jan. 2011) or fined 500,000 Congolese francs [500,000 Congolese francs (CDF) = 500 Canadian dollars (CAD) (XE.com 21 Feb. 2011)] (BTM 3 Nov. 2010; Jeune Afrique 22 Oct. 2010). Members of associations that defend the rights of homosexuals could also face prison sentences (Human Rights Watch Jan. 2011)." **[33a]**

22.13 Human Rights Watch (HRW) in its 2011 World Report stated: "In October a private member's bill was introduced in the National Assembly proposing a punishment of three to five years' imprisonment for 'homosexual relations' and to outlaw all publications and films that highlight 'sexual practices against nature.' The bill also seeks to criminalize members and financers of associations that promote or defend 'sexual relations against nature' with six months to one year in prison." **[10b]**

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TREATMENT BY, AND ATTITUDES OF, STATE AUTHORITIES

22.14 The USSD 2010 noted: "Homosexuality remained a cultural taboo, and while harassment by state security forces continued, there were no reports during the year of police harassing gays and lesbians or perpetrating or condoning violence against them. On September 6, in Kabare, South Kivu, authorities prevented a mob from lynching a 21-year old woman accused of homosexual relations with another villager." **[8b]**

22.15 A response by the Immigration and Refugee Board of Canada stated in a country of origin response accessed via Refworld 3 March 2011:

"Information on the treatment of homosexuals by government authorities was scarce among the sources consulted by the Research Directorate. According to Country Reports, in 2009, there were no reports of police harassing homosexuals or perpetrating violence against them…However, in December 2009…LGBTI individuals were arrested or arbitrarily detained and denied justice, and…they complained [translation] 'of not being listened to or made to feel safe' by law enforcement personnel...in its article on the young lesbian woman in Cinjoma I…the territorial administrator of Kabare informed the Congolese National Police (Police nationale congolaise), the National Intelligence Agency (Agence nationale de renseignement) and the Armed Forces (Forces armées) about the plot and warned the Christians that if anything happened, the guilty parties would face legal repercussions." **[33a]**

SOCIETAL TREATMENT AND ATTITUDES

22.16 The IRB response 2011 reported that:

> "In correspondence sent to the Research Directorate on 28 February 2011, the President of GHB said that, in general, society favours criminalizing [translation] 'acts against nature.' Homosexuality is still taboo in the DRC (Belgium 12 Oct. 2009; The New York Times 5 Aug. 2009; US 11 Mar. 2010, sec. 6). In a telephone interview with the Research Directorate on 21 February 2011, the Secretary General of the Centre for Human Rights and Humanitarian Law (Centre des droits de l'homme et du droit humanitaire, CDH), an NGO founded in Lubumbashi in 1993 (CDH n.d.), said that homosexuals in the DRC are not open about their sexual orientation (ibid. 21 Feb. 2011). Moreover, according to the authors of an article on homosexuality in the DRC published by Africultures, whose offices are in France and which publishes a magazine on African art and culture (Africultures n.d.), there are no public places for homosexuals in the capital city of Kinshasa (5 May 2009).
>
> "For the Minister of Development Cooperation in Belgium, [translation] 'homosexuality is not socially accepted and... is absolutely denied' in the DRC (Belgium 12 Oct. 2009). Similarly, the Africultures article indicates that [translation] 'the vast majority of the population is extremely hostile' toward homosexuals (ibid. 5 May 2009). According to GHB, [translation] 'discrimination against LGBTI individuals is widespread, and they are often rejected by their communities' and are subjected to threats, retaliation, insults and social exclusion (10 Dec. 2009). BTM provides similar information and reports that openly homosexual individuals 'are abused by their relatives' and that 'hostile acts [toward homosexuals] are not isolated" (BTM 7 Oct. 2009). The BTM article cites the cases of an adolescent whose parents stopped paying his tuition after discovering that he was gay, a young man whose family was 'morally threatened for months' because of his homosexuality, and a homosexual man who was threatened by his neighbours because of his sexual orientation and was forced to move (ibid.). A document published by GHB on 10 September 2010 highlights the case of a young lesbian woman; Christians in the village of Cinjoma I in South Kivu [translation] 'planned to kill' the woman because of her sexual orientation. The plan was not carried out after the territorial administrator intervened, but the young woman and her partner [translation] 'became undesirables in their village' (GHB 10 Sept. 2010). However, according to Country Reports on Human Rights Practices for 2009, which is published by the United States Department of State, in 2009, there were no reports of social discrimination based on sexual orientation in the areas of employment, housing, education or health care (US 11 Mar. 2010, sec. 6)." **[33a]**

22.17 The same source continued:

> "… there are no support services for homosexuals in the DRC. According to Africultures, organizations that help homosexuals in the DRC instead organize meetings and outings and [translation] 'are practically inactive when it comes to helping homosexuals rejected by their families or in the fight against AIDS'. The President of Groupe Hirondelles Bukavu (GHB) said that his organization, which is located in Bukavu, in South Kivu, is the only support service for homosexuals in the DRC. Founded in 2008, GHB is recognized under the Decree of 29 January 1999 respecting non-profit organizations and organizations that serve the public (Décret du 29 janvier 1999 portant réglementation des associations sans but lucrative et des établissements d'utilité publique) in the DRC (ibid.). Among other services, GHB helps make NGOs in Bukavu aware of the issues pertaining to LGBTI individuals, offers training to LGBTI individuals on such topics as human rights and sexual health, reports human rights

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violations against LGBTI individuals, and offers legal and judicial assistance to LGBTI individuals'… GHB participates on the working group against the bill criminalizing homosexuality, which is made up of various Congolese organizations and also receives support from organizations based in other African countries 'that have more experience'" **[33a]**

22.18 Read about the first hand experience of a transgender person who is gay from DRC, who has chosen to live outside of the country in An African Transgender Activist Speaks of his Struggle, posted by Behind the Mask, 18 July 2012. **[32b]**

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23. WOMEN

OVERVIEW

23.01 Freedom House, in its report, Freedom in the World 2011, DRC, released in May 2011, covering events in 2010, stated:

"Despite constitutional guarantees, women face discrimination in nearly every aspect of their lives, especially in rural areas. Violence against women and girls, including rape and sexual slavery, has soared since fighting began in 1994, though sex crimes often affect men as well. Between late July and early August 2010, various armed groups reportedly raped more than 560 women, children, and men in a series of incidents in North and South Kivu. A UN investigation in August found links between the rapes and the exploitation and control of mineral-rich areas by armed groups, including factions of the FARDC. An atmosphere of almost total impunity for such crimes means that perpetrators are rarely prosecuted, regardless of whether they are soldiers, rebels, or civilians. Congolese women are also subjugated as agricultural laborers, and armed groups regularly loot their harvests. Abortion is prohibited. Save the Children has ranked the DRC among the world's five worst conflict zones in which to be a woman or child. " **[14a]**

See also the section on Socio –economic rights for further information.

23.02 In reference to women in politics, but an indication as to the welfare of women generally the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) noted in the Summary record of the 740th meeting (Chamber B), Thirty-sixth session, 8 August 2006: "Women had been educated not to speak in public or to raise their voices in places where men gathered." **[17a] (p4)**

23.03 CEDAW also noted

"… that education was the most significant factor for the advancement of women, teaching them about their rights and helping to eliminate stereotypes. According to the report, 50 per cent of adult women were illiterate; there was also a problem of school desertion and low attendance, particularly in the case of girls. Clearly the successive wars had had a negative effect on the education system, particularly on the infrastructure and the lack of teachers. However there were two very important articles in the new Constitution concerning education: article 43 which made education free and compulsory and article 44 which declared the need to eliminate illiteracy." **[17a] (p4)**

23.04 The report titled Compilation prepared by the Office of the High commissioner for human rights, in accordance with paragraph 15(b) of the annex to human rights Council resolution 5/1, dated 19 September 2009, submitted as part of the UN Human Rights Council's universal periodic review of the DRC noted:

"The Committee on the Elimination of Discrimination against Women (CEDAW) in 2006 and CERD in 2007 recommended adopting a definition of discrimination in domestic law, consistent with the respective Conventions monitored by them.

"According to the 2009 joint report of seven thematic special procedures, gender inequality and oppression of women are deeply rooted in society, and continue to be sanctioned through discriminatory laws. Sexual coercion of women and girls is a long-standing phenomenon that existed before the conflict. The special procedures regretted the tendency to perceive sexual violence as an exclusively war-related phenomenon with little or no regard to the serious inequality between men and women.

"In 2007, CEDAW called for the conduct of a comprehensive law review process and recommended reforming the Family Code as a priority, as did the HR Committee in 2006. The seven special procedures were encouraged that a law to reform this Code had been drawn up." **[37f] (p4)**

23.05 The Coalition of the Campaign of Africa for Women's Rights noted in an undated posting accessed 27 June 2011: "Although the Democratic Republic of Congo (DRC) ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), it has still not ratified the Protocol to the CEDAW." **[38a]**

Campaign of Africa for Women's Rights provides a snapshot of the situation for women, which can be accessed here.

23.06 CEDAW commented in its Concluding comments of the Committee on the Elimination of Discrimination against Women: Democratic Republic of the Congo published 25 August 2006:

"While recalling the State party 's obligation to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding comments as requiring the State party's priority attention between now and the submission of the next periodic report. Consequently, the Committee calls upon the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It calls on the State party to submit the present concluding comments to all relevant ministries and to Parliament so as to ensure their full implementation." **[17b] (p2, paragraph 8)**

The full report Concluding comments of the Committee on the Elimination of Discrimination against Women: Democratic Republic of the Congo can be accessed here.

STATISTICAL DATA

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23.07 The following information was taken from the UNICEF report, 'State of the World's Children 2011', published February 2011. Although some of the data refers to the education of children it has a direct bearing on the welfare of women with regard to the opportunities afforded by education:

- "Life expectancy: 107 (as a % of males 2009): ('Number of years newborn children would live if subject to the mortality risks prevailing for the cross section of population at the time of their birth.')
- Adult literacy: 72 (as a % of males 2005-2008): ("Number of literate persons aged 15 and above, expressed as a percentage of the total population in that age group.")
- Enrolment in primary school: 95 (as a % of males 2005-2009): ("Girls' net enrolment ratio divided by those of boys, as a percentage.")
- Attendance in primary school: 95 (as a % of males 2005-2009): ("Girls' net attendance ratio divided by those of boys, as a percentage.")
- Attendance in secondary school: 80 (as a % of males 2005-2009): ("Number of children attending secondary or tertiary school who are of official secondary school age, expressed as a percentage of the total number of children of official secondary school age.") **[48a] (p116, Table 8)**

(Gorrila.CD noted in the article Nyakiliba Primary School in Jomba, undated, accessed 31 November 2011: "Age Range: In DRC children attend primary school from the age of 6 until they are 12. But this pattern has been disrupted here, as in many other places, by war: some of the children at the school are as old as 15.) **[76a]**

- Contraceptive prevalence: 21% (2005-2009): ("Percentage of women in union 15–49 years old currently using contraception.")
- Antenatal care at least once: 85% (2005-2009): ("Antenatal care coverage – Percentage of women 15–49 years old attended at least once during pregnancy by skilled health personnel (doctors, nurses or midwives) and the percentage attended by any provider at least four times.")
- Antenatal care at least four times: 47% (2005-2009) : as above
- Skilled attendant at birth: 74% (2005-2009): ("Percentage of births attended by skilled health personnel (doctors, nurses or midwives)")
- Institutional delivery: 70% (2005-2009): (" Percentage of women 15–49 years old who gave birth during the two years preceding the survey and delivered in a health facility")
- Caesarean Section: 4% (2005-2009): ("Percentage of births delivered by Caesarean section (C-section rates between 5 per cent and 15 per cent expected with adequate levels of emergency obstetric care)")

- Maternal mortality ratio: ("Maternal mortality ratio – Number of deaths of women from pregnancy-related causes per 100,000 live births during the same time period. The 'reported' column shows country-reported figures that are not adjusted for under-reporting and misclassification.")

  - reported: 550 (2005-2009)

  - adjusted: 670 (2008)

  - lifetime risk of maternal death 1:24 (2008) : ("Lifetime risk of maternal death takes into account both the probability of becoming pregnant and the probability of dying as a result of that pregnancy accumulated across a woman's reproductive years.")" **[48a] (p116, Table 8)**

23.08 In addition UNICEF also noted that "58% of women aged 20-24% were first married or in union by the age of 20" (approximately half of that number were married or in union by the age of 18.) **[48a] (p34, Fig 2.7)**

See also subsection on Health and welfare below

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LEGAL RIGHTS

23.09 The Economic and Social Council of the UN stated in the report Implementation of the International Covenational Archives of the Congo Cultural Rights Combined second, third, fourth and fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant Democratic Republic of the Congo, 21 January 2009:"In the Democratic Republic of the Congo, men and women are placed on a footing of equality, as confirmed by article 14 of the Constitution…" **[43a] (p14, paragraph 56, Article 3)**

23.10 The US Department of State's Country Report on Human Rights Practices 2010, DRC (USSD 2010), released on 8 April 2011, reported:

"Women did not possess the same rights as men under the law or in practice. The law requires a married woman to obtain her husband's consent before engaging in legal transactions, including selling or renting real estate, opening a bank account, or applying for a passport. According to UNICEF, 69 percent of widows had been dispossessed of their property. Under the law, women found guilty of adultery may be sentenced to up to one year in prison; adultery by men is subject to legal penalty only if judged to have 'an injurious quality." **[8b]**

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POLITICAL RIGHTS

23.11 The Guardian noted in the article, 'The worst places in the world for women: Congo', published 14 June 2011: "Women say they are treated as second-class citizens with few opportunities to enter politics and make a difference in gender relations." **[27b]**

23.12 The USSD 2010 reported noted that: "Between 2005 and 2008 the proportion of seats held by women in parliament decreased from 12 percent to 8 percent. Women held 50 of 500 seats in the National Assembly and 43 of 690 seats in the provincial assemblies. Four of the 108 senators were women. Among the 45 government ministers and vice ministers, five were women." **[8b] (section 3, Elections and Political Participation)** The Coalition of the Campaign of Africa for Women's Rights noted in an undated posting accessed 27 June 2011: "In 2010, women make up only 8.4% of members of the National Assembly and 4.6% of senators. There is no law or policy to ensure the application of the principles of fair representation and non-discrimination against women (as provided for by article 14 of the Constitution). Electoral law does not set minimum quotas, but merely calls for the representation of women to be taken into account in the compiling of electoral lists." **[38a]**

23.13 The Inter-Parliamentary Union recorded in Women in National Parliaments, last updated 30 April 2011, that DRC ranked 99th out of 187 countries: Following the July 2006 elections 52 women had seats in the lower house (10.4%). In January 2007 an election for the upper house saw women gain 5 seats (4.6%). **[39a]**

See also Section 4: Recent developments, 2011 Elections.

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SOCIO-ECONOMIC RIGHTS

23.14 The USSD 2010 noted: "Women experienced economic discrimination. The law forbids a woman from working at night or accepting employment without her husband's consent. According to the International Labor Organization (ILO), women often received less pay in the private sector than men doing the same job and rarely occupied positions of authority or high responsibility." **[8b]**

See also Employment for more detailed information.

23.15 The Coalition of the Campaign of Africa For Women's Rights stated in an undated posting, accessed 27 June 2011: "Although a large part of the Congolese population lives in extreme poverty, women are made even more vulnerable to economic difficulties by the persistence of deep-rooted patriarchal and stereotyped behaviour with regard to their role and responsibilities." **[38a]**

23.16 Divine Caroline posted the undated article 'Rape, Poverty, and War: Congo and Beyond, by Women Thrive Worldwide', accessed 28 June 2011: "In the Democratic Republic of Congo… where armed conflict has resulted in thousands of rapes, it is estimated that 60-80% of women have become single heads of households due to the conflict." [40a] The USSD 2010 also noted that "according to UNICEF 69% of widows had been dispossessed of their property." **[8b]**

(Women Thrive Worldwide (formerly the Women's Edge Coalition) is the leading nonpartisan organization shaping U.S. foreign assistance and trade policy to benefit poor women worldwide. We bring together a diverse coalition of over 50 organizations and 25,000 individuals united in the belief that women are the key to ending global

poverty, and empowering them is not only right, it's also the most effective long-term solution to world poverty.)

23.17 Freedom House in its Freedom in the World 2011 Report stated: "Abortion is prohibited". **[14a]**

Marriage and family law

23.18 The Coalition of the Campaign of Africa for Women's Rights noted concern in an undated posting, accessed 27 June 2011, at:

"… the persistence of discriminatory legislation, notably in the Family Code [which] contains provisions that are particularly discriminatory against women:

"Article 352 sets a minimum age of marriage for women that is different to that for men (18 for men, 15 for women). Article 355 states that 'Women may not remarry until a period of 300 days has passed from the time of dissolution or annulment of the previous marriage. This period ends in the event of childbirth'. Other provisions of the Code impose the marital subjugation of women. Article 444 states that the husband is the head of the household, that he owes protection to his wife and that the wife must obey him. Article 445 states that the married couple contribute to the moral and material management of the household under the leadership of the husband. According to article 450, apart from some exceptions, 'the wife cannot appear in court on civil matters, acquire, sell or undertake commitments without the authorisation of her husband. If the husband refuses to authorise his wife, authorisation may be given by a judge. The husband can give general authorisation, but he still retains the right to revoke it'. According to article 454, only the husband has the right to establish the marital home or residence. Article 467 establishes discrimination in the area of adultery, as it penalises adultery by the husband only in certain circumstances, while adultery by the wife is punishable in all circumstances." **[38a]** The USSD 2010 also noted "Under the law, women found guilty of adultery may be sentenced to up to one year in prison; adultery by men is subject to legal penalty only if judged to have 'an injurious quality" **[8b]**

23.19 The coalition went on to say: "The Nationality Law: Although article 5 of this law (Law No004/24 of 2004) permits women to pass on their Congolese nationality to their descendants, in the same way as men, article 30 states that women may not retain their Congolese nationality if they marry a foreigner." **[38a]**

23.20 The USSD 2010 noted: "In their March 2009 report to the UNHRC, seven UN special rapporteurs and representatives expressed concern that, while the family code recognizes equality between spouses, it 'effectively renders a married woman a minor under the guardianship of her husband,' by stating that the wife must obey her husband; women remained underrepresented in the democratic institutions." **[8b] (Section 6. Women)**

23.21 The UN Economic and Social Council noted: "There are however certain practices that exist outside the law, reflecting the persistence of ancestral customs, in particular those requiring the man to marry the daughter of his paternal aunt, i.e. his first cousin, and others obliging the widow to marry the younger brother of her deceased husband. These customs are disappearing, thanks to evolving mentalities." **[43a]**

23.22 The same source continued: "In legal terms, the State protects families without distinction or discrimination, but the country does not yet have a coherent policy of assisting families to raise and support their children: in this, no class of families is privileged, for there is no State assistance at all." **[43a] (p33, paragraph 160-165, Article 10)**

23.23 A response by the Refugee Documentation Centre (Ireland) titled 'Information on Marriage Formalities in DR Congo', dated 17 May 2011, noted from the United States Department of State (Date Unknown) Democratic Republic of Congo Reciprocity Schedule, Marriage Certificates that "It should be noted that some natives still believe in, and practice polygamy, despite the fact that the Democratic Republic of the Congo is officially a monogamous country." **[49a]**

The response by the Refugee Documentation Centre (Ireland)' titled Information on Marriage Formalities in DR Congo', dated 17 May 2011 provided a good overview of the situation and can be accessed here. **[49a]**

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Underage and forced marriage

23.24 The USSD 2010 stated:

"The law prohibits marriage of girls under the age of 14 and boys under the age of 18; however, marriages of girls as young as 13 years old took place. Dowry payments greatly contributed to underage marriage. In some cases parents married off a daughter against her will to collect a dowry or to finance a dowry for a son. The sexual violence law criminalizes forced marriage. It subjects parents to up to 12 years' hard labor and a fine of 92,500 Congolese francs (approximately $103) for forcing a child to marry. The penalty doubles when the child is under the age of 15. There were no reports of prosecutions for forced marriage; no additional information was available." **[8b] (Section 6, children)**

It would also be helpful to look at Section 24: Children in relation to the above.

Employment

23.25 The Economic and Social Council of the UN noted in the report 'Implementation of the International Covenational Archives of the Congo Cultural Rights Combined second, third, fourth and fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant Democratic Republic of the Congo', dated 21 January 2009:

"With respect to female employment, it must be noted that male employees outnumber female employees by 4 to 1 (12% versus 3%). The gap is lower in the case of self-employed workers, where the male/female ratio is 2 to 1. Women are engaged primarily in agriculture and in the informal sector.

"In agriculture, women are more numerous (53.8%) than in wage-earning jobs (2.8%), for agriculture constitutes the primary employment sector in the country and accounts for a high proportion of workers. Women are also numerous in the informal sector (6%). The low proportion of female employees reflects the severe obstacles described in

paragraph 51 of the third periodic report to the Human Rights Committee (CCPR/C/COD/2005/3)." **[43a] (p14-15, paragraphs 63-65)**

23.26 Paragragh 51 of the United Nations Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Third periodic report, Democratic Republic of the Congo, (CCPR/C/COD/2005/3), dated 3 May 2005, stated:

"The major obstacles blocking participation by women in decision-making arise in particular for the following reasons:

- "Negative stereotypes of women based on custom and tradition;
- "Low level of education among women arising from the fact that families prefer to send boys rather than girls to school, girls being bound for early marriages;
- "The absence, until recent years, of a database and reliable information on women capable of discharging high-level functions;
- "A lack of self-confidence among women." **[20a] (p11, paragraph 51)**

23.27 The same source continued: "With a view to tackling these obstacles the Government has launched an action programme to encourage the advancement of women, including through a school enrolment campaign entitled 'Every girl in school'." **[20a] (p11, paragraph 51)**

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VIOLENCE AGAINST WOMEN

This section includes information about conflict related violence as well that in non-conflict areas and domestic violence.

23.28 The Foreign and Commonwealth Office (FCO) stated in its 'Human Rights and Democracy the 2010 Foreign and Commonwealth Office Report', published 31 March 2011:

"Women continued to face extremely high levels of sexual and gender-based violence throughout 2010. Nearly two-thirds of married women reported being physically or sexually abused by their partners. There are also extremely high levels of conflict related sexual violence. All the regional armed actors in the DRC's various conflicts are guilty of offences. The DRC authorities have a stated policy of zero tolerance of sexual violence, but this has not been implemented. The lack of discipline and accountability in the Congolese army means that they are often a threat themselves, rather than a source of protection." **[4b] (p189, Women's rights)**

23.29 The United Nations General Assembly, in the Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo to the UN Human Rights Council, dated 8 March 2010, observed that:

134 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

"Alarming levels of violence against women continue to be reported across the country, particularly in the east, as part of a broader pattern of violence and discrimination against women and girls. As reflected in the experts' initial report, forms and manifestations of violence endured by women and girls in conflict and 'peace' situations are manifold. While most instances of violence, in particular sexual violence, are committed by various armed actors, many cases are nevertheless reportedly perpetrated by civilians, both in zones affected by conflict and other parts of the country. In an increasingly militarized society, impunity, absence of the rule of law and women's subordinate social and legal position reinforces a climate of general acceptance and tolerance for violence against women and girls." **[37g] (p10)**

23.30 The Office of the High Commissioner for Human Rights noted in the 'Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the DRC', published March 2010:

"The Panel was informed about efforts undertaken by the Government to address sexual violence, including the adoption of a National Strategy to Combat Gender-Based Violence and the passing of two laws against sexual violence in 2006. The panel found that the needs of the victims of sexual violence it interviewed are largely unmet, particularly in remote areas. The lives they knew have been largely destroyed, and they are suffering greatly - physically, psychologically, and materially. This victimization continues and is compounded by the stigma they often face in families and communities. Their husbands abandon them, and they are socially ostracized. Often this rejection is further compounded for victims who suffer from fistula, victims who become pregnant and bear children as a result of rape, and victims who contract sexually transmitted diseases, including HIV/AIDS. Shifting the stigma from the victims to the perpetrators would have a great impact on the ability of victims to reclaim their dignity and rebuild their lives." **[19c]**

23.31 In the Third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, dated 9 March 2011, the experts noted that:

"The [UN] High Commissioner [for Human Rights] also stressed that sexual violence remains a cause of major concern not only in the eastern part of the country but throughout the rest as well. From 30 July to 2 August 2010, at least 380 women, men and children were raped in 13 villages in Walikale territory, in North Kivu, by a group of armed men belonging to FDLR, members of Mai Mai Cheka and combatants affiliated with a former FARDC member who founded his own armed group in early 2010. Security forces reportedly also committed many rapes during the reporting period. The experts note with satisfaction that a number of cases of sexual violence attributed to FARDC members has been investigated and the perpetrators have been prosecuted by military courts. In particular, they welcome the recent decision by a military court in eastern Democratic Republic of the Congo, which, for the first time, sentenced a high-ranking commander for crimes against humanity for having sent his troops to rape, beat and loot the population in Fizi on 1 January 2011. Besides sending a clear signal that sexual violence in conflict would not be tolerated, this verdict shows that accountability for sexual violence is possible when the political will is there." **[37c] (p5)**

23.32 The International Centre for Migration, Health and Development Blog (ICMHD) noted under the heading 'ICMHD in DRC: Protecting the Health of Women and Girls', published 12 August 2010:

"The conflict in the DRC has also given rise to widespread [sexual and gender-based violence] SGBV, which has reached epidemic proportions, especially in the eastern provinces. Hundreds of thousands of women and girls have been raped and mutilated, robbed of basic human rights, and deprived of their health, therefore destroying their chances of participating and benefiting in the future recovery and reconstruction of the country.

"When rape is used as a weapon of war, as in the case of the DRC, the vulnerability of both women and girls increases dramatically in many ways. Rape, and the subsequent mutilation that so often accompanies SGBV in the DRC, not only traumatizes victims, but destroys their livelihoods, breaks up their families and often means rejection by their own communities. For these women and girls, the impact of rape remains long after fighting ends." **[47a]**

23.33 Human Rights Watch's World Report 2011, released 24 January 2011, covering events in 2010 noted: "The level of sexual violence in Congo continued at an alarming rate. Over 15,000 cases of sexual violence were reported in 2009. In 2010 there were no signs that the trend was decreasing. For the first six months of the year 7,685 cases were reported. More than half of the victims were under 18 years of age." **[10b]**

23.34 The American Journal of Public Health noted in the Abstract to the report 'Sexual violence against women in the Democratic Republic of the Congo: Population-based estimates and determinants', published June 2011:

"Approximately 1.69 – 1.80 million women report being raped in their lifetime (407,397 – 433,785 in the last 12 months), and 3.07 – 3.37 million women report experiencing intimate partner sexual violence in a country of approximately 63.23 – 66.97 million. Reports of sexual violence are largely independent of individual-level background factors. However, women in Nord-Kivu are significantly more likely to report all types of sexual violence. Sexual violence, including intimate partner sexual violence, is more generalized than previously thought." **[26a]**

23.35 In her 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, dated 10 January 2011, the High Commissioner observed that:

"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.

"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… 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. In some cases, the law has been misinterpreted and mitigating circumstances misunderstood. The situation of women will remain precarious

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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." **[19d] (p8-10)**

23.36 Paragraph 23 of the United Nations Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, (A/HRC/13/64), dated 28 January 2010 stated:

"Impunity for the perpetrators of crimes of sexual violence is chronic. High-ranking officials are rarely prosecuted, and, even when there are prosecutions, the justice sector is so severely under-resourced and understaffed that judicial proceedings are slow. Often high-ranking officials — and in fact all those accused who have money — simply pay their way out. Furthermore, alleged perpetrators regularly "escape" from prison. Other factors hinder improvement in the plight of victims, such as the influence of local customs and the victim's fear of rejection by their family and community. The gender-specific root causes of sexual violence, namely the subordinate social, economic and political position of women in Congolese society is not effectively addressed by the State. Victims also face enormous difficulties in accessing justice because of expensive judicial fees, amicable settlements, pressure and threats against them, and ignorance of the law among the police in rural areas. All of these impediments contribute to the climate of impunity for crimes against women." **[19h] (p9, paragraph 23)**

23.37 The Final Report of the Experts on the DRC, published by the United Nations on 26 November 2010 stated:

"Women and children are among the victims of armed attacks on civilian populations, which usually involve a combination of serious violations of international humanitarian law. Among the most commonly reported types of incidents are attacks on villages in which houses are burned and the population, including women and children, is forced to help assailants carry away looted goods. Burning houses inflicts collective suffering on the civilian population and usually leads to displacement. Forced labour in such circumstances usually involves abduction and often leads to the recruitment of children and sexual violence." **[9c] (p38)**

It would also be helpful to look at Section 24: Children in conjunction with the above and the section on Assistance and protection to women

Violence by government security forces and armed groups

The Sections on Human Rights violations by armed forces and Rape should be read in conjunction with this section.

23.38 The Amnesty International (AI) Report 2011: the state of the world's human rights: DRC (AI Report 2011), covering events in 2010 and published on 13 May 2011, noted: "Rape and other forms of sexual violence were widespread, committed by government security forces, including the National Police, and armed groups. Insufficient access to health care and impunity for perpetrators aggravated the situation for rape survivors. Members of security forces responsible for sexual violence were often protected by superior officers or allowed to escape by prison staff." **[16a] (sexual violence)**

For further information about reparation, see the Section on Assistance and protection to women

23.39 AI stated in the article 'New Mass Rapes in DRC are Result of Horrific Failure of Justice', published 23 June 2011:

"New mass rapes by members of the Congolese army in the Democratic Republic of Congo are the result of the government's failure to bring human rights abusers to justice, Amnesty International said today.

"New reports have emerged that fighters of a former armed group integrated into the Congolese army deserted from an army training camp and raped possibly up to 100 women, in an attack on the village of Nyakiele near Fizi town in the east of the country, on the night of 11 June. Members of this armed group were previously implicated in mass rape in the same area in January 2011." **[16c]**

23.40 Voice of America (VoA) noted in the article 'Domestic Rape in Congo a Rapidly Growing Problem', published 30 May 2011:

"In Eastern Congo, rape can be an act of war or revenge, or a response to extreme poverty, ignorance and fear... A new study published by the American Journal of Public Health indicates that nearly 2 million women in the Democratic Republic of Congo have been raped. Many rapes are a part of military operations, designed to terrorize and control the population. Rates of domestic rape and rape by civilians, however, appear to be growing rapidly in the DRC." **[44b]**

23.41 For accounts of specific incidents which took place during the reporting year refer to The Final Report of the Experts on the DRC, published by the United Nations on 26 November 2010. **[9c] (pages 38-40)** and the Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, dated 2 December 2011, accessible via Reports on Country.

Violence by civilians

23.42 The Guardian noted, in the article 'Forty-eight Women Raped Every Hour in Congo, Study Finds', published 12 May 2011:

"About 48 women are raped in the Democratic Republic of the Congo every hour, a study has claimed. The study, due to be published in the American Journal of Public Health in June [2011], found sexual abuse was rampant not only in conflict areas but also in the home, with nearly one woman subjected to some form of sexual abuse every minute. The DRC has been racked by war, with rapes widely documented in the conflict-hit east of the country. However, the study suggests the problem is bigger and more pervasive than previously thought, and goes further in documenting domestic sexual abuse.

"It found 1,152 women are raped every day – a rate equal to 48 per hour. That rate is 26 times more than the previous estimate of 16,000 rapes reported in one year by the United Nations. 'Not only is sexual violence more generalised, but our findings suggest that future policies and programmes should focus on abuse within families,' the study's researchers said.… The figures showed 12% of women had been raped at least once and 3% of women across the country were raped between 2006 and 2007. About 22% had also been forced by their partners to have sex or perform sexual acts against their

will. The study also revealed alarming levels of sexual abuse in the capital, Kinshasa. **[27a]**

23.43 In terms of the attitude towards domestic violence UNICEF noted in their report 'State of the World's Children 2011': "76% of women 15–49 years old... consider a husband to be justified in hitting or beating his wife for at least one of the specified reasons. Women were asked whether a husband is justified in hitting or beating his wife under a series of circumstances, i.e., if his wife burns the food, argues with him, goes out without telling him, neglects the children or refuses sexual relations." **[48a] (p20, Child protection Table 9)**

23.44 The Voice of America (VoA) stated in the article 'Domestic Rape in Congo a Rapidly Growing Problem', published 30 May 2011: "Rape in Congo also is increasingly common at home. Last year, a study commissioned by Oxfam showed that incidents of domestic rape grew 17-fold between 2004 and 2008. In the June issue of the American Journal of Public Health, researchers recommended that future programs against sexual violence in Congo focus on 'abuse within families,' in addition to ending impunity for rapists and improving security in the countryside." **[44b]**

Female genital mutilation (FGM)

23.45 The USSD 2010 noted: "The law does not prohibit female genital mutilation (FGM). According to the World Health Organization, isolated groups in the north practiced FGM, and approximately 5 percent of women and girls were victims." **[8b]**

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ASSISTANCE AND PROTECTION TO WOMEN

23.46 The USSD 2010 stated:

"The law on sexual violence, enacted in 2006, broadened the definition of rape to include male victims, sexual slavery, sexual harassment, forced pregnancy, and other sexual crimes not previously covered by law. It also increased penalties for sexual violence, prohibits compromise fines and forced marriage, allows victims of sexual violence to waive appearance in court, and permits closed hearings to protect confidentiality. It raised the age of sexual consent to 18 years old, although the family code establishes that girls can marry at the age of 14. The minimum penalty prescribed for rape is a prison sentence of five years.

"Government security forces, nongovernmental armed entities, and civilians perpetrated widespread and sometimes mass rape against women and girls." **[8b] (section 6)**

23.47 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo published 30 March 2010 noted:

"Since my last report, there has been some judicial progress with regard to three of the five senior FARDC officers accused of acts of sexual violence, whose cases were

raised with President Kabila during the visit of the Security Council mission in May 2009. Two of the accused have, however, avoided arrest.

"On 25 and 26 November 2009, the national strategy on sexual and genderbased violence developed by the Ministry of Gender, Family and Children was launched in Kinshasa with the support of MONUC and the United Nations country team. The national strategy includes priority elements identified in the operational plan for the implementation of the United Nations comprehensive strategy to address sexual violence in the eastern Democratic Republic of the Congo. In addition, in line with the five pillars outlined in the comprehensive strategy, five thematic working groups were established. Government focal points have been identified for each component and, in January 2010, implementation mechanisms were established at the provincial level in North and South Kivu and Ituri." **[9a] (Paragraphs 73-74)**

23.48 IRIN reported in the article 'Analysis: New laws have little impact on sexual violence in DRC', published 7 June 2011: "Five years after the Democratic Republic of Congo (DRC) revised its laws against sexual and gender-based violence (SGBV), these crimes continue to go unpunished because of judicial inaction and a legal culture at odds with the changes. The laws, ignored and misinterpreted, have left escalating numbers of sexual violence survivors unprotected, and perpetrators free to violate again.

"When the penal code was amended in 2006, it was intended to 'prevent and severely reprimand infractions relating to sexual violence and to ensure systematic support for the victims of these crimes', according to the text. To this end, it included previously ignored sexual violations addressed in international humanitarian law, and toughened up sentencing for those who violated the vulnerable, including children, the disabled and subordinates… Most magistrates show little regard for the revisions to the law and prefer to highlight their perceived failings, such as the requirement for police to open a case within a month of receiving the complaint, according to Josiane Mutombo, a lawyer at the UN Joint Human Rights Office (UNJHRO)." **[45a]**

23.49 The same source continued:

"But while the 2006 revisions were designed to beef up options for legal action, they clash with other laws and certain cultural norms. Sexual contact with someone under 18 is now automatically defined as rape, but the Family Code permits women to marry at 15, for example.

"'The law is really not recognized among the population and even among magistrates,' explained Marie Josée Mijinga, president of the Association of Women Magistrates. 'It is not adapted to the realities of Congolese life. In Bantu culture, a woman who has been raped is dirty, and she is excluded from the community,' Mijinga told IRIN. Thus, a woman who has been raped must weigh her desire for justice against the social consequences. Incest survivors are sometimes silenced by other female relatives, afraid of losing the income that the male offender brings the family. 'The mother silences the whole thing because she thinks, 'It's he who ensures that I eat',' explained Mijinga. 'Between sacrificing a little girl or the whole family, her choice is quickly made.'

"She added that the law was also open to abuse by families of girls younger than 18 who used accusations of statutory rape against older boyfriends to extract dowries and pledges of marriage.

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"Cases that are brought to the police are not guaranteed to be pursued. Less than one in three SGBV cases presented to law-enforcement agents in North Kivu was investigated in 2010 for example, according to the UN Development Programme's access to justice and legal protection project." **[45a]**

23.50 IRIN continued:

"The 2006 laws set a requirement for police to open cases within 30 days of receiving the complaint. 'Without this strict timeframe…it would be worse,' said Yvette Kabuo, assistant lawyer at the legal clinic of the Panzi Hospital. 'Judicial staff wouldn't do anything for years.'

"The burden of proving allegations that do go forward usually falls on the survivor alone. Magistrates often wrongly demand a medical certificate as proof before they will register a complaint, according to Epiphane Zoro, a magistrate working with UNJHRO. Even though it is illegal, magistrates also demand fees to prepare cases, and to ensure that they progress. Claims of indigence require a certificate, which must be paid for.

"Magistrates and security forces are also hesitant to investigate perpetrators in influential positions. When cases do go to court, judicial decisions are sometimes twisted by corruption so that the guilty may buy their freedom. The ease with which suspects bribe or escape their way out of custody leaves survivors even more afraid to testify for fear of reprisal.

"Kabuo, the Panzi hospital lawyer, said the problems lay more with the judicial system than the law. 'Our programme here had to be put on hold for months because there was no magistrate in the jurisdiction. In 2008, only 10 perpetrators were arrested out of the 49 cases presented'." **[45a]**

23.51 Actionaid, in the undated article 'Healing wounds in the Congo', accessed 31 November 2011, mentioned the existence of "... a shelter run by ActionAid partner Maode (Mothers' Organisation for Development), a simple place that consists of five small wooden huts, each housing up to 12 women and their children. Shelter is also provided for 132 orphans." [83a]

23.52 The campaign Stop Raping our Greatest Resource: Power to Women and Girls of Democratic Republic of Congo noted in the article US tour to raise awareness of V-Day/UNICEF campaign against rape in DR Congo, 12 Febraury 2009: "The City of Joy shelter soon to open in Bukavu will allow about 100 recovering rape victims to stay for up to six months at a time, providing a safe place where they can recuperate and develop leadership skills to bring to their struggle against violence." **[13a]**

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HEALTH AND WELFARE

23.53 The International Centre for Migration, Health and Development Blog (ICMHD) noted under the heading 'ICMHD in DRC: Protecting the Health of Women and Girls', published 12 August 2010: "The conflict in DRC has eroded the health sector's capacity to respond effectively and efficiently to the needs of rape victims. Damage to local health facilities has been extensive, and the complete lack of investment in the health sector has exacerbated the situation even more. What few health facilities exist are

often in such disrepair that they don't even have the most basic equipment, and it is presently impossible for them to respond to these women and girls in a meaningful way." **[47a]**

23.54 The Coalition of the Campaign of Africa For Women's Rights, undated, stated:

"The prolonged armed conflict has had an extremely negative effect on maternal mortality which may be explained by the lack of access to obstetric care, inadequate healthcare centres, limited use of existing services during pregnancy and childbirth, limited access to reproductive health and sexual hygiene services for women (particularly those living in rural areas) and low levels of education. The lack of information on HIV/Aids helps the virus to propagate, and women are the main victims." **[38a]**

23.55 Freedom House in its Freedom in the World Report 2011 stated: "Abortion is prohibited". **[14a]**

23.56 Refugee International stated in their report 'DR Congo: Emergency Response to Sexual Violence Still Essential', dated 28 June 2010:

"Access to adequate medical assistance for survivors of sexual violence remains extremely difficult. While survivors can receive free medical care in the provincial capitals in eastern DRC, most conflict-related sexual violence is taking place in remote areas. Refugees International (RI) met with one displaced woman who had been gang-raped in the conflict-affected area of Walikale and was forced to walk in the forest for two weeks in order to reach transport to Goma, since she could not access free medical care closer to home.

"Survivors such as this woman need to access medical services within 72-hours in order to benefit from post-exposure prophylaxis (PEP) kits, but many medical facilities in conflict-affected areas outside of the provincial capitals lack PEP kits." **[11a]**

23.57 The International Centre for Migration, Health and Development Blog (ICMHD) noted under the heading 'ICMHD in DRC: Protecting the Health of Women and Girls', published 12 August 2010: "In most parts of the DRC, but especially in the war-torn regions…women and girls have no choice but to cope with massive psychological and physical injuries that prevent them from going back to their families and being reinserted in society." **[47a]**

Section 26: Medical issues, which provides information about various specific health conditions should be read in conjunction with the above

23.58 The Social and Economic Council of the UN noted in the report 'Implementation of the International Covenational Archives of the Congo Cultural Rights Combined second, third, fourth and fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant Democratic Republic of the Congo', dated 21 January 2009:

"Women are entitled to cash allowances, medical assistance and other social security benefits pursuant to article 130.2 of the Labour Code, which provides:

"'During this time, whether the child lives or not, the female employee is entitled to two-thirds of her pay and to maintenance of benefits in kind.'

142 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

"These benefits have evolved over time in the following manner: the former Labour Code granted pregnant women eight weeks of maternity leave before childbirth and six weeks thereafter. By contrast, the new Labour Code grants six weeks before childbirth and eight weeks afterwards, and benefits are regulated in accordance with article 130.2 cited in the previous paragraph." **[43a] (p34, paragraphs 171-174, Article10)**

23.59 The same source continued:

"It must be recognized that there are in the DRC groups of women who do not benefit from any form of maternity protection or who are clearly disadvantaged. These include:

"(a) Female victims of divorce or family breakdown caused by various factors including migration of the husband to the mining regions, and forced displacement in conflict zones. According to a pilot study on risks and vulnerability in the DRC (report of 31 October 2003), a third of these women received no medical attention during pregnancy.

"(b) Women in 'difficult situations', in particular child mothers, widows, victims of war-related divorces, victims of rape and violence, prostitutes etc.

"The pilot study referred to above notes some governmental and nongovernmental provisions as practical measures of maternity protection. On the government side, there are very few mechanisms that target vulnerable women. Available interventions focus on Congolese women in general and relate to reproductive health, training in income-generating activities, literacy, and the overall advancement of women's role and status in Congolese society, medical assistance and psychological rehabilitation for female victims of rape and violence, legal assistance for women in difficult situations, help to women who are separated because of war in relocating their husbands, etc.." **[43a] (p34, paragraphs 171-174, Article10)**

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24. CHILDREN

OVERVIEW

24.01 UNICEF in the online article 'Latest UNICEF data reveal iniquities in Democratic Republic of the Congo, Results of 'Multiple Indicator Cluster Survey',' released 5 October 2010, noted:

"The latest results of a core UNICEF research tool – The Multiple Indicator Cluster Survey (MICS) – were presented recently in the Democratic Republic of the Congo.

"(The MICS, an international programme of standardized household surveys, covers topics including, but not limited to demography, health, nutrition, education, water and sanitation, as well as indicators about the socioeconomic status of the household. The current MICS is in its fourth generation of this assessment and DR Congo is the first country in sub-Saharan Africa to carry it out.)

"Key findings of the MICS show that DR Congo has made significant progress in terms of education and child survival. Today, three out of four children go to school in the country. This represents an increase of 23 per cent compared to 2000, with near parity for girls and boys.

"The latest United Nations report on global child mortality shows that worldwide mortality rates among children below five years old are the highest in sub-Saharan Africa, where one in eight children dies before his or her fifth birthday. In DR Congo, 158 out of every 1,000 children die before their fifth birthday. Although this figure is still very high, it shows a positive trend compared to 2001, when 205 out of every 1,000 did not reach the age of five.

"Among the worrying tendencies are the degradation of birth registration and the stagnation in the use of improved drinking water sources and improved sanitation facilities. Still today, only one in seven people in DR Congo lives in acceptable hygienic conditions and less than half of the population has access to safe drinking water. Two out of three children under five do not have a birth certificate, a situation that has worsened over the past decade. Indeed, while 34 percent of the country's children under five were registered in 2000, this figure dropped to 28 per cent in 2010… The MICS 4 noted that for every four fully vaccinated children in socio-economically well-off families, there is just one fully vaccinated child in the category of 'disadvantaged households.' The same was found for literacy: there are four times as many literate women in wealthy families as those in disadvantaged ones." **[48e]**

24.02 The US State Department Country Report on Human Rights Practices 2010: Democratic Republic of Congo (USSD 2010), 8 April 2011, referring to the UNCRC 2009 report, stated that:

"In a report released in February 2009, the UNCRC welcomed the government's adoption in January 2009 of the child protection code, which provides for the establishment of 180 juvenile tribunals. However, the UNCRC expressed concern over the capacity of the government to implement the code's provisions, particularly in the absence of an awareness raising campaign. The UNCRC urged the government to expedite implementation of child protection laws, increase investment in law enforcement training on child protection, adopt a comprehensive child protection action plan, establish a 24-hour child helpline as a tool for children to seek assistance and lodge complaints, establish a data base and coherent national programs for refugee and internally displaced children, and swiftly improve juvenile justice standards." **[8b] (section 6)**

24.03 The UN Committee on the Rights of the Child document Concluding observations: Democratic Republic Of Congo, dated 10 February 2009, (UNCRC Report 2009), commenting in response to a report submitted by the DRC government, stated that:

"The Committee is deeply concerned that armed conflict has and continues to negatively impact the effective implementation of the rights of the child enshrined in the Convention.

"The Committee is concerned at the high level of poverty in the State party, which hampers the full enjoyment by children of their rights and leads to several forms of exploitation, such as economic exploitation, sexual exploitation and trafficking, and also

increases vulnerability of certain groups of children, inter alia, street children, refugee and displaced children." **[91b] (p2)**

24.04 The same source also noted that:

"The Committee welcomes efforts by the State party to implement the Committee's concluding observations on the State party's initial report. Nevertheless, the Committee notes with regret that many of these concluding observations, including on such issues as data collection, best interests of the child, respect for the views of the child, child abuse and neglect, children with disabilities, the right to health, child soldiers and juvenile justice have not been significantly addressed." **[91b] (p2)**

24.05 Democratic Republic of Congo ratified the United Nations Convention on the Rights of the Child 28 September1990. **[91c]**

STATISTICAL DATA

24.06 UNICEF (United Nations International Children's Emergency Fund) noted in its 'Country Profile, Congo, Democratic Republic, Maternal, Newborn & Child Survival', March 2010:

"From a total population of (000) 64,257 in 2008:

- "Total under-five population (000) 11,829 (2008)
- "Births (000) 2,886 (2008)
- "Under-five mortality rate (per 1000 live births) 199 (2008)
- "Infant mortality rate (per 1000 live births) 126 (2008
- "Neonatal mortality rate (per 1000 live births) 47 (2004)
- "Total under-five deaths (000) 554 (2008)

24.07 In relation to schooling Unicef noted:

- "Survival rate to last grade of primary school (% survey data) 49 (2001)
- "Primary school net enrolment or attendance ratio (% total) 61 (2007)
- "Primary school net enrolment or attendance ratio (% male) 63 (2007)
- "Primary school net enrolment or attendance ratio (% female) 59 (2007)." **[48f]**

24.08 The United Nations Human Development Index noted that the expected years of schooling were 8.2, with the mean being 3.5. **[28a]**

24.09 The same source ranked Democratic Republic of Congo bottom: 187th out of 187 countries. **[28a]**

BASIC LEGAL INFORMATION

24.10 The Democratic Republic of Congo is a signatory of the Convention on the Rights of the Child. [91c] The Coalition to stop the use of child soldiers Global Report 2008 noted "The February 2006 constitution defined a child as any person below the age of 18. All forms of exploitation of children were punishable by the law (Article 41), and public authorities were under obligation to protect young people from threats to their health, education and development (Article 42)." **[23b]**

24.11 Find the Best, World Country Facts, Democratic Republic of the (Congo-Kinshasa), undated, accessed 31 November 2011, noted the age of consent as 18. **[36a]**

24.12 However, in the UNCRC Report 2009: The Committee noted its concern "... that the legal minimum age for marriage is 15 years for girls". **[91b] (paragraph 26)**

24.13 The USSD 2010 noted: "Although the minimum age for full-time employment without parental consent is 18 years old, employers may legally hire minors between the ages of 15 and 18 with the consent of a parent or guardian. Those under the age of 16 may work a maximum of four hours per day. All minors are restricted from transporting heavy items." **[8b] (Section 7d Prohibition of Child Labor and Minimum Age for Employment)**

For more information about the exploitation of children in the workplace see paragraph 24.23: Child labour

LEGAL RIGHTS

24.14 The UN Committee on the Rights of the Child (UNCRC), Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child :concluding observations: Democratic Republic of the Congo, 10 February 2009, stated:

"The Committee notes with appreciation the adoption by the State party of legislation providing protection for the rights of the child, inter alia:

"(a) The Child Protection Code in January 2009;

"(b) The Law on Sexual Violence in July 2006;

"(c) The new Constitution in February 2006;

"(d) The Labour Code in October 2002; and

"(e) Decree-Law No. 66 of June 2000.

"4. The Committee welcomes the ratification by the State party of the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 11 November 2001;

"5. The Committee also welcomes the ratification by the State Party of the following:

(a) The African Charter on the Rights and Welfare of the Child (ACRWC) in March 2001;

(b) ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in March 2001;

(c) ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment in March 2001; and

(d) The Rome Statute of the International Criminal Court in March 2002." **[91b]**

24.15 The UNCRC Report 2009 noted that: "The Committee welcomes the reference to the best interests of the child in the Child Protection Code. However, the Committee is concerned that, generally, the principle of the best interests of the child is not translated into legislation, policy documents or capacity building activities." **[91b] (p6)**

24.16 The USSD 2010 stated: "The law prohibits all forms of child abuse, but it was common. There was no information about authorities arresting individuals for child abandonment and abuse during the year." **[8b] (Section 6, children)**

24.17 The UNCRC 2009 noted:

"While the Committee notes as positive the low prevalence of female genital mutilation in the State party, it nevertheless regrets the lack of explicit legislation prohibiting the practice. The Committee is concerned that the law sets the marriage of girls at the age of 15 and is even more concerned that some girls get married at an even lower age. The Committee is concerned that, while the law prohibits forced marriages, in practice such marriages still occur. The Committee regrets that, while the 2006 law on sexual violence is considered to prohibit marriage under the age of 18, this prohibition is not explicit and, furthermore the law is not sufficiently disseminated." **[91b] (p13)**

24.18 USSD 2010 concurred: "The law prohibits marriage of girls under the age of 14 and boys under the age of 18; however, marriages of girls as young as 13 years old took place." **[8b] (Section 6, children)**

For more information about underage marriage see paragraph 24.22: Underage/Forced marriage.

24.19 The USSD 2010 also noted: "There were laws to protect children from exploitation in the workplace; however, government agencies did not effectively enforce child labor laws." **[8b] (Section 7d Prohibition of Child Labor and Minimum Age for Employment)**

For more information about the exploitation of children in the workplace see paragraph 24.23: Child labour.

24.20 The Global Movement for Children commented in the article Congo-Kinshasa: Children Still in Prison Despite Law, 3 July 2011:

"Two years after the Democratic Republic of Congo (DRC) promulgated the Law on Child Protection, an estimated 3,000 children remain in prisons across the country.

"The law, which came into effect in January 2009, replaced a 1950 colonial law on juvenile delinquency that set the age of criminal responsibility at 16, leading to a number of severe penalties against children, including life imprisonment and the death sentence.

"The current law has provisions for judicial, penal and social protection of children under 18 and states that a judge can send child law-breakers to 'a public or private institution of a social character, but only as a measure of last resort', and not to a prison …'According to the law, it is absolutely illegal to have children in prison,' Innocent Bugandwa, a legal protection officer for the UN Children's Fund (UNICEF), told IRIN…Some 158 children are living in a section of Kinshasa's Makala prison, according to UNICEF. Boys are separated from adult men, but girls remain in the same cells as adult women." **[35a]**

See also Section 14: Prison and Detention Facility Conditions in connection with the above.

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VIOLENCE AND DISCRIMINATION AGAINST CHILDREN

Sexual violence

24.21 The UNCRC 2009 commented:

"The Committee welcomes the adoption in 2006 of two laws against sexual violence, particularly Law No.° 06/018, which takes into account provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of hildren [sic], child prostitution and child pornography. The Committee however is deeply concerned about the extremely high rates of sexual violence in the State party and that in some areas up to half of the victims of such violence are children.

"The Committee is seriously concerned that marginalized children, such as children involved in armed conflict, refugees and internally displaced persons, are victims of sexual exploitation and abuse. Furthermore, the Committee is concerned that young girls in urban centres are often forced to engage in prostitution, sometimes by their parents, at a very early age." **[91b] (p8)**

Underage/forced marriage

24.22 The USSD 2010 noted:

"Dowry payments greatly contributed to underage marriage. In some cases parents married off a daughter against her will to collect a dowry or to finance a dowry for a son. The sexual violence law criminalizes forced marriage. It subjects parents to up to 12 years' hard labor and a fine of 92,500 Congolese francs (approximately $103) for forcing a child to marry. The penalty doubles when the child is under the age of 15. There were no reports of prosecutions for forced marriage; no additional information was available." **[8b] (Section 6, children)**

Child labour

24.23 The USSD 2010 noted:

"There were laws to protect children from exploitation in the workplace; however, government agencies did not effectively enforce child labor laws. Child labor remained a problem throughout the country, including forced child labor. Although there was at least one report of a large enterprise using child labor during the year, it was much more

common in the informal sector, particularly in mining and subsistence agriculture. For economic survival, families often encouraged children to work in order to earn money. According to the Ministry of Labor, children continued to work in mines and stone quarries, and as child soldiers, water sellers, domestic servants, and entertainers in bars and restaurants." **[8b] (Section 7d Prohibition of Child Labor and Minimum Age for Employment)**

24.24 The same source continued:

"According to data collected by UNICEF in surveys between 1999 and 2007, approximately 32 percent of children between the ages of five and 14 were involved in child labor. UNICEF considered children to be involved in labor if, during the week preceding the survey, a child who was five to 11 years old performed at least one hour of economic activity or at least 28 hours of domestic work or a child who was 12 to 14 years old performed at least 14 hours of economic activity or at least 28 hours of domestic work." **[8b] (Section 7d Prohibition of Child Labor and Minimum Age for Employment)**

24.25 UNICEF's undated 'Background Information', accessed January 2012, reported:

"Child labour is commonplace: More than a quarter of children ages 5 to 14 are working." [48g] The USSD 2010 also noted "Children made up as much as 30 percent of the work force in the informal ("artisanal") mining sector. In mining regions of the provinces of Katanga, Kasai Occidental, Orientale, and North and South Kivu, children performed dangerous mine work, often underground. In many areas of the country, children who were five to 12 years old broke rocks to make gravel for a small wage. In October 2009 a foreign diplomat observed children breaking stones and carrying heavy loads in a stone quarry on the compound of the government-owned Gecamines mining company in Kipushi, Katanga. According to the Solidarity Center, during the year there was an increase in the number of children working in the Kolwezi mines in southern Katanga. Catholic Relief Services in Katanga reported that the local population, including children, were drawn to mining work, largely due to the lack of alternative sources of income and the higher salaries offered in the mining sector." **[8b] (Section 7d Prohibition of Child Labor and Minimum Age for Employment)**

24.26 The USSD 2010 went on to report:

"The Ministry of Labor has responsibility for investigating child labor abuses but had no dedicated child labor inspection service. The Ministry of Labor had yet to develop a national action plan to comprehensively address child labor. Other government agencies responsible for combating child labor included the Ministry of Gender, Family and Children, the Ministry of Social Affairs, and the National Committee to Combat Worst Forms of Child Labor. These agencies had no budgets for inspections and conducted no investigations during the year." **[8b] (Section 7d Prohibition of Child Labor and Minimum Age for Employment**

The USSD Trafficking in Persons 2011 report also provides information relevant to the section above. It can be accessed here. **[8b]**

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Children associated with armed groups

24.27 The Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, published 30 March 2010, stated:

"The systematic recruitment and use of children in armed conflict continued, particularly in North and South Kivu, Katanga and Orientale Province. In 2009, MONUC documented 848 newly recruited children (including 52 girls). Perpetrators included PARECO, FDLR, CNDP, FRPI and LRA. The fast track integration process also led to the increased presence of children in FARDC, and the national armed forces have undertaken new recruitment in Katanga and the Kasaïs. A total of 23 cases of killing and 12 cases of maiming of children were also documented, and sexual violence against children continued to be widespread. In this context, the United Nations system in the Democratic Republic of the Congo continues to work closely with the Government to ensure the implementation of its commitments to address grave violations against children." **[9a] (paragraph 72)**

24.28 The Swiss Association against Impunity (Trial) stated in a submission to the Committee on the Rights of the Child, Initial report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, dated April 2011:

"The present written submission to the Committee for the Rights of the Child follows the Democratic Republic of the Congo (DRC) initial report of July 2008 regarding its implementation of the Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-AC). TRIAL is focusing more specifically on the topic of universal jurisdiction, with a view to the effective prosecution of the war crime of recruiting, enrolling and using child soldiers in armed conflict, considered as one of the necessary measures to properly implement the OP-AC, ratified by DRC on 11 November 2001.

"A detailed review of DRC current criminal legislation leads TRIAL to highlight that the current legal framework is lacunar and does not permit DRC to live up to its commitments under the OP-AC." **[29a]**

24.29 A Letter dated 23 November 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, published 23 November 2009, stated:

"The recruitment and use of children by all armed forces active in North and South Kivu continued in 2009, although it has decreased since the beginning of the integration process. According to MONUC, a total of 2,134 children were released from the armed groups between January and September 2009. Separately, the Group directly verified a total of 2,020 demobilization files of children separated from the armed groups since November 2008 in North and South Kivu. Almost half of these cases were of children who had been affiliated with Mai Mai groups and PARECO, while significant numbers were recruited by CNDP. The Group has also documented 285 cases of new recruitment of children between January and October 2009, compared with 770 cases recorded in the same period in 2008. Of the 285 cases in 2009, 127 were attributed to PARECO, 107 to FARDC and 29 to FDLR. The Group was unable to verify the chain of command in the remaining cases. In the territories of Masisi, North Kivu, and Kalehe,

150 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

South Kivu, the Group has been able to directly verify a significant presence of children within the FARDC ranks, while in key strategic zones such as Ngungu, cases of re-recruitment of children already reunified with their families have been reported. As Kimia II operations moved into South Kivu, larger numbers of children began to be separated from FARDC: at the time of writing 118 children had been separated since July 2009. As also noted in its interim report (para. 78 of S/2009/253), the Group confirms that a significant proportion of these children had been integrated into FARDC during the accelerated integration process and had been engaged in active combat against FDLR. At the same time, FDLR continues to maintain children in its ranks and has been practising wide-scale abductions." **[9f] (paragraphs 315-317)**

Mai Mai recruitment

24.30 The Coalition to stop the use of Child Soldiers noted in a media statement, 'Democratic Republic of the Congo (DRC): Coalition calls for end to Mai Mai child soldier recruitment and use', 26 February 2010 (in reference to its February 2010 briefing paper: 'Mai Mai Child Soldier Recruitment and use: Entrenched and Unending') :

"Insecurity is seen to justify the existence of local militias but the vulnerability of children is also entrenched in socio-economic conditions. The lives of many children in the conflict-affected areas are additionally blighted by poverty, lack of access to education and few economic opportunities. While forced recruitment by Mai Mai is not uncommon, for some children, joining with a Mai Mai group is seen as a way out of poverty or just another job." **[23a]**

24.31 The same source also noted: "The imperative of protecting children from involvement with Mai Mai is underscored by the range of abuses that they experience when in the ranks. Children have been sent into frontline combat, subjected to whipping or other violent punishments and, in the case of girls, raped and used for sexual slavery. Young children are also actively recruited by Mai Mai to perform rituals believed to protect their members in battle." **[23a]**

24.32 The Coalition continued:

"The primary responsibility for protecting and promoting the rights of children in eastern Congo rests with the government. However, Mai Mai have often had the tacit support of the authorities, which have sought their support in past military operations in the full knowledge that they have violated national and international law by having child soldiers in their ranks. 'The Congolese government could make a significant difference simply by implementing its own policy and laws. This means systematically investigating and prosecuting those who recruit and use children and ensuring that any former Mai Mai integrated into the FARDC suspected of committing abuses against children are removed.' In terms of Mai Mai recruitment of children the Coalition noted: 'Mai Mai militias have been among the most prolific recruiters of children in eastern Congo in recent years, yet virtually nothing has been done to lessen the vulnerability of boys and girls from exploitation by these groups'." **[23a]**

24.33 The Coalition noted:

"The term Mai Mai describes a range of militia groups drawn from communities broadly described as 'indigenous' to the DRC. The groups vary in size and level of organization, from community-based militias with about 50-60 members, to larger more structured

groups with a wider geographical spread and up to 1,000 troops. Mai Mai have an ambiguous relationship with the DRC authorities having fought both alongside the armed forces and, on occasions, in opposition to them. Successive attempts to disarm and demobilize Mai Mai groups, including most recently through an accelerated integration process into the armed forces in 2009, have not succeeded. A number of Mai Mai groups either refused to join or have withdrawn from the process and are once again reported to be militarily active and recruiting children.Several Mai Mai commanders have been among a handful of people prosecuted for the crime of child soldier recruitment in Congolese courts. However, other suspected child recruiters remain at large or have been integrated into the FARDC. One former Mai Mai commander Jean-Pierre Biyoyo, who was found guilty by a military court in 2006 on charges related to child recruitment, subsequently escaped and is now reported to be serving as deputy commander in the Congolese armed forces." **[23a]**

The briefing paper 'Mai Mai Child Soldier Recruitment and use: Entrenched and Unending', February 2010 can be accessed here. **[23c]** Also see Section 11: Non-government armed groups .

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Lord's Resistance Army (LRA) recruitment

24.34 The UN noted that the Lord's Resistance Army had kidnapped 97 children during the reporting period covered by its 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston', published by the General Assembly, 14 June 2010, [37b] (p14, paragraph 52) whilst the USSD 2010 noted "... the recruitment and use of children by all armed entities active in North and South Kivu and Orientale, including the FARDC (particularly ex-CNDP elements), continued." **[8b]**

See also Section 11: Non-government armed groups in connection with the above.

Children associated with the FARDC

24.35 The USSD 2010 noted:

"The use and treatment of child soldiers by FARDC elements--particularly fast-track integrated brigades composed mainly of ex-CNDP members--remained a problem. In December the UNGOE reported to the UN Security Council that during 2009 the MONUC Child Protection Section documented 686 cases of child recruitment attributable to the FARDC, compared with 631 children released by the FARDC during the same time. The FARDC showed what the UN secretary-general called 'a dramatic increase' in the number of children within its ranks in 2009. According to the UN secretary-general's report of July, following the fast-track integration of former rebels and militia members in 2009, which brought many child soldiers from RMGs into the ranks of the FARDC, 'the FARDC not only accounted for the highest number of children recruited during October 2008 through December 2009 but was also the only armed entity for which an increase in child recruitment was documented. By contrast, all the other groups showed a downward trend in child recruitment, with the transfer of their children to the FARDC." **[8b] (Section 1g Use of Excessive Force and Other Abuses in Internal Conflicts)**

24.36 The USSD 2010 noted:

"In December the UNGOE [UN Group of Experts] underscored concerns that UN child protection officers had been denied access to physically screen nearly two thirds of the FARDC combatants in military operations supported by the UN to ensure children were not involved. The UNGOE reported that 'since the outset of the Amani Leo operations, only one FARDC battalion has been fully screened by the MONUSCO Child Protection Section.' The UNGOE added that, while some FARDC commanders have cooperated in efforts to separate children from FARDC units, others have hidden children or continued to recruit children, including some of those who had previously been separated. In 2009 the UNGOE expressed concern that ex-CNDP officers in FARDC units in the east 'repeatedly and deliberately obstructed MONUC from repatriating foreign fighters from their ranks.' Sometimes the obstruction involved death threats. During the year and in 2009, the UNGOE reported that the acts of obstruction occurred often under the command of certain colonels and lieutenant colonels, including Colonel Gwigwi Busogi, Colonel Baudouin Ngaruye, Lieutenant Colonel Antoine Manzi, Lieutenant Colonel Bisamaza, Salumu Mulenda, and Colonel Innocent Zimurinda, who was sanctioned by the UN Security Council in December for recruitment and use of child soldiers and other grave abuses against children. Gwigwi, along with his commanders, systematically hid children from child protection officers and otherwise obstructed their efforts, according to witnesses. Between May and August, MONUSCO documented a further 15 cases of children who had been used as soldiers by senior officers under Gwigwi's command. Gwigwi commanded the 24th Sector of the FARDC in Kalehe, South Kivu, for most of the year but was redeployed as deputy commander of the 4th operational zone in Uvira." (Abuses by State Security Forces) The same source added "In November, ex-CNDP FARDC members were actively recruiting children to serve in their ranks by visiting schools in North Kivu and demanding lists of recently demobilized children. They were also targeting young adult men to serve in their ranks.'" **[8b] (National Congress for the Defense of the People (CNDP))**

Also see Section 9: Security Forces in connection with the above.

Additional, more detailed information, can be found in the Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, dated 2 December 2011 as mentioned in the Section: Reports on Country, published between 1 December 2011 and 1 March 2012. (pages 160-162).

Abduction of girls

24.37 The Voice of America (VoA) noted in the article 'Congolese Girls Abducted Into War', published 2 June 2011:

"International organizations say all types of military groups are guilty of recruiting or abducting children, including countless numbers of girls, to serve as soldiers, porters, spies, scouts, cooks and sex-slaves…UNICEF says more than 31,000 children - 20 percent of them girls - have been rescued from militias or have escaped from them in the past seven years. And while the organization says thousands of children are still serving in militias, officials say it is impossible to know exactly how many. The deputy team leader of the U.N. child demobilization program in North Kivu Province, Patrick-Cyrille Garba, said girls are less likely to escape or be rescued from militias than boys.

Commanders keep girls hidden, he said, afraid they will accuse soldiers of sexual assault if they get out." **[44a]**

Demobilisation

24.38 The USSD 2010 noted:

"According to a UN Children's Fund (UNICEF) estimate in late March 2009, 8,000 children had yet to be demobilized from the ranks of RMGs and several units of government security forces in the east, where they served as combatants, porters, spies, and sex slaves. The estimate represented an increase of 4,500 children, compared with the UNICEF estimate for 2008; however, it was very difficult to verify actual numbers, as estimates were provided based on the numbers of children who had been demobilized, not counted within the ranks." **[8b]**

24.39 The USSD 2010 continued: "From January to September, MONUC/MONUSCO facilitated the release of 1,559 children from the FARDC and RMGs. Between October 2008 and December 2009, the Resolution 1612 Joint Action Committee reported that 3,180 children, overwhelmingly male, were released from RMGs and the FARDC." **[8b] (Section 1g Use of Excessive Force and Other Abuses in Internal Conflicts)**

24.40 The same source also noted:

"The Resolution 1612 Country Task Force is pursuing advocacy with the government to commit to, negotiate, and implement an action plan to end the recruitment and use of children by the FARDC, as requested by UN Security Council resolutions 1539, 1612, and 1882. The action plan would facilitate, among other things, the commitment of the government and the FARDC to release all children remaining within the FARDC's ranks and put an end to the recruitment and use of children, mainly through military orders and measures to clearly prohibit the practice, as well as through systematic investigation of perpetrators of child rights violations.

"…From January to September, MONUC/MONUSCO facilitated the release of 1,559 children from the FARDC and RMGs. Between October 2008 and December 2009, the Resolution 1612 Joint Action Committee reported that 3,180 children, overwhelmingly male, were released from RMGs and the FARDC." **[8b] (Section 1g Use of Excessive Force and Other Abuses in Internal Conflicts)**

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Street children

This section should read in conjunction with Children accused of witchcraft.

24.41 The USSD 2010 stated:

"The country's estimated 50,000 street children included many accused of witchcraft, child refugees, and war orphans, as well as children with homes and families. During the year, according to UNICEF, there were more than 20,000 street children in Kinshasa, of whom 26 percent were girls. Many churches in Kinshasa conducted exorcisms of children accused of witchcraft involving isolation, beating and whipping, starvation, and forced ingestion of purgatives. According to UNICEF, there was a

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practice of branding as witches children with disabilities or even speech impediments and learning disabilities; this practice sometimes resulted in parents abandoning their children. According to UNICEF, as many as 70 percent of the street children they assisted claimed to have been accused of witchcraft." **[8b] (Section 6, children)**

24.42 The same source continued:

"The government was ill equipped to deal with large numbers of homeless children. Citizens generally regarded street children as delinquents engaged in petty crime, begging, and prostitution and approved of actions taken against them. State security forces abused and arbitrarily arrested street children.There were numerous reports that street children had to pay police officers to be allowed to sleep in vacant buildings and had to share with police a percentage of goods stolen from markets." **[8b] (Section 6, children)**

24.43 The USSD 2010 added:

"In February 2009 the UNCRC underscored its concern over the frequency of sexual assaults committed against street children, as well as state security forces' regular harassment, beating, and arrest of street children. In addition the UNCRC expressed concern that 'violence against children accused of witchcraft is increasing, and that children are being kept as prisoners in religious buildings where they were exposed to torture and mistreatment, or even killed under the pretext of exorcism.' The UNCRC recommended that the government take effective measures to prevent children from being accused of witchcraft, including by continuing and strengthening public awareness-raising activities, particularly directed at parents and religious leaders and by addressing root causes such as poverty. The UNCRC further urged the government to criminalize accusing children of witchcraft, bring to justice persons responsible for violence against children accused of sorcery, and take steps to recover and reintegrate children accused of witchcraft." **[8b] (Section 6, children)**

See also the paragraph 24.41: Trafficking of children

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Children accused of witchcraft

24.44 The UN stated in its 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston', published by the General Assembly, 14 June 2010:

"Significant numbers of children and women are accused of being witches in the Democratic Republic of the Congo, and are subjected to torture, harsh beatings and other cruelty as a result. Some have been killed, or have died following cruel treatment. This violence is one outcome of a widespread social phenomenon in which vulnerable members of the community are blamed for misfortunes, such as the loss of a job or illness. According to international and local non-governmental organizations, tens of thousands of children abandoned on the streets of Kinshasa and other major cities are especially vulnerable to witchcraft accusations. Unsurprisingly, this phenomenon is most prevalent in povertystricken communities, which lack access to education and social services, and the victims are often individuals with physical or mental disabilities

who are perceived to have 'brought defects' into a family or community." **[37b] (p20, paragraphs 88-91 killings of 'witches')**

24.45 The same source continued:

"Because of the remoteness of many communities and a level of secrecy around the practice, victim numbers are hard to ascertain. According to the United Nations Children's Fund, at least 12 accused child witches were killed in three provinces (Orientale, Maniema Katanga) from September 2008 to early October 2009, mostly by their own family members. In Kasai Occidental, there are credible accounts of over 21 children subjected to harsh beatings and cruel treatment for alleged witchcraft. Churches and cults that practice exorcism play an especially pernicious role, often condoning victimization and subjecting children to 'exorcisms' or 'deliverance' ceremonies in which they are forcibly isolated and deprived of food and water. In one emblematic case from Province Orientale, one of the wives of a polygamous man accused her husband's young son of trying to kill her. The father took the son to be exorcised and a church deacon bound the child while the father and his wife poured boiling water on him. The wife submerged the child in water heated to over 90 degrees. He died of second degree burns. In another case in Katoko, Maniema, an 8-year-old boy died in October 2009 after a local pastor imprisoned him in a 'prayer chamber' for seven days without food." **[37b] (p20, paragraphs 88-91 killings of 'witches')**

24.46 The UN continued: "There is almost total impunity for such killings; witnesses or family members are reluctant to report such incidents to authorities, and officials all too often turn a blind eye to preventing or investigating the violence." **[37b] (p20, paragraphs 88-91 killings of 'witches')** The USSD 2010 report noted "The constitution prohibits parental abandonment of children for alleged sorcery; however, such allegations resulted in abandonment and abuse. The 2009 Child Protection Law provides for a sentence of imprisonment for parents and other adults who accuse children of witchcraft; however, authorities did not implement the law effectively." **[8b] (Section 6, children)**

TRAFFICKING

24.47 The US Department of State noted in its Trafficking in Persons 2011 report (USSD TiP 2011), published 27 June 2011:

"The Child Protection Code (Law 09/001) also prohibits and prescribes penalties of 10 to 20 years' imprisonment for sexual slavery, child trafficking, child commercial sexual exploitation, and the enlistment of children into the armed forces; it cannot be fully implemented, however, due to the continued absence of necessary decrees from several ministries and a lack of a funding allotment issued by the Ministry of Finance. In July 2010, the government appointed 1,000 of the 2,000 new magistrates that were recruited during the previous reporting period; most began hearing cases, but worked under difficult conditions with few resources. In an effort to further protect children, in January 2011, the prime minister signed a bylaw implementing the creation of juvenile courts specifically focused on children who have suffered violence and abuse or are in conflict with the law. The first such court, opened in Lubumbashi in March 2010, heard 82 cases of children victimized by violence and abuse in its first six months of operation; it is unknown whether any of these cases constituted child trafficking. Additional courts were established in Kinshasa and Bandundu in early 2011." **[8c]**

CHILDCARE AND PROTECTION

24.48 In terms of child protection, UNICEF noted in its 'Humanitarian Action Update', 1 June 2010:

"UNICEF's Child Protection in Emergencies program has provided critical care and protection for children and women affected by conflict and displacement in at least five provinces across the country with emergency funds in early 2010. UNICEF and its partners have identified and provided access to essential medical, psychosocial care and reintegration assistance to approximately 1,628 survivors of sexual violence since the beginning of 2010. In addition, to contribute to prevention efforts over 15,000 girls and boys, men and women, participated in outreach activities to raise awareness about the consequences of sexual violence and seek to engage men as allies in the fight against sexual violence. In the eastern DRC, since the beginning of the year, UNICEF and its partners have identified and certified 458 children out of which 372 have received temporary shelter and care. In total, 466 children have been reunified with their families since January 2010. In the Equateur province alone, local protection partners trained by UNICEF on identification, documentation, tracing and reunification have reunified over 260 children and placed an additional 234 with foster families pending their family reunification. Several day centres will be created to provide a protective environment." **[48d] (Child protection)**

24.49 UNICEF noted in a blog titled 'DR Congo - Children not soldiers', dated 20 January 2011:

"UNICEF's local NGO partner BVES, a project that addresses another illustration of abuse in DRC - the recruitment of children into armed forces or groups. The Centre of Transit and Orientation (CTO) was created in 2002, accommodating every year an average of 100 boys aged between 14 and 17 years. While most of the children are from the two Kivus, some of them had been enrolled in rebel groups in Rwanda and Burundi. BVES [Bureau pour le Volontariat au service de l'Enfance et de la Sante] has two centres in Bukavu, one for boys and one for girls. Currently 43 girls stay in the latter, many of whom lost their families during war." **[48c]**

24.50 The same source continued:

"BVES intervenes in a holistic manner, including monitoring of gross child rights violations at the community level (UN Security Council Resolution1612). Once information is received regarding child recruitment, UNICEF, MONUSCO and local military divisions get involved. The information is verified and if it proves true the partners aim to demobilize the minor; which is subject to the will of the concerned commander. Many of the identified youth can be saved this way. Others are identified in prisons or similarly 'hot' locations of the region, such as bordellos; a small number of children manage to escape from the groups by themselves. Since 2002, 3,942 children from war-affected zones have found a temporary home in BVES, including 2.346 ex combatants." **[48c]**

Also see Section 23: Women in connection with the above.

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EDUCATION

24.51 The Economist Intelligence Unit (EIU) DRC Country Profile 2008, published 19 September 2008, noted: "The state education system is in a state of collapse; infrastructure is dilapidated or non-existent, and teachers infrequently paid and often absent. Education was officially nationalised in 1972, but the Catholic Church remains responsible for an estimated 80% of functioning primary schools and 60% of secondary schools. The World Bank estimates male adult literacy at 81% and female adult literacy at 54%." **[22a] (p12)**

24.52 The USSD 2010 noted:

"In practice primary school education was not compulsory, free, or universal, and few functioning government-funded schools existed. Fighting that resumed in 2008 in North Kivu between government and rebel forces resulted in the closure of approximately 85 percent of all schools in the area, according to UNICEF. Public and private schools generally expected parents to contribute to teachers' salaries, and parents typically funded 80 to 90 percent of school expenses. These expenses, plus the potential loss of income or labor while their children attended class, left many parents unable to enroll their children. In September President Kabila ordered that fees required by the government for primary school children would no longer be required; however, at year's end, parents were still paying fees." **[8b] (Section 6, children)**

24.53 The USSD 2010 continued:

"Primary and secondary school attendance rates for girls were lower because many parents preferred to send their sons to school, either for financial or cultural reasons.The majority of schools in conflict zones were dilapidated and had been closed due to insecurity. Parents in such areas often prevented their children from attending the few functioning schools due to fear that armed entities would forcibly recruit their children, according to reports received by the UN during the year." **[8b] (Section 6, children)**

24.54 UNICEF noted in its 'Humanitarian Action Update', 1 June 2010:

"The priority for 2010 is to ensure that 300,000 conflict-affected girls and boys have access to quality education. The following activities were carried out by UNICEF in the first quarter of 2010: In North Kivu, 680 teachers have received teaching kits, 206 have been trained on psychosocial support to children and 552 on Peace education for the benefit of 122,000 children. Particular attention was paid to addressing notions of conflict resolution and management as well as to promoting 'peace clubs' and peer education workshops on peace issues. Furthermore, 126 parent committee members in 21 schools were trained on co-management. In South Kivu, 18,309 children have been supported during the past four months in formal and non-formal education. This support has been accompanied with community-based awareness programmes on the importance of education, advocacy to the government for the payment of the teachers" salaries and distribution of school kits. In Ituri, 20 temporary classes with 20 permanent latrines were built in three schools in Haut-Uélé. Furthermore, 277 teachers were trained on Child Rights and Peace Education. In three temporary adolescent youth centres constructed in the province, adolescents receive training on HIV/AIDS, peace education, reproductive health and are provided the space for individual creativity through art and sport." **[48d] (education)**

Also see Section 28: Internally Displaced Persons (IDPs) in connection with the above.

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HEALTH AND WELFARE

Section 8: Security Situation and Section 18: Human Rights Institutions, Organisations and Activists should be read in conjuction with this section.

24.55 UNICEF's undated 'Background Information', accessed 24 August 2011, recorded the following health issues faced by children in the Democratic Republic of the Congo:

- "Rates of infant, under-five and maternal mortality are staggering. One in five children dies before reaching the age of five. Mothers die in childbirth in 13 out of every 1,000 deliveries.
- "Nearly one third of children are underweight. Malnutrition and micronutrient deficiencies are responsible for nearly half of deaths among children under age five.
- "Vaccination rates for the most common childhood diseases are approximately 65 per cent. [In December 2008, WHO also provided statistical information on estimated vaccination coverage **[27e]**]
- "Less than half the population has access to a safe source of clean drinking water. Less than one third has access to adequate sanitation facilities.
- "The adult HIV/AIDS prevalence rate was 4.2 per cent in 2005, a significant increase from 2004. The rate is believed to be significantly higher in areas of recent armed conflict, where sexual abuse and violence against women was widespread.
- "There are over 4 million orphaned children in the country." **[48g]**

24.56 The International Organization for Migration (IOM) noted in its report 'Returning to the Democratic Republic of Congo', Country Information, latest update 17 November 2009:

"Medicines for the treatment of some diseases (tuberculosis, malaria, hepatitis, children's diseases, HIV) are available in small health posts and health centres in each Commune (administrative area) in Kinshasa and in each administrative sector in the regions. There is one general hospital and a specialised centre in the big towns as well as in the administrative territories of the regions. There are also some clinics (public and private) in Kinshasa." **[34a] (1. Healthcare)**

Section 26: Medical Issues should also be read in conjunction with the above.

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25. TRAFFICKING

25.01 The U.S Department of State (USSD) noted in its Trafficking in Persons Report 2011, (USSD TiP 2011), published 27 June 2011:

"The Democratic Republic of the Congo (DRC) is a source and destination country for men, women, and children subjected to forced labor and sex trafficking. The majority of this trafficking is internal, and while much of it is perpetrated by armed groups and rogue elements of government forces outside government control in the country's

unstable eastern provinces, incidents of trafficking occur throughout all 11 provinces. A significant number of unlicensed Congolese artisanal miners – men and boys – are exploited in situations of debt bondage by businessmen and supply dealers from whom they acquire cash advances, tools, food, and other provisions at inflated prices, and to whom they must sell the mined minerals at prices below the market value. The miners are forced to continue to work to repay constantly accumulating debts that are virtually impossible to repay. Throughout the year, in North Kivu, South Kivu, and Katanga Provinces, armed groups – such as the Democratic Forces for the Liberation of Rwanda (FDLR) – and Congolese national army (FARDC) troops routinely used threats and coercion to force men and children to mine for minerals, turn over their mineral production, pay illegal 'taxes,' or carry looted goods from mining villages. There were reports that, following the government's September 2010 order attempting to suspend all mining activities in the three eastern provinces, the military's control of the mines intensified and that some FARDC elements increased their use of forced labor in the mines, though FARDC spokesmen repeatedly denied such allegations. In January 2011, for example, the UN Organization Stabilization Mission in the Congo (MONUSCO) reported that the Commander of the 21st Sector of the FARDC was using forced child labor in the mines located in Bisiye (North Kivu Province)." **[8c]**

25.02 The same source continued:

"The government did not show evidence of progress in punishing labor or sex trafficking offenders among members of its own armed forces, but took initial steps investigating three suspected sex and labor trafficking cases. Other advances were noted in demobilizing children from fighting factions, including some from the national army. The government failed, however, to provide protective services for the vast majority of trafficking victims or to raise public awareness of human trafficking. The government continued to lack sufficient financial, technical, and human resources to effectively address trafficking crimes and provide basic levels of security and social services in most parts of the country." **[8c]**

25.03 The same source continued:

"Congolese girls are forcibly prostituted in tent- or hut-based brothels or informal camps – including in markets and mining areas – by loosely organized networks, gangs, and brothel operators. Congolese women and children are exploited within the country in conditions of domestic servitude and migrate to Angola, South Africa, Republic of the Congo, as well as East African, Middle Eastern, and European nations, where some are exploited in forced prostitution, domestic servitude, and forced agricultural labor." **[8c]**

Also see Section 24: Children, Child labour and Section 23: Women in connection with the above.

25.04 The USSD TiP 2011 also noted:

"The Government of the Democratic Republic of the Congo does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. However, it did demonstrate increased willingness to engage with the international community on certain types of human trafficking occurring within the country… The government did not show evidence of progress in punishing labor or sex trafficking offenders among members of its own armed forces, but took initial steps investigating three suspected sex and labor trafficking cases. Other advances were

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noted in demobilizing children from fighting factions, including some from the national army. The government failed, however, to provide protective services for the vast majority of trafficking victims or to raise public awareness of human trafficking. The government continued to lack sufficient financial, technical, and human resources to effectively address trafficking crimes and provide basic levels of security and social services in most parts of the country. The country's criminal and military justice systems, including the police, courts, and prisons, were challenged by the shortage of human, material, and financial resources; there were few functioning courts or secure prisons in the country." **[8c]**

PROSECUTION

25.05 The same source continued:

"The government made modest progress in investigating suspected trafficking offenses during the reporting period, but failed to convict and punish trafficking offenders. The government's judicial writ did not cover many areas of the country in which human trafficking occurs, and it remained hamstrung by a critical shortage of magistrates, clerks, and lawyers. The Ministry of Justice was hampered in its overall judicial efforts, including the prosecution of trafficking cases, due to its very small budget of $67 million – slightly less than one percent of the national budget – for 2010-2011. Corrupt officials allegedly embezzled meager financial resources from government agencies, further complicating the government's efforts to combat human trafficking through law enforcement training, capacity building, or victim assistance. Existing laws do not prohibit all forms of labor trafficking; however, the July 2006 sexual violence statute, Law 6/018, specifically prohibits sexual slavery, sex trafficking, child and forced prostitution, and pimping, prescribing penalties for these offenses of three months' to 20 years' imprisonment. These penalties are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. The government has not applied this law to suspected trafficking cases. The Child Protection Code (Law 09/001) also prohibits and prescribes penalties of 10 to 20 years' imprisonment for sexual slavery, child trafficking, child commercial sexual exploitation, and the enlistment of children into the armed forces; it cannot be fully implemented, however, due to the continued absence of necessary decrees from several ministries and a lack of a funding allotment issued by the Ministry of Finance. In July 2010, the government appointed 1,000 of the 2,000 new magistrates that were recruited during the previous reporting period; most began hearing cases, but worked under difficult conditions with few resources. In an effort to further protect children, in January 2011, the prime minister signed a bylaw implementing the creation of juvenile courts specifically focused on children who have suffered violence and abuse or are in conflict with the law. The first such court, opened in Lubumbashi in March 2010, heard 82 cases of children victimized by violence and abuse in its first six months of operation; it is unknown whether any of these cases constituted child trafficking. Additional courts were established in Kinshasa and Bandundu in early 2011." **[8c] (Prosecution)**

25.06 USSD Trafficking 2011 continued: "Impunity for the commission of trafficking crimes by the security forces remained acute; the government made no efforts to hold suspected trafficking offenders within its security forces accountable for the use of civilians for forced labor or the unlawful recruitment and use of child soldiers. There was no evidence of disciplinary, investigative, or legal action taken by authorities, either during

the reporting period or in recent years, following the commission of such abuses." **[8c] (Prosecution)**

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PROTECTION

25.07 The same source continued:

"Elements of the governmental security forces continued to victimize, rather than protect, local populations during the reporting period. Although the government assisted in the identification and demobilization of child soldiers, it offered minimal protection to other types of trafficking victims; NGOs provided nearly all of the limited shelter, legal, medical, and psychological services available to trafficking victims. It is unknown whether the government provided any services to the child victims identified in Kamako in 2010. The government lacked procedures for proactively identifying victims of trafficking among vulnerable groups or referring victims to protective services. Although the national government did not address forced labor in the mining sector, provincial Ministries of Education in Orientale, Kasai-Oriental, and Katanga coordinated with two international NGOs during the first half of the reporting period to reintegrate children working in mines into the formal education system. Katanga's provincial Ministry of Interior continued to provide funding for the two Kasapa residential "welcome centers" in Lubumbashi to provide 206 street children, including trafficking victims, with protective services and educational programming; the center for girls provided care to an unknown number of children engaged in street prostitution in 2010." **[8b] (Protection)**

25.08 The USSD TiP 2011 added:

"Though government officials recognized the growing problem of child prostitution in the country, they took no concrete action against it. The government did not show evidence of encouraging victims to assist in investigations against their traffickers. It offered no legal alternatives to the removal of foreign victims to countries in which they may face hardship or retribution; there were, however, few foreign trafficking victims identified within the DRC in 2010 and the government has consistently allowed for the safe repatriation of foreign child soldiers in cooperation with MONUSCO." **[8b] (Protection)**

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PREVENTION

25.09 The USSD TiP 2011 continued:

"The government made no significant efforts to prevent human trafficking during the reporting period. While the country has an inter-ministerial body focused on human rights, there is a lack of coordination of anti-trafficking efforts at the national level. Although the National Ministry of Labor remained responsible for inspecting worksites for child labor and it employed 160 inspectors nationwide, including 10 in the mining region of Katanga Province, the ministry neither conducted any forced child labor investigations nor identified any cases of forced child labor in 2010 and had no system to track child labor complaints; inspectors often lacked means of transportation or resources to carry out their work." **[8c] (Prevention)**

26. MEDICAL ISSUES

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OVERVIEW OF AVAILABILITY OF MEDICAL TREATMENT AND DRUGS

26.01 The United States Agency International Development (USAID) commented in its Democratic Republic of Congo, HIV/AIDS Health Profile, September 2010:

"Health indicators are among the worst in the world and reflect the hardships resulting from the protracted conflict and the corresponding deterioration of health services throughout the country. Consequently, the health sector's ability to respond to the needs of the citizens of the DRC has declined significantly over the past decades. It is estimated 70 percent of the population has little or no access to health care, including HIV/AIDS services." **[50b]**

26.02 Freedom House's Freedom in the World 2008 reported that: "According to the United Nations, Congolese people on average manage to get access to health care once every seven years, and they are among the poorest and least healthy people on earth." **[14c] (Overview)** In its Freedom in the World 2011 report, Freedom House noted: "Critical health and social services are nonexistent in many areas, and much of the country's infrastructure has disintegrated. The DRC was ranked 168 out of 169 countries on the UN Development Programme's 2010 Human Development Index." **[14a]**

26.03 In 2011, the United Nations Development Programme (UNDP) ranked Democratic Republic of Congo 187 out of 187 countries in its Human Development Index. **[28a]**

26.04 The International Rescue Committee's (IRC) January 2008 publication, 'Mortality in the Democratic Republic of Congo – An ongoing crisis', recorded:

"While insecurity persists in the eastern provinces, only 0.4 percent of all deaths across DR Congo were attributed directly to violence. As with previous IRC studies in DR Congo, the majority of deaths have been due to infectious diseases, malnutrition and neonatal- and pregnancy-related conditions. Increased rates of disease are likely related to the social and economic disturbances caused by conflict, including disruption of health services, poor food security, deterioration of infrastructure and population displacement. Children, who are particularly susceptible to these easily preventable and treatable conditions, accounted for 47 percent of deaths, even though they constituted only 19 percent of the total population." **[68a] (Executive summary)**

For the full report on the findings of the IRC's Survey of 2006-2007, see here. **[68a]**

26.05 The summary record of the 1385th meeting of the UN Committee on the Rights of the Child (UN CRC), dated 30 January 2009, reported:

"The right to health care was severely compromised. More human and financial resources should be allocated to improve health indicators such as infant and maternal mortality, vaccination rates and nutrition. Emphasis should be placed on primary health care, especially in areas affected by the conflict. Minimum standards should be set and enforced for private practitioners. Attention should be given to adolescents and reproductive health rights, with a focus on the correlation between gender-based violence and HIV/AIDS and between children with HIV/AIDS and illiteracy and mother-to-child transmission." **[19e] (p15)**

26.06 Whilst the concluding observations of the Committee, also released in January 2009, expressed its "… grave concern at the current situation in the health services sector, including the following:

"(a) Lack of adequately functioning health centres, particularly in rural areas, and the deplorable conditions and lack of human, medical and financial resources in hospitals;

"(b) High infant, under-five and maternal mortality rates;

"(c) High chronic and acute malnutrition rates, inadequate vaccination rates for childhood illnesses;

"(d) Difficulty for children to access health services due to costs;

"(e) Lack of qualified health practitioners particularly in the east of the country, due mainly to armed conflict in that region; and

"(f) Declining quality of medical and paramedical training in the country." **[19e] (p12)**

26.07 A European Community paper from the Country of Return Information Project, dated June 2009, noted:

"Access to health care services is open provided that [sic] the patient has the financial means to be treated. Indeed, in the Democratic Republic of Congo, the patient take on all the cares [sic] provided by the hospital starting with the form [sic] of consultation for which the price varies depending on the hospital or health center. There are hospitals where the consultation only costs 10 USD without the examination costs or depending on the case, the medicine costs.

"But the consultation fees often vary if the patient must consult a general practitioner or a specialist in some hospitals. For example, at the Hôpital Saint Joseph, the consultation form [sic] is 1500 CF (3 USD) for a general practitioner and 2000 CF for a specialist. But if the consultation is done by appointment, it can vary from 3000 to 3500 CF.

"Access to health care is open.

"Health care is expensive in the Democratic Republic of Congo. Indeed, apart from the administrative fees and doctors fees, the patient or his/her family takes on medicine costs, which is hard to evaluate. The patient receives his/her prescription and is free to go and buy the treatment where he/she wants. However if a patient did not manage to buy the treatment for a surgery, even if the doctor is honest he will not proceed to the operation. Each patient must have all treatment required, except for the patients recommended by companies, or institutions that has [sic] an agreement with the hospital. The payment is completed at the end of all cares [sic]." **[52a] (p58-58)**

26.08 the same soure continued:

"Generally, a patient must pay for the consultation at the hospital except for the destitute or patients with high connections. The costs depend on the doctor's quality and on the patient's category. By way of example, here are a compilation of costs for the Hôpital général de référence of Kinshasa:

"Standard category

- Consultation done by a general practitioner: USD 6
- Consultation done by a specialist: USD 9.5
- Consultation by a neuropsychiatrist: USD 12
- Fees for an appendicitis operation: USD 112.5

In all cases, 40% cover the doctors' fees.

"Rich patient category

- Consultation done by a general practitioner : USD 10.75
- Consultation done by a specialist: USD 16
- Consultation by a neuropsychiatrist : USD 21.5
- Fees for an appendicitis operation: USD 187,50.

In all cases, 40% cover the doctors' fees.

26.09 The same source also noted: "There is no discrimination in the health care system in DRC. However there are different categories for patients in hospitals:

- the destitute;
- The assignees, member of the hospital or the clinic community, the assignees of the State, i.e. the army, the police and assignees from companies and institutions bound by an agreement;
- Insurers of medical expenses or rich or average independent workers (average in the sense of they can afford to pay health care by themselves)." **[52a]**

26.10 The same source stated:

"The following diseases cannot be treated efficiently in DRC. They often require a transfer outside the country in order to save the patient's life.

"Here is the list of the untreatable diseases:

- All forms of cancers: Cancer treatment cannot be done in DRC; as well as for radiotherapy or chemotherapy;
- Anemia [sic] combined with kidney failure and kidney transplant requiring hemodialysis (a blood transplant done outside the body);
- Diseases that require chronical transfusion, i.e. a regularly transfusion (e.g. once a month);
- All diseases requiring a bone marrow transplantation;

- All cardio pathologies that require a surgical operation;
- All types of drepanocytosis (or sickle-cell disease)
- Cardiac surgeries due to a lack of equipment.

"The hepatitis C can be treated in DRC, more specifically in internal medicine. As far as AIDS/HIV is concerned, patients are effectively followed. But the lack of antiretroviral therapies is a major problem." **[52a] (p61-62)**

See the sections on Hepatitis B & C, HIV/AIDS – anti-retroviral tretament and Sickle Cell Anaemia for further information.

26.11 The Foreign and Commonwealth Office (FCO) stated in its travel advice section, last updated 22 August 2011: "Medical care in the DRC is extremely limited. The Centre Prive d'Urgence (CPU) clinic in Kinshasa is able to cope with basic health problems and to stabilise a patient after most serious accidents. Outside Kinshasa, western standard medical facilities are practically non-existent... Malaria, rabies, polio, meningitis and cholera are common in DRC. Since June 2011, an outbreak of cholera has been reported in Kinshasa, South Kivu and Bandundu." **[4a] This information remained current at 13 February 2012.**

26.12 For information on the outbreak of epidemics such as plague, meningococcal disease, poliomyelitis and ebola haemorrhagic fever in the Democratic Republic of Congo follow this link for the World Health Organisation's (WHO) 'Global Alert and Response' (GAR) **[69a]**

26.13 The UN News Service reported on 13 July 2011 in the article 'Cholera deaths reported in DR Congo as disease infects thousands':

"More than 3,000 cases of cholera have been reported in the Democratic Republic of the Congo (DRC) since March, the United Nations reported today, saying that the disease had claimed the lives of 192 people since it was first reported in the north-eastern city of Kisangani, from where it spread downstream along River Congo. The UN Office for the Coordination of the Humanitarian Affairs (OCHA), meanwhile, reported that although Bandundu remains the worst affected province – with 1,271 cases and 72 deaths as of 4 July – cholera has been spreading quickly in Kinshasa." **[54a]**

Also see Section 23: Women, Health and Section 24: Children, Health and Welfare in connectin with the above.

26.14 The World Health Organisation's (WHO) Country Health System Profile of 2006 recorded the following statistics from 2004 concerning the health system of the Democratic Republic of Congo:

- Physicians 5, 827: Density per 1000 = 0.11
- Nurses 28, 789: Density per 1000 = 0.53
- Dentists 159: Density per 1000 = 0.00
- Pharmacists 1, 200: Density per 1000 = 0.02

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- Lab technicians 512: Density per 1000 = 0.01
- Other health workers 1, 042:Density per 1000 = 0.02
- Health management and support workers 15, 013: Density per 1000 = 0.28

Number and density of midwives, public and environmental health workers, Community Health workers and hospital beds marked as data not available or not applicable **[69b] (p5)**

The WHO country health profile for DRC can be accessed here.

26.15 The Economist Intelligence Unit's (EIU) Country Profile 2009 stated that: "After decades of neglect, the country's transport infrastructure is in a dilapidated state, as are its schools, hospitals and all other public services." **[22a] (p3)** Médecins san Frontières' (MSF) 'Top Ten Humanitarian Crises of 2008' recorded that it was one of the few humanitarian organisations working in the conflict areas of eastern Congo where the continuing fighting and subsequent displacement of civilians severely hampered access to medical help, with some areas completely cut off from any medical or other assistance. **[70a]**

26.16 The 2010 Annual Report of the International Committee of the Red Cross (ICRC) recorded:

- "In the 12 health centres receiving regular ICRC support (catchment population: 223,287):
- "57,872 people given consultations, including 13,792 attendingante/post natal consultations and 43,614 women and 19,394 children attending curative consultations
- "118,561 immunizations administered (113,033 to children aged five or under and 5,528 to women of childbearing age)
- "2,420 health education sessions held

"In addition:

- "Victims of sexual violence received psychological support at 37 counselling centres supplied and supported by the ICRC. Women heard about the services offered in such centres during six awareness-raising campaigns, which also aimed to prevent social stigma linked to sexual assault. In response to a peak in needs in North Kivu in August, five temporary counselling centres were set up and supported. Another three improved their services following ICRC rehabilitation work, helping them accommodate some 240 people." **[71a] (p129-135)**

HIV/AIDS – ANTI-RETROVIRAL TREATMENT

26.17 USAID noted in the overview of its HIV/AIDS Country Profile for the Democratic Republic of Congo, dated September 2010:

"The country has a generalized epidemic, though data from surveillance studies show cases are concentrated among most-at-risk populations in numerous hotspots across the country. The Joint United Nations Program on HIV/AIDS estimated there were between 400,000 and 500,000 people living with HIV/AIDS (PLWHA) and 1.3 percent prevalence among adults at the end of 2007; recent studies suggest prevalence may be increasing. Despite an abundance of natural resources, the DRC remains mired in poverty. Health indicators are among the worst in the world and reflect the hardships resulting from the protracted conflict and the corresponding deterioration of health services throughout the country. Consequently, the health sector's ability to respond to the needs of the citizens of the DRC has declined significantly over the past decades. It is estimated 70 percent of the population has little or no access to health care, including HIV/AIDS services." **[50c]**

26.18 The same source continued:

"Since the 1980s, the U.S. Government has worked with the DRC Ministry of Health to develop HIV/AIDS programming. USAID currently supports activities that contribute to the reduction of HIV prevalence while increasing access to quality HIV/AIDS prevention, care, and support. USAID supports HIV/AIDS prevention, treatment, and care activities in the high-prevalence areas of Kinshasa, Matadi, Lubumbashi, and Bukavu, as well as 57 health zones through the Primary Health Care program. USAID uses a comprehensive continuum-of-care approach that includes:

- "behavior change communication and condom social marketing targeting high-risk populations, including truckers, commercial sex workers, police, military, miners, and youth;

- "HIV voluntary counseling and testing (VCT), including integrated VCT with family planning and tuberculosis services in community, standalone, and mobile sites; and

- "prevention of mother-to-child transmission, safe blood transfusion, and care and support, including home-based care and support to PLWHA and orphans and vulnerable children, as well as systems strengthening." **[50c]**

26.19 USAID commented in its September 2010 HIV/AIDS country profile: "The DRC also has one of the highest estimated numbers of pregnant women living with HIV (32,000 in 2008) and one of the lowest proportions of HIV-positive pregnant women receiving antiretroviral therapy (ART) at 5 percent… According to UNAIDS, between 37,000 and 52,000 children under 15 years of age are infected with HIV." **[50b]**

26.20 The undated UNAIDS country fact sheet on HIV/AIDS prevalence and treatment, undated, accessed 24 August 2011 provided the following information:

"HIV AND AIDS ESTIMATES (2009)

- "Number of people living with HIV [430,000 - 560,000]

- "Adults aged 15 to 49 prevalence rate [1.2% - 1.6%]

- "Adults aged 15 and up living with HIV [380,000 - 490,000]

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- "Women aged 15 and up living with HIV [220,000 - 300,000]
- "Children aged 0 to 14 living with HIV [33,000 - 86,000]
- "Deaths due to AIDS [26,000 - 40,000]
- "Orphans due to AIDS aged 0 to 17 [350,000 – 510,000]." **[72a]**

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Availibility of antiretroviral drugs

26.21 On the availability of antiretroviral drugs for the treatment of HIV/AIDS, the Medical Advisor's Office (BMA) of the Netherlands Ministry of the Interior and Kingdom Relations, Immigration & Naturalisation Service stated in a response provided through the MedCOI service (European Commission funded project to share medical information in countries of origin) on 16 November 2010:

"The following nucleoside / nucleotide reverse transcriptase inhibitors are available in the DRC: Zidovudine; Lamivudine; Abacavir; Tenofovir; Didanosine; Stavudine.

Emtricitabine and Zalcitabine are not available." **[73a]**

26.22 The same source continued:

"The following combinations are available in the DRC:

Efavirenz+ Emtricitabine + Tenofovir (= Atripla);

Zidovudine + Lamivudine (= Combivir);

Abacavir+ Zidovudine+ Lamivudine (= Trizivir)

Tenofovir+ emtricitabine (= Truvada)

Abacavir+ Lamivudine (= Epzicom) is not available." **[73a]**

26.23 The same source continued:

"The following Non-nucleoside reverse transcriptase inhibitors are available in the DRC:

Efavirenz; Nevirapine;

Delavirdine is not available." **[73a]**

26.24 The same source continued: "lopinavir/ritonavir (= Kaletra), a Protease inhibitor is available.

The following Protease inhibitors are not available: Amprenavir; Tipranavir; Indinavir; Saquinavir Mesylate; Fosamprenavir." **[73a]**

26.25 The same source continued:

"Enfuvirtide an entry fusion inhibitor is not available." **[73a]**

26.26 The same source continued:

"Treatment and follow up of HIV infections by an Internist and by an Infectiologist are available in DRC. It was anticipated at the time of this response (November 2010) that laboratory facilities capable of providing CD-4 counts and viral load counts will have been available by December 2010." **[73a]**

26.27 A more recent reponse from International SOS provided through the MedCOI service on 28 March 2011noted:

"At two private facilities one in Kinshasa, the following is available:

- "Inpatient treatment by an internist
- "Outpatient treatment by an internist
- "Treatment and follow up by an infectiologist

"In addition CD4 tests; viral load counts; haemodialysis and both inpatient and outpatient treatment by a nephrologist are available.

"Treatment and follow up by a HIV specialist is not available." **[73b]**

A response provided by the Ireland Refugee Documentation Centre, accessed via Refworld titled Democratic Republic of the Congo: Treatment of those with HIV/AIDS including stigma, discrimination, availability and cost of medication, 6 October 2010 gives an overview of the accessibility to treatment by HIV/AIDS sufferers. **[49b]**

CANCER TREATMENT

26.28 The FCO's Embassy in Kinshasa confirmed that, according to their most recent research, the following information provided by the Embassy in August 2006 was still true: "chemotherapy and other related treatments are available (at a cost to the patient and not all of the time) in 5 medical centres, all of which are in Kinshasa. These are: the University Clinics (Cliniques Universitaires), Centre Hospitalier Monkole, Clinique Ng anda, Clinic Ngaliema and at the referral hospital, Hôpital Général." **[4c] [4e]**

KIDNEY DIALYSIS

26.29 On dialysis, the Embassy reported that the August 2006 statement "kidney dialysis is not available in the DRC. Most patients who need this treatment (if they can afford it) go to South Africa" **[4e]** was now incorrect: "There are 3 places where you can get extrarenal epuration in DRC: Clinique NGANDA, CLINIQUES UNIVERSITAIRES de KIN and Centre Hospitalier SINO CONGOLAIS in Nd'jili. What is true is that not everyone can afford it. To go to S Africa depends on free choice of each person." **[4c]**

DIABETES

26.30 On Diabetes treatment, the Embassy reported that the August 2005 statement "treatment is readily available but too costly for the majority of the population. Poor diet

is an aggravating complication" **[4f]** was still: "True. Treatment is expensive. Follow up treatment requires iteratives consultations." **[4c]**

HEPATITIS B AND C

26.31 On Hepatitis B the FCO also provided the following information on 7 May 2009: "It is true that treatment administrated in RDC is symptomatic. But not all patients die because the affection can heal itself spontaneously." And on Hepatitis C:

"Treatment is complex and long. It can be administered by trained doctors. However, molecules are extremely expensive; they are not always available in pharmacies. RIBAVIRINE (1 yr of treatment + medical rest); INTERFERONS : pegylated or hepatic transplantation. HVB: INTERFERON alone or in bitherapy with RIBAVIRINE. If patients are going to S Africa, it is due to the lack of available molécules. And only those who have the means to pay." **[4c]**

SICKLE CELL ANAEMIA

26.32 In August 2005, the Embassy in Kinshasa reported that, regarding Sickle Cell Anaemia: "... only one centre is operating at the moment in Kinshasa." **[4f]** In May 2009, the FCO confirmed that: "... there are 5 hospitals who deal with this: Centre Hospitalier de Kingasani (BDOM); Centre KIKIMI(BDOM); CEMMAS de Yolo; Centre Hospitalier Monkole, supported by PAFOVED project (Diagnostic Néonatal des drépanocytaires et Prise en charge vaccinale)- nearly 32.500 samples analysed by end 2008." **[4c]**

TUBERCULOSIS

26.33 The WHO Global Tuberculosis Database Country Profile of 2010 provided information on the prevalence and treatment of Tuberculosis (TB), which can be accessed here. **[69c]**

26.34 The same source also noted the following bottlenecks in 2010:

- "Programme management: delay in signing memorandum of understanding between Expand-TB and Ministry of Health;
- "Insufficient implementation of MDR-TB [Multi Drug Resistant TB].
- "Recording and reporting: weak; limited capacity at peripheral and provincial levels.
- "Laboratory capacity and quality assurance: weak laboratory capacity.
- "Qualified M/XMDR-TB treatment (human resources, facilities): limited human resource capacity.
- "Access to quality-assured second-line drugs: weak drug management.
- "TB infection control: no national policy.
- "Other: no access to drugs for managing side-effects." **[69c]**

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MENTAL HEALTH

26.35 The WHO's Mental Health Atlas of 2005 recorded that, despite the existence of a mental health policy, programme and legislation, which were all formulated between 1998 and 2000, no budget was allocated specifically to mental health. **[69d] (p1)** Further, "The primary source of mental health financing is out of pocket expenditure by the patient or family. The cost of psychiatric treatment is considered to be high by the average earning capacity. The country does not have disability benefits for persons with mental disorders." **[69d] (p2)** In terms of facilities, WHO recorded:

"Mental health is a part of primary health care system. Actual treatment of severe mental disorders is available at the primary level. … Regular training of primary care professionals is carried out in the field of mental health. The Government also partially supports some charitable organisations like the Soins de Santé Mentale (SOSAME) that provide mental health services." **[69d] (p2)**

26.36 The same source continued: "There are no community care facilities for patients with mental disorders. There is one mental health care centre." **[69d] (p2)**

- Total psychiatric beds per 10 000 population 0.17
- Psychiatric beds in mental hospitals per 10 000 population 0.15
- Psychiatric beds in general hospitals per 10 000 population 0.009
- Psychiatric beds in other settings per 10 000 population 0.009
- Number of psychiatrists per 100 000 population 0.04
- Number of neurosurgeons per 100 000 population 0.004
- Number of psychiatric nurses per 100 000 population 0.03
- Number of neurologists per 100 000 population 0.01
- Number of psychologists per 100 000 population 0.01
- One occupational therapist is present **[69d] (p2-3)**

26.38 On the availability of therapeutic drugs, the WHO Mental Health Atlas of 2005 noted that the country's essential list of drugs was revised in 2001 and reported that the following list of drugs were generally available at the primary care level:

- Carbamazepine
- Phenobarbital
- Phenytoin sodium
- Amitriptyline
- Chlorpromazine

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- Diazepam
- Haloperidol
- Levodopa

"The drugs mentioned are dispensed by the private sector and not by the Government." **[69d] (p3)**

26.39 The FCO's update of 7 May 2009 **[4c]** stated that the following information originally provided in August 2005 by the Embassy in Kinshasa was still accurate: "Hypertension: treatment is available from most medical centres/hospitals or clinics in Kinshasa." **[4f]** As was the following information, originally provided in April 2006; treatment was available for manic depressive psychosis and bipolar affective disorder in Kinshasa for those who have the funds to pay for it. It also said the drugs Risperdal, Clopixol and Tegrettol were available. **[4g]**

26.40 The same source continued: "However, when updating the following information of August 2005: "CNPP [Centre Neuro-Psycho-Pathologique] at the university of Kinshasa and centre TELEMA run by Catholic nuns are two well-known centres providing psychiatric care but they lack the specialists to treat schizophrenia and stress related depression" **[4f]** the Embassy in Kinshasa noted, according to their latest research, "There are specialists for neuropsychiatric care but the medicines are not always available, or too expensive for the patient; or perhaps suffer from shortages." **[4c]**

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27. FREEDOM OF MOVEMENT

27.01 In terms of the state of transport in the Democratic Republic of Congo, the Economist Intelligence Unit's (EIU) Country Profile 2009, dated 19 September 2008, remarked:

"Transport infrastructure has been hugely neglected since independence, and most of it is worse now than it was then. Road and rail networks and capacity have both shrunk over the past 48 years, and although there are more internal flights today than at independence, the country has a poor record of air safety. The government has plans to spend billions of dollars on the road and rail network, if the loans can be secured from Chinese banks." **[22a] (p13)**

27.02 Freedom House, in its 'Freedom in the World Report 2011', DRC, released May 2011, covering events in 2010, stated: "Although the law provides for freedom of movement, security forces seeking bribes or travel permits restrict it in practice, and foreigners must regularly submit to immigration controls when traveling [sic] internally. In conflict zones, various armed groups and soldiers have seized private property and destroyed homes." **[14a]**

27.03 The US Department of State's 'Country Report on Human Rights Practices 2010', DRC (USSD 2010), released on 8 April 2011, reported:

"The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; however, the government sometimes restricted these

rights. State security forces established barriers and checkpoints on roads, at ports, airports, and markets, ostensibly for security reasons, and routinely harassed and extorted money from civilians for supposed violations, sometimes detaining them until they or a relative paid. The government forced travelers to pass through immigration procedures during domestic travel at airports, ports, and when entering and leaving towns and implemented a $36 fee for passengers traveling internally on MONUSCO flights.

"Local authorities continued to extort taxes and fees from boats traveling on many parts of the Congo River. There were also widespread reports of FARDC soldiers extorting fees from persons taking goods to market or traveling between towns. During the year there were reports of attempts by DGM officials to fine foreigners not carrying passports, although the law does not require foreigners to do so.Security services sometimes required travelers to present official travel orders from an employer or government official." **[8b] (Section 2d, Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons)**

27.04 The same source continued: "The significant risk of rape by soldiers and nongovernmental armed entities, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas, particularly in the east." **[8b] (Section 2d, Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons)**

27.05 Freedom House, Freedom in the World, Country Report – DRC, 2011 edition, released in May 2011, covering events in 2010, observed that; "Although the law provides for freedom of movement, security forces seeking bribes or travel permits restricts this right in practice, and foreigners must regularly submit to immigration controls when traveling internally." **[14a]**

27.06 In relation to the practiacailites of moving from place to place within the country the International Organization for Migration noted in its report Returning to the Democratic Republic of Congo, Country Information, last updated 17 November 2009:

"A large part of the DRC road network is in a poor condition. Due to this, land transport is a problem: there are practically no roads that connect one city to another. Trips can take weeks or months to cover relatively small distances. Railways go between some cities only. Even so, the trains are mostly in such a precarious condition that people fear to put their lives at risk by using this mode of travel. Air transport is smoother than any other mode, but since the country has different administrations, the ability to travel to troubled areas (war zones such as North Goma and Bunia) is highly restricted. Accessing remote areas therefore remains very difficult due to the lack of transport." **[34a] (p20)**

27.07 A European Community Country of Return Information Project, Country Sheet, Democratic Republic of Congo (DRC), dated June 2009 contained information gathered from various French sources, including interviews with Voix des Sans-Voix pour les Droits de l'Homme (VSV) and provided a detailed overview of routes available by land. **[52a]**

This information and details of river transport and internal flights can be accessed here (pages 7-11). **[52a]**

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Section 8: Security Situaion should be read in conjunction with the above and Section 23: Violence against women.

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28. INTERNALLY DISPLACED PERSONS (IDPS)

28.01 USAID (United States Agency International Development) noted in the report USAID Office of Food for Peace Democratic Republic of Congo Bellmon Estimation, published September 2010:

"As of July 2010, there are an estimated 1.9 million IDPs within the country. Donors and humanitarian organizations have focused their interventions on the eastern part of the country due to the prevalence of conflict and population displacements there. Not only does the eastern part of the country suffer the most instability, conflict, and general insecurity, but these circumstances also impact other parts of the DR Congo, and regionally throughout the Great Lakes area (Sudan/Uganda/Rwanda/Burundi/Tanzania). (p20)… Approximately 93 percent of these IDPs are located in the three provinces of North/South Kivu and Orientale, with the remaining small numbers of IDPs based in Katanga and Equateur provinces. **(p162)**… When forced to move from their homes, IDPs lose access to their social networks, which they normally rely upon to enable them to find income-generating activities. Without their traditional social networks, displaced and returnee populations in the DR Congo earn income from activities involving manual labor and foraging." **[50a] (p165)**

28.02 The Internal Displacement Monitoring Centre (IDMC) stated in 'Democratic Republic of the Congo: IDPs need further assistance in context of continued attacks and insecurity, Overview', dated 14 September 2011:

"There were an estimated 1.7 million internally displaced people (IDPs) in the Democratic Republic of Congo (DRC) as of July 2011, the vast majority of them in the eastern provinces of North and South Kivu. This included over 128,000 people newly displaced in the first quarter of 2011. Most fled their homes to escape fighting between rebel groups and the Congolese armed forces, while others were victims of direct attacks and violence perpetrated by the warring parties or by other armed individuals. The UN peacekeeping mission has provided some support to the army in its fight against rebel groups, and has led short operations too." **[55a]**

28.03 Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo published 30 March 2010 stated:

"An important indicator of the protection challenges in the Democratic Republic of the Congo is the continuing high level of human rights violations throughout the country, and the high level of internal displacement, which lies at the core of humanitarian needs. While more than 1 million returns were registered in 2009, including 850,000 in North Kivu, insecurity remained widespread in parts of North Kivu including Masisi, Rutshuru and Lubero, and in South Kivu including in Shabunda, Kalehe and the Hauts Plateaux of Uvira, where violations and attacks by armed groups against the civilian population continue to be reported. Tensions have also increased as a result of some

cross-border movement of people from Rwanda into the Democratic Republic of the Congo, which has led to land disputes in areas of return." **[9a]**

28.04 The same source continued: "In Orientale Province, an estimated 300,000 people remain displaced. In Equateur Province, following the events in the Dongo area, up to 60,000 people were internally displaced, 114,000 people crossed the border into the Republic of the Congo, and 18,000 more took refuge in the Central African Republic from November 2009 to February 2010. Few have returned despite the improved security situation." **[9a] (paragraphs 60-61)**

28.05 Human Rights Watch (HRW) stated in its report Always on the Run, published in September 2010:

"The scale of internal displacement in eastern Congo, and the disruption and dislocation it causes to people's lives, is colossal. As of April 2010 at least 1.8 million people were displaced—the fourth largest internal displacement in the world—1.4 million of whom were in the volatile provinces of North and South Kivu bordering Rwanda. As people have fled, they have lost possessions, homes, land, and livelihoods; as well as family, friends, neighbors [sic], and the economic and social support associated with them. Internally displaced persons (IDPs) have been the victims of deliberate attacks perpetrated by virtually all warring factions in the area—government forces and armed groups alike. Moreoever, IDPs are often among the civilians most vulnerable to further abuse, hunger, and disease, yet they have limited access to services such as health care and education. Many have been displaced two or three times, sometimes more. For some, the years since 1993 can be characterized as being 'always on the run'." **[10a]**

28.06 HRW continued:

"At least 1.2 million IDPs were forced to flee their homes during three successive military operations that began in January 2009; others had fled during earlier waves of displacement. At the same time, over 1.1 million others returned—or tried to return—to their homes between January 2009 and March 2010. Despite these attempts, over 1.4 million people remained displaced in North and South Kivu by April 2010… IDPs face assault, robbery, forced labor [sic], and rape: for example, witnesses told Human Rights Watch of women being raped in their own houses and in forests; of villagers—including children as young as six—being killed with machetes and hoes and burned to death when soldiers torched houses; and of civilians being beaten and killed for refusing to carry soldiers' belongings." **[10a]**

28.07 The same source continued:

"Since January 2010, following a new round of military operations against the Democratic Forces for the Liberation of Rwanda (FDLR), civilians in many parts of North and South Kivu continue to endure forced labor, arbitrary arrests, illegal taxation, looting, sexual violence, and excessive restrictions on movement. The Congolese government's view that civilian protection in eastern Congo is much improved has been challenged by Congolese civil society groups, national and provincial parliamentarians, and human rights and humanitarian groups. For example, in 2010 South Kivu members of Congo's National Assembly wrote a letter of protest to the prime minister, Adolphe Muzito, saying, 'We find it sadistic and irresponsible that your government declares without embarrassment that there is peace throughout [Congo] with only a few residual

pockets of resistance in our province... In nearly all territories [of South Kivu] insecurity continues'." **[10a]**

28.08 The same source also noted:

"In many conflict situations around the world, IDPs flee their homes and seek refuge in one location—including IDP camps where they can receive assistance for years—and then return home when fighting ends. However, this is not the case in eastern Congo. As a result, national authorities and international agencies face huge protection and assistance challenges as they grapple with at least four main patterns of IDP displacement: remaining close to home; moving back and forth between villages and displacement sites; returning home for significant periods when violence subsides, only to flee again when it flares; and occupying abandoned property." **[10a]**

28.09 The same source noted: "Human Rights Watch conducted in-depth interviews with 146 internally displaced persons (IDPs) (71 women and 75 men) living with host families, in spontaneous sites, and in official camps in North and South Kivu. The vast majority had fled their homes during the previous 12 months and had been previously displaced an average of three to four times over many years." **[10a]**

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29. FOREIGN REFUGEES

29.01 The US Department of State's Country Report on Human Rights Practices 2010, DRC (USSD 2010), released on 8 April 2011, reported:

"The country's laws provide for the granting of asylum or refugee status, and the government has established a rudimentary system for providing protection to refugees. In practice it granted refugee and asylum status to individuals and provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The government provided temporary protection to an undetermined number of individuals who may not qualify as refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol." **[8b] (Protection of Refugees)**

29.02 The USSD 2010 continued:

"The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers with welfare and safety needs. The government provided assistance in enabling the safe, voluntary return of refugees to their homes by allowing their entry into the country and facilitating their passage through the immigration system. However, government authorities did not provide adequate security to refugees." **[8b] (Protection of Refugees)**

29.03 The United Nations High Commissioner for Refugees (UNHCR) Global Report 2010, Democratic Republic of the Congo (DRC), published Jube 2011,noted:

"Tripartite agreementswere signed between UNHCR, the Democratic Republic of the Congo (DRC) and neighbouring countries hosting Congolese refugees, including Rwanda, the Republic of the Congo (Congo) and Uganda.These agreements will pave

theway for the repatriation of more than 200,000 Congolese refugees. Some 10,300 Congolese refugees returned home in 2010, mostly from Zambia.

"In the course of the year, some 3,600Burundian and 10,800 Rwandan refugees living in theDRC returned to their countries of origin.

"UNHCRassisted some 100,000 internally displaced persons (IDPs) living in 42 spontaneous settlements in North Kivu.

"Close to 7,700 IDP families and 2,400 returning refugee familieswere providedwith shelter assistance.

"All urban refugees aged 12 and above received refugee identity cards. All other refugees now possess civil documents." **[80b]**

29.04 The USSD 2010 also noted:

"From January to November 2009, Angola forcibly expelled 85,000 illegal Congolese immigrants to Bas-Congo, and the DRC retaliated by forcibly expelling 30,000 Angolans, including those with refugee status. However, during the year smaller expulsions along the entire border between the two countries continued. While most expulsions were conducted peacefully in 2009, abuses during expulsions by state security forces of both countries occurred during the year. According to the UNJHRO, between January 1 and February 23, 9,205 Congolese were allegedly expelled from Angola, including 1,943 women, of whom 304 were allegedly raped by Angolan security forces. Congolese security forces committed 23 documented and verified rapes of expelled Congolese women on Congolese soil. Authorities had arrested one lower-level FARDC officer for the rapes by year's end." **[8b] (Section 2d, Protection of Refugees)**

29.05 The Amnesty International Report 2010: the state of the world's human rights: DRC (AI Report 2010) covering events in 2009 and published on 27 May 2010, noted:

"The [Angolan] authorities continued to expel undocumented migrants, mainly nationals from the Democratic Republic of the Congo (DRC). However, many of those expelled claimed to have rights to remain in Angola. Towards the end of September, the DRC authorities began expelling Angolans in retaliation. Te mass expulsions were carried out under deplorable conditions and accompanied by human rights violations, including physical and at times sexual violence by the armed forces. Large numbers of people were transported to borders in overcrowded vehicles and there were reports that some died of asphyxiation. Many family members, including children, were separated during the expulsions and those deported were left in remote areas without food and shelter. Refugees from both countries were affected by these expulsions. In October, both countries agreed to stop the expulsions. The Angolan government worked with a UN inter-agency commission to deal with the resultant humanitarian situation in Uíge and Zaire provinces. No action was known to have been taken against anyone for the human rights violations that accompanied the expulsions." **[16a] (Angola: migrant's rights p64)**

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30. CITIZENSHIP AND NATIONALITY

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30.01 An untranslated copy of the November 2004 Nationality law was available from the European Country of Origin Information (ECOI) Network. **[81a]**

30.02 Refugees International's March 2009 report, 'Nationality Rights for All: A Progress Report and Global Survey on Statelessness', stated "Despite a 2004 citizenship law granting citizenship to the Banyamulenge community, it is unclear whether the 300,000 to 400,000 of them living in Congo can obtain nationality documents or their rights as citizens in the ongoing conflict in eastern Congo." **[11b] (p29)** The concluding observations of the United Nations Committee on the Elimination of Racial Discrimination, published on 17 August 2007, concurred:

30.03 "While welcoming the adoption of the Act of 12 November 2004, granting the Banyarwanda Congolese nationality, the Committee is concerned to note that in practice Congolese nationality is particularly difficult to acquire by members of this group. The Committee also notes that, according to article 10 of the Constitution and article 14 of the 2004 Act, Congolese nationality is one and exclusive." **[19f] (p4)**

PASSPORTS

Old (pre 1 April 2009)

30.04 An information response by the Canadian Immigration and Refugee Board's (IRB) Research Directorate, dated 20 March 2007, recorded the following information provided by the President of Journalists in Danger (JED), a Congolese non-governmental organisation based in Kinshasa:

"The DRC issues three types of passports: a regular passport, a duty passport and a diplomatic passport. Passports are issued by the Ministry of Foreign Affairs and International Cooperation (ministère des Affaires étrangères et de la coopération internationale).

30.05 The same source continued:

"The regular passport is dark blue and issued to all Congolese citizens who apply for one. Since the Ministry of Foreign Affairs and International Cooperation is based in Kinshasa, Congolese citizens who want to obtain a regular passport must either go to Kinshasa themselves or authorize a friend or relative there to act on their behalf. All applications must include a duly completed passport application form, a certificate of nationality, four passport-size photographs (sometimes two are sufficient) of the applicant, and USD 50. The passports are signed by ministry employees [translation] 'who are often as high up as a counsellor of embassy, etc.' A regular passport is valid for three years but can be extended." **[33b]**

30.06 The IRB response also provided information on the green duty passport, "… issued to government employees …" and the red diplomatic passport, "…issued to members of the government and their families, to government employees with the rank of minister and their families, and to diplomats and their families." **[33b]**

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New (post 1 April 2009)

30.07 The New Vision stated in the article DRC Citizens in Uganda Get Biometric Passports, 23 January 2010 accessed via AllAfrica: "The DRC launched biometric passports believed to be very secure and tamper-proof in 2007 and were made available to the public in DRC from April 1, 2009. During their annual gathering at Munyonyo Commonwealth Resort on June 30 last year, the Congolese community living in Uganda mounted pressure on the ambassador to issue new travel documents." **[82a]**

30.08 An IRB response titled Democratic Republic of the Congo: Process for applying for or renewing a passport, dated 1 April 2011 noted:

"Radio Okapi, the United Nations radio station in the Democratic Republic of the Congo (DRC), interviewed a spokesman for the Department of Foreign Affairs (ministère des Affaires étrangères) by telephone for a 22 October 2009 article. During the interview, the spokesman reportedly indicated that applicants applying for the DRC's new biometric passport must [translation] 'bring their voter card, US$150 for the passport and US$20 for the form' (Radio Okapi 22 Oct. 2009). In a telephone interview with the Research Directorate on 16 March 2011, a representative at the Embassy of the DRC in Ottawa explained that the new biometric passport entered circulation in April 2009; he also said that to apply, applicants must provide their current passport or nationality certificate, their residency card or a valid driver's licence, and pay C$250." **[33c]**

30.09 The IRB continued: "The same embassy representative also said, in a telephone interview with the Research Directorate on 7 March 2011, that the new passport is valid for five years and that it is not renewable; unlike previous passports, the new passport does not include a page for passport extension." **[33c]**

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31. FORGED AND FRAUDULENTLY OBTAINED OFFICIAL DOCUMENTS

31.01 The Immigration and Refugee Board of Canada's response of 20 March 2007 recorded the President of the Journaliste en danger (JED) as stating:

"[translation] in practice, you complete a regular passport application form (a friend or a government employee can even do it for you and sign it). You provide two photographs and USD 150 or USD 200. The officer at the Ministry of Foreign Affairs puts USD 50 in the government's coffers and pockets the difference, which he shares with his bosses who sign the passport. At that price, you get your passport in one or two days at most. It is not necessary to go in person." **[33b]**

31.02 The IRB response noted: "The information on corruption provided by the President of JED is corroborated by Documents d'identité, a [July 2004] report from a joint mission to the Democratic Republic of Congo …" by the Belgian, French and Swiss offices for refugees and stateless persons. **[33b]** "The authors of the report note that Congolese passports are obtained, in most cases, through corruption and that the official procedures with the Ministry of Foreign Affairs are [translation] 'often circumvented'. More specifically, the report explains that:

'[translation] a person simply has to go to the ministry with four photographs and approximately 150 dollars to obtain a passport in whatever name the person wants. With more money, one can also obtain a few extra stamps. A fake [passport] enables

one to obtain an authentic passport (the same goes for diplomatic passports). The authenticity of a passport does not reflect reality, in the sense that a person can obtain an authentic document but have someone else's photograph or a fake name inserted'." **[33b]**

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32. EXIT AND RETURN

EXIT

32.01 A Country Sheet, Democratic Republic of Congo (DRC), dated June 2009, produced by Country of Return Information Project (CRIP country sheet 2009), which "… functions as a network of NGOs for the collection and transfer of specific information on reintegration possibilities for potential returnees and their counsellor", funded by the European Commission, contains information gathered from various public sources, including that obtained from "local partners" in the DRC Voix des Sans-Voix pour les Droits de l'Homme (VSV) and Regional Programme of Development Training and Exchanges. The country sheet noted in relation to those who made a former illegal exit from the country:

"Except in the case of people leaving the country to avoid prosecution, the illegal exit from the country of origin has no negative consequence. Illegal exit from the country for escaped convicts or defendants with a case on trial can have severe consequences. They might charge with new proceedings upon return. This is also the case for offenders or alleged offenders of imprescriptible crimes (crimes against humanity, war crimes, genocide…) and serious crimes such as murder, assassination or security offence." **[52a] (p12)**

ENTRY PROCEDURE

32.02 The CRIP country sheet 2009 noted on the subject of return:

"Upon arrival at the airport, immigration agents will wait for the returnee and identify him before taking him to the litigation office of the DGM for the formalities before the hearing.

"The returning Congolese candidates are sometimes subject to hassle from the DGM agents (systematic searches and extortion of their private belongings : shirts, pants, shoes, watches, lighters and many others as well as money if for example the vaccination certificate isn't valid). This hunt continues in the parking as well, after leaving the passenger zone of the airport they risk hassle from zealous agents (police, military…) as they rightly or wrongly believe that returnees have a lot of money and goods with them." **[52a] (P11)**

32.03 The same source also noted in terms of the impact of crimes committed outside of the country "Persons having purged their sentence in the asylum country after sentence do not risk prosecution from Congolese courts. Person shaving committed a crime in the asylum country risk being arrested upon return if the asylum country has acted against them through international legal mechanisms. In the case of legal proceedings, the

UNHCR does not intervene and declares the issue is not of her responsibility or her mission." **[52a] (p11)**

Documentation

32.04 The CRIP country sheet 2009 described the documentation required for returnees:

"The following information has been taken from the Ministry of Foreign Affairs and International Cooperation, from the Directorate General of Migrations (DGM) and the Ministry of the interior. These institutions are qualified to either to give or to control travel documents.

"Travel documents needed for returnees

- "Entry permission
- "Passport
- "Passport substitute (abolished in some countries such as France)
- "Polling card or national identity card
- "Consular registration card
- "Vaccination certificate
- "Full residence permit or residence card or anther identity card from the country of asylum delivered by the Ministry of Interior or the relevant departments of the country of asylum.
- "Certification of final return
- "A list for the Congolese returning in groups" **[52a] (p5, 1.Access to territory (from country of asylum to return area)**

32.05 In relation to refugees protected by UNHCR, the same source noted:

"The required document, delivered by the Office of the UN High Commissioner for Refugees (UNHCR) is entitled 'UNHCR Voluntary Repatriation Form (VRF)'. The repatriation candidate receives it in the host country. The UNHCR of the asylum country informs UNHCR Kinshasa and the latter contacts the Ministry of Interior through the National Commission on Refugees (NCR). This Commission takes care of the tracing before the repatriation. It consists of the identification of family bonds through questioning. To put in a nutshell, it is the verification of the hosting address based on the information provided by the candidate to voluntary return. The NCR works closely with the Directorate General of Migration (DGM) and the National Information Agency (ANR). Generally, there are fewer problems for the candidates returning to Kinshasa. Problems can occur if there are wrong address information or if changes have taken places without traces of the new address." **[52a]**

32.06 The same source also described how the necessary documents could be obtained:

"In the asylum country:

- "Passport, entry permission, passport substitute, consular registration card and the certification of final return are delivered by the Embassy, the Consulate or at the cultural services of the DRC.

"Among the conditions for acquiring these documents there are -

- "Proof of Congolese identity
- "Fill in a form explaining the nature of the documents applied for.
- "Presentation of the residence permit from the host country (in the case of final return) and the reasons for returning addressed by regular mail to the DRC Embassy.
- "Justification by which the returnee assures he can really come back (prove he has means to make the trip)
- "For students, the papers certifying the completion of their studies are necessary.
- "Residence card delivered by the asylum country

"In the country of return (in DRC)

- "Polling card: IEC (Independent Electoral Commission). This document was delivered during the registration and the identification for the 2006 elections and is considered as a temporary identity card.
- "Certification of loss: document delivered by the services dependent of Ministry of Interior (notably in the local office).

"Today, the site for information relative to the obtaining of an identity card is the site of the Independent Electoral Commission (IEC). This identity card is the polling card also considered as a temporary identity card5. Other documents are necessary to obtain a passport:

- "Extract of criminal record. The price varies between 25 and 50 USD.
- "Certificate of nationality
- "Form (for the certificate of nationality) at the equivalent price of 10 USD
- "Banking fees at the equivalent price of 2 USD
- "The vaccination certificate delivered by the health service of the borders

"Obligatory vaccinations: vaccine against yellow fever (from the age of 6 months). However there are other recommended vaccines such as typhoid fever (from the age of 2 months) and against hepatitis A (from the age of 1).

"It takes (in Paris and Brussels) at most 24 hours." **[52a] (p5-7)**

32.07 In relation to the cost of the necessary documents, the same source noted:

"The prices for the Congolese documents to obtain from the host country vary from an Embassy or a consulate to another.

"Generally, the price for the passport is up to 150 USD+.5USD Bank Fees

"Identification at the Agence Nationale des Renseignements (ANR) : physical presence is required

"Internally (in DRC):

- Passport: 50 USD
- Polling card: free
- Certification for the loss of papers: 3500 FC
- Vaccination Certificate (required): 20 USD." **[52a] (p7)**

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RETURN OF REFUGEES

32.08 The United Nations High Commissioner for Refugees (UNHCR) noted in the article '2011 UNHCR country operations profile - Democratic Republic of the Congo, Working Environment, the context', undated, accessed 16 December 2011: "In January 2011 there were 107,900 returnee refugees (whose country of origin was DRC) in the country of which UNHCR assisted 10,900. In December 2011 there were 145,500 of which UNHCR assisted 145,500. Figures taken from the table 2011 UNHCR planning figures for the Democratic Republic of the Congo." [80c]

RETURN OF FAILED ASYLUM SEEKERS

32.09 The CRIP country sheet 2009 noted with reference to unsuccessful asylum claims: "The candidate does not get any assistance from the public services. Generally, he is not prosecuted unless he has earlier committed a crime for which he has not been pardoned or amnestied. However the candidate can be hassled by agents willing to take some of his goods or personal effects." **[52a]**

32.10 The same source also noted "no identified administrative restrictions" or "practical obstacles" in internal travel, however "there might be anti-personnel land mines on the Bokunga-Ikela route in the Ecuador [Equateur] province. The inhabitants of that region fear that area presumably mined during the rebellion that took place between 1998 and 2003…the cities in cluding the capital do not present any risk relevant to land mines." **[52a] (p14)**

Sections 27: Freedom of Movement, 8:Security Situation, 9: Security Forces, 11: Non-government armed groups, 18: Human rights institutions, organisations and activists and 23: Women should be read in conjunction with the above in relation to freedom of movement within the country.

32.11 A response by researchers in the Belgian country of origin information (COI) research nit (in the Office of the Commissioner General for Refugees and Stateless Persons

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(CEDOCA)) and the French COI research unit, La division de l'information, de la documentation et des recherché (DIDR), part of the Office Francais de Protection des Refugies et Apatrides) provided under the European Country of Origin Sponshorship project (ECS Response 2011) dated 9 February 2011 noted:

"Not surprisingly, in December 2009, during the Fact Finding Mission (FFM) in DRC [conducted by Belgian/French COI units], the 'Direction générale des migrations' (DGM or 'General Migration Directorate') indicated that the return of Congolese to DRC takes place without problem, in total respect of Human Rights. A diplomatic source, which is present during forced returns, corroborated DGM comments, adding that the airport services welcome repatriated individuals with 'great humanity'. This person added that since he has been working at Ndjili International Airport, he has not witnessed any case of returnees being ill-treated.

"More specifically, according to DGM officials met in December 2009, return-ees [sic] are brought to the Legal (Litigation) department office (small office, with no windows) where they spend a maximum of 30 minutes. Their case is then registered on a database; this measure prevents any subsequent dispute and constitutes a proof that the person has been heard by this service. Officials recognize that this registering phase constitutes a difficult step as it repre-sents the first returnee's contact with local officials, after failing to immigrate. According to DGM officials, after this registering phase, returnees are free to meet with their kin and are not subject to legal proceedings. The database where their case is registered is not used against returnees, noted DGM, but only for statistical purposes. In addition, DGM made it clear that it will accept returnees only if they can provide an address in Kinshasa or else-where in the country. Persons originating from other provinces than Kinshasa are kept until their trip can be 'negotiated'. Furthermore, DGM does not accept returnees who have been drugged or ill-treated by the returning country. Finally, if a returnee is wanted by Congolese justice, he will be kept by DGM until further verification is made and until his transfer to the public's prosecutor office, if requested. DGM indicated that it had no detention facility within Ndjili facility.

"A Congolese Human Rights NGO met during the December 2009 FFM, con-firmed [sic] the information provided by DGM officials. Another Congolese Human Rights NGO indicated that returnees may face harassment, or hassles by au-thorities (money, cigarettes, clothes extortion), but not arrest. It is worth noting that according to a press article dated September 2008, Congolese immigrants returning to DRC, via Ndjili International Airport, denounced the ill-treatments which they were subjected to upon arrival. They underlined specifically the practice of extortion. More recently, in January 2011, the Prime Minister, Adolphe Muzito, proceeded to visit airport and ports in Kinshasa. During his inspection, the various contacts which he met pointed to the existence of multiple harassments or hassles ('tracasseries')." **[59b] (Annex F)**

32.12 The same source also noted:

"On the other hand, during this December 2009 FFM in DRC, a third NGO provided information according to which returnees are at risk of persecution, and even more so if they are asylum returnees . The NGO gave the example of a failed asylum seeker who had to flee Kinshasa to live in a clandestine manner in Bas-Congo as his home, in the capital, and his family were constantly subject to surveillance . A few months earlier, in May 2009, the British newspaper 'The Guardian' revealed that two Congolese returnees

had been detained and tortured after arrival. One of the returnees declared that 'The government in Congo views Congolese people deported back home from the UK as enemies […]. The guards who beat me kept saying to me 'You are a spy, give us information, why are you doing this to your country ?'.

"2011 Information

"Contacted by the COI Unit to update the information summarized above, the person in charge of the 'Assisted Voluntary Return' (AVR) programme for IOM in DRC specified that this intergovernmental agency is not involved in the forced returns of rejected asylum seekers, unless they have accepted to return voluntarily. If rejected asylum seekers accept to return voluntarily, they can be part of the IOM Voluntary Assisted Return Programme and IOM may then provide assistance, from the country where the person has asked for asylum. In such case, IOM can be present at the airport to provide for transportation to the returnee's home. Then, the person will have to come to the IOM office to discuss further about the Assistance programme. Asked as to whether IOM has been informed of returnees (whether forced or voluntary) being ill-treated upon return to DRC, the IOM contact declared that they are not aware of such problems. IOM added that returnees are heard by DGM and kept by DGM only if they are criminals. Otherwise, DGM let them go.

"Contacted in February 2011, the president of the 'Voix des Sans Voix' (VSV or 'Voice of the Voiceless'), a Congolese Human Rights NGO stated :'Until the beginning of 2010, VSV had an office in Ndjili International airport. Yet since then, because of financial constraints, we could no longer rent this office. Yet, we continue going to the airport in order to monitor the arrivals of returnees. Since we have been present in the airport, we have established good contacts with agents of DGM and security services. We go to Ndjili roughly once a week, especially when they are international flights, light Air France or SN Brussels, landing in Kinshasa. In the last year or so, we have not observed any ill-treatment of returnees. Of course, extortion is still practiced, even thought more rarely now. Airport agents may take clothes or other be-longings from returnees'.

"In February 2011, another Congolese NGO representative, the president of the 'Comité des observateurs des droits de l'Homme' (CODHO or Committee of Observers of Human Rights) provided a somehow different light on the situation of returnees : 'Returnees are placed in the hands of the DGM agents who interrogate them on their departure from DRC and the reasons they asked for asylum in Europe. They are then kept a few hours in the airport while DGM agents report to their hierarchy and wait for further instructions. Those who do not represent a problem are immediately released. They are not taken care of, however, neither by NGOs, nor by State services, whichever Province they come from. Some of these returnees are not from Kinshasa or from the vicinity of Kinshasa. Some of them have never been to Kinshasa. For the returnees who represent a problem - amongst whom political opponents who made no secret of their political position in European cities - after they are interviewed by DGM, it may occur that they are taken to the city centre, to the DGM national office for more questioning and possibly, to be handed over to the Public Prosecutor's office to be charged. Only the Public Prosecutor's office may decide on such charge. In other words, activists who are well-known for their position against authorities, who are failed asylum-seekers, are obviously exposed to ill-treatments when arriving in Ndjili'.

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"By means of conclusion regarding the contradictory information NGOs provided on the question of rejected asylum seekers returning to DRC, it should be mentioned that they remain nevertheless credible informers, with regard to their international reputation in the field of human rights. Therefore, it remains impossible to somehow 'resolve' those contradictions." **[59b] (Annex F)**

32.13 A report by Justice First, UK-based Non Government Organisation set up to work with people whose asylum claims had been refused, 'Unsafe Return, Refoulement of Congolese Asylum Seekers', compiled by Catherine Ramos ,dated 24 November 2011 (JF Report 2011), stated in its introduction:

"This report has been prepared in response to a growing concern for the plight of Congolese nationals who have sought asylum in the UK, whose appeals have been refused and who have been forcibly removed to the Democratic Republic of the Congo between 2006 and 2011. During this period, first hand reports which were received from nine people who had been living in the Tees Valley area alleged inhuman and degrading treatment at the hands of the Congolese authorities. These were clients of Justice First (Reg. Charity No. 1116388) which was set up in 2006 to work with people in Tees Valley whose asylum appeals had been refused. Justice First helps clients explore ways to reengage with the legal process and offers practical support to those experiencing destitution.

"As the United Kingdom has no monitoring mechanism in place to test the UKBA hypothesis of safety on return for rejected asylum seekers, the post return experience of Justice First clients began to be documented. Information in this report postdates the BK Country Guidance case, which proceeded through the High Court and Court of Appeal between 2007 and 2008 and which concluded there was no risk to failed asylum seekers removed to the Democratic Republic of the Congo." **[77a] (p5)**

32.14 The report stated:

"…This report details the post return experience of 14 involuntary and 3 voluntary returnees removed to the DRC between August 2006 and June 2011… The age range of the 11 men and 6 women is between mid-20s to mid- 40s. 9 children aged between 16 months and 8/9 years of age were removed with their parents. 6/9 children aged 16 months to 7 were removed with their mothers. The father of one child lives in the UK. The returnees are known to the UK supporters they contacted post return….

"September – November 2011

"Six of the fifteen returnees who are contactable were interviewed in person in an informal setting. Interviews were in the DRC in 2011. New contacts established since February 2011 led to a client from SOLACE and a man refouled in June 2011 also being interviewed. An interview with the Congolese client of Beacon could not be arranged due to there being mobile phone network problems. One female returnee was too frightened to be interviewed in person. The person sheltering her was interviewed and provided an audio recording and a written statement. Most returnees were contacted a week in advance. One returnee had taken steps to disguise his appearance when he came to the arranged meeting. He had had to take an alternative route when he came to a second meeting, as he had seen police on the street ahead of him and he has no electoral card for identification purposes. One returnee was met at night at a neutral place of his choice in order to arrange an interview.

- "The interviews were in French and were filmed or recorded. Lingala was spoken briefly by one returnee and one child spoke briefly in English. The following topics were covered during the interviews. Reasons for claiming asylum "Reasons for claiming asylum
- "Detention in the UK and removal to DRC
- "Reception at N'djili airport
- "Subsequent treatment by the Congolese authorities
- "Prison conditions
- "Bribes and post release experience
- "Current situation and safety of the returnee

"Transcripts in French of the interviews and translations into English are being made by the interviewer [Ms Ramos], a French teacher and two Congolese nationals. Written notes had been made intwo cases and are being translated into English…An interview with a member of the Congolese authorities was audio recorded and a transcript in French and translation into English made. The following topics were covered:

- "Communication between Congolese and UK Immigration authorities;
- Reception of refouled Congolese at the airport
- Treatment of those who have left DRC on a false passport
- Treatment by the authorities of those returnees found to have had a problem with the Congolese state
- Treatment of women and children" **[77a] (p11-12)**

32.15 The JF Report 2011 provided a summary of its findings, "documented human rights violations":

"The following human rights of 9 children and 15 adults were violated after removal to the…

- "13 returnees were subjected to some degree to interrogation, arrest, imprisonment, verbal, physical and sexual abuse, rape and torture
- "6 children were imprisoned for periods between 2 days and up to three months…
- "9/15 returnees suffered imprisonment and 1 was arrested but escaped from officers
- "6/15 returnees have faced harassment forcing them to flee their homes and local environs for safety in other countries. 5 children fled with their mothers
- "5 /15 returnees' family / friends were subject to threats and harassment in their homes or in the house where they were being sheltered

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- "3/15 suffered both imprisonment and harassment and threats at home
- "3/9 children witnessed threats at home to their parents and abduction of their father
- "6/15 returnees spent time in hiding after release and 1/4 women before her arrest
- "1 returnee who suffered human rights violations following his arrival in DRC and during detention in Kin Mazière prison has not made contact with his family and friends in the UK since June 2009…
- "7/10 Justice First clients are known to have been imprisoned without access to a lawyer and without being judged. Three of the other returnees were also imprisoned without access to lawyers. A member of the legal profession has confirmed that one returnee was held in an underground cell in Kin Mazière without access to a lawyer…
- "6 returnees are known to have been forced to flee the DRC and 5 have been forced to move location due to fears for the safety of the returnee or family members and friends and 7 are known to remain in hiding in 2011 as they fear for their safety
- "11 One male returnee has not made contact with his family and friends since his removal to Kinshasa in 2008. One female returnee has made no contact since 2010. The violations of the rights of only 15 adults are recorded.
- "7/15 cannot live in their former homes or in the homes of relatives/friends due to harassment in the home.
- "1/4 women could not live in her home because she feared future harm having been followed from the airport by men in a Jeep. She was arrested subsequently
- "One mother reports that the family home was destroyed in 2007. The mother of one child cannot establish contact with her family
- "3 children have not seen their father for four and a half years. The father of one child resides in the UK. 2/4 women live in precarious conditions with their children. One mother is living outside the DRC with her children and has had to move room twice. Another mother has had to move location in DRC with her children because of threats…
- "2 children are still not in education in November 2011. 3 children could not access education for more than three years." **[77a][p16-17]**

32.16 The JF Report 2011 continued:

"Post Return experience Political affiliation of returnees

"The returnees in this report were perceived or actual political opponents of the current DRC regime. The UKBA Country of Origin Information Report for DRC (2009) refers to the human rights of those who are both 'real and supposed political opponents of President Joseph Kabila' being violated. (Amnesty International 2007 Report: Torture

and Killings by State Security Agents still endemic). The current Operational Guidance Note guides decision makers to reject low level perceived political opponents as they are considered not to be at risk on return. In UKBA refusal letters Tees Valley returnees were described as low level activists of no interest to the authorities. In a letter to Dari Taylor MP dated 21st April 2009, Mark Griffiths, Assistant Director of Removals Logistics, refers back to an Immigration Judge's findings that 'I reject the appellant's account of being involved with the UDPS and of her and her husband's difficulties. I find that she has not established that the authorities within the DRC are interested in her.' The appellant was imprisoned, tortured and raped after return. To date she has not found her husband…

"Of the report's returnees:

- "8/17 are members of the UDPS (Union pour la Démocratie et le Progrès Social – Union for Democracy and Social Progress)
- "1 is a member of MNC – Albert Onawhelo (Mouvement National Congolais - Congolese National Movement –Lumumba)
- "1 is a member of the MLC (Mouvement pour la Liberation du Congo - Movement for the Liberation of Congo)
- "1 is the President of an unregistered political opposition party
- "1 is a member of the RCD – Goma (Rassemblement Congolais pour la Démocratie - Rally for Congolese Democracy)
- "Unknown political affiliation in 5 cases (two returnees are missing)
- "2 are members of APARECO".**[77a] (p18)**

32.17 The JF report 2011 also noted with respect of the adult returnees:

"The following were violations experienced by 15 of the 17 returnees. Periods of imprisonment were between one day and 3 months. Returnees were verbally abused and in some cases were threatened with death. Six men were detained in the ANR (Agence Nationale de Renseignements – National Intelligence Agency) prison, Kin Mazière. One escaped before reaching the prison he was being transported to. One female returnee was held in the ANR prison, Tolérance Zero, one in a cachot (small dugout cells) and one in the vicinity of the airport. Four women were threatened at the airport and one is known to have been threatened with death during her imprisonment.

- "Arrested at the airport: 6/15
- "Arrested after leaving the airport building and transferred to Kin Mazière: 2/15
- "Arrested after leaving the British Embassy in Kinshasa 1/15
- "Arrested at home 3/15
- "Threatened with death in Tolérance Zero by officers 1/15

- "Threatened at the airport 4/15

"Congolese human rights activists and a lawyer confirmed that detainees are not given access to lawyers during their imprisonment. Returnees reported the following ill treatment in prison:

- "Handcuffed, blindfolded and severely beaten: 1/15
- "Severely beaten 6/15
- "Electric shock treatment: 2/15
- "Sexual abuse 2/10 men
- "Rape 2/5 women
- "Slaps and blows with hand/fist 2/5 women

[77a] (p19)

32.18 In respect of the children being returned, the JF Report 2011 stated:

- "6/9 children were imprisoned, 3/9 held separately to their mothers. Five children are known to have been traumatised by their removal from the UK and subsequent imprisonment in the DRC. Two children have received psychological treatment in another African country following their flight from DRC. Three children required medical treatment following their imprisonment in DRC, one child was treated in an intensive care unit and two children treated in the Paediatric Unit in the same hospital.
- "6/9 children are living in poor conditions, 3/9 have been separated from their father for over four and a half years and had no schooling for three and a half years. 1/9 was separated from his father in the UK.
- "6/9 children are known to be experiencing hunger. Three have no access to water, nor sanitation at the room they are sharing with another family.
- "7/9 children are known to have been ill from the time they arrived in DRC. Illnesses suffered are malaria, chicken pox, gastroenteritis and scabies." **[77a] (p21-22)**

32.19 Justice First noted in relation to interrogation:

"Evidence about interrogation methods suggests that returnees were subjected to mis treatment and held in conditions that amount to torture. Nine returnees are known to have been interrogated about their activities in the UK, either at the airport or in prison, or both. Of these:

- "5/15 returnees were interrogated at the airport
- "5/15 were interrogated in Kin Mazière or Tolérance Zero

- "1/15 was interrogated in a cachot (small dugout cells)." **[77a] (p25-26)**

See Latest news. It would also be helpful to see a response by the Ireland: Refugee Documentation Centre titled: 'Democratic Republic of Congo: Information on the treatment of failed asylum seekers, including children, by the Congolese authorities on their return to Democratic Republic of Congo?', published 15 February 2012.

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Annex A

CHRONOLOGY OF MAJOR EVENTS

The following is taken from the British Broadcasting Corporation (BBC) Country Profile: DRC, A Chronology of Key events, last updated 17 May 2011, accessed 28 August 2011. For information about events which took place prior to the Mobuto years see here. [65b]

"Mobutu years

1965	Kasavubu and Tshombe ousted in a coup led by Joseph Mobutu.
1971	Joseph Mobutu renames the country Zaire and himself Mobutu Sese Seko; also Katanga becomes Shaba and the river Congo becomes the river Zaire.
1973-74	Mobutu nationalises many foreign-owned firms and forces European investors out of the country.
1977	Mobutu invites foreign investors back, without much success; French, Belgian and Moroccan troops help repulse attack on Katanga by Angolan-based rebels.
1989	Zaire defaults on loans from Belgium, resulting in a cancellation of development programmes and increased deterioration of the economy.
1990	Mobutu agrees to end the ban on multiparty politics and appoints a transitional government, but retains substantial powers.
1991	Following riots in Kinshasa by unpaid soldiers, Mobutu agrees to a coalition government with opposition leaders, but retains control of the security apparatus and important ministries.
1993	Rival pro- and anti-Mobutu governments created.
1994	Mobutu agrees to the appointment of Kengo Wa Dondo, an advocate of austerity and free-market reforms, as prime minister.
1996-97	Tutsi rebels capture much of eastern Zaire while Mobutu is abroad for medical treatment.

Aftermath of Mobutu

1997 May	Tutsi and other anti-Mobutu rebels, aided principally by Rwanda, capture the capital, Kinshasa; Zaire is renamed the Democratic Republic of Congo; Laurent-Desire Kabila installed as president.
1998 August	Rebels backed by Rwanda and Uganda rise up against Kabila and advance on Kinshasa. Zimbabwe, Namibia send troops to repel them. Angolan troops also side with Kabila. The rebels take control of much of the east of DR Congo.
1999	Rifts emerge between Congolese Liberation Movement (MLC) rebels supported by Uganda and Rally for Congolese Democracy (RCD) rebels backed by Rwanda.

Lusaka peace accord signed

1999 July	The six African countries involved in the war sign a ceasefire accord in Lusaka. The following month the MLC and RCD rebel groups sign the accord.
2000	UN Security Council authorises a 5,500-strong UN force to monitor the ceasefire but fighting continues between rebels and government forces, and between Rwandan and Ugandan forces.
2001 January	President Laurent Kabila is shot dead by a bodyguard. Joseph Kabila succeeds his father.
2001February	Kabila meets Rwandan President Paul Kagame in Washington. Rwanda, Uganda and the rebels agree to a UN pull-out plan. Uganda, Rwanda begin pulling troops back from the frontline.
2001 May	US refugee agency says the war has killed 2.5 million people, directly or indirectly, since August 1998. Later, a UN panel says the warring parties are deliberately prolonging the conflict to plunder gold, diamonds, timber and coltan, used in the making of mobile phones.
2002 January	Eruption of Mount Nyiragongo devastates much of the city of Goma.

Search for peace

2002 April	Peace talks in South Africa: Kinshasa signs a power-sharing deal with Ugandan-backed rebels, under which the MLC leader would be premier. Rwandan-backed RCD rebels reject the deal.
2002 July	Presidents of DR Congo and Rwanda sign a peace deal under which Rwanda will withdraw troops from the east and DR Congo will disarm and arrest Rwandan Hutu gunmen blamed for the killing of the Tutsi minority in Rwanda's 1994 genocide.
2002 Sept	Presidents of DR Congo and Uganda sign peace accord under which Ugandan troops will leave DR Congo.
2002 Sept/Oct	Uganda, Rwanda say they have withdrawn most of their forces from the east. UN-sponsored power-sharing talks begin in South Africa.
2002 Dec	Peace deal signed in South Africa between Kinshasa government and main rebel groups. Under the deal rebels and opposition members are to be given portfolios in an interim government.

Interim government

2003 April	President Kabila signs a transitional constitution, under which an interim government will rule pending elections.
2003 May	Last Ugandan troops leave eastern DR Congo.
2003 June	French soldiers arrive in Bunia, spearheading a UN-mandated rapid-reaction force. President Kabila names a transitional government to lead until elections

	in two years time. Leaders of main former rebel groups are sworn in as vice-presidents in July.
2003 August	Interim parliament inaugurated.
2004 March	Gunmen attack military bases in Kinshasa in an apparent coup attempt.
2004 June	Reported coup attempt by rebel guards is said to have been neutralised.
2004 Dec	Fighting in the east between the Congolese army and renegade soldiers from a former pro-Rwanda rebel group. Rwanda denies being behind the mutiny.
2005 March	UN peacekeepers say they have killed more then 50 militia members in an offensive, days after nine Bangladeshi soldiers serving with the UN are killed in the north-east.

New constitution

2005 May	New constitution, with text agreed by former warring factions, is adopted by parliament.
2005 Sept	Uganda warns that its troops may re-enter DR Congo after a group of Ugandan Lord's Resistance Army rebels enter via Sudan.
2005 Nov	A first wave of soldiers from the former Zairean army returns after almost eight years of exile in the neighbouring Republic of Congo.
2005 Dec	Voters back a new constitution, already approved by parliament, paving the way for elections in 2006. International Court of Justice rules that Uganda must compensate DR Congo for rights abuses and the plundering of resources in the five years up to 2003.
2006 Feb	New constitution comes into force; new national flag is adopted.
2006 March	Warlord Thomas Lubanga becomes first war crimes suspect to face charges at the International Criminal Court in The Hague. He is accused of forcing children into active combat.
2006 May	Thousands are displaced in the north-east as the army and UN peacekeepers step up their drive to disarm irregular forces ahead of the elections.

Free elections

2006 July	Presidential and parliamentary polls are held - the first free elections in four decades. With no clear winner in the presidential vote, incumbent leader Joseph Kabila and opposition candidate Jean-Pierre Bemba prepare to contest a run-off poll on 29 October. Forces loyal to the two candidates clash in the capital.
2006 Nov	Joseph Kabila is declared winner of October's run-off presidential election. The poll has the general approval of international monitors.

2006 Dec	Forces of renegade General Laurent Nkunda and the UN-backed army clash in North Kivu province, prompting some 50,000 people to flee. The UN Security Council expresses concern about the fighting.
2007 March	Government troops and forces loyal to opposition leader Jean-Pierre Bemba clash in Kinshasa.
2007 April	DRCongo, Rwanda and Burundi relaunch the regional economic bloc Great lakes Countries Economic Community, known under its French acronym CEPGL.
2007 April	Jean-Pierre Bemba leaves for Portugal, ending a three-week political stalemate in Kinshasa, during which he sheltered in the South African embassy.
2007 May	The UN investigates allegations of gold and arms trafficking by UN peacekeepers in Ituri region.
2007 June	War could break out again in the east, warns the Archbishop of Bukavu, Monsignor Francois-Xavier Maroy.
2007 June	Radio Okapi broadcaster Serge Maheshe is shot dead in Bukavu, the third journalist killed in the country since 2005.
2007 August	Uganda and DRCongo agree to try defuse a border dispute. Aid agencies report a big increase in refugees fleeing instability in North Kivu which is blamed on dissident general Nkunda.
2007 Sept	Major outbreak of the deadly Ebola virus.
2008 January	The government and rebel militia, including renegade Gen Nkunda, sign a peace pact aimed at ending years of conflict in the east.

Renewed clashes

2008 April	Army troops clash with Rwandan Hutu militias with whom they were formerly allied in eastern Congo, leaving thousands of people displaced.
2008 August	Heavy clashes erupt in the east of the country between army troops and fighters loyal to rebel leader Laurent Nkunda.
2008 October	Rebel forces capture major army base of Rumangabo; the Congolese government accuses Rwanda of backing General Nkunda, a claim Rwanda denies. Thousands of people, including Congolese troops, flee as clashes in eastern DR Congo intensify. Chaos grips the provincial capital Goma as rebel forces advance. UN peacekeepers engage the rebels in an attempt to support Congolese troops.
2008 Nov	Campaign by Tutsi rebel leader Laurent Nkunda to consolidate control over east prompts new wave of refugees. UN Security Council approves temporary increase of troops to bolster the strained UN peacekeeping effort.

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2008 Dec	Uganda, South Sudan and DRCongo launch joint assault on Ugandan Lord's Resistance Army bases in north-east DRCongo. Hundreds of civilians are killed in backlash attacks.
2009 Jan	Launch of joint DRCongo-Rwandan military operation against Tutsi rebels led by Laurent Nkunda. Campaign lasts five weeks. Nkunda is displaced by Bosco Ntaganda and arrested in Rwanda.
2009 Feb	Medecins San Frontiers accuses UN peacekeepers of failing to protect civilians from LRA rebels.
2009 April	Hutu militia re-emerge after end of joint DRCongo-Rwanda campaign in east, prompting thousands to flee.
2009 May	Kabila approves law giving amnesty to armed groups as part of deal meant to end fighting in east.
2009 June	nternational Criminal Court orders ex-vice president Jean-Pierre Bemba to stand trial on charges of war crimes for his troops' actions in Central African Republic between 2002 and 2003. Series of mutinies by soldiers in the east complaining they haven't been paid.
2009 July	Swiss court rules that frozen assets of ex-president Mobutu Sese Seko be returned to his family.
2009 August	US Secretary of State Hillary Clinton visits Goma, promises $17 million aid for victims of sexual violence. Head of MONUC Alan Doss declares five months of joint army-UN operations against Rwandan rebels – 'Kimia 2' - to have been 'largely positive'.
2009 Sept	UN High Commissioner for Human Rights Navi Pillay suspects October-November 2008 violence in North Kivu may amount to war crimes committed by both the army and CNDP militia.
2009 Nov	Germany arrests two alleged FDLR leaders on suspicion of war crimes in eastern DR Congo.
2009 Dec	UN extends mandate of MONUC for shortened five months, as a step to full withdrawal by mid-2010.
2010 May	Government steps up pressure for UN peacekeepers to quit before elections in 2011. UN's top humanitarian official John Holmes warns against premature departure.
2010 June	Prominent human rights advocate Floribert Chebeya found dead a day after being summoned to meet the chief of police. Celebrations mark 50 years of independence.
2010 July	$8 billion debt relief deal approved by World Bank and IMF. New electoral commission launched to prepare for 2011 elections.
2010 Jul-Aug	Mass rapes reported in North Kivu province. UN envoy Margot Wallstrom blames both rebels and army.

2010 Jun-Aug	Operation Rwenzori against Ugandan ADF-NALU rebels prompts 90,000 to flee in North Kivu province.
2010 Oct	UN report into killing of Hutus in DR Congo between 1993 and 2003 says they may constitute 'crimes of genocide'. It implicates Rwanda, Uganda, Burundi, Zimbabwe and Angola.
2010 Nov	UN agencies report widespread rapes during mass expulsion of illigal migrants from Angola to DRCongo. UN report accuses networks within army of promoting violence in east to profit from mining, smuggling and poaching. Ex-DRCongo vice-president Jean-Pierre Bemba goes on trial at International Criminal Court accused of letting his troops rape and kill in Central African Republic between 2002 and 2003. Paris Club of creditor countries scrap half of DRCongo's debt.
2011 Jan	Constitution changed, which some say boost President Kabila's election chances.
2011 Feb	Court sentences Lt-Col Kibibi Mutware to 20 years in jail in a mass rape case in eastern Congo. This is the first conviction of a commanding officer for rape in eastern DR Congo. 19 killed in coup bid against president, police say.
2011 May	Rwandan Hutu rebel Ignace Murwanashyaka goes on trial in Germany for alleged crimes against humanity in DR Congo.
2011 June	Gunmen carry out mass rape of 170 women near the eastern town of Fizi, North Kivu province, according to UN.
2011 July	Col Nyiragire Kulimushi, who is accused of ordering the mass rape of women in eastern DR Congo, surrenders to authorities.
2011 July	Voter registration for November elections marred by demonstrations by opposition supporters alleging irregularities.
2011 Sept	Mai Mai militia leader Gideon Kyungu Mutanga escapes during a mass prison break-out by almost 1,000 inmates.
2011 Nov	Presidential and parliamentary elections. Mr Kabila gains another term. The vote is criticised abroad and the opposition disputes the result." [65b]

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Annex B

POLITICAL ORGANISATIONS

Europa World, in an undated posting, Directory – Political organisations ,accessed 27 July 2011, noted: ”In January 1999 a ban on the formation of political associations was officially ended, and in May 2001 remaining restrictions on the registration and operation of political parties were removed. Some 260 political parties registered to contest presidential and legislative elections on 30 July 2006.” **[1c]**

Janes Sentinel Security Assessment stated in Political Parties, undated, accessed 27 July 2011:

“There was a realignment of political factions and parties during and after the 2006 presidential and legislative elections, which generally involved opting to become part of the Presidential Majority (Alliance pour la Majorite Presidentielle: AMP) or the opposition Union pour la Nation (UPN). The former is spearheaded by Kabila's Party for Reconstruction and Democracy (Parti du Peuple pour la Reconstruction et la Démocratie: PPRD), with the Unified Lumumbist Party (Parti Lumumbiste Unifié: PALU) and the Union of Mobutuist Democrats (Union des Démocrates Mobutistes), both opposition parties during the transition period, having opted to back Kabila. PALU's leader, Antoine Gizenga, became prime minister in the post-transition period up until his resignation in October 2008. The UPN, meanwhile, was formed of Jean-Pierre Bemba's Congo Liberation Movement (Mouvement de Libération du Congo: MLC) and the opposition parties of a number of other presidential candidates. The AMP gained more than 300 seats, while the UPN secured 116 seats in the 500-seat legislature in the 2006 elections. **[58a]**

Jane’s also stated:

“Political parties: President Joseph Kabila's party is Parti du Peuple pour la Reconstruction et le Developpement (PPRD). Two main coalitions, the Alliance pour la Majorite Presidentielle (AMP) and the Union pour la Nation (UN), respectively represent President Kabila and former Transitional Vice President Jean-Pierre Bemba. Bemba was Kabila’s principal opponent in the 2006 presidential election (see “Government and Political Conditions” section below), and despite his May 2008 arrest by Belgian authorities and transfer to the International Criminal Court in The Hague, is still the official president of the largest single opposition party, Mouvement pour la Liberation du Congo (MLC). Another important opposition party is the Union pour la Democratie et le Progres Social (UDPS), led by aging Mobutu opponent Etienne Tshisekedi. Although the UDPS boycotted the 2006 elections, the party nominated Tshisekedi in December 2010 as its presidential candidate; UDPS will participate in the 2011 presidential and 2012 parliamentary and local elections. In 2010, former National Assembly Speaker Vital Kamerhe announced that he had left the PPRD and had formed his own Congolese National Union (UNC) party, which was expected to nominate Kamerhe as its presidential candidate for 2011. Other parties include Forces du Futur (FDF), Forces Novatrices pour l'Union et la Solidarite (FONUS), Parti Democrate Social Chretien (PDSC), Mouvement Social Democratie et Developpement (MSDD), Mouvement Populaire de la Revolution--Fait Prive (MPR-FP), Union des Nationalistes et des Federalistes Congolais (UNAFEC), and Mouvement National Congolais/ Lumumba (MNC/L). Former rebel movements-turned-political parties include the Rassemblement Congolais pour la Democratie (RCD), Mouvement pour la Liberation du Congo (MLC), and independent splinter groups of the RCD (RCD/ML, RCD/N, RCD/G). The former

rebel group Congres National pour la Defense du Peuple (CNDP) received official status as a political party in May 2009 and joined the AMP in September 2010." **[58a] (political parties)**

Camp de la patrie
Leader: Arthur Z'ahidi Ngoma.Kinshasa **[1c]**

Coalition des démocrates congolais (CODECO) (founded 2006)
Leader: Pierre wa Syakassighe Pay-Pay **[1c]**

Congrès national pour la défense du peuple (founded 2006)
President: Laurent Nkunda Mihigo.
Secretary: G. Kambasu Ngeve. **[1c]**
www.cndp-congo.org

Convention des démocrates chrétiens
Leader Florentin Mokonda Bonza. Kinshasa **[1c]**

Démocratie chrétienne féderaliste—Convention des fédéralistes pour la démocratie chrétienne (DCF—COFEDEC)
Leader Venant Tshipasa Vangi. **[1c]**

Forces du renouveau
Leader Antipas Mbusa Nyamwisi.Kinshasa
Alliance pour le Renouveau du Congo (ARC) Founded 2006;
Leader Olivier Kamitatu Etsu. **[1c]**

Rassemblement congolais pour la démocratie—Mouvement de libération (RCD—ML).
Pres. Antipas Mbusa Nyamwisi.
broke away from main RCD in 1999; supported by Uganda. **[1c]**

Forces novatrices pour l'union et la solidarité (FONUS) Founded 2004
President: Joseph Olenghankoy.Kinshasa
Secretary-General: John Kwet.
Advocates political pluralism. **[1c]**

Front des nationalistes intégrationnistes (FNI) (Founded 2003 in Uganda)
Leader Floribert Ndjabu Ngabu. Bunia
Ethnic Lendu rebel group, in conflict with Union des patriotes congolais in north-east. **[1c]**

Mouvement de libération du Congo (MLC) (Founded 1998)
Leader Jean-Pierre Bemba Gombo.
Sec.-Gen. Thomas Luhaka.
Former Ugandan-supported rebel movement; incl. in Govt in July 2003. **[1c]**

"The Congo Liberation Movement (Mouvement de Libération du Congo: MLC) was set up in late 1998 to fight Laurent Kabila and was used as a proxy by Uganda on the northern front between Kisangani and Mbandaka. Allied at times with Wamba's RCD-ML, relations became strained from mid-2001 onward, when it backed the RCD-Nationale against the RCD-ML to gain territory in Oriental. The party had General Alengbia Nzambe as the military commander of Katanga, the sixth military region. It also held the governorship of Bandundu province. Jean-Pierre Bemba, the MLC's presidential candidate in the 2006 elections, emerged as the leading opposition

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challenger to Kabila, securing 41.95 per cent in the second-round run-off. The MLC won 64 seats in the National Assembly elections in July 2006." **[58a]**

Mouvement populaire de la révolution (MPR)
Founded 1966 by President Mobutu; sole legal political party until November 1990; advocates national unity and opposes tribalism.
Leader Professor: Vundwawe te Pemako
Secretary -General: Kithima bin Ramazani **[1c]**

Mouvement social pour le renouveau (MSR), Founded 2006 Leader Yves Mobando Yogo. Kinshasa **[1c]**

Parti démocrate chrétien
Leader José Endundo Bononge **[1c]**

Parti démocrate et social chrétien (PDSC) (Founded 1990)
President: André Boboliko.
Secretary -General: Tuyaba Lewula.
Centrist. **[1c]**

Parti lumumbiste unifié (PALU)
Leader Antoine Gizenga.Kinshasa **[1c]**

Parti du peuple pour la reconstruction et la démocratie (PPRD) (People's Party for Reconstruction and Democracy) Founded March 2002 by Pres. Joseph Kabila;
Secretary -General: Évariste Boshab. **[1c]**

"Headed by President Joseph Kabila, the PPRD was set up from the old AFDL in early April 2002 and contains loyalists close to the president's late father, Laurent Kabila. From its outset, the party was always going to be a force to be reckoned with, boasting more than 250 founding members at a time when the political scene in pre-transition Kinshasa was highly fragmented. Among the key founders was Vital Kamerhe, Kabila's chief negotiator during the 2002 peace talks. One of the four transition vice-presidents - Yerodia Abdoulaye Ndombasi - also came from the PPRD.

"The transition arrangement saw Kinshasa/Kabila military loyalists take control of two of the 10 military regions. This was on a par with the other two key parties/military factions in the transition, Congolese Rally for Democracy - Goma (Rassemblement Congolais pour la Démocratie - Goma: RCD-Goma) and the Congo Liberation Movement (Mouvement de Libération du Congo: MLC). PPRD representatives also assumed governorships of three of 11 provinces: Bas-Congo, Kinshasa and Kasai Occidental.

"The party secured 111 seats in the July 2006 parliamentary polls. The PPRD is part of the Alliance of the Presidential Majority (Alliance pour la Majorité Présidentielle: AMP), with some 30 other parties, with the alliance winning 332 out of 500 seats in the National Assembly." **[58a]**

Parti pour l'unité et la sauvegarde de l'intégrité du Congo (PUSIC)
Leader Robert Pimbu.Bunia
Coalition of 4 tribal militia groups, led by Hema. **[1c]**

Rassemblement congolais pour la démocratie (RCD—Goma) (Founded 1998)

Leader: Azarias Ruberwa.
Secretary -General: Francis Bedy Makhubu Mabele.
Rebel movement until Dec. 2002 peace agreement; incl. in Govt July 2003; main Ilunga faction; supported by Rwanda. **[1c]**

Janes Sentinel Security Assessment stated in Political Parties, undated, accessed 27 July 2011:

"The Congolese Rally for Democracy - Goma (Rassemblement Congolais pour la Démocratie - Goma: RCD-Goma) is one of several offshoots of the original RCD movement (RCD-Nationale and RCD-ML are the others and also had representation in the transition government). The RCD was established as a Rwandan proxy in 1998 to fight against the government of Laurent Kabila and was initially led by Professor Ernest Wamba dia Wamba, before being taken over by Emile Ilunga. Wamba then set up the RCD-ML. The intrigue continued within the RCD-Goma, with Adolphe Onusumba taking over from Ilunga in late 2000, before former secretary general Ruberwa finally took control in June 2003 at the conclusion of the peace negotiations, when he was appointed vice-president of the Democratic Republic of Congo. RCD-Goma remained a significant force, despite divisions within its ranks during 2004, which saw personnel in its North Kivu stronghold take offensive military action against government units in both North and South Kivu (much to the chagrin of most of the Kinshasa-based leadership). Indeed, despite these divisions, Rwanda retained a strong influence over RCD-Goma, including both its Kinshasa-based political leadership and South Kivu-based personnel.

"During the transition process, military commanders from RCD-Goma headed both North Kivu and Kasai Oriental, with General Gabriel Amisi taking the former and General Obeid Rwibasria the latter. Previously, General Obeid had headed North Kivu, but was rotated out of the province following the December 2004 clash with government loyalists. The party also gained the governorship of two provinces: North Kivu and Orientale.

"However, the presidential and legislative elections in 2006 saw RCD-Goma perform poorly, in line with expectations, due to the low popularity of the party outside of its largely Tutsi support base. In the eastern provinces, where RCD-Goma built up its power base during the civil war, there was strong support for Kabila during the election." **[58a]**

Rassemblement congolais pour la démocratie—National (RCD—N)
Leader: Roger Lumbala.Isiro
broke away from RCD—ML in Oct. 2000. **[1c]**

Rassemblement des forces sociales et fédéralistes (RSF)
Leader: Vincent de Paul Lunda Bululu. **[1c]**

Rassemblement pour une nouvelle société (RNS)
Leader: Dr Alafuele M. Kalala.
Citation: Rassemblement pour une nouvelle **[1c]**

Union des démocrates mobutistes (UDEMO)
Leader: François Joseph Mobutu Nzanga Ngbangawe.
Founded by son of former President Mobutu. **[1c]**

Union des nationalistes fédéralistes du Congo (UNAFEC)
Leader: Gabriel Kyunga wa Kumwanza**. [1c]**

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Union des patriotes congolais (UPC)
Leader: Thomas Lubanga. Bunia
Rebel group of Hema ethnic group, formerly in conflict with Lendu in north-east; registered as political organisation 2004, after peace agreement with Goverment. **[1c]**

Union pour la démocratie et le progrès social (UDPS) (Founded 1982)
Leader: Dr Etienne Tshisekedi Wa Mulumba.
Secretary-General: Rémy Massamba.
Kinshasa
www.udps.net **[1c]**

Union pour la reconstruction du Congo (UREC)
Leader: Oscar Lukumwena Kashala. **[1c]**

Union pour la République (UPR)
Leader: Boboy Nyabaka.
Founded 1997; by former members of the MPR. **[1c]**

Union pour la République—Mouvement National (UNIR—MN)
President: Frédéric Boyenga-Bofala.
Secretary -General: Olivier Meskens Ntambu Kufuanga.
Kinshasa
www.unir-mn.org
Founded 2001; officially registered as a political party in 2005. **[1c]**

Armed Groups

Janes Sentinel Security Assessment noted in an online posting, last updated 10 January 2012, in respect of armed groups:

"Forces Démocratiques de Libération du Rwanda (FDLR), or Democratic Forces for the Liberation of Rwanda.
The FDLR's military wing is the Force Combattante Abacunguzi (FOCA), or the Combatant Force for the Liberation of Rwanda.

"Type: Ethnic Militia (Hutu).
Status: Active since being founded in May 2000.
Leader: Dr Ignace Murwanashyaka, who was detained on war crimes charges in Germany in November 2009.
Summary: The Forces Démocratiques de Libération du Rwanda (FDLR) is a Hutu nationalist militant group based in the Kivu provinces of eastern Democratic Republic of Congo (DRC). The group is actively committed to the overthrowing of the Rwandan government but has limited its activities to the disruption of Rwandan interests in the Democratic Republic of Congo since 2001, carrying out sporadic ambush and harrassing attacks against Congolese armed forces. A resurgence of violence in the Kivu provinces in late 2008, perpetrated by the Congres National pour la Defense du Peuple (CNDP), led to an increase in FDLR activity. Renewed regional attention on the FDLR led to a joint Congolese-Rwandan operation against the group in January 2009." **[58a]**

Lord's Resistance Army (LRA).

"Type: Other Religious Militant.
Status: Active since being founded in 1991.
Leader: Joseph Kony.
Summary: The Lord's Resistance Army (LRA) is a loose-knit militant organisation led by Joseph Kony that operates in northern Uganda, southern Sudan, the Democratic Republic of Congo (DRC), and the Central African Republic (CAR). The LRA was founded by Kony in 1991 following the renaming of the United Democratic Christian Movement/Army (UDCM/A), a religious group that splintered from the Uganda People's Democratic Army (UPDA), itself a group that emerged in opposition to the government of Ugandan President Yoweri Museveni. The LRA was founded with the millenarian objective of overthrowing the government of Museveni and replacing it with a Christian theocracy that ruled on the basis of the Biblical Ten Commandments. Nevertheless, the group began attacking civilian targets throughout northern Uganda in the late 1990s and the LRA was soon carrying out similar such operations in the DRC, CAR, and southern Sudan. In response to the LRA's continued attacks against civilians, the International Criminal Court (ICC) issued arrest warrants for Kony and four senior LRA commanders in 2005 on charges of war crimes and crimes against humanity. Following the ICC indictments, the LRA engaged in several years of peace negotiations with the Ugandan government, leading to the signing of a permanent ceasefire in early 2008 ahead of the signing of a peace agreement. However, the agreement was scuppered by Kony at the last minute and LRA violence increased notably across the group's area of operations. However, this violence led to a series of co-ordinated regional counter-terrorism offensives against the group, severely depleting the LRA's strength. As such, the LRA's primary objective is that of survival, with only small groups of militants scattered throughout the cross-border region between Uganda, the DRC, Sudan, and the CAR. Nevertheless, the group retains the capability and the intent to continue attacking civilian targets, as it demonstrated with a series of attacks in the DRC and southern Sudan in early and mid 2011." **[58a]**

Allied Democratic Forces (ADF), sometimes rendered as the Allied Defence Forces.

"Type: Political.
Status: Active since being founded in 1989.
Leader: Sheikh Jamil Mukulu, alias David Steven alias Arilabaki alias Musezi Talengelanimiro alias Mzee Tutu alias Bruno alias Kafeero alias Kyagulanyi.
Summary: The Allied Democratic Forces (ADF) is a small militant group based and operating in the border area between eastern Democratic Republic of Congo (DRC) and southwestern Uganda. It was founded in Uganda in 1989 by its current leader, Sheikh Jamil Mukulu, a radical Islamist who aimed to overthrow the government of President Yoweri Museveni and replace it with a loosely defined Islamist administration. The ADF did not become operationally active until 1995, but over the following years it emerged as a significant if localised threat to government authority in southwestern Uganda. However, by 2002 the Ugandan army had successfully forced the group to retreat across the border into the DRC, and the ADF threat appeared to have been neutralised. Despite this setback, following Uganda's military withdrawal from the DRC in 2003, the ADF - along with its principle ally, the National Army for the Liberation of Uganda (NALU) - consolidated its position in the largely ungoverned eastern DRC, and become involved in lucrative illegal mining activities. Following renewed recruitment activities, the ADF today comprises a loose mix of freelance fighters from the DRC; exiled Hutu militiamen from Rwanda; and various rebels and dissidents from Uganda. As such, although nominally Islamist in character, the ADF lacks a coherent ideology and oscillates between an overtly religious agenda and a radical ethno-nationalist one, with its opposition to President Museveni the unifying factor that unites its disparate elements. Although militarily dormant in recent years, the

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group continues to pose a potential threat to stability in the DRC-Uganda border region, and a resumption of hostilities remains possible should the current status quo be disturbed. Such a scenario has become more likely following Uganda's discovery of commercial oil reserves in the border region, and subsequent efforts by DRC and Ugandan forces in mid-2010 to clear the area of ADF and other militant elements." **[58a]**

Forces Nationales de Libération (FNL), or National Forces of Liberation.

"Type: Political (Hutu nationalist).
Status: Formed in 1985. Officially dormant following the signing of a peace deal in December 2008.
Leader: Agathon Rwasa.
Summary: The Forces Nationales de Libération (FNL) is a Hutu militant group which operates in the west and northwest of Burundi. The group was formed in 1985 as the armed wing of the Parti de la Liberation du Peuple Hutu (PALIPEHUTU), a Hutu political party which aimed to protect the majority Hutu population from the minority Tutsi-dominated government and military. The FNL participated in Hutu-Tutsi ethnic violence and fought in the Burundian Civil War, which began in 1993, executing a low-level insurgency against the state in the west and northwest of the country. While the civil war ended in 2005 with the ascendancy to power of former Hutu militant group the Conseil National Pour la Défense de la Démocratie - Forces pour la Défense de la Démocratie (CNDD-FDD), the FNL continued fighting until it signed a ceasefire agreement with the government in 2006. Following the signing of a comprehensive peace agreement in December 2008, FNL fighters began to disarm while the FNL itself transformed into a political party. FNL leader Agathon Rwasa was due to stand in presidential elections in June 2010, but the FNL and all other opposition parties withdrew from the elections in late May, alleging that the ruling CNDD-FDD had engaged in electoral fraud. Rwasa fled across the border into the Democratic Republic of Congo (DRC) where he was accused of re-mobilising FNL fighters. Suspected FNL militants conducted a number of attacks in northwest Burundi in late 2010 and throughout early-to-mid 2011, typically targeting security forces or the CNDD-FDD. Such violence escalated notably with the killing of 41 people in an attack in Gatumba in mid-September 2011, although it remained impossible to conclusively demonstrate FNL responsibility." **[58a]**

Congrès National pour la Défense du Peuple (CNDP), or National Congress for the Defense of the People.

"Type: Political.
Status: Formed in July 2006. Dormant following a peace deal with the government in March 2009.
Leader: Bosco Ntaganda.
Summary: The Congrès National pour la Défense du Peuple (CNDP) is a militant group that was established and based in the Nord Kivu province in the east of the Democratic Republic of Congo (DRC). The group was founded in mid-2006 by Laurent Nkunda, a former senior Rassemblement Congolais pour la Démocratie (RCD) commander who refused to integrate into the Forces Armées de la République Démocratique du Congo (FARDC) following the end of the Second Congolese War in 2003. The nominal objective of the CNDP was to protect the Tutsi population in eastern DRC but the group became notorious for its attacks on civilians in its areas of operation. After several years of periodic clashes with the FARDC, and a failed peace initiative in 2007, the CNDP signed a peace deal with the government in January 2008. However, the peace deal soon broke down and following sporadic clashes through mid-2008, the CNDP launched a renewed offensive against government held towns in Nord Kivu in

October. However, the CNDP campaign was stalled by the intervention of MONUC peacekeepers and Nkunda called a ceasefire in late October. Nkunda was ousted as CNDP leader in early January 2009 by senior commander Bosco Ntaganda, before Nkunda was then captured in Rwanda at the end of the month. Under Ntaganda, the CNDP signed a peace deal with the DRC government in March 2009 which led to the group becoming a political party and its fighters being integrated into the FARDC. Ntaganda remains in control of CNDP forces within the FARDC and these former militant elements participated in a January 2010 FARDC operation against the Forces Démocratiques de Libération du Rwanda (FDLR). While there has been no indication of a desire to break the peace deal, a UN report in November 2010 expressed concern that the CNDP seemed to maintain de facto control of large areas of Nord Kivu, under the aegis of the FARDC. As such, while the CNDP is not currently assessed to pose a threat to the DRC government, it remains a destabilising influence in the region." **[58a]**

See also Sections 6: Political System, 8: Security Situation, 9: Security Forces, 11: Non-government armed groups.

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Annex C

PROMINENT PEOPLE

Taken from Europaworld Online, dated September 2010, last accessed on October 2011

President –Maj Gen	Joseph Kabila Kabange
Vice President	Name
Prime Minister	Adolphe Muzito
Deputy Prime Minister, Minister of the Interior and Security, Decentralisation and Land settlement	Adolphe Lumanu Mulenda Bwana N'Sefu
Deputy Prime Minister, Minister of Posts, Telephones and Telecommunications	Louis Alphonse Koyagialo Ngbase te Gerengbo
Minister of Foreign Affairs	Alexis Thambwe Mwamba.
Minister of International and Regional Co-operation	Raymond Tshibanda N'Tungamulongo.
Minister of National Defence and War Veterans	Charles Mwando Simba.
Minister of Justice and Human Rights	Luzolo Bambi Lessa.
Minister of Relations with Parliament	Richard Muyej Mangenz.
Minister of Communications and Media	Lambert Mende Omalanga
Minister of Finance	Matata Ponyo Mapon.
Minister of the Budget	Jean-Baptiste Ntahwa Kuderwa Batumike
Minister of Planning	Olivier Kamitatu Etsu.
Minister of without Portfolio	Jeannine Mabunda Lioko
Minister of the National Economy	Jean-Marie Daruwezi Batumike
Minister of Infrastructure, Public Works and Reconstruction	Fridoli Kasweshi Musoka
Minister of the Environment, Conservation of Nature and Tourism	José Endundu Bononge
Minister of Energy	Gilbert Tshiongo Tshibinkubula Wa Tumba
Minister of Mines	Martin Kabwelulu Labilo

Minister of Hydrocarbons	Celestin Mbuyu Kabango
Minister of Transport and Communication Routes	Joseph Martin Kitumba Gagedi Gasagisa Mwanza
Minister of Public Health	Victor Makwenge Kaput
Minister of Higher and University Education	Leonard Mashako Mamba
Minister of Primary and Secondary Education and Professional Training	Maker Mwangu Famba
Minister of Agriculture	Norbert Basengezi Kantintima
Minister of Rural Development	Charles Aluea Mengulwa
Minister of Industry	Anicet Kuzunda Mutangiji
Minister of Trade	Justin Kalumba Mwana Ngongo
Minister of Small and Medium- sized Enterprises	Jean-Marie Bulambo Kilosho
Minister of Gender Equality, Women and Children	Maire-Ange Lukiana Munfonkolo
Minister of Land Affairs	Kisimba Ngoy Maje
Minister of Town Planning and Housing	César Lubamba Ngimbi
Minister of Employment, Labour and Social Security	Simon Bulupiy Galati
Minister of Social Affairs, Humanitarian Affairs and National Solidarity	Ferdinand Kambere Kalumbi
Minister of the Civil Service	Dieudonné Upira Sunguma Kagimbi
Minister of Scientific Research	Jean-Pierre Bokole Ompoka
Minister of Culture and the Arts	Jeannette Kavira Mapera
Minister of Youth and Sports	Claude Bazibuhe Nyamugabo
Minister of Culture and the Arts	Jeanette Kavira Mapera

There are also 10 Deputy ministers

PROMINENT PEOPLE OUTSIDE THE GOVERNMENT

The BBC noted 26 April 2010:

"**Jean-Pierre Bemba**

Founder of the rebel group Movement for the Liberation of Congo (MLC), in 1998.

- Son of famous businessman
- Former assistant to Mobutu Sese Seko
- 1998: Helped by Uganda to form MLC rebel group
- 2003: Becomes vice-president under peace deal
- 2006: Loses run-off election to President Joseph Kabila but gets most votes in western DR Congo
- 2007: Flees after clashes in Kinshasa."

late publicly available information as at 1 December 2011.
been provided in the Latest News section to 29 February

To read more about Jean-Pierre Bemba, see the BBC profile here. **[65r]**

Etienne Tshisekedi

Aljazeera commented, "Widely regarded as the DRC's main opposition leader, Etienne Tshisekedi heads up the Union for Democracy and Social Progress party (UDPS). Tshisekedi served in governments during Mobuto Sese Soko's decades-long rule, but became a focal point for opposition when he formed the UDPS in 1980 to counter Mobuto's party, serving briefly as prime minister on three occasions.When Laurent Kabila became president in 1997, after Mobuto was usurped from power, political parties were banned until scheduled general elections in 1999. Tshisekedi was placed on a list drawn up by a constitutional committee of people who could not run for president and was ultimately forced into internal exile in February 1998 after being accused of violating a ban on party politics. He was confined to his village, Mupompa." **[51a]**

To read more about Etienne Tshisekedi, see the Aljazeera profile here. **[51a]** and the BBC profile here.

Vital Kamerhe

The BBC noted in DR Congo: profiles of Kabila, Tshisekedi and Kamerhe, 19 December 2011: "Now an opposition candidate, Mr Kamerhe, 52, is a former ally of President Kabila. A founding member of the presidential PPRD party, Mr Kamerhe managed the president's election campaign in 2006. He then became speaker of the National Assembly, until he clashed with the presidency over a secret pact allowing Rwanda to send troops into eastern DR Congo to pursue rebels in early 2009. A native of the eastern Kivu region, Mr Kamerhe then broke away to form the Union for the Congolese Nation (UNC)." **[65d]**

To read more about Vital Kamerhe, see the BBC profile here.

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Annex D

LIST OF ABBREVIATIONS

ACD	Armed Conflict Database
AFDL	Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre
AFP	Agence France-Presse
AI	Amnesty International
AMP	Alliance pour la Majorite Presidentielle
CDC	Convention of Christian Democrats
CDF	Congolese Franc
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CEDOCA	Centre de documentation des instances d'asile
CIA	Central Intelligence Agency
CNDP	National Congress for the Defense of the People
CPJ	Committee to Protect Journalists
CSM	Conseil Superieur de la Magistrature
DIDR	La division de l'information, de la documentation et des recherché
DRC	Democratic Republic of Congo
EU	European Union
EBRD	European Bank for Reconstruction and Development
FAC	Forces Armees Congolaises
FARDC	Forces Armées de la République Démocratique du Congo
FCO	Foreign and Commonwealth Office (UK)
FDF	Forces du Futur
FDLR	Democratic Forces for the Liberation of Rwanda
FGM	Female Genital Mutilation
FH	Freedom House
FR	Forces of Renewal
FPR	Front Patriotique Rwandais
FONUS	Forces Novatrices pour l'Union et la Solidarite
GBP	British Pounds
GDP	Gross Domestic Product
HCR	Haut Conseil de la République
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRW	Human Rights Watch
IAG	Illegal Armed Group
ICG	International Crisis Group
ICRC	International Committee for Red Cross
IDP	Internally Displaced Person
IFRC	International Federation of Red Cross and Red Crescent Societies
IRIN	Integrated Regional Information Networks
IMF	International Monetary Fund

IOM	International Organisation for Migration
LRA	Lord's Resistance Army
MIBA	La Societe Miniere de Bakwanga
MLC	Mouvement pour la Liberation du Congo
MONUC	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MPR-FP	Mouvement Populaire de la Revolution--Fait Prive
MSDD	Mouvement Social Democratie et Developpement
MSF	Médecins sans Frontières
MSR	Social Movement for Renewal
NATO	North Atlantic Treaty Organisation
NGO	Non Governmental Organisation
OCHA	Office for the Coordination of Humanitarian Affairs
ODIHR	Office for Democratic Institutions and Human Rights
ODPR	Office for Displaced Persons and Refugees
OECD	Organisation of Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PALU	Unified Lumumbist Party
PDC	Christian Democrat Party
PDSC	Parti Democrate Social Chretien
PPRD	People's Party for Reconstruction and Democracy
RCD	Rassemblement Congolais pour la Democratie
RMG	
RSF	Reporters sans Frontières
SADC	Southern African Development Community
STD	Sexually Transmitted Disease
STC	Save The Children
TB	Tuberculosis
TI	Transparency Internationa
UDPS	Union for Democracy and Social Progress
UN	United Nations
UNAFEC	Union des Nationalistes et des Federalistes Congolais
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNC	Union for the Congolese Nation
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USD	US Dollars
USSD	United States State Department
WFP	World Food Programme
WHO	World Health Organization

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Annex E

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Annex F

RESPONSES TO UK BORDER AGENCY PROVIDED UNDER EUROPEAN COUNTRY OF ORIGIN SPONSORSHIP (ECS) PROJECT

Below is the full text of information responses provided by researchers in the the Country of Origin Information (COI) research unit in the Office of the Commissioner General for Refugees and Stateless Persons (CEDOCA - Belgium), and the French COI research unit, La division de l'information, de la documentation et des recherché (DIDR), of the Office Francais de Protection des Refugies et Apatrides. These responses were provided under the ECS project, a European Commission funded scheme to an "information and co-operation network that allows all European countries to profit from Country of Origin Information"

The responses are organised chronologically, oldest first.

i) Treatment of Army Deserters **[59a]**

European Country of Origin Sponsorship (ECS) introduces an information and co -operation network that allows all European countries to profit from Country of Origin Information.

Template for Requests and Answers

A. Request

Requesting ECS Contact/Person

Contact details:
Name:
Country: UK
Authority/Organisation: UKBA
Phone:
Fax:
E-Mail address:

Request Details

Country of Origin: DRC

Context / Background (optional if needed):

Question/Subject:
Treatment of army deserters

- Please detail the treatment that individuals may receive as a result of deser-tion from the army. What evidence is there as to the enforcement of the Military Penal Code. Further, what evidence is there as to the type and level of penalties being issued for each of the following categories: particularly, in respect of desertion abroad.
- simple desertion,
- desertion with conspiracy,
- desertion abroad,
- desertion to an armed gang and
- desertion to the enemy or in the presence of the enemy

Date of request: 18 May 2011
Timeframe: Completion till: 14 June 2011

Date of answer: 26/05/2011
Already used sources of information, if any: Refworld, Armed Conflict, HRW, UN, CSIS & Google

B. Answer of the ECS Experts Team

The present answer has been elaborated by the Belgian COI Unit (CEDOCA) and the French COI Unit (DIDR) within the framework of the partnership provided for in the ECS project.

Disclaimer on Sources and Information

This report was written according to the Common EU Guidelines for processing COI (2008). All sources used are referenced. All information presented, except for un-disputed/obvious facts, has been cross-checked, unless stated otherwise.
The information provided has been researched, evaluated and processed with the utmost care within a limited time frame. However, this document is not exhaustive. Neither is this document conclusive as to the merit of any particular claim to inter-national protection.
If a certain event, person or organization is not mentioned in the report, this does not mean that the event has not taken place or that the person or organization does not exist. The information in the report does not reflect the opinion or policy of the sponsor country.

Desertion from the FARDC (DRC Armed Forces) falls under the Military Criminal Code "« Loi N° 024/2002 du 18 novembre 2002 portant Code Pénal Militaire » available at http://www.leganet.cd/Legislation/Droit%20Judiciaire/Loi.024.2002.18.11.2002.pdf (last consulted on 20/05/2011). The code determines the procedure. Articles 47 and 48 tackle desertion from abroad.

Article 47 defines the deserter abroad :

Article 47. - Est déclaré déserteur à l'étranger :

 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

1. tout militaire ou assimilé qui, trois jours après celui de l'absence constatée, franchit, sans autori-sation, les limites du territoire de la République ou qui, hors de ce territoire, abandonne l'unité ou le détachement, la base ou la formation à laquelle il appartient, le navire ou l'aéronef à bord duquel il est embarqué ;
2. tout militaire ou assimilé qui, hors du territoire de la République, à l'expiration du délai fixé au point 1 ci-dessus pour son retour de congé, de mission ou de déplacement, ne se présente pas à l'unité ou au détachement, à la base ou à la formation à laquelle il appartient, au navire ou à l'aéronef à bord duquel il est embarqué.

Article 48 enounces a punishment :
Tout militaire ou assimilé, coupable de désertion à l'étranger est puni, en temps de paix, d'un à cinq ans de servitude pénale principale.
Si le coupable a emporté une arme ou du matériel de l'Etat, ou s'il a déserté étant de service ou avec complot, la peine encourue est de trois à dix ans de servitude pénale.
Si la désertion à l'étranger a lieu en temps de guerre ou pendant les circonstances exceptionnelles, la peine peut être portée à la servitude pénale à perpétuité et même à la peine de mort.

Among other sources consulted, information on the enforcement of the Military Penal Code regard-ing desertion, and more specifically regarding desertion abroad, was scarce.

In January 2007, more than 30 officers who deserted the Congolese army were arrested in Goma (North Kivu). No information could be found on their situation following their arrest however .

In a 2008 United States report on children and armed conflict in DRC, we learn that on July 2007, a 16-year-old boy was arrested and detained by the national police of Luvungi (South Kivu) for desertion. The boy reported that he had spontaneously left the ranks of Colonel Abdou Panda at the end of 2006 and had since returned to his village. He was released on 6 August 2007 .

It should also be emphasized that in 2009, a wave of desertion from newly integrated FARDC units took place. Many of these soldiers were ex-rebels of the "Congrès national pour la défense du people" (CNDP) of Laurent Nkunda, who had recently integrated the FARDC and decided to desert the army to return to their initial armed group . No information could be found, however, on the sanctions applied to soldiers who may have been arrested, following their desertion from the FARDC.

Interestingly, an article published in February 2010 mentions the reintegration of 350 soldiers who had deserted the FARDC in the Kivu in December 2009. These soldiers faced no punishment. An official ceremony was even organized to celebrate the event . This specific case illustrates that there might be a gap between the Military Penal Code and what happens in the field.

In the recent case of general Munene, an ex-FARDC general who was presumably involved in an attempt to organize a coup d'Etat, 28 FARDC soldiers were arrested in December 2010, in the Bas-Congo Province. They were charged with desertion and participation in a rebellion movement and condemned to 20 years imprisonment, as well as to the payment of 1 million Congolese francs .

Regarding the more specific case of desertion abroad, it seems interesting to point to a 2009 arti-cle published on a blog which mentions the phenomenon of militaries who do not return to DRC . In a quite dated, but nonetheless interesting article of October 2004, for instance, the Congolese press reports the desertion of 16 Congolese officers, following a military training in Belgium. Re-garding this specific case, the Minister of Defence had then stated that these persons would be wanted in order to be tried by Congolese military courts .
Amongst all sources consulted, one case of a FARDC deserter abroad being convicted could be found. Indeed, in March 2006, the military tribunal of the garrison of Bukavu (South Kivu) convicted Major Jean-Pierre Biyoyo a member of the Tenth Military Region, on charges of insurrection, de-sertion abroad, arrest and illegal detention of children in South Kivu in April 2004 . He was sen-tenced to army dismissal and to the capital punishment, before his sentence was reduced to five years imprisonment . Yet, after succeeding to evade from the jail where he was detained, Biyoyo returned to Bukavu in 2007 and acted as lieutenant-colonel in charge of reintegration. He then pre-sented himself as FARDC major. In a May 2009 communiqué, “Avocats Sans Frontières” (“Law-yers without Borders”) denounced this situation and underlined that he had not been arrested yet .

In 2010, CEDOCA contacted both an Attaché from the Belgian ministry of Defence and a Congo-lese military judge regarding a case of a military deserter who had not returned to the DRC after a trip abroad for training purposes. Neither contact had any information on the enforcement of the Military Penal Code in such a case.

Yet, during a previous telephone interview with a Belgian Commander of the General Direction of Trainings and during phone conversations with the military judge cited above , both contacts stated that a military deserter who finally decides to go back to DRC would benefit from lenient circumstances and would be welcomed, taken into consideration the training he received within the Belgian army.

Please find below, for further reading, articles 85 and 86 of the Congolese constitution detailing how the President of the Democratic Republic of Congo can declare the state of war or the state of siege (or exceptional circumstances).

Article 85
Lorsque des circonstances graves menacent, d’une manière immédiate, l’indépendance ou l’intégrité du territoire national ou qu’elles provoquent l’interruption du fonctionnement régulier des institutions, le Président de la République proclame l’état d’urgence ou l’état de siège, après con-certation avec le Premier ministre et les Présidents des deux Chambres, conformément aux arti-cles 144 et 145 de la présente Constitution.
Il en informe la nation par un message.
Les modalités d’application de l’état d’urgence et de l’état de siège sont déterminées par la loi.

Article 86
Le Président de la République déclare la guerre par ordonnance délibérée en Conseil des ministres après avis du Conseil supérieur de la défense et autorisation de l’Assemblée nationale et du Sénat, conformément à l’article 143 de la présente Constitution.

Consulted sources

- COI Portals : Ecoi.net, Refworld;
- Databases : Allafrica, Pressed;
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234 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

- Other websites : War Resisters International, Portail de la société civile;

Oral sources

These oral sources were contacted within the framework of previous CEDOCA researches :
- Telephone conversation between Cedoca and the Attaché of the Belgian ministry of Defence on 18/10/2010 and mails dated 22/11/2010 and 17/12/2010.
- Telephone conversation between Cedoca and the Congolese military judge on 13 and 14/12/2010.
- Telephone conversation between Cedoca and the Belgian Commander of the General Direction of Trainings on 15/10/2010.

Annexes

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Radio Okapi, « Masisi: 350 militaires réintègrent les FARDC, après 2 mois de désertion », 17/02/2010, http://radiookapi.net/actualite/2010/02/17/masisi-350-militaires-reintegrent-les-fardc-apres-2-mois-de-desertion/ (last consulted 20/05/2011).

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ii) Mai Mai representing the Bahunde **[59c]**

European Country of Origin Sponsorship (ECS) introduces an information and co-operatio network that allows all European countries to profit from Country of Origin Information.

Template for Requests and Answers

A. Request

Requesting ECS Contact/Person

Contact details:
Name:
Country: UK
Authority/Organisation: UKBA
Phone:
Fax:
E-Mail address:

Request Details

Country of Origin: DRC

Context / Background (optional if needed):

Question/Subject: Mai Mai representing the Bahunde

- Could you please indicate whether the Mai Mai that represent the Bahunde are included in the current government or are not part of the peace process?

Date of request: 23 June 2011
Timeframe: Completion till: 4 July 2011

Date of answer: 01/07/2011

Already used sources of information: Information on the Alliance Maintaining the Peace Agreement of Goma (9 April 2010).

B. Answer of the ECS Experts Team

The present answer has been elaborated by the Belgian COI Unit (CEDOCA) and the French COI Unit (DIDR) within the framework of the partnership provided for in the ECS project.
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This report was written according to the Common EU Guidelines for processing COI (2008). All sources used are referenced. All information presented, except for un-disputed/obvious facts, has been cross-checked, unless stated otherwise.
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1. General information on the Maï Maï

The Maï Maï combatants are not an homogenous group. In fact, in 2009, it was esti-mated that “they were over 22 Maï Maï groups, ranging greatly in size and effec-tiveness, both in North and South Kivu”. These various groups do not operate accord-ing to a centralized command and structure, but rather independently, “in pursuit of its own interests, although these interests at times coincide ”. Overall, the Maï Maï groups are estimated to have some 8 000 to 12, 000 combatants (2009).

Among the Maï Maï groups which can be listed, but in no way exhaustively, the Maï Maï Kifuafua, the Maï Maï Shikito, the Maï Maï Yakutumba, Mudundu 40/Front de résis-tance et de défense du Kivu (FRDKI), the Mouvement de lutte contre l’agression au Zaïre/Forces unies de résistance nationale contre l’agression de la République démoc-ratique du Congo (MLAZ/FURNAC), Maï Maï Rwenzori, the Maï Maï Sheka (or Cheka), the Maï Maï PARECO (Coalition des patriotes résistants congolais), the largest of all Maï Maï groups, and the APCLS (Alliance des patriotes pour un Congo libre et sou-verain) . We will come back to these two latter factions in section 2 of this note.

It seems interesting to underline that the formation of the local militias, that eventually became the Maï Maï, emerged in the early 1990s. If they were initially organized mainly along tribal

lines, most groups are now mixed, involving different ethnic groups . They are drawn primarily from the Bashi, Bembe, Nande, Bangilima, Hunde, Tembo and Nyanga ethnic groups.

Regarding their political stand, if the Maï Maï have traditionally fought alongside the government army against “foreign invaders”, including the “Congrès national pour la défense du people” or CNDP and other Rwandan-backed rebel groups , but also, Bu-rundian or Ugandan combatants , they have also been known for their constant change of alliances . Hence some Maï Maï groups have also fought against govern-ment troops and formed alliances with Rwandan groups, but they have also fought against each other . Originally committed to defend their community against outsid-ers, Human Rights Watch report that they have become “opportunistic predators, kill-ing, raping and pillaging local civilians […] moving from intensified conflict with foreign troops over the control of local resources…” .

A member of the Pole Institute , a cultural institute based in Goma (North Kivu) con-tacted by email, provided the following information:

« Maï Maï - at least according to their actual version following the 1996 and 1998 wars - are essentially Congolese tribal militias which have based their le-gitimacy on their capacity to defend their land and their people against foreign invasion, when regular forces were totally scattered. In this respect, there has been and there always are several Maï Maï groups which operate in dispersed order, but who globally claim they are loyal to the Central power. They actually try and often succeed in selling their ‘small-states » (that is villages), in ex-change of ranks recognition (essentially officers)”.

Due to lack of cohesion among Maï Maï groups, their involvement in the peace process has been equally heterogeneous.

According to a report on child recruitment amongst the Maï Maï groups, “Following the 2002 Sun City peace agreement, which officially ended the conflict, some Maï Maï groups entered the power-sharing transitional government and the army inte-gration and demobilization process. Other stayed outside the transitional process and have continued to be militarily active in their localities” .
More recently, and according to a 2009 report by Human Rights Watch, “some Maï Maï groups have joined the army as part of the rapid integration process, while other refused, angry at the perceived preferential treatment given to CNDP and un-willing to join the army unless they were able to stay in their communities” .

2. Information on the Maï Maï representing the Bahunde

As mentioned previously, today, Maï Maï groups are not ethnically homogenous.
Below, we will focus on the two groups which are composed of Hunde ethnic combat-ants, even though not exclusively.

The PARECO (Coalition des patriotes résistants congolais or Coalition of Congolese resisting patriots) was created in 2007 with the intention to unify the Maï Maï, even though some Maï Maï factions refused to join . The PARECO group includes Congolese Hutu, Hunde and Nande ethnic groups . During 2007 and 2008, the PARECO aligned with the government in opposition to the CNDP . According to Human Rights Watch, in 2009, many PARECO combatants, particularly Hutu, joined the Congolese army and its military commander was made a colonel, whereas the Hunde and Nande commanders were not offered equivalent command positions.

238 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

As a consequence, they remained outside the integration process, along with a majority of Hunde and Nande combatants.

The APCLS (Alliance des patriotes pour un Congo libre et souverain or The Patriots Alliance for a Free and Sovereign Congo), a breakaway faction of PARECO created in 2008 , is largely made up of ethnic Hunde and is led by General Janvier Buingo Karairi, previously Chief of the Hunde branch of PARECO . The APCLC is estimated to have between 500 to 1.500 combatants , depending on sources. According to various sources, “it is allied with the FDLR [Forces démocratiques de libération du Rwanda], and refuses to integrate the Congolese army without guarantees that the combattants will be deployed in their home region and that the newly integrated CNDP soldiers will leave” . According to a report from International Crisis Group (ICG) on the situation in the Kivu (November 2010), APCLS is supported by the rural Hunde population which fears for its land.

Contacted by email, a MONUSCO agent working for the Joint Mission Analysis Cell (JMAC) provided the following information which corroborates the above information:

“There are no Hunde combatants integrated into the FARDC [Forces ar-mées de la RDC/DRC Armed Forces]. Besides the Hunde faction of PARECO, one can also find the APCLS made-up of ex-combatants of PARECO who have joined General Janvier. After the signature of the Goma accords [March 2009], certain members of PARECO questioned the leadership and are still present in the Nyabiondo and Pinga zones, in the Masisi Territory”.

On the other hand, a member of the Pole Institute, contacted by email, declared :

“Indeed, there are Maï-Maï of Hunde ethnicity (in the Masisi Territory). Some benefited from the end of the war, and more recently, from the CNDP disman-tling, in 2009, to integrate the regular army. Their political leaders, how-ever, have more difficulty to obtain positions because of the overabun-dance of Maï Maï groups. More recently, the last existing Maï Maï factions have claimed loyalty more strongly to their chiefs than to their ethnic group. They act ruthlessly, in their strongholds as war lords, against communities from which they yet orginate” .

Another contact, a member of the local Congolese Non Governmental Organization “Groupe d’action pour la démobilisation et la réinsertion des enfants soldats (GADERES) or “Action Group for the Demobilization and Reinsertion of Child Soldiers”, provided information similar to the Pole Institute :
“I contacted colleagues based in the two Kivus regarding your question. Cross-checking allow us to say that the Maï Maï who represent the Hunde people’s in-terests were operational in North-Kivu. Some of them are now part of the Republic institutions, in particular of the army. Nonetheless, a fraction of these Maï Maï who are opposed to the mixing process [“brassage”] in the regular army, continue to hold their initial position [that is, refusing to integrate the army] and therefore spread doubt among the population” .

No other information has been found on the Maï Maï representing the hunde ethnic group. It should be mentioned that two additional oral sources were contacted within the framework of this research, but neither provided information on the subject in due time.

3. Information on the Alliance for the Safeguard of the Goma Peace Agree-ment

On April 2010, the “Alliance pour la sauvegarde des accords de paix de Goma” or“Alliance for the Safeguard of the Goma Peace Agreement” was formed. It is com-posed of 17 armed

groups, amongst which the Kifuafua Maï Maï, the Mongol, the CNDP and the PARECO. This alliance was created because its members felt that the government was not doing anything in order to apply the Goma Peace Accords signed in March 2009. The Alliance' spokesperson is Didier Bitaki, head of the Kifuafua Maï Maï. Interviewed on this new Alliance, Didier Bitaki declared that the group did not exclude to use violence in order to be heard .

Amongst all sources consulted, no further information on this Alliance and on its sub-sequent actions could be found.

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240 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

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Other consulted Sources

- Ecoi.net, REFWORLD, Allafrica, Pressed;
- MONUSCO, Radio Okapi, Pole Institute;

Oral source

- Email exchange with a MONUSCO agent, working for the Joint Mission Analysis Cell (JMAC), on June 27 2011;
- Email exchange with a member of the Pole Institute (Goma) between June 28 and June 29 2011;
- Email exchange with a member of GADERES (Groupe d’action pour la démobilisation et la réinsertion des enfants soldats or Action Group for the Demobilization and Rein-sertion of Child Soldiers) between June 28 and July 1st 2011;

- Email sent to the Great Lakes Centre for Strategic Studies (GLCSS) on June 29 2011. No response was received from this contact, at the date this note was finalized;
- Email sent to the European Network for Central Africa (EURAC) on June 27 2011. EURAC could not respond in due time due.

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iii) Apareco & 'fake' Apareco? **[59d]**

European Country of Origin Sponsorship (ECS) introduces an information and co-operation network that allows all European countries to profit from Country of Origin Information.

Template for Requests and Answers

A. Request

Requesting ECS Contact/Person

Contact details:
Name:
Country: UK
Authority/Organisation: UKBA
Phone:
Fax:
E-Mail address:

Request Details

Country of Origin: DRC

Context / Background (optional if needed):

Question/Subject: Apareco & 'fake' Apareco ?

- According to an ECS response dated 11/02/2011 (attached) there is a fake Apareco group based in London (Alliance of Patriots Resisting in the Congo) which is presumably a Mai-Mai militia group of which in 2010 Amisi Kiloshi was the president (see letter attached - produced by him in response to a previous

 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

issue). Apareco (Alliance des patriotes pour la refondation du Congo) under Honoré Ngbanda is, presumably, the “true group”. Mr Rene Kabala Mushiya may be connected with the latter – he appeared as an ex-pert witness at an Appeal hearing this week in the UK – and pointed out that the two were different – but he didn’t provide any further information.

- Any information on the “fake” group.

Date of request: 29 June 2011
Timeframe: Completion till: 20 July 2011

Date of answer: 18/07/2011
Already used sources of information, if any: /

B. Answer of the ECS Experts Team

The present answer has been elaborated by the Belgian COI Unit (CEDOCA) and the French COI Unit (DIDR) within the framework of the partnership provided for in the ECS project.

Disclaimer on Sources and Information

This report was written according to the Common EU Guidelines for processing COI (2008). All sources used are referenced. All information presented, except for un-disputed/obvious facts, has been cross-checked, unless stated otherwise.

The information provided has been researched, evaluated and processed with the utmost care within a limited time frame. However, this document is not exhaustive. Neither is this document conclusive as to the merit of any particular claim to inter-national protection.

If a certain event, person or organization is not mentioned in the report, this does not mean that the event has not taken place or that the person or organization does not exist. The information in the report does not reflect the opinion or policy of the sponsor country.

Two press articles, referring to an APARECO (Alliance des patriotes pour la re-fondation du Congo led by Honoré Ngbanda) communiqué dated October 27th 2009, mention the creation of a “second APARECO” in London which is, nothing else, according to the official APARECO, than an organization created by the government and led by the Congolese ambassador in London, Kikaya Bin Karubi .

The APARECO communiqué dated October 27th 2009 could be found on the internet on the following address : http://www.aparecordc.org/forum/galerie/documents/12566101131140.pdf?bcsi_scan_1fe59ba8c561fa18=0&bcsi_scan_filename=12566101131140.pdf . According to this document, a fake APARECO, holding the same acronym than APARECO, but standing for “Alliances des patriotes et résistants congolais” (Congolese Patriots and Resisting Fighters Alliances) was created, in London, by the Congolese authorities in order to create “confusion”, “doubt” and “chaos”. In this document, APARECO argues that, while creating an organization which holds the same initials, the government is trying to undermine the efforts of the Congolese opponents living in exile. The communiqué mentions that it is not the first time that such strategy is being used, as other groups, with the names “PARECO” or “PAREC” have also emerged. According to this communiqué, London was not chosen randomly as a basis for this new organization as the United Kingdom is “considered as the most dreadful of all Congolese diasporas, provoking

insomnia to the impostor Joseph Kabila". Finally, APARECO denounces the abusive and fraudulent use of the APARECO acronym which it considers to be a "private property protected by French law" and urges all members, in particular those based in the UK, to be cautious regarding this new group .

It seems worthwhile to underline that, according to the "official" APARECO (Alliance des patriotes pour la refondation du Congo) web site , APARECO has several commit-tees throughout the world, amongst which an "APARECO-UK" whose regional presi-dent is Amisi Kilosho.
Despite several attempts, the APARECO (Alliance des patriotes pour la refondation du Congo) public relations officer could not be contacted to obtain more information on the official vs. fake APARECO .
No further information could be found on the second APARECO or "Alliance des patri-ots et résistants congolais" led by Kikaya Bin Karubi. It should be mentioned, how-ever, that Kikaya Bin Karubi was designated as the Congolese ambassador in the UK in May 2009. He presented his accreditation letter to Queen Elizabeth II of England on October 22nd 2009 .

Consulted sources

[Websites consulted July 18th 2011]

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244 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

Other consulted sources

- Ecoi.net, REFWORLD, Allafrica, Pressed;
- MONUSCO, Radio Okapi;

Oral source

- Several attempts to contact APARECO public officer by telephone on July 18th 2011 ;

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iv) Is there any updated information on the situation/treatment of failed asylum seekers who are returned back to DRC? **[59b]**

European Country of Origin Sponsorship (ECS) introduces an information and co-operation network that allows all European countries to profit from Country of Origin Information.

Template for Requests and Answers

A. Request

Requesting ECS Contact/Person

Contact details:
Name:
Country:
Authority/Organisation:
Phone:
Fax:
E-Mail address:

Request Details

Country of Origin: Democratic Republic of Congo (DRC)

Context / Background (optional if needed):

Available information on the situation of failed asylum seekers who are returned back to DRC is somewhat contradictory.

According to some sources returned asylum seekers may face torture and ill-treatment. In a report (http://www.unhcr.org/refworld/pdfid/4cb6c6bf2.pdf item 116, page 38) it is claimed:

“The available country information that post-dates BK suggests that refused asylum seekers are likely to be interrogated by national security forces when returned to DRC, who have a very good and wide network throughout the country. There have been reports of failed asylum seekers who were tortured on return to DRC simply because of having claimed asylum in the UK. One article reports that refused asylum seekers returned from the UK have been interrogated, arrested, subjected to torture, and disappeared. Voice of America News similarly quoted a Congolese refugee, who helped compile evidence for lawyers representing DRC asylum seek-ers, as saying “We have evidence of failed asylum seekers who were sent back to the Congo and who have been arrested, detained and many of them have disappeared". This was con-firmed in a radio interview with a former Congolese police officer who worked at a police sta-tion in Kinshasa: “We have politicians, people who are active against the government, who had to be brought there [police stations] for interrogation, and there were military deserters, criminals, people who have been sent back from Europe, who also had to be interrogated”.

In 2006 UNHCR tried to verify BBC's claim that failed asylum seekers from DRC were ill-treated after they were returned back to DRC. (http://www.unhcr.org/refworld/pdfid/4459b53f4.pdf) According to the sources consulted by the UNHCR (April 2006), there were no reports of torture, abuse nor ill-treatment of failed asylum seekers. UNHCR’s Nordic office in Stockholm informed FIS recently (January 2011) that they haven't updated this information after 2006. However the representative of the office said also that the organisation has not received any information according to which returned asylum seekers are tortured or arrested.

Contradictory information was collected also during an OFPRA/CGRA and BAMF mission to the Democratic Republic of Congo during November – December 2009. According to two consulted sources failed and returned asylum seekers are interrogated in DRC, but there are no reports of torture or arrests. However one NGO claimed that torture of returned asylum seekers is possible in DRC.

Question/Subject :

Is there any updated information on the situation/treatment of failed asylum seekers who are returned back to DRC?

Date of request: 31/01/2011
Timeframe: Completion till: 13/02/2011

Date of answer: 09/02/2011

Already used sources of information, if any:

B. Answer of the ECS Experts Team

The present answer has been elaborated by the Belgian COI Unit (CEDOCA) and the French COI Unit (DIDR) within the framework of the partnership provided for in the ECS project.

246 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

Executive summary (optional) or Main keywords (advisable)

The information on whether or not returned asylum seekers are ill-treated has been updated and still remains contradictory, and as a consequence, inconclusive.

Even if they only concern voluntary returnees, these comments by the “Inter-national Organization for Migration” (IOM), within the framework of report (2009) on migration in DRC, are interesting as preliminary statements to this research :

“Voluntary return is not organized in the Congolese legislation. Every re-turned Congolese manages the situation as he/she can. In addition, re-turned migrants do not appreciate being identified as such. Often, they tell family members, friends and acquaintances that they have returned temporarily, for business” .

Regarding the treatment of failed asylum seekers in DRC, we will summa-rize, below, the findings of a December 2009 Fact-Finding Mission in DRC (Kinshasa, Bas-Congo) . We will provide complementary elements to these findings, from other sources (reports, press articles), when relevant. In order to update this December 2009 information, we will also present elements col-lected in February 2011, for the purpose of this research, from Congolese Non Governmental Organizations (NGOs) and from the IOM Office in Kinshasa.

2009 Information

Not surprisingly, in December 2009, during the FFM in DRC, the “Direction générale des migrations” (DGM or « General Migration Directorate ») indicated that the return of Congolese to DRC takes place without problem, in total re-spect of Human Rights. A diplomatic source, which is present during forced returns, corroborated DGM comments, adding that the airport services wel-come repatriated individuals with “great humanity”. This person added that since he has been working at Ndjili International Airport, he has not witnessed any case of returnees being ill-treated .

More specifically, according to DGM officials met in December 2009, return-ees are brought to the Legal (Litigation) department office (small office, with no windows) where they spend a maximum of 30 minutes. Their case is then registered on a database; this measure prevents any subsequent dispute and constitutes a proof that the person has been heard by this service. Officials recognize that this registering phase constitutes a difficult step as it represents the first returnee’s contact with local officials, after failing to immigrate. Ac-cording to DGM officials, after this registering phase, returnees are free to meet with their kin and are not subject to legal proceedings. The database where their case is registered is not used against returnees, noted DGM, but only for statistical purposes. In addition, DGM made it clear that it will accept returnees only if they can provide an address in Kinshasa or elsewhere in the country. Persons originating from other provinces than Kinshasa are kept until their trip can be “negotiated”. Furthermore, DGM does not accept returnees who have been drugged or ill-treated by the returning country. Finally, if a returnee is wanted by Congolese justice, he will be kept by DGM until further verification is made and until his transfer to the public’s prosecutor office, if requested. DGM indicated that it had no detention facility within Ndjili facility .

A Congolese Human Rights NGO met during the December 2009 FFM, con-firmed the information provided by DGM officials. Another Congolese Human Rights NGO indicated that returnees may face harassment, or hassles by au-thorities (money, cigarettes, clothes extortion), but not arrest . It is worth noting that according to a press article dated September

2008, Congolese immigrants returning to DRC, via Ndjili International Airport, denounced the ill-treatments which they were subjected to upon arrival. They underlined specifically the practice of extortion . More recently, in January 2011, the Prime Minister, Adolphe Muzito, proceeded to visit airport and ports in Kinshasa. During his inspection, the various contacts which he met pointed to the existence of multiple harassments or hassles ("tracasseries") .

The June 2009 report of the "Country of Return Information Project" corrobo-rates the information provided above regarding harassment of returnees. Ac-cording to this report :

"Upon arrival at the airport, immigration agents will wait for the returnee and identify him before taking him to the litigation office of the DGM for the formalities before the hearing. The returning Congolese candidates are sometimes subject to hassle from the DGM agents (systematic searches and extortion of their private belongings : shirts, pants, shoes, watches, lighters and many others as well as money if for example the vaccination certificate isn't valid). This hunt continues in the parking as well, after leaving the passenger zone of the airport they risk hassle from zealous agents (police, military…) as they rightly or wrongly believe that returnees have a lot of money and goods with them" .

Regarding the specific case of unsuccessful asylum claim, the report states :

"The candidate does not get any assistance from the public services. Generally, he is not prosecuted unless he has earlier committed a crime for which he has not been pardoned or amnestied. However the candi-date can be hassled by agents willing to take some of his goods or per-sonal effects" .

On the other hand, during this December 2009 FFM in DRC, a third NGO pro-vided information according to which returnees are at risk of persecution, and even more so if they are asylum returnees . The NGO gave the example of a failed asylum seeker who had to flee Kinshasa to live in a clandestine manner in Bas-Congo as his home, in the capital, and his family were constantly sub-ject to surveillance . A few months earlier, in May 2009, the British newspa-per "The Guardian" revealed that two Congolese returnees had been detained and tortured after arrival. One of the returnees declared that "The government in Congo views Congolese people deported back home from the UK as enemies […]. The guards who beat me kept saying to me "You are a spy, give us information, why are you doing this to your country ?" .

2011 Information

Contacted by the COI Unit to update the information summarized above, the person in charge of the "Assisted Voluntary Return" (AVR) programme for IOM in DRC specified that this intergovernmental agency is not involved in the forced returns of rejected asylum seekers, unless they have accepted to return voluntarily. If rejected asylum seekers accept to return voluntarily, they can be part of the IOM Voluntary Assisted Return Programme and IOM may then provide assistance, from the country where the person has asked for asylum. In such case, IOM can be present at the airport to provide for transportation to the returnee's home. Then, the person will have to come to the IOM office to discuss further about the Assistance programme. Asked as to whether IOM has been informed of returnees (whether forced or voluntary) being ill-treated upon return to DRC, the IOM contact declared that they are not aware of such problems. IOM added that returnees are heard by DGM and kept by DGM only if they are criminals. Otherwise, DGM let them go .

248 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.

Contacted in February 2011, the president of the “Voix des Sans Voix” (VSV or “Voice of the Voiceless”), a Congolese Human Rights NGO stated :

“Until the beginning of 2010, VSV had an office in Ndjili International air-port. Yet since then, because of financial constraints, we could no longer rent this office. Yet, we continue going to the airport in order to monitor the arrivals of returnees. Since we have been present in the airport, we have established good contacts with agents of DGM and security ser-vices. We go to Ndjili roughly once a week, especially when they are in-ternational flights, light Air France or SN Brussels, landing in Kinshasa. In the last year or so, we have not observed any ill-treatment of returnees. Of course, extortion is still practiced, even thought more rarely now. Air-port agents may take clothes or other belongings from returnees ”.

In February 2011, another Congolese NGO representative, the president of the “Comité des observateurs des droits de l’Homme” (CODHO or Committee of Observers of Human Rights) provided a somehow different light on the situation of returnees :

« Returnees are placed in the hands of the DGM agents who interrogate them on their departure from DRC and the reasons they asked for asy-lum in Europe. They are then kept a few hours in the airport while DGM agents report to their hierarchy and wait for further instructions. Those who do not represent a problem are immediately released. They are not taken care of, however, neither by NGOs, nor by State services, which-ever Province they come from. Some of these returnees are not from Kinshasa or from the vicinity of Kinshasa. Some of them have never been to Kinshasa. For the returnees who represent a problem - amongst whom political opponents who made no secret of their political position in European cities - after they are interviewed by DGM, it may occur that they are taken to the city centre, to the DGM national office for more questioning and possibly, to be handed over to the Public Prosecutor’s office to be charged. Only the Public Prosecutor’s office may decide on such charge. In other words, activists who are well-known for their position against authorities, who are failed asylum-seekers, are obviously exposed to ill-treatments when arriving in Ndjili” .

By means of conclusion regarding the contradictory information NGOs provided on the question of rejected asylum seekers returning to DRC, it should be mentioned that they remain nevertheless credible informers, with regard to their international reputation in the field of human rights. Therefore, it remains impossible to somehow “resolve” those contradictions.

Finally, it should be said that other organizations (ASADHO , Amnesty Inter-national, Human Rights Watch, and “Eglise du Christ au Congo”/”Church of Christ in Congo” or ECC) were contacted within the framework of this re-search, unsuccessfully however.

Disclaimer on Sources and Information

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The information provided has been researched, evaluated and processed with the utmost care within a limited time frame. However, this document is not exhaustive. Neither is this document conclusive as to the merit of any particular claim to inter-national protection.
If a certain event, person or organization is not mentioned in the report, this does not mean that the event has not taken place or that the person or organization does not exist. The information in the report does not reflect the opinion or policy of the sponsor country.

Consulted (additional) sources of information

- Ecoi.net; UNHCR (Refworld); IRB/CISR (Canada); IOM;; Metafro.be; Radio Okapi; Réseau documentaire international sur la région des Grands Lacs; Hu-man Rights Watch; Amnesty International; OMCT/FIDH;
- Allafrica; Panapress; Pressed;

Oral Sources consulted

- Telephone interview with the President of VSV, 04/02/2011;
- Email exchange with the President of CODHO between 02/02/2011 and 04/02/2011;
- Email exchange and telephone interview with the person in charge of As-sisted Voluntary Return Programme in the IOM Office in Kinshasa, between 02/02/2011 and 08/02/2011;
- Emails sent to Amnesty International, Human Rights Watch, ASADHO and “Eglise du Christ au Congo” on the 02 and 03/02/2011. On the date this ECS response was finalized (February 9th 2011), no response had been provided by these organizations.

Annexes [web sites last consulted 02/02/2011]

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250 The main text of this COI Report contains the most up to date publicly available information as at 1 December 2011. Further brief information on recent events and reports has been provided in the Latest News section to 29 February 2012.