



**General Assembly**

Distr.  
GENERAL

A/HRC/13/63  
8 March 2010

Original: ENGLISH

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HUMAN RIGHTS COUNCIL  
Thirteenth session  
Agenda item 10

**TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

**Second joint report of seven United Nations experts on the situation in the  
Democratic Republic of the Congo\***

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\* Late submission.

## Summary

This report is submitted by seven United Nations experts pursuant to Human Rights Council resolution 10/33. The experts find that the human rights situation has not improved since their initial report and remains serious, including in areas not affected by conflict. Members of the Armed Forces of the Democratic Republic of the Congo (FARDC), the National Congolese Police (PNC), the National Intelligence Agency (ANR) and other intelligence forces have been reported as being responsible for summary executions, sexual violence, torture and ill-treatment. Armed groups such as the Lord's Resistance Army (LRA) and the Democratic Forces for the Liberation of Rwanda (FDLR) commit atrocities that amount to grave breaches of international humanitarian law and, in some instances, may also constitute crimes against humanity.

There has been little progress in implementing the recommendations that the experts made in their initial report. Government efforts in particular have been wholly insufficient, making it difficult for partners to provide related technical assistance.

Impunity and the continued presence of perpetrators of serious violations in the security forces remain key concerns. Reforms of the justice and security sectors, recommended by the experts, have not advanced enough and efforts undertaken are undermined by a lack of will to implement a declared "zero tolerance" policy in respect of certain influential individuals suspected of serious human rights violations.

Violence against women, in particular rape and gang rape committed by men in uniform and civilians, remains a serious concern, including in areas not affected by armed conflict. Laws and practices that discriminate against women remain in place and, along with impunity, remain a root cause of violence against women.

Improvements in peace and security have allowed for the release of some child soldiers from armed groups undergoing integration with FARDC. However, certain FARDC brigades continue to use and recruit child soldiers, a problem the Government urgently needs to tackle on the basis of an action plan.

The link between violations and illegal exploitation and trade of natural resources, and unresolved land conflicts is increasingly recognized. The lack of transparent and effective Government control over the mining sector deprives the State of funds it could dedicate to financing its responsibilities with respect to social and economic rights.

The Government neglects its responsibilities to protect and assist internally displaced persons and returnees, who therefore have to rely entirely on the support provided by the international community. In addition, there is a real risk that displaced populations may not be able to participate in the 2010 local elections.

There has been little progress in moving forward legislation to strengthen State and civil society structures to promote and protect human rights. There is a worrying trend of certain officials trying to delegitimize and harass human rights defenders, thus fuelling the increase in violence against defenders.

In the light of the seriousness of the human rights situation and the lack of progress in implementing key recommendations, the experts consider it to be of utmost importance that the Human Rights Council continue monitoring the situation in the Democratic Republic of the Congo on the basis of reports provided by OHCHR and its special procedure mandate holders.

They encourage the Government to continue the positive practice of responding favourably to requests of individual mandate holders and strongly recommend that the Government issue a standing invitation to all special procedure mandate holders.

In light of the gravity of the human rights situation, which has not improved over the course of the last year, the experts recommend that the Council once again consider the creation of a country-specific mandate, in particular if the level of access and response to thematic special procedures decreases.

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## **I. INTRODUCTION**

1. This report is submitted pursuant to Human Rights Council resolution 10/33 inviting six special procedure mandate holders and the Special Representative of the Secretary-General for children and armed conflict to report again on the development of the situation in the Democratic Republic of the Congo. It is submitted by the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on human rights of internally displaced persons, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and the Special Representative of the Secretary-General for children and armed conflict (hereafter “the experts”).

2. Highlighting the seriousness of the present human rights situation, the experts explore in the report the extent to which the recommendations made in their initial report have been implemented.<sup>1</sup>

## **II. ENGAGEMENT BY THE SEVEN THEMATIC SPECIAL PROCEDURES WITH THE GOVERNMENT AND OTHER STAKEHOLDERS**

### **A. Letters sent to the Government and other stakeholders**

3. To follow up the recommendations made in their initial report, on 23 and 24 September 2009, the experts sent letters to the Congolese authorities, the Special Representative of the Secretary-General in the Democratic Republic of the Congo and the High Commissioner for Human Rights.

#### **1. To the Government of the Democratic Republic of the Congo**

4. The experts requested that the Minister for Human Rights provide information on the steps taken by the national authorities to implement the recommendations contained in the combined report, in particular:

- The establishment of a comprehensive and adequately resourced secondary screening mechanism, where each officer is vetted for his or her past human rights record and subjected to a determination of his or her ability to command in accordance with principles of international humanitarian law and the values embodied in the Constitution;
- The drafting and adoption of a national law on the protection of human rights defenders, including women defenders;
- The drafting and adoption of a legislative framework and plan of action for internally displaced persons;

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<sup>1</sup> A/HRC/10/59.

- The deployment, at least in conflict-affected provinces, of experienced military advocates from the militaries of countries contributing peacekeeping troops as advisers to Congolese military prosecutors and courts;
- The setting up of community-based land commissions to address local disputes over land;
- The implementation of the plan of action against sexual violence of the Ministry of Justice and the Ministry of Gender, Family and Children, the Government's "zero tolerance" policy on this matter and its National Strategy to Combat Sexual Violence;
- The immediate abolition of fees for forensic medical certificates for victims of sexual and gender-based violence;
- The payment of compensation awarded by national courts or the International Criminal Court to victims of serious human rights violations, starting with cases of sexual violence;
- The adoption and immediate implementation by the Government and FARDC Military Command of action plans to identify, release and ensure effective and sustainable reintegration of all children associated with their forces, to prevent further recruitment and to address all other grave violations against children (in accordance with Security Council resolutions 1539 (2004), 1612 (2005) and 1882 (2009)); and
- The implementation of the Extractive Industries Transparency Initiative or similar accountability mechanisms that will help prevent illegal diversion of State revenues and increase the resources available to the State.

5. Furthermore, the experts requested information on the mandates, functioning and activities of the Agency to Combat Violence against Women and the newly established human rights liaison entity.

6. The experts regret that, at the time of finalizing the present report, no response to their letter had been received. In this context, they also note that the Government had not responded to any of the 14 urgent appeals and letters of allegations that thematic special procedure mandate holders had sent during the course of 2009.

## **2. To the United Nations Organization Mission in the Democratic Republic of the Congo**

7. The experts wrote to the Special Representative of the Secretary-General for the Democratic Republic of the Congo, requesting information regarding the technical cooperation provided by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) to the Congolese authorities in the priority areas highlighted in the aforementioned letter to the Government.

8. They further suggested that MONUC should consider deploying experienced and French-speaking military lawyers and investigators from troop-contributing countries as advisers to Congolese military investigators, military prosecutors and military courts, for training purposes.

9. They reiterated their recommendation that MONUC should avoid cooperating with FARDC commanders and units involved in committing serious human rights violations and make its support conditional on compliance with international humanitarian, human rights and refugee law.

10. The experts thank MONUC for its detailed response of 10 December 2009, the content of which is reflected in the present report.

### **3. To the Office of the High Commissioner for Human Rights**

11. The experts sent a letter to the High Commissioner for Human Rights, requesting information on support provided by her office to the Democratic Republic of the Congo, including with regard to the follow-up to the experts' report, and welcoming any other information that the High Commissioner considered important to reflect in the present report. The experts thank OHCHR – which also served as the secretariat – for the information provided, including reports gathered from other reliable sources.

#### **B. Country visits undertaken**

##### **1. Visit of the Special Representative of the Secretary-General for children and armed conflict**

12. From 14 to 21 April 2009, Ms. Radhika Coomaraswamy, Special Representative of the Secretary-General for children and armed conflict, undertook a visit at the invitation of the Government to ascertain first-hand the situation of children, as well as follow up recommendations of the Secretary-General in his report on children and armed conflict in the Democratic Republic of the Congo (S/2008/693) and developments since her previous visit in March 2007.

13. The Special Representative met with Government officials, the FARDC Military Command, MONUC, the United Nations Country Team, representatives of civil society and children and young people in Kinshasa, Goma, Bukavu, Masisi and Dungu.

##### **2. Visit of the Special Rapporteur on the situation of human rights defenders**

14. From 21 May to 3 June 2009, Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, conducted an official visit at the invitation of the Government (see her full report: A/HRC/13/22/Add.2). The purpose of the visit was to assess the situation of human rights defenders in the country.

15. The Special Rapporteur visited Kinshasa, Kananga and Bukavu. She met with senior Government officials, including the Prime Minister, the Minister for Human Rights, the Minister of Gender, Family and Children, a wide range of representatives of

civil society and many human rights defenders. She also met with representatives of MONUC, United Nations agencies and diplomatic missions.

### **3. Visit of the Special Rapporteur on summary, extrajudicial or arbitrary executions**

16. The experts note with appreciation that the Government extended an invitation to the Special Rapporteur on summary, extrajudicial or arbitrary executions, Mr. Philip Alston, who visited the country from 5 to 15 October 2009. The experts have been able to draw on findings of the Special Rapporteur in compiling their report.

## **III. DEVELOPMENT OF THE HUMAN RIGHTS SITUATION, PARTICULARLY IN THE EAST**

### **A. Overall human rights situation**

17. The situation of human rights in the Democratic Republic of the Congo is of serious concern and continues to deteriorate, especially in the eastern region. This is also highlighted by the latest reports of the Secretary-General, OHCHR and the Group of Experts on the Democratic Republic of the Congo of the Security Council's Sanctions Committee.<sup>2</sup>

18. FARDC (including the newly integrated elements), PNC, ANR and other intelligence services, have committed serious human rights violations and grave breaches of international humanitarian law. Violations committed by members of State security forces include: summary executions; sexual and gender-based violence; torture and other cruel, inhuman or degrading treatment or punishment; arbitrary arrest and detention; forced labour and extortion.

19. Some of the FARDC violations were perpetrated in the context of Kimia II operation against the FDLR armed group that started in February 2009. This operation is being conducted with the logistical and, in some instances, operational support of MONUC. According to the United Nations Joint Human Rights Office in the Democratic Republic of the Congo, between May and September 2009, FARDC troops engaged in the Kimia II operation summarily executed at least 62 people around Nyabiondo (North Kivu), while at least 8 more people disappeared. As a result, on 1 November 2009, MONUC suspended its support for the FARDC units allegedly involved in the killings.

20. At the end of his visit, the Special Rapporteur on summary, extrajudicial or arbitrary executions concluded that "from a human rights perspective, [Kimia II] has

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<sup>2</sup> Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2009/623; Report of the 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; Report of the Group of Experts submitted through the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, S/2009/603.

produced catastrophic results. Hundreds of thousands have been displaced, thousands raped, hundreds of villages burnt to the ground, and at least 1,000 civilians killed”.<sup>3</sup>

21. The Special Rapporteur also observed that “the mines in the Kivus have not been demilitarized and continue to be exploited by armed groups, especially the FARDC”.<sup>4</sup> In this context, the experts are concerned about reports that civilians are still subjected to forced labour, extortion and illegal taxation, and that sexual exploitation of women and girls is rife in these mining areas.

22. State security forces frequently carry out arbitrary arrests and detention and related violations. FARDC and ANR often exceed their powers and mandates. The PNC arrests individuals not suspected of criminal conduct, e.g., relatives of suspects, debtors or persons who resist attempts to extort bribes. The United Nations Joint Human Rights Office regularly documents cases of torture or ill-treatment at all stages of the detention process (see A/HRC/13/64). Conditions remain inhumane in almost all places of detention and result in several deaths per month.

23. Grave breaches of international humanitarian law continue to be committed by non-State armed groups, in particular FDLR and LRA. These range from summary executions, sexual violence and related atrocities and enforced disappearances to forced recruitment and pillage. Allegations have also been received indicating that Mai Mai armed groups are committing serious human rights violations in their areas of operation.

24. In many areas, a humanitarian crisis persists. When this report was finalized, there were some 1.9 million internally displaced persons in the eastern part of the country.<sup>5</sup> While, in North Kivu close to 500,000 internally displaced persons have returned as camps in the Goma area were closed, continued LRA attacks in Orientale province and the ongoing FARDC Kimia II operation and related FDLR reprisals in South Kivu have created substantial new displacement. In addition, inter-ethnic clashes over farming and fishing rights in Equateur province in the north-west of the country displaced about 130,000 persons, including 84,000 who sought refuge in neighbouring countries. Humanitarian access to displaced and other crisis-affected populations remains a serious problem, not least because of attacks on humanitarian workers, committed mainly by criminal gangs. During 2009, there have been 125 attacks on humanitarian actors in North Kivu, including three murders, while there were 25 attacks in South Kivu, including one murder.<sup>6</sup>

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<sup>3</sup> Special Rapporteur’s statement of 15 October 2009 available at: [http://www2.ohchr.org/english/issues/executions/docs/PressStatement\\_SumEx\\_DRC.pdf](http://www2.ohchr.org/english/issues/executions/docs/PressStatement_SumEx_DRC.pdf).

<sup>4</sup> Ibid.

<sup>5</sup> According to figures from the Office for the Coordination of Humanitarian Affairs of 30 November 2009, the total number of internally displaced persons stands at 1,859,078; of those 709,064 are in North Kivu, 707,187 in South Kivu, 439,059 in Orientale province (171,376 in Ituri, 216,826 in Haut Uele and 50,857 in Bas Uele), and about 3,768 in Katanga.

<sup>6</sup> S/2009/623, para. 38.

25. Even outside areas affected by conflict, a large majority of Congolese still do not enjoy their most basic economic and social rights. The World Food Programme has warned that acute malnutrition is at dangerously high levels in some parts of the country, exacerbated by the food price crisis.<sup>7</sup> These include areas not affected by conflict, such as Kasai, which benefit from fewer humanitarian interventions. The rights of everyone to the highest attainable standard of health and to education, including free primary education, suffer from the fact that the health and education sectors survive only on the basis of user fees and support from external donors. The Congolese State generates too little income of its own (notwithstanding the country's wealth in natural resources) that actually flows into State coffers, rather than being illegally diverted, and not enough of this limited income is dedicated to the fulfilment of economic and social rights.

### **B. Violence against women**

26. 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.

27. In the context of the military operations against FDLR, brutal sexual violence has been used as a weapon of war by all local parties to the conflict. The United Nations Population Fund has recorded 7,500 cases of sexual violence against women and girls across North and South Kivu in the first nine months of 2009, nearly double the figures for the same period in 2008. An increase in cases of sexual violence is also reported by health counselling centres near conflict zones. FARDC continues to be the major perpetrator of sexual violence. In North Kivu, an assistance provider for victims of sexual violence recorded a total of 3,106 cases between January and July 2009; half of these cases were perpetrated by FARDC members.<sup>8</sup>

28. Attacks on the civilian population by armed actors are frequently accompanied by sexual atrocities. According to documentation and testimonies collected by the Group of Experts of the Security Council's Sanctions Committee, a total of 1,199 human rights violations against the civilian population were committed by FDLR between February and October 2009 in reprisal for attacks perpetrated by FARDC during the Umoja Wetu and Kimia II operations, including 135 cases of sexual violence.<sup>9</sup> On 27 April 2009, for instance, FARDC attacked a makeshift camp of Rwandan Hutu refugees in Shalio, North Kivu. Reports indicate that FARDC

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<sup>7</sup> See <http://www.wfp.org/countries/congo-democratic-republic>.

<sup>8</sup> S/2009/603, para. 339.

<sup>9</sup> S/2009/603, para. 347.

surrounded the camp, shot and beat to death at least 50 refugees and burned the camp to the ground. Out of 40 women that were abducted from the camp, a group of 10 who managed to escape described being kept as sexual slaves, gang-raped and mutilated by the soldiers. On 10 May 2009, FDLR retaliated against the civilian population of Busurungi and Moka, raping women and children and killing at least 60 civilians, mostly women and children.

29. Sexual violence against women and girls is also pervasive in revenge massacres perpetrated against civilians by LRA in Orientale province in the aftermath of the Government's military operations.<sup>10</sup>

30. There are disturbing reports of women and girls being summarily executed and mutilated after being gang-raped. Some victims had guns, wood, sand or glue inserted into their bodies. Husbands, parents or children trying to stop the rape of their loved ones have also been attacked, killed or forced to rape their own family members. Accounts reveal that women and girls have been abducted and held as sexual slaves both by FARDC members and other armed actors, and have been subject to collective rapes for weeks and months, often accompanied by additional atrocities.

31. Subsequent to the experts' initial report, the Special Rapporteur on violence against women, its causes and consequences has received disturbing information about widespread sexual violence against women in prisons throughout the country, mainly as a result of pervasive corruption among prison management officials and lack of security.

32. Despite the 2009 Child Protection Act outlawing marriage of children under 18 years of age, early and forced marriages constitute a serious and growing concern. In addition, cases of children, mostly girls, being subjected to torture and ill-treatment on witchcraft accusations have also been documented.

33. Women human rights defenders, particularly women working in rural communities on cases of sexual violence and as peace mediators, often fall victim to reprisal attacks – including sexual assaults – against them and their families, and are forced to move to safer locations.

34. Noting with appreciation that in November 2009 the Minister of Gender, Family and Children launched the Government's Action Plan on Combating Sexual Violence, the experts call for greater efforts on the ground. For example, the Agency to Combat Violence against Women, the establishment of which the Government highlighted in its statement before the Human Rights Council of 17 March 2009, is not operational and exists only on paper.

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<sup>10</sup> See MONUC/OHCHR, "Special Report: Summary of fact-finding missions on alleged human rights violations committed by the Lord's Resistance Army (LRA) in the districts of Haut-Uélé and Bas-Uélé in Orientale Province", December 2009.

### **C. Child recruitment and other violations against children**

35. In the course of her visit, the Special Representative of the Secretary-General for children and armed conflict found that, in the first four months of 2009, 1,617 children had been separated from armed groups during the accelerated integration of the National Congress for the Defence of the People (CNDP) and other armed groups into FARDC in North Kivu.<sup>11</sup> The Group of Experts of the Security Council's Sanctions Committee has verified 2,020 demobilization files of children separated from the armed groups since November 2008 in North and South Kivu.<sup>12</sup>

36. Although the process of dismantling armed groups and integrating their members represents a unique opportunity to systematically identify and release children, there are grave concerns that many children have passed into the ranks of the newly integrated brigades and that a number of FARDC commanders have blocked the separation of children from their troops.<sup>13</sup> There have also been new recruitments of children by integrated FARDC troops. Between January and October 2009, there were reportedly 107 cases of new recruitment by FARDC; an additional 127 cases were attributed to the Coalition of Congolese Patriotic Resistance (PARECO), 29 to FDLR, and 22 to unidentified armed groups.<sup>14</sup> In the territories of Masisi, North Kivu, and Kalehe, South Kivu, a considerable number of children within the FARDC ranks was reported, as were instances of re-recruitment of children already reunited with their families in key strategic zones such as Ngungu.<sup>15</sup> It is believed that hundreds of children remain in armed groups despite commitments made by many such groups to address this issue. The reintegration of children into their families and communities remains critical for the peace process.

37. In addition to the recruitment of children, FARDC and armed groups continue to be cited for other grave child rights violations, including the direct involvement of children on the front lines, the killing and maiming of children and sexual violence.

38. The regional dimensions of the conflict and cross-border concerns continue to carry significant implications for children, including for the recruitment of children from neighbouring countries and the issue of repatriating foreign children demobilized from fighting groups to their countries of origin.<sup>16</sup>

### **D. Situation of human rights defenders**

39. The situation of human rights defenders, especially in the eastern part of the country, remains extremely worrying. The Special Rapporteur on the situation of human

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<sup>11</sup> See the Special Representative's report, available at: [http://www.un.org/children/conflict/\\_documents/countryvisits/DRCVisitReport.pdf](http://www.un.org/children/conflict/_documents/countryvisits/DRCVisitReport.pdf).

<sup>12</sup> S/2009/603, para. 317.

<sup>13</sup> Ibid., para. 322.

<sup>14</sup> Ibid., para. 317.

<sup>15</sup> Ibid., para. 317.

<sup>16</sup> See footnote 11; see also S/2009/603, para. 318.

rights defenders noted that defenders are particularly exposed to threats, attacks, arbitrary arrest and detention and other serious human rights violations when supporting victims of grave violations, including sexual violence; when fighting impunity and supporting the work of the International Criminal Court; and when protecting economic, social and cultural rights, including denouncing the illegal exploitation of natural resources.<sup>17</sup>

40. On 23 August 2009, Bruno Koko Chirambiza, journalist at Radio Star, was killed in Bukavu in South Kivu by a group of unidentified men. Chirambiza is the third journalist to be killed in Bukavu in the past two years, allegedly for his human rights activities, following Didace Namujimbo (murdered on 21 November 2008) and Serge Maheshe (murdered on 13 June 2007).

41. On 15 March 2009, following a press conference in Kinshasa on the tensions between political institutions in the country, Floribert Chebeya Bahizire, Dolly Ibefo Mbfunga, and Donat Tshikaya, three members of non-governmental organizations (NGOs), together with Coco Tanda, a cameraman, were arrested by members of PNC, brought to the ANR headquarters and then detained in Kin Mazière prison. Their computers and video cameras were reportedly seized. They were released two days later. The aim of this press conference was to announce a peaceful demonstration in front of the Parliament, with the intention of presenting a memorandum to the Presidents of the Senate and the National Assembly concerning the “preservation of democracy in the Democratic Republic of the Congo”.

42. On 24 July 2009, Golden Misabiko was arrested following the publication of a report by his organization ASADHO/Katanga on the clandestine exploitation of the Shinkolobwe uranium mine, with the alleged complicity of members of FARDC, PNC and the military court (“*auditorat militaire*”). He was later sentenced to one year’s suspended prison sentence on counts of “threat to national security” and “defamation”. Emmanuel Umpuda, Timothée Mbuya, Grégoire Mulumba and Dominique Munongo continue to receive threats from unknown perpetrators because of their endorsement of the aforementioned ASADHO/Katanga report.

43. As stated earlier, women defenders continue to be most at risk and face sexual and gender-based violence. On 1 October 2009, for instance, a group of unidentified armed men threatened to kill and rape Rebecca Agamile, a member of SOFEPADI – an NGO which promotes and protects women rights in Bunia (Orientale province), and her 16-year-old daughter. Reports allege that the threats are linked to the work of SOFEPADI in cooperating with the International Criminal Court and sharing information about human rights violations.

44. The Congolese authorities, as well as non-State actors, have continued to stigmatize defenders, labelling them as “enemies” or “opponents”. At the end of July 2009, the Minister of Communication publicly labelled three international human rights

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<sup>17</sup> This assessment is also confirmed by the Committee on Economic, Social and Cultural Rights: see E/C.12/COD/CO/4 (20 November 2009), para. 12. For detailed analysis of the situation of human rights defenders in the Democratic Republic of the Congo, see A/HRC/13/22/Add.2.

NGOs (Human Rights Watch, the International Federation of Human Rights Leagues (FIDH) and Global Witness) as “humanitarian terrorists”, following the publication of critical reports by these NGOs.

45. On 26 July 2009, the Congolese authorities interrupted the signal of Radio France International, accusing the radio of destabilizing the State by broadcasting “untrue and unconfirmed” information related to the conflict.

46. Journalists and civil society activists who report on conflict-related issues or criticize the army are also at risk of being tried before a military court under article 87 of the Military Penal Code (“Insult to the flag or to the army”). Anyone convicted faces a prison sentence of between six months to five years, and loses his or her media accreditation.

47. Impunity for violations committed against human rights defenders by State authorities and members of armed groups is widespread. Complaints filed by human rights defenders are rarely thoroughly investigated and defenders who speak out are not protected against reprisals by alleged perpetrators.

#### **IV. IMPLEMENTATION OF RECOMMENDATIONS**

48. In their initial report,<sup>18</sup> the experts identified eight priority objectives for Government action and related technical assistance needs. They made concrete recommendations on how to pursue these objectives. The Government has made little progress in respect of these priority objectives, thereby limiting the opportunities for partners to provide relevant technical assistance.

##### **A. Fighting impunity and strengthening the law enforcement and justice sectors**

49. The experts note with appreciation that a number of trials have been initiated against officers and soldiers of FARDC, some resulting in convictions. Overall, however, impunity remains pervasive, especially with regard to crimes committed by powerful figures in the security forces. It is regrettable that command responsibility, while being an essential aspect in this context, is still rarely the subject of investigation by military prosecutors. Information received suggests that commanders continue to protect soldiers under their command against investigations and deliberately obstruct the course of justice. The high numbers of escapes from military and civilian prisons that have occurred throughout the year – many of them under suspicious circumstances – continue to be a major challenge in the fight against impunity.

50. The fight against impunity is undermined by an apparent lack of political will to arrest and prosecute certain high-profile suspects, including Bosco Ntaganda, against whom the International Criminal Court issued an arrest warrant for war crimes (see also below, para. 64)

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<sup>18</sup> A/HRC/10/59.

51. In May 2009, a delegation of the Security Council visiting the country handed to the President and other senior officials a list with the names of five high-ranking army officers accused of crimes of sexual violence. The five have yet to be prosecuted. According to the latest information received, only two are in pretrial detention, while two are under controlled supervision in Kinshasa and one is at large.

52. In July 2009, President Joseph Kabila announced a policy of “zero-tolerance” for human rights violations committed by FARDC members, which would include holding commanders accountable for the behaviour of their soldiers. While the experts strongly welcome the announcement of this policy, significant obstacles hamper its implementation.

53. The serious structural deficiencies of the justice system foster impunity. The experts are concerned that legislation has not been adopted to establish the Constitutional Court, the Court of Cassation and the State Council, as required by the 2006 Constitution. Judicial structural reform must be implemented urgently, including through the establishment of high courts. The Higher Judicial Council, established in 2008 to be responsible for the selection of, and disciplinary measures against, judges is not fully functional and shortcomings persist regarding its internal organization, human resources and budget.

54. The State needs to increase the financial, logistical and human resources that it provides to the justice system. The Government has decreased spending on the judicial sector to 0.24 per cent of the 2009 budget, which is far below the 2-6 per cent of national budget that most other countries dedicate to justice.

55. Reiterating their recommendation to expand the State justice system in rural areas and provide more support to legal assistance programmes,<sup>19</sup> the experts note that the President redeployed more than 600 new judges in July 2009, including to remote areas. When this report was finalized, a considerable number of them had apparently not yet reported to their new posts. The Government also launched a competitive examination, on the basis of which 1,000 magistrates (civil and military) are to be appointed.

56. In July 2009, the President also dismissed 86 judges by decree. In the absence of timely replacements, these dismissals have created a critical shortage of judges in some areas. Furthermore, the dismissals were reportedly made without hearings being held and did not meet fundamental due process standards. Reportedly, a number of those judges who were dismissed had disciplinary measures or a criminal sentence pronounced against them. However, others were promoted even though the facts of their cases were substantially identical.

57. One step towards greater transparency would be to adopt a code of ethics for judges. A draft code has been developed by the Higher Judicial Council in cooperation with donors and the United Nations Joint Human Rights Office and is intended to be submitted to the General Assembly of the Higher Judicial Council for adoption.

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<sup>19</sup> A/HRC/10/59, para. 93.

58. The military justice system retains jurisdiction over most cases involving serious violations of human rights and international humanitarian law, but remains weak and susceptible to executive interference by military or political decision makers. The experts are pleased to note that MONUC began supporting joint investigation teams. The United Nations Joint Human Rights Office submits information to military prosecutors on human rights violations by FARDC or PNC and provides additional technical support to increase the investigative and prosecution capacity of the military justice system.

59. A project has been developed to establish “prosecution support cells”, operating in teams composed of a military prosecutor, two military and two civil investigators, and a judicial investigation expert from MONUC, in order to investigate and prosecute alleged perpetrators of serious human rights violations. The project, which is still awaiting approval by the Ministry of Defence, should form part of a wider effort to strengthen the capacity of the military justice system. Measures should be taken to guarantee that military courts are sufficiently independent to prosecute even high-level officers, including through appointment of senior military officers to the military bench.

60. No progress has been made on the experts’ recommendation that the civilian jurisdiction vis-à-vis military justice institutions should be strengthened by reassigning criminal jurisdiction over perpetrators from among the police or civilian population to civilian prosecutors and courts.<sup>20</sup> This should be a first step in an effort gradually to transfer jurisdiction over serious human rights violations committed by members of the Armed Forces to ordinary civilian courts. For this purpose, the Government should enact the draft law on the implementation of the Rome Statue of the International Criminal Court.

61. Victims rarely receive the compensation that the courts order the perpetrators of human rights violations to pay. This includes cases where the State itself is ordered to pay for violations committed by State agents. In October 2009, the Minister of Justice announced his intention to establish a fund to compensate victims of sexual violence, an initiative that has also attracted donor interest. When this report was finalized, the envisaged fund had not been established.

62. The experts reiterate the importance of transitional justice measures to address the massive violations which took place between 1993 and 2003. They recall their recommendation that joint benches, comprising national and international judges and sitting in national courts, might be an appropriate transitional justice tool that can be combined with truth-seeking initiatives.<sup>21</sup> In this respect, they are encouraged to note that the investigative phase of the Secretary-General’s project to map major violations committed between 1993 and 2003 has been concluded. The experts hope that the timely publication of the mapping project’s findings and recommendations will provide new impetus in the quest for justice and institutional reform.

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<sup>20</sup> A/HRC/10/59, para. 92.

<sup>21</sup> See A/HRC/10/59, para. 95.

## **B. Reforming the security sector**

63. In their initial report, the experts emphasized the need for comprehensive security sector reform, starting by removing perpetrators of serious human rights violations identified as such from their posts without further delay.<sup>22</sup> However, contrary to the Government's "zero tolerance" policy, FARDC officers and soldiers implicated in human rights violations continue to be present in the Armed Forces, including in high-ranking positions.

64. In January 2009, Bosco Ntaganda was promoted to the rank of general in the context of the rapprochement with CNDP, even though nine months earlier the International Criminal Court had published an arrest warrant for war crimes against him.<sup>23</sup> During the Human Rights Council's universal periodic review in November and December 2009, the Government explicitly rejected the recommendation that Ntaganda should be arrested and transferred to the International Criminal Court.<sup>24</sup> Despite Government assurances that Ntaganda no longer exercises command functions within FARDC, reports indicate that he remains involved in the FARDC command structure, including in the context of the Kimia II operation.<sup>25</sup>

65. In March 2009, the Government appointed Jean-Pierre Biyoyo as a colonel in FARDC. Two years earlier, Biyoyo had been found guilty of recruiting child soldiers by a Congolese military court and later escaped from prison.

66. The Government appears unwilling to create structures to identify and remove perpetrators of human rights violations. In their initial report, the experts recommended setting up a comprehensive and adequately resourced secondary screening mechanism, where each officer's past human rights record and his ability to command in accordance with principles of international humanitarian law and the values embodied in the Constitution is subject to review.<sup>26</sup> Even though this recommendation mirrors repeated calls of the Security Council,<sup>27</sup> it has not been implemented. The Government explicitly rejected recommendations to establish an effective human rights vetting mechanism during the Human Rights Council's universal periodic review.<sup>28</sup>

67. Emphasizing the need for comprehensive training programmes that systematically cover international humanitarian and human rights law, the experts also recommended that donors make the extension of programmes contingent on serious

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<sup>22</sup> A/HRC/10/59, para. 97.

<sup>23</sup> In August 2006, an International Criminal Court pretrial chamber confirmed the arrest warrant, which was issued under seal and only made public in April 2008.

<sup>24</sup> See A/HRC/WG.6/6/L.7, para. 97.

<sup>25</sup> See S/2009/623, para. 43.

<sup>26</sup> See A/HRC/10/59, para. 97.

<sup>27</sup> See S/RES/1906 (2009), para. 32, and S/RES/1856 (2008), para. 22.

<sup>28</sup> See A/HRC/WG.6/6/L.7, para. 97.

Government efforts to clean up the ranks of the security forces.<sup>29</sup> Various actors have established training programmes for FARDC and PNC on human rights, international humanitarian law and the reformed Congolese legislation on sexual violence. The experts take note of MONUC efforts to facilitate coordination between the many actors engaged in assisting security reform. However, the Government's resistance to instituting real security sector reform, including human rights vetting, creates a dilemma for many assistance partners considering whether to extend their engagement.

68. While legislation to reform FARDC is currently being considered by the National Assembly, the experts are very concerned that no process has been initiated to reform the intelligence services, which are in particular need of reform from a human rights point of view.

69. Progress has been with regard to the recommended construction of barracks,<sup>30</sup> which keep soldiers away from civilian populations. FARDC, MONUC, the United Kingdom, the International Organization for Migration and the European Union Mission of Assistance for Security Sector Reform are currently evaluating a total of 25 proposed sites in the eastern Democratic Republic of the Congo. In South Kivu, the United Nations Development Programme and the International Organization for Migration have been rehabilitating accommodation facilities to garrison approximately 3,000 FARDC soldiers at Camp Saio.<sup>31</sup>

70. Having recommended that MONUC should not cooperate with FARDC commanders and units implicated in human rights violations,<sup>32</sup> the experts are pleased to note that MONUC adopted the policy of not participating in or supporting FARDC operations if there are substantial grounds for believing that the FARDC units involved will violate international humanitarian, human rights or refugee law.<sup>33</sup> The experts stress the importance of consistently implementing this policy as a matter of utmost priority. In this context, they reiterate their concerns about the reported involvement of alleged perpetrators of serious crimes, including Bosco Ntaganda, in ongoing FARDC operations.<sup>34</sup>

### **C. Preventing the (re-) recruitment of children by armed actors and socially reintegrating children associated with armed actors**

71. As noted above (para. 35), some progress has been made in identifying children associated with armed groups, although grave concerns persist that other children remain in the FARDC ranks, including as a result of new recruitments. The Government

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<sup>29</sup> See A/HRC/10/59, paras. 96 and 98.

<sup>30</sup> Ibid., para. 96.

<sup>31</sup> S/2009/623, para. 34.

<sup>32</sup> See A/HRC/10/59, para. 98.

<sup>33</sup> S/2009/623, para. 12.

<sup>34</sup> See also the press release of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, of 16 December 2009, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9679&LangID=E>.

needs to do more to ensure that no children are present within the integrated brigades, and continue to allow access of MONUC and UNICEF in a timely manner to all units for monitoring and verification of the presence of children and release of all children associated with integrated brigades. It must ensure rigorous investigation and hold perpetrators accountable. Suspected perpetrators of grave child rights violations should not be simply reassigned, especially to the same locations where the supposed abuse and violence have taken place.

72. During the course of the visit of the Special Representative of the Secretary-General for children and armed conflict in April 2009, the Minister for Defence and the FARDC Military Command, through the Army Chief of Staff, committed to entering into dialogue with the United Nations for the preparation of a time-bound action plan for the prevention of child recruitment and identification and release of those children already present in integrated FARDC brigades, in the framework of Security Council resolutions 1539 (2004) and 1612 (2005). They also agreed to facilitate the access of MONUC and UNICEF to the rapid integration process of CNDP and FARDC in South Kivu for systematic identification and release of children. When this report was finalized, MONUC was still waiting for the Government to confirm in writing its commitment to developing an action plan and for meetings with Government representatives to discuss how to address the continued problem of children within the FARDC ranks.

73. The experts reiterate their recommendation that the Government and FARDC Military Command cooperate in elaborating an action plan on recruitment and use of child soldiers as stipulated in Security Council resolutions 1539 and 1612 on children and armed conflict.<sup>35</sup> This action plan should entail specific measures to prevent recruitment and use of children, identify and release all children associated with their armed forces and ensure access for child protection actors for ongoing monitoring and verification. Cross-border frameworks of cooperation and information exchange must be established and enhanced to address these concerns, both among United Nations actors and NGOs and between Governments.

74. Donors should commit to multi-year funding to ensure the sustainability of child reintegration programmes in line with the Paris Principles on children associated with armed forces or armed groups. They should ensure that such resource commitments are flexible and resources are delivered early.

#### **D. Protecting women's rights and ensuring gender equality in law and society**

75. Limited progress has been made in the implementation of the experts' recommendations on protecting women's rights and ensuring gender equality (A/HRC/10/59, paras. 102-104), which therefore remain fully applicable. Given the shocking levels of violence against women throughout the country, it is important that the Government and donors continue to address such violence and assistance to survivors as a matter of priority by building on current initiatives and enhancing coordination, including with local women's organizations.

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<sup>35</sup> See A/HRC/10/59, para. 99.

76. Technical assistance for the implementation of the National Strategy to Combat Sexual Violence and the roadmap against impunity for sexual violence should be fostered, without detracting from crucial support to local Congolese NGOs for women. Supporting advocacy and ensuring widespread dissemination of the 2006 Sexual Violence Act, including by training judicial officials involved in its application, is of fundamental importance. The United Nations Comprehensive Strategy on Combating Sexual Violence – the tenets of which are also reflected in the United Nations Security and Stabilization Support Strategy – offers a good framework to coordinate the response of the United Nations, the Government, civil society and international donors. The establishment of benchmarks, in consultation with all actors, should be given priority, as an important accountability measure and an essential tool in steering donor priorities.

77. Legislation to reform the Family Code and implement the gender equality provision contained in the Constitution is still much needed. Donors should continue to support advocacy and awareness-raising programmes to make sure that these reforms are passed by Parliament and enacted into law.

#### **E. Addressing economic root causes of human rights violations**

78. The illegal exploitation of natural resources continues to be one of the main causes of human rights abuses in the Democratic Republic of the Congo, either directly through violations linked to the actual exploitation and trade or indirectly because the proceeds finance unscrupulous armed groups and rogue FARDC elements. Reportedly, illegal mineral exports to neighbouring States have significantly increased since 2008, particularly since the rapprochement between Kinshasa and Kigali in January 2009. Rogue factions of FARDC, other armed groups and traders of cassiterite, coltan and wolfram collaborating with them have profited from this increase.<sup>36</sup>

79. Corruption and other illegal practices in the mining sector deprive the Government of resources it could dedicate towards the progressive realization of economic and social rights. In September 2009, the Congolese Senate considered a report by Senator David Mutamba Dibwe, which found that in 2008 alone the Government did not receive US\$ 450 million in resources it should have reasonably gained from the exploitation of the country's natural resources.

80. The Government has made little progress in implementing its commitments under the Extractive Industries Transparency Initiative (see A/HRC/10/59, para. 105) and the Democratic Republic of the Congo remains only a candidate country. There is still a lack of transparent management and reliable statistics; revenues generated by the exploitation of natural resources are not published and bad governance practices persist.

81. There have been some notable initiatives during 2009. Illicit mineral transfers in the region were addressed at the Constitutive Meeting of the International Conference on the Great Lakes Region which took place in Gisenyi, Rwanda from 30 September to 2 October 2009 and brought together representatives of the Democratic Republic of the

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<sup>36</sup> S/2009/603, para. 299.

Congo, Burundi, the Central African Republic, Kenya, Rwanda, Tanzania, Uganda and Zambia; however, no tangible effects on the ground have been reported.

82. Within the framework of the United Nations Security and Stabilization Support Strategy, the Government, MONUC and partners have agreed to establish, as a pilot project, five trading counters in North and South Kivu to bring together all State services involved in the ore business, in order to improve traceability and provide counters closer to mining areas. In October 2009, MONUC and the country's Ministry of Mines organized joint missions to visit key mining sites in order to assess the security situation. In addition, MONUC and the PNC continued to carry out random checks at Goma and Bukavu airports.<sup>37</sup>

83. While the exploitation and exportation of rare minerals from the Democratic Republic of the Congo is often conducted outside or at the very margins of the law, these minerals always surface on the official market at some point. Businesses therefore need to exercise due diligence to ensure that their use of natural resources does not fuel human rights abuses.<sup>38</sup> All States involved in trading such minerals have to make sure that they respond fully to their obligation to put in place appropriate policies, regulation and oversight mechanisms to stop illegal exploitation and trade linked to human rights violations.

84. The experts welcome that the Security Council has mandated the Sanction Committee's Group of Experts on the Democratic Republic of the Congo to produce due diligence guidelines for importers, processing industries and consumers of mineral products on the purchase, sourcing (including steps to be taken to ascertain the origin of mineral products), acquisition and processing of mineral products from the Democratic Republic of the Congo.<sup>39</sup>

85. It is important to develop effective and credible monitoring of the supply chain of minerals from the extraction site to the consumer. This will require efforts by the Democratic Republic of the Congo, neighbouring states and the companies involved. The tin industry, for instance, has started promoting a Tin Supply Chain Initiative as part of an effort to increase due diligence in purchasing practices in the Democratic Republic of the Congo and other countries. States also need to put in place policies and regulations with respect to companies subject to their jurisdiction which operate or intend to operate in the region. They should refuse to extend support (e.g. credit guarantees) to companies that prove unwilling to comply with due diligence standards.

86. In the context of the ongoing Kimia II military operations against FDLR, it is important to ensure that rogue FARDC units do not simply replace FDLR and continue illegal mining operations. This requires the extension of a credible, legitimate and civilian State authority in the eastern part of the country, in line with the Government's

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<sup>37</sup> S/2009/623, para. 36.

<sup>38</sup> On the corporate responsibility to respect, see A/HRC/11/13, paras. 45 ff.

<sup>39</sup> See S/RES/1896 (2009).

Stabilization and Reconstruction Plan for War-Affected Areas and the United Nations Security and Stabilization Support Strategy.<sup>40</sup>

87. Highlighting the important role of local conflicts over land, the experts recommended establishing community-based land commissions involving traditional leaders, provincial State officials and community representatives or other appropriate dispute resolution mechanisms.<sup>41</sup> While the experts are not aware of Government efforts to implement this recommendation, they take note of increased activities of international actors. The United Nations Human Settlements Programme (UN-Habitat) has opened an office in Goma and, together with the Office of the United Nations High Commissioner for Refugees and MONUC, launched a programme to establish housing, land and property mediation mechanisms in North Kivu and Ituri initially, and subsequently in South Kivu and the Orientale and Katanga provinces. The Norwegian Refugee Council has established community-based land commissions in the Petit Nord region of North Kivu that allow the population to access legal counselling on land disputes and submit specific problems to the commissions for mediation.

#### **F. Protecting the rights of the displaced and minorities**

88. As a State party to the Protocol on Protection and Assistance to Internally Displaced Persons (“Great Lakes Protocol”), adopted at the International Conference on the Great Lakes Region, the Democratic Republic of the Congo is obliged to incorporate the Guiding Principles on Internal Displacement into its domestic law.<sup>42</sup> In their report, the experts recommended that the Government should develop a legislative framework, strategy and plan of action for the implementation of these obligations.<sup>43</sup>

89. The Representative of the Secretary-General on human rights of internally displaced persons discussed this recommendation with the delegation of the Democratic Republic of the Congo at a workshop of member States of the International Conference of the Great Lakes Region, which was organized by the Conference’s Secretariat, the Representative and other stakeholders and took place from 9-10 July 2009 in Nairobi. The Congolese delegation expressed its readiness to prepare laws and policies on internal displacement and approved a list of detailed recommendations drawn up by member States delegates on how best to implement the Great Lakes Protocol.

90. When this report was finalized, the Democratic Republic of the Congo did not have either a draft law or draft policy on internal displacement. The experts are not aware that any process has been started to develop a law or policy, or that responsibilities have been clarified within the Government regarding who would be responsible for the drafting process.

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<sup>40</sup> See S/2009/623, para. 103.

<sup>41</sup> A/HRC/10/59, para. 106.

<sup>42</sup> E/CN.4/1998/53/Add.2.

<sup>43</sup> A/HRC/10/59, para. 107.

91. The experts are encouraged by the fact that return of displaced persons, their reintegration and recovery has been designated one of the priorities of the United Nations Support and Stabilization Strategy. Apart from the 1.9 million internally displaced persons, there are also more than 200,000 refugees who have returned or are awaiting return to the eastern part of the country. The experts reiterate the importance of including host families and communities who receive displaced persons and returnees in all efforts to provide support for return, reintegration and recovery.

92. In their initial report, the experts highlighted that the National Election Commission, in cooperation with MONUC and other partners, should ensure registration of the displaced as voters and that the Commission should be given support to find ways to ensure (e.g. through provisions on absentee voting) that the displaced can exercise their political rights. In addition, they recommended launching a campaign in the eastern part of the country to provide national identification and electoral cards to anyone qualifying for Congolese nationality under the new Nationality Act of 12 November 2004.<sup>44</sup>

93. While local elections are still being planned for 2010 and the provision of electoral cards has started in some areas, sources on the ground are concerned that not everyone qualifying for nationality under the 2004 Nationality Act is being included. According to information received, the National Election Commission has not yet adopted provisions to ensure the registration of internally displaced persons as voters. The Government officials responsible seem to assume that there will be peace throughout the country, which would allow all the displaced to return for the elections and receive electoral cards at their home. In light of the huge number of displaced persons and the volatile security situation, this approach could mean that a large number of displaced potential voters will be unable to exercise their human right to vote on an equal and fair basis.

94. In their initial report, the experts called for local conflict resolution and ethnic reconciliation initiatives involving all sectors of society, including women, returnees and internally displaced persons and refugees awaiting their return.<sup>45</sup> The fact that the peace agreement between the Government and CNDP of 23 March 2009 specifically foresees reconciliation initiatives is positive. However, there have been delays in establishing such initiatives and related support structures.<sup>46</sup> In the meantime, some NGOs have established smaller conflict resolution and reconciliation projects, which deserve more donor attention.

### **G. Providing access to health care, especially for marginalized groups**

95. With few Government funds allocated to and reaching health-care institutions on the ground, the sector relies on user fees, meaning that the poorest sectors of society cannot access health care. Persistently poor security conditions and, in large parts of the

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<sup>44</sup> See A/HRC/10/59, paras. 108-109.

<sup>45</sup> See A/HRC/10/59, para. 110.

<sup>46</sup> S/2009/623, para. 16.

eastern region, armed conflict continue to present significant challenges to the delivery of health care. Some localities are left without any health care or have irregular access thereto because of the security situation. In addition, where health-care facilities exist, the need for basic supplies, equipment and medicines often remains unmet.

96. In order to improve access to health care, greater mobilization and allocation of targeted resources are needed to support the abolition of user fees and an accompanying increase in public support for improving health-care infrastructure, supplies, equipment, human resources and medicine supplies. While international humanitarian assistance continues to meet some of the medical needs of the population, including those displaced by conflict, a long-term strategy is needed to ensure that health-care provision will be guaranteed by the Government for all, without discrimination. Immediate action is still required to ensure that the whole population has access to medical services, safe water and sanitation to avert an exacerbation of the public health crisis.

97. Thanks to support from Canada and Belgium and in line with the experts' recommendation,<sup>47</sup> fees for forensic medical certificates for victims of sexual violence in the provinces of Equateur, Maniema, Orientale and in North and South Kivu have been abolished. However, women in other parts of the country continue to pay for the processes, examinations and care linked to forensic medical certificates, meaning that justice remains financially inaccessible for poor victims.

#### **H. Strengthening State and civil society structures to promote and protect human rights<sup>48</sup>**

98. When this report was finalized, no progress had been made on the recommended adoption of national and provincial laws on the protection of human rights defenders, including women defenders.<sup>49</sup> During her visit, the Special Rapporteur on the situation of human rights defenders welcomed that the President of the National Assembly and the President of the Senate had acknowledged the need to adopt such legislation at the national level, and was encouraged to have obtained their commitment to having Parliament examine a draft law during their next session. She welcomed the recent attempt to adopt a provincial law on human rights defenders in South Kivu at the initiative of the civil society, and called on provincial parliamentarians to adopt a revised text. However, at the time of drafting the present report, no steps had been taken towards the adoption of such legislation. Instead, the experts note with concern that certain senior figures of authority have publicly sought to delegitimize the work of human rights defenders, fuelling the increased harassment, intimidation and violence that defenders face on the ground.

99. The draft law on the establishment of a national human rights commission, which was adopted by the Senate in July 2008, is reportedly still pending before the National Assembly. The experts underline that the future institution should be

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<sup>47</sup> See A/HRC/10/59, para. 111.

<sup>48</sup> See also A/HRC/13/22/Add.2.

<sup>49</sup> See A/HRC/10/59, para. 114.

established in accordance with the Paris Principles relating to the status of national human rights institutions.

100. The draft law on the organization and functioning of the Superior Council of Audiovisual and Communication Affairs was passed by the National Assembly and the Senate, and is reportedly pending before the Supreme Court of Justice for confirmation. In addition, a draft law amending Act No. 96-002 of 22 June 2006 on the freedom of the press has been prepared by the Government and is awaiting its submission to Parliament. The draft law proposes the decriminalization a number of media-related offences and reduces the harshness of the sanctions currently applicable.

101. The Ministry for Human Rights still lacks the human and financial resources and political support required to ensure that human rights concerns are effectively taken into account in the law- and policymaking processes at the national level. Furthermore, the work of provincial representatives of the Ministry for Human Rights is not always fully respected or appreciated by local authorities. The Ministry has reportedly not started translating the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms into the main local languages, and has not delivered awareness-raising training on the work of human rights defenders to law enforcement authorities and judicial officials, as had been recommended by the experts.<sup>50</sup>

102. Despite meeting all administrative requirements for registration, a number of NGOs engaging in human rights-related activities are arbitrarily denied legal personality and are therefore unable to file complaints before courts and receive funding from donors. The procedure for registration is not well known to NGOs and is often arbitrarily interrupted by authorities. Therefore, NGOs receive temporary authorization to operate, but rarely the final decree granting them legal personality and the legal security that this entails. This situation has reportedly been used by authorities to discredit these NGOs.

103. The regime of notification governing the exercise of the right to freedom of peaceful assembly, introduced by the 2006 Constitution, is not fully respected in practice, and the authorities frequently still require defenders to seek formal authorization every time they wish to stage a demonstration.

104. The Protection of Victims, Witnesses and Human Rights Defenders programme, funded by the European Union, was closed in March 2009 and absorbed by MONUC into the work of the Protection Unit. Between the inception of the programme in June 2007 and June 2009, the Protection Unit assisted 516 victims, witnesses and defenders in nine provinces, including in the eastern Democratic Republic of the Congo.

105. The experts note that, in August 2009, the Government issued a decree to set up a human rights liaison entity, which would bring together representatives of the Government, the United Nations and NGOs to discuss concerns. When this report was

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<sup>50</sup> A/HRC/10/59, para. 113.

finalized, however, the decree had yet to be implemented by the Government and the liaison entity was not yet functional.

## V. CONCLUSIONS AND RECOMMENDATIONS

106. **During the course of 2009, peace returned to some parts of the Democratic Republic of the Congo, while other areas have seen renewed hostilities and violence. Overall, the human rights situation has not improved and remains serious, including in areas not affected by conflict. Members of FARDC, PNC, ANR and other intelligence forces have been cited as responsible for summary executions, sexual violence, torture and ill-treatment. Armed groups such as LRA and FDLR continue to commit atrocities, which amount to grave breaches of international humanitarian law and, in some instances, may also constitute crimes against humanity.**

107. **The experts regret that the Government failed to provide any information on the implementation of the recommendations made in the experts' initial report.<sup>51</sup> Information received from other sources indicates that there has been little progress overall. Government efforts in particular have been wholly insufficient, making it difficult for partners to provide related technical assistance.**

108. **The reforms of the justice and security sectors have not advanced enough and efforts undertaken are undermined by a lack of will to implement a “zero tolerance” policy against certain influential individuals suspected of serious human rights violations. Impunity and the continued presence of perpetrators of serious violations in the security forces remain key concerns.**

109. **Violence against women, in particular rape and gang rape committed by men with guns and civilians, remains a serious concern, including in areas not affected by armed conflict. Discriminatory laws and practices remain in place and, along with impunity, remain a root cause of violence against women.**

110. **Improvements in terms of peace and security have allowed for some progress on identifying child soldiers and releasing them from the ranks of armed groups undergoing integration with FARDC. However, the problem continues to exist in certain integrated units and requires full Government commitment to prepare and implement an action plan for the prevention of recruitment and use of child soldiers.**

111. **The Government neglects its responsibilities to protect and assist internally displaced persons and returnees, who therefore have to rely entirely on the support provided by the international community. In addition, there is a risk that displaced populations may not be able to participate in the 2010 local elections.**

112. **The economic root causes of human rights violations, in particular illegal exploitation of natural resources and unresolved land conflicts, are increasingly**

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<sup>51</sup> A/HRC/10/59.

being recognized by international and Government actors, which is a first step towards addressing the issue. The lack of transparent and effective Government control over the mining sector deprives the State of funds it could dedicate to meeting its responsibilities with regard to social and economic rights.

113. The lack of budgetary allocations for the fulfilment of social and economic rights is reflected in different sectors. Health and educational institutions, for instance, have to charge user fees to generate income and are therefore not accessible to the poor.

114. There has been little progress in moving forward legislation to strengthen State and civil society structures to promote and protect human rights. There is a worrisome trend of certain officials trying to delegitimize and harass human rights defenders, which fuels an increase in violence, intimidation and threats against defenders.

115. Rather than formulating new proposals, the experts therefore reiterate the relevance and applicability of their existing recommendations<sup>52</sup> and urge the Government and technical assistance partners to prioritize their implementation.

116. They encourage the Government to continue the positive practice of responding favourably to requests of individual mandate holders and continue to invite several mandate holders every year. The experts strongly recommend that the Government issue a standing invitation to all special procedure mandate holders, as the combined ambit of the experts' mandate leaves out key concerns relating to economic, social and cultural rights and political and civil rights. They urge the Government to respond to mandate holders' urgent appeals and communications.

117. In light of the seriousness of the human rights situation, which has not improved since their initial report, the experts consider it to be of utmost importance that the Council continue monitoring the situation in the Democratic Republic of the Congo on the basis of reports provided by OHCHR and individual special procedure mandate holders.

118. The experts recommend that the Council once again consider the creation of a country-specific mandate, in particular if the level of access and response to thematic special procedures decreases.

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<sup>52</sup> See A/HRC/10/59.