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DEMOCRATIC REPUBLIC OF CONGO

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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The murder of several human rights defenders in 2010, caused a shock wave in the human rights community and demonstrated once again the climate of insecurity in which they work. Women defenders who denounce sexual violence, defenders who fight against impunity for international crimes, who denounce women's poor working conditions or who work on issues linked to the management of natural resources, continued to be especially vulnerable. In addition, as of the end of April 2011, a proposal for a law aiming at criminalising homosexuality and defenders who work in defence of the rights of sexual minorities, remained pending before the National Assembly.

Political context

In the run-up to the presidential and parliamentary elections due to be held in the Democratic Republic of the Congo (DRC) in November 2011, violations of the rights of people who criticise the regime in power increased, whilst civilian population continued to be subjected to grave atrocities by the regular army and armed rebel groups that clashed in several regions in the east and the north of the country¹. Operation Amani Leo, launched on January 1, 2010 in the Kivu provinces and led by the Armed Forces of the DRC (*Forces armées de la RDC* - FARDC) to fight against the Democratic Forces for the Liberation of Rwanda (*Forces démocratiques de libération du Rwanda* - FDLR), led to a deterioration in the security of civilians, who are victims of the atrocities committed by both FDLR and FARDC. Other operations carried out by the FARDC against armed groups, such as the "Rwenzori" Operation led in Beni against an Ugandan armed group, the Alliance of Democratic Forces – National Army for the Liberation of Uganda (ADF-NALU), resulted in serious human rights violations and population displacement². In the eastern province, on the Ugandan border, operations by the FARDC and the Uganda People's Defence Forces (*Forces de défense populaires de l'Ouganda* - FDPO) were

1/ In November 2010, the United Nations Security Council also recalled that these conflicts were fuelled by pillaging of the country's natural resources. See United Nations Security Council Resolution, United Nations document S/RES/1952 (2010), November 29, 2010.

2/ See Security Council, *Report of the Secretary General on the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo*, United Nations document S/2010/512, October 8, 2010.

unable to stop the attacks, the pillaging and the recruitment of child soldiers by the Lord's Resistance Army (LRA)³.

In this context, impunity continued to prevail. General Bosco Ntaganda, despite being sought by the International Criminal Court (ICC) since 2006, accused of war crimes committed in Ituri in 2002-2003, was still active within the FARDC. In addition, several officers suspected of war crimes remained in positions of command, in particular of the Operation Amani Leo. However, some symbolic progress may be noted, especially towards the adoption of a draft law to incorporate the provisions of the ICC statute⁴ into national legislation, as well as to hold the trials of several high-ranking officials. Furthermore, following the publication in October 2010, by the Office of the United Nations High Commissioner for Human Rights, of a Mapping Report of serious human rights violations perpetrated in Zaire and then in DRC between March 1993 and June 2003 against the civilian population by various armed rebel groups that could be termed as international crimes, a draft law on the creation of a specialised mixed court within the Congolese judicial system to try the authors of the most serious crimes committed since 1990 was in the course of being adopted by Parliament as of the end of April 2011. At international level, positive developments were also to be noted, particularly with the arrest by the French authorities of Mr. Callixte Mbarushimana on October 11, 2010, in accordance with an arrest warrant issued by ICC for "war crimes" and "crimes against humanity" committed by the FDLR in the Kivu provinces between the end of 2008 and 2009⁵.

Finally, journalists continued to work in a context not auspicious for them. Although *Radio France internationale* (RFI), whose signal had been interrupted since July 2009, was able to resume broadcasts in October 2010, other media were the subject of suspension measures for having criticised the authorities. Journalists in Danger (*Journalistes en danger* - JED) noted

3/ See Security Council, *Report of the Secretary General on the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo*, United Nations document S/2011/20, January 17, 2011.

4/ On November 4, 2010, parliamentarians voted in favour of the admissibility of the draft law. However, the Political, Administrative and Legal Commission of the National Assembly must examine it before it is proposed for adoption to the parliamentarian in plenary session.

5/ However, on October 25, 2010, the ICC Pre-Trial Chamber I rejected the request of Congolese victims to question the prosecutor on the decision not to prosecute Mr. Jean-Pierre Bemba, President of the Movement for the Liberation of Congo (*Mouvement pour la libération du Congo* - MLC), for crimes he is alleged to have committed in the Congolese province of Ituri during the 2002-2003 conflict. On November 22, 2010, therefore, his trial began solely for crimes committed in the Central African Republic, and continued until April 2011.

87 cases of attacks on freedom of the press in 2010, including arrests, threats and administrative, economic or judicial pressure⁶.

Lack of any operational mechanism to guarantee the protection of defenders at national level

Although the United Nations Organisation Stabilisation Mission in DRC (MONUSCO)⁷ was renewed and its mandate extended specifically to cover the protection of civilians and human rights defenders, and although at the end of April 2011, a draft law on the promotion and protection of human rights defenders was being prepared at the level of the Government Legislation Subcommittee, defenders continued to work without any operational mechanism to guarantee their protection. Furthermore, although during the United Nations Human Rights Council's Universal Periodic Review in December 2009, the Government had encouraged human rights defenders to refer their complaints to the courts⁸, these had rarely been the subject of investigation or fair trial. Finally, in her report presented during the Human Rights Council session in March 2011, the United Nations Special Rapporteur on the situation of human rights defenders noted that 57 of the 58 communications sent to the Government since 2004, had remained unanswered, and she considered that "the situation of human rights defenders working in the Democratic Republic of the Congo remains very worrying"⁹.

Assassination of several human rights defenders

While persistent impunity for the murder of several human rights defenders, especially in 2005, of Mr. **Pascal Kabungulu Kimembi**, Executive Secretary of the Congolese NGO Inheritors of Justice (*Héritiers de la justice*), and in 2007, of Mr. **Serge Maheshe**, a journalist with *Radio Okapi* which plays a key role in the fight against violence particularly in eastern DRC, probably contributed to the cycle of violence against defenders that intensified in 2010¹⁰, the murder of three of them caused a shock wave within the human rights community and once again demonstrated the great climate of insecurity in which defenders work. As an example, on June 1,

6/ See JED Annual Report, *L'état de la liberté de la presse en RDC*, December 2010.

7/ The United Nations Mission in DRC (MONUC) was replaced by a similar mission called MONUSCO in July 2010. See Security Council Resolution, United Nations document S/RES/1925 (2010), May 28, 2010.

8/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Democratic Republic of the Congo*, United Nations document A/HRC/13/8, January 4, 2010.

9/ See Human Rights Council, *Report of the United Nations Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, United Nations document A/HRC/16/44/Add.1, February 28, 2011.

10/ On May 4, 2010, the Bukavu Military Court sentenced two soldiers and a civilian to death for the murder of Mr. **Didace Namujimbo**, a journalist with *Radio Okapi*, in 2008. However, this trial shed no light on the facts and the responsibilities in this case.

2010, Mr. **Floribert Chebeya Bahizire**, Executive Director of the Voice of the Voiceless (*Voix des sans voix* - VSV), National Executive Secretary of the National Network of Human Rights NGOs of the DRC (*Réseau national des ONG des droits de l'Homme de la RDC* - RENADHOC) and a member of the OMCT General Assembly, disappeared after going to the offices of the Inspector General of the Congolese National Police (IG/PNC), General John Numbi Banza Tambo, in the company of Mr. **Fidèle Bazana Edadi**, a member of VSV and one of its drivers. The next day, the police found the lifeless body of Mr. Chebeya in his car on a road on the way out of Kinshasa. Furthermore, Mr. Bazana was declared dead on March 14, 2011, as his body had not been found¹¹. Irregularities that were noted as soon as the body of Mr. Chebeya was discovered – problems for his family in getting access to the body, contradictory statements concerning the cause of death – gave rise to serious concerns about the willingness of the authorities to investigate the case. In spite of appeals by Congolese civil society and the international community to set up an independent commission of enquiry, the investigation was carried out by the Military Justice Department. A trial against eight officers of the PNC for the murder of the two defenders opened on November 12, 2010 before the Kinshasa / Gombe Military Prosecutor's Department¹². However, the main suspect, General John Numbi was not charged and was only heard as a witness, although he was suspended from office on June 7, 2010¹³. Furthermore, the families of the two defenders were subjected to intimidation and pressure, forcing them to leave the DRC. During the night of June 29 to 30, 2010, unidentified men wearing military clothing killed Mr. **Salvator Muhindo**, leader of the human rights NGO The Good Samaritan (*Bon samaritain*) at his home in Kalunguta, in North Kivu province. Mr. Muhindo was very active and was known for his work to denounce the human rights violations committed by the military in the Beni and Lubero territories. Shortly before his death, he was organising a peaceful demonstration in protest against the murder of Mr. Chebeya and the disappearance of Mr. Bazana, planned for June 30, on the occasion of the 50th anniversary of the independence of the DRC. An investigation was opened, with no result by April 2011¹⁴.

11/ Congolese legislation provides for a disappeared person to be declared dead six months after disappearing. The families' lawyers consequently obtained the requalification of the disappearance of Mr. Bazana as a murder during the trial.

12/ Three of them were on the run as at the end of April 2011, and were tried *in absentia*. After the trial opened, two of them were promoted to the respective grades of major and lieutenant colonel.

13/ On June 23, 2011, the Court issued its verdict, sentencing four of the accused to capital punishment, one to life imprisonment, and discharging the other three defendants.

14/ See Committee on Human Rights and Development (*Comité des droits de l'Homme et de développement* - CODHOD), African Association for the Defence of Human Rights (*Association africaine de défense des droits de l'Homme* - ASADHO), the Lotus Group (*Groupe Lotus*) and the League of Electors (*Ligue des électeurs*).

Harassment of women defenders who denounce sexual violence

In 2010, women defenders who denounce sexual violence continued to be particularly exposed. As an example, the members of the Women's Association for Solidarity, Peace and Integral Development (*Solidarité féminine pour la paix et le développement intégral* - SOFEPADI), an organisation involved in the fight against impunity for sexual violence in the east of the country, were on several occasions the target of threats and harassment, in particular its President, Ms. **Julienne Lusenge**, in February and May 2010. Similarly, on September 19, 2010, Ms. **Zawadi Leviane Musike**, SOFEPADI Programme Officer, was stopped and threatened by a group of military whom she presumed belonged to FARDC. SOFEPADI had also had to close its offices in Bunia in December 2009, because of the threats they received. During the night of October 4, 2010, six armed men dressed in military clothing, burst into the home in Beni of Ms. **Clémence Bakatuseka**, Coordinator of the Great Lakes Human Rights Program (GLHRP), an NGO that had succeeded in obtaining the sentencing of civilians and military belonging to FARDC for sexual violence. They fired two shots at the lock of her bedroom door and ordered her to give them the money received from an international NGO to finance her legal aid work. When the victim refused, the attackers fired a third shot and then ran off. Ms. Bakatuseka filed a complaint with the Military Prosecutor at Beni Garrison but this has not been acted on. On December 27, 2010, a magistrate from the Goma Military Prosecutor's Department called Ms. **Justine Masika Bihamba**, Coordinator of Women's Synergy for Victims of Sexual Violence (*Synergie des femmes pour les victimes des violences sexuelles* - SFVS), to warn her that she might be arrested if she continued to denounce the human rights violations committed in eastern DRC. He said that he had received the order to arrest her, following her appearance on November 28, 2010 during the *TV5* programme "And what if you told me the whole truth" (*"Et si vous me disiez toute la vérité"*), during which Ms. Masika had spoken in particular about the impunity, sexual violence and human rights violations perpetrated by General Bosco Ntaganda.

Reprisals of defenders who fight against impunity for international crimes

Although the trials of Messrs. Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui for crimes committed in Ituri in 2002 and 2003 continued before the ICC and General Bosco Ntaganda was still in post in the region, defenders involved in the fight against impunity for international crimes were once again the subject of reprisals in 2010. Several of them were the target of death threats and had to leave the country, stopping consequently their activities. Mr. **Gilbert Angwandia**, President of the Association for the Protection of the Rights

and Dignity of Victims in Ituri (*Association pour la protection des droits et dignité des victimes en Ituri* - APROVIDI) and the Focal Point in the region for the DRC Coalition for the ICC (*Coalition de la RDC pour la CPI* - CN-CPI/RDC), and Mr. **André Kito**, the CN-CPI/RDC National Coordinator, received death threats by text message on April 17 and May 3, respectively. During the week of April 26, 2010, Mr. Kito appeared on the *Digital Congo* TV channel and on the Congolese National Radio and Television station (RTNC) to call on the Congolese authorities to carry out their obligations in terms of international justice. On May 24, 2010, Mr. Angwandia received threats in a text message from Uganda, referring to his work with the “*Haki ya Amani*” network, a group of NGOs for which he had identified land conflicts in Ituri, and to his work with the Network of Human Rights Associations in Ituri (*Réseau des associations des droits de l’Homme en Ituri* - RADHIT) to promote human rights. Mr. Angwandia left DRC in July 2010, following these threats. Other defenders received similar threats, as Mr. **Simon Angoyo**, Programme Officer with the association Hope for All (*Espoir pour tous*), a development organisation working with the most disadvantaged populations, on May 13. Mr. **Sylvestre Bwira Kyahi**, Chairman of the Civil Society of Masisi (*Société civile de Masisi*), in North Kivu, was abducted in Goma on August 24, 2010 by armed men wearing FARDC uniforms. He was found six days later near Sake, about thirty kilometres from Goma. Mr. Bwira was the target of death threats by the security services and had been living in hiding since July 30, 2010, date when civil society had sent an open letter to President Joseph Kabila requesting the withdrawal of troops from General Bosco Ntaganda’s National Congress for the Defence of the People from Masisi territory, denouncing the atrocities committed by this group and demanding implementation of the ICC arrest warrant against the General. After his release, Mr. Bwira Kyahi filed a complaint against unknown persons with the Goma Military Prosecutor’s Department, which had not been followed up as of April 2011. He left the country in December 2010.

Threats and judicial harassment against human rights lawyers

In 2010-2011, several lawyers were the target of threats and intimidation because of their work to defend human rights. As an example, on September 30, 2010, Mr. **André Marie Mwila Kayembe**, Secretary General of the association Black Gowns (*Toges noires*), was arrested by the General Directorate of Special Intelligence Services (DGRSS), while he was visiting Ms. **Nicole Bondo Muaka**, in detention after her arrest on the previous day¹⁵.

15 / Accused by the DGRSS of having filmed President Joseph Kabila’s bodyguards beating up a person suspected of throwing a stone at the presidential motorcade in Kinshasa, Ms. Bondo Muaka was released without charge after eight days in detention.

His laptop computer, his memory stick and his telephone were violently snatched from him. His lawyer was not allowed to meet him. He was released without charge at the end of the afternoon and his personal belongings were returned to him. In addition, on February 15, 2010, Mr. **Peter Ngomo**, who was defending a former election candidate who was sentenced to death in March 2010, was arrested at nightfall by agents of the National Intelligence Agency (ANR), who made him get into a vehicle and searched him on the way, without the slightest explanation. He was released near Gombe cemetery.

Threats and stigmatisation of human rights activities by the authorities

In February 2011, two human rights defenders were the target of acts of harassment following a statement by the Minister of Communication stigmatising their activities. Messrs. **Jean-Claude Katende** and **Georges Kapiamba**, respectively National President and Vice-President of the African Association for the Defence of Human Rights (*Association africaine de défense des droits de l'Homme* – ASADHO), had in fact received threats following a press conference and a press release on February 1, 2011, denouncing the revised Constitution adopted by the Congolese Parliament and the political intolerance of political opponents that was encouraged by the Government in the run-up to the presidential elections in November 2011. Following this press conference, the Minister of Communication, Mr. Lambert Mendé, publicly stated that ASADHO was an organisation in the pay of foreign powers that were trying to destabilise the country. Threats were subsequently made against the two defenders by telephone. In mid-February, Mr. Georges Kapiamba filed a complaint before the Court of the Republic in Kinshasa, which one had still not been acted on as of the end of April 2011.

Judicial harassment and threats against defenders of economic and social rights

Defenders of economic and social rights who denounce the activities of Congolese and foreign mining and petroleum corporations that contravene the national legal framework and the international instruments, as well as the environmental effects of their activities and the working conditions in DRC, continued to be vulnerable to threats and obstacles to their work. As an example, at the end of April 2011, sixteen small farmers from the villages of Kongo and Tshiende who denounced the pollution of their lands by the PERENCO-MIOC petroleum corporation after toxic waste was buried near their villages, were still being prosecuted for “rebellion”, although they had received no summon since their release in January

2010¹⁶. Furthermore, on February 25, 2010, two policemen arrested Messrs. **Papy Avugara, Josep Likonga** and **Didier Nzau**, members of the Committee on Human Rights and Development (*Comité des droits de l'Homme et de développement* - CODHOD), in the commune of Barumbu in Kinshasa, while they were filming the testimony of Ms. **Elise Lokoku** on the working conditions of women in DRC. They were all taken to the Epolo village sub-police station, where they were held in a container until 2 p.m., before being referred to the cells of the main police station. They were all released at around 5 p.m. on the same day. While they were in detention, the police seized the defenders' camera in order to look at the films, and questioned them about CODHOD activities and the sources of their funding. When he returned their camera, the police officer warned them that they should be careful, as they were making "false accusations against the Government". On March 10, 2011, Ms. Justine Masika Bihamba received threats during a press conference organised in Goma by the Congo Business Federation (*Fédération des entreprises du Congo* - FEC). On the same day, two unknown persons were waiting for her daughter in front of her home. Mistaking her for Ms. Bihamba, they snatched her passport and her digital camera before running away. Ms. Masika filed a complaint with the Goma police on March 15, 2011, but no action had been taken as of the end of April 2011. On March 14, 2011, a Senator from North Kivu province also publicly attacked Ms. Bihamba and the SFVS in these words: "Civil society organisations don't know what they are doing; the story behind minerals is none of their business". These threats came after a letter from SFVS, dated March 7, 2011, was sent to Ms. Hillary Clinton, the US Secretary of State, asking the American State Department to support the rapid and effective implementation of an American law aiming at regulating the American financial markets to prevent American companies from procuring minerals from Congolese armed groups.

Proposal to criminalise homosexuality and the defenders of the rights of sexual minorities

On October 21, 2010, a legislative proposal to criminalise homosexuality and defenders of the rights of sexual minorities was debated in the National Assembly. The proposed legislation, entitled "Proposed law on unnatural sexual practices", filed on October 13, 2010, describes homosexuality as a "threat to the family, the foundation of society, and

16 / Messrs. Loka Makuiza, Kuebo Edouard, Mabedo Mabedo, Diangu Kakudu, Tshikokolo Sibou, Tshikokolo Njimbi, Nzau Mateka, Phoba Mayuma Pablo, Mualangu Phaka, Nsamvu Sasulu, Kadioto Nsamu, Nzinga Tshitunda, Bendo Balu, Nzau Njimbi, Buela Bembe and Lakula Bueya had been arrested on December 15, 2009 before being released on bail on January 7, 2010.

a serious attack on Congolese culture. It is nothing other than a deviation of the human race to unnatural relations". If this proposal were approved, homosexuality would be punished with three to five years of prison and a fine of 500,000 Congolese francs (about 382 euros), and any association that defends the right of sexual minorities would be banned. In fact, it is proposed to ban "on DRC territory any association that promotes or defends unnatural sexual relations. A punishment of six months to one year of prison and a fine of 1,000,000 Congolese francs (about 760 euros) will apply to whoever creates, finances, sets up and establishes any association or any structure to promote unnatural sexual relations in DRC". Furthermore, it forbids "all publications, posters, pamphlets or films that highlight or are likely to provoke or encourage unnatural sexual practices". As the United Nations Special Rapporteur on the situation of human rights defenders stressed, this draft legislation would make defenders who work on these issues very vulnerable and have a damaging effect on the country's efforts in the fight against HIV/AIDS¹⁷. As of the end of April 2011, the draft law was still before the National Assembly.

Urgent Interventions issued by The Observatory from January 2010 to April 2011

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. Loka Makuiza, Kuebo Edouard, Mabedo Mabedo, Diangu Kakudu, Tshikokolo Sibui, Tshikokolo Njimbi, Nzau Mateka, Phoba Mayuma Pablo, Mualangu Phaka, Nsamvu Sasulu, Kadioto Nsamu, Nzinga Tshitunda, Bendo Balu, Nzau Njimbi, Buela Bembe and Lakula Bueya	Arbitrary detention / Judicial harassment	Urgent Appeal COD 001/0110/OBS 007	January 13, 2010
	Provisional release / Judicial harassment	Urgent Appeal COD 001/0110/OBS 007.1	January 21, 2010
Messrs. Firmin Yangambi and Olivier Marcel Amisi Madjuto	Arbitrary detention / Judicial harassment / Torture and ill-treatment / Release	Urgent Appeal COD 002/0110/OBS 011	January 20, 2010
	Death penalty / Torture and ill-treatment	Urgent Appeal COD 002/0110/OBS 011.1	March 5, 2010
Messrs. Papy Avugara, Josep Likonga and Didier Nzau	Arrest / Intimidation	Urgent Appeal COD 002/0310/OBS 031	March 5, 2010

17/ See Human Rights Council, *Report of the United Nations Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, United Nations document A/HRC/16/44/Add.1, February 28, 2011.

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. André Kito and Gilbert Angwandia	Death threats	Urgent Appeal COD 004/0510/OBS 054	May 5, 2010
Messrs. Gilbert Angwandia, Simon Angoyo and Ms. Sylvie Laissi	Death threats	Urgent Appeal COD 004/0510/OBS 054.1	June 1, 2010
Messrs. Floribert Chebeya Bahizire and Fidele Bazana Edadi	Enforced disappearance	Urgent Appeal COD 005/0610/OBS 069	June 2, 2010
	Murder / Enforced disappearance	Press Release	June 2, 2010
		Press Release	3 June 2010
		Joint Open Letter to the authorities	June 5, 2010
		Open Letter to the authorities	June 10, 2010
		Open Letter to the authorities	June 22, 2010
Messrs. Floribert Chebeya Bahizire, Fidele Bazana Edadi, Pascal Kabungulu Kibembi, Frank Ngyke, Serge Maheshe, Didace Namujimbo, Bill Omar and Ms. Hélène Mpaka	Impunity / Kidnapping / Threats	Joint Closed Letter to the authorities	July 29, 2010
		Press Release	August 3, 2010
		Press Release	November 11, 2010
		Press Release	January 26, 2011
Mr. Sylvestre Bwira Kyahi	Disappearance	Urgent Appeal COD 006/0810/OBS 105	August 26, 2010
	Abduction / Ill-treatment	Joint Press Release	September 8, 2010
Ms. Zawadi Leviane Musike	Threats / Acts of intimidation	Urgent Appeal COD 007/910/OBS 117	September 24, 2010
Messrs. André Marie Mwila Kayembe and Nicole Bondo Muaka	Arbitrary arrest	Urgent Appeal COD 008/1010/OBS 119	October 1, 2010
	Release	Urgent Appeal COD 008/0710/OBS 119.1	October 7, 2010
Ms. Clémence Bakatuseka	Attack	Joint Press Release	November 1, 2010
Messrs. Jean-Claude Katende and Georges Kapiamba	Death threats	Urgent Appeal COD 001/0211/OBS 013	February 2, 2011
Ms. Justine Masika Bihamba	Threats / Intimidation	Urgent Appeal COD 002/0311/OBS 047	March 24, 2011