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## Human Rights Council

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**Technical assistance and capacity-building**

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

#### *Summary*

This report is submitted pursuant to Human Rights Council Resolution 13/22.

The experts reiterate their deep concern at the serious human rights situation in the country, which has reportedly not improved since their initial report.

While acknowledging with appreciation the state of the willingness of the Congolese authorities to improve its cooperation with the international community in the field of human rights, including with the Special Procedures, the experts wish to highlight that for such cooperation to be fruitful, especially in relation to the global action plan, it needs to be sustained and based on regular and flexible exchange and dialogue. The late responses from the Government to letters sent by the experts regrettably do not meet these criteria. Similarly, the Government has responded to less than seven per cent of the urgent appeals and allegation letters sent by them since they were requested to report for the first time on the human rights situation in the country in March 2008.

The experts are of the view that the current mandate given to a group of seven thematic special procedures, which undertake this task in addition to the considerable workload entailed by their respective mandates, does not have the necessary flexibility and reactivity to ensure a regular dialogue with the Congolese authorities, and is not therefore the most suitable mechanism to respond to the specific needs of the country. By visiting the country several times and by elaborating specific recommendations related to their respective mandates, which are still relevant and applicable to the human rights situation in the country, they have contributed to their maximum to the improvement of the situation of human rights in the Democratic Republic of the Congo.

The experts strongly believe that follow-up to these recommendations and assistance to the Democratic Republic of the Congo in this regard, in particular regarding the finalisation of the global action plan, would be best served by a single mechanism dedicated solely to the situation in the country. Therefore, they reiterate their call on the

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\* Late submission.

Council to once again consider the creation of a Special Procedures country-specific mandate. Such a mandate would provide a reliable mechanism which would focus on the improvement of the human rights situation in the country. In addition to providing focused attention and resources to addressing a situation of grave and long standing concern, a country-specific mandate would facilitate regular engagement with the Government, as well as regional and international stakeholders, and allow the different actors to work in a concerted and sustainable fashion towards the implementation of both existing and future recommendations.

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## I. Introduction

1. This report is submitted pursuant to Human Rights Council Resolution 13/22 inviting six Special Procedures mandate-holders and the Special Representative of the Secretary-General on Children and Armed Conflict (the experts) to report 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 Special Rapporteur on the 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. This is the third report submitted by the experts.

## II. Engagement by the seven thematic special procedures with the Government

2. With a view to once again seek follow up on the recommendations made in their initial joint report on the basis of a visit by one mandate-holder<sup>1</sup>, and reiterated in their second joint report<sup>2</sup> supported by the findings of two mandate-holders following their visits to the country<sup>3</sup>, the experts sent on 29 September 2010 a letter to the Congolese authorities reminding them to respond to their letter dated 23 September 2009, in which they requested the then Minister for Human Rights to provide information on the steps taken by the national authorities to implement the recommendations contained in this initial report, as well as on the functioning of Agency to Combat Violence Against Women and Girls, and the human rights liaison entity. The experts finally received a response on 7 February 2011, for which they wish to thank the Government. This letter was however limited to a brief description of the functioning of the aforementioned institutions, and the future establishment of the national human rights commission, whose draft related law has been pending before the National Assembly since 2009. The experts take note of the commitment of the Government, already expressed to the Special Rapporteur on the situation of human rights defenders during her visit to the country in June 2009, to ensure the prompt examination of this law and the subsequent effective establishment of this commission.

3. The abovementioned letter also announced the sending of the global action plan on the implementation of recommendations for discussion and improvement in line with resolution 13/22. This plan was received on 11 February 2011, together with the comments of the Government on the present report. The experts acknowledge the efforts made by the Government in this regard. However, the late submission of this global action plan does not allow for a thorough analysis and discussion in the spirit of resolution 13/22. Furthermore, the experts wish to highlight that this plan consists merely of a compilation of all the

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<sup>1</sup> A/HRC/10/59 (2009)

<sup>2</sup> A/HRC/13/63 (2010)

<sup>3</sup> The Special Representative of the Secretary-General for children and armed conflict visited the country in April 2009, and the Special Rapporteur on the situation of human rights defenders in June 2009.

recommendations made by human rights mechanisms with the identification of the departments in charge of implementing these recommendations, and a provisory general estimate of the cost entailed. The plan fails to define, in a concrete manner, measurable targets to be met and actions to be taken to implement the recommendations. While the document contains some benchmarks, these are not specific and action-oriented enough to evaluate implementation. In addition, the provisory cost estimates for the implementation of each recommendation are unclear as facts and figures on which these estimates are based are lacking. Finally, the prioritization of the recommendations lacks precision and specific timeline.

4. The experts further regret that the Government had responded to only two of the 29 urgent appeals and allegation letters sent jointly or individually by four of the seven thematic Special Procedures mandate-holders since they were requested to report on the human rights situation in the Democratic Republic of the Congo in March 2008.<sup>4</sup>

### III. Development of the human rights situation

5. The overall human rights situation in the Democratic Republic of the Congo remains of serious concern as highlighted by the latest reports of the High Commissioner for Human Rights, the Secretary-General, and the Group of Experts on the Democratic Republic of the Congo of the Security Council's Sanctions Committee, as well as the 13 communications sent by four of the seven thematic Special Procedures mandate-holders since March 2010.<sup>5</sup>

6. The High Commissioner for Human Rights noted that the human rights situation in the country did not improve since her last report. The situation remains extremely worrying, especially in the eastern part of the country, where the United Nations Joint Human Rights Office in the Democratic Republic of the Congo continued to document serious human rights violations and grave breaches of international humanitarian law committed by national security forces and armed groups. Most of these violations are linked to the conflict and were committed in the framework of operations conducted by the national armed forces (Forces armées de la République démocratique du Congo – FARDC) against armed groups and/or in reprisal against these operations by armed groups, including combatants of the Lord Army Resistance (LRA), the Democratic Forces of Liberation of Rwanda (Forces démocratiques de libération du Rwanda – FDLR), and Mai Mai groups.<sup>6</sup>

7. The High Commissioner further stressed that sexual violence remains a cause of major concern, in the eastern part of the country as well as in the rest of the country. From 30 July to 2 August 2010, at least 380 women, men and children were raped in 13 villages in Walikale territory, in North Kivu, by a group of armed men belonging to FDLR, members of Mai Mai Cheka and combatants affiliated with a former member of the FARDC who founded his own armed group in early 2010. FARDC soldiers reportedly also committed many rapes during the reporting period.<sup>7</sup> The experts note with satisfaction that

<sup>4</sup> See Human Rights Council resolutions 7/20 (March 2008) and S-8/1 (December 2008),

<sup>5</sup> Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2010/512 (2010); 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/16/27; Final 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/2010/596; Communications reports of Special Procedures mandate-holders, notably the report of the Special Rapporteur on the situation of human rights defenders, A/HRC/16/44/Add.1.

<sup>6</sup> A/HRC/16/27, see summary and para. 3.

<sup>7</sup> A/HRC/16/27, para. 4.

a number of cases of sexual violence attributed to members of the FARDC have been investigated and the perpetrators have been prosecuted by military courts. In particular, they welcome the recent decision by a military court in Eastern Democratic Republic of the Congo, which for the first time sentenced a high-ranking commander for crimes against humanity for having sent his troops to rape, beat and loot from the population in Fizi on New Year's Day. Besides sending a clear signal that sexual violence in conflict will not be tolerated, this verdict shows that accountability for sexual violence is possible when there is political will.

8. According to the High Commissioner, human rights violations throughout the country also resulted from structural shortcomings and were linked to deficiencies in State institutions. In addition, the reporting period was marked by an increase of violations against human rights defenders and media representatives, as epitomized by the killing of Mr. Floribert Chebeya Bahizire, and the enforced disappearance of his driver, Mr. Fidèle Bazana Edadi. The experts hope that the trial which has opened in relation to this killing will be free from any irregularities, and that the perpetrators will be held accountable. Finally, the High Commissioner noted that the illegal exploitation of natural resources, despite the Government's condemnation, remains of concern as it is a chief cause of many serious human rights violations.<sup>8</sup>

9. The Secretary-General noted that "serious human rights violations by armed groups and by elements of the national security forces continued, including acts of arbitrary execution; rape; arbitrary arrest and detention; torture; cruel, inhuman and degrading treatment; and looting. While the most frequent and serious human rights violations continued to take place in the eastern provinces, the situation also remained of concern in some areas in western Democratic Republic of the Congo".<sup>9</sup>

10. The Group of Experts on the Democratic Republic of the Congo of the Security Council's Sanctions Committee pointed out some "cases of direct and command responsibility for the recruitment and use of children by the leaders of Congolese armed groups, as well as two military commanders from FARDC, all of whom have used children as their personal escorts".<sup>10</sup> The Group of Experts further highlighted that, with regard to the illegal exploitation of natural resources, "[t]he conflict between the economic interests of criminal networks within FARDC and the security mandate of the army has led to three critical negative consequences: (a) Failure on the part of FARDC to prioritize the protection of civilians; (b) Competing chains of command and insubordination within FARDC; (c) Distraction from the pursuit of military operations against armed groups, leading to cohabitation and in some cases active collusion with those same groups... [T]hese developments have directly contributed to the persistent threat posed by armed groups and represent a critical challenge to addressing insecurity in the eastern part of the Democratic Republic of the Congo".<sup>11</sup>

11. It must be stressed that the majority of the urgent appeals and allegation letters sent by thematic Special Procedures mandate-holders during the reporting period illustrates the aforementioned worsening of the situation of male and female human rights defenders, and journalists in the country, despite the recommendations made by the Special Rapporteur on the situation of human rights defenders to the Government following her visit to the country in June 2009.<sup>12</sup>

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<sup>8</sup> A/HRC/16/27, para. 5-6 and 33.

<sup>9</sup> S/2010/512, para. 42.

<sup>10</sup> S/2010/596, see summary and para. 131-132.

<sup>11</sup> *Ibid.*, para. 177.

<sup>12</sup> See A/HRC/13/22/Add.2.

12. Finally, the experts note the cooperation of the Government in the course of the preparation and follow-up of the report of the Mapping Exercise “documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003”.<sup>13</sup>

#### **IV. Conclusions and recommendations**

13. **The experts reiterate their deep concern at the serious human rights situation in the country, which has reportedly not improved since their initial report.**

14. **While acknowledging with appreciation the stated willingness of the Congolese Government to improve its cooperation with the international community in the field of human rights, including with the Special Procedures, the experts wish to highlight that for such cooperation to be fruitful, especially in relation to the aforementioned global action plan, it needs to be sustained and based on regular and flexible exchange and dialogue. The late responses from the Government to the aforementioned letters regrettably do not meet these criteria. Similarly, the Government has responded to less than seven per cent of the urgent appeals and allegation letters sent by the experts since they were requested to report for the first time on the human rights situation in the country in March 2008.**

15. **The experts are of the view that the current mandate given to a group of seven thematic special procedures, which undertake this task in addition to the considerable workload entailed by their respective mandates, does not have the necessary flexibility and reactivity to ensure a regular dialogue with the Congolese authorities, and is not therefore the most suitable mechanism to respond to the specific needs of the country. By visiting the country several times and by elaborating specific recommendations related to their respective mandates, which are still relevant and applicable to the human rights situation in the country, they have contributed to their maximum to the improvement of the situation of human rights in the Democratic Republic of the Congo.**

16. **The experts strongly believe that follow-up to these recommendations and assistance to the Democratic Republic of the Congo in this regard, in particular regarding the finalisation of the global action plan, would be best served by a single mechanism dedicated solely to the situation in the country. Therefore, they reiterate their call on the Council to once again consider the creation of a Special Procedures country-specific mandate. Such a mandate would provide a reliable mechanism which would focus on the improvement of the human rights situation in the country. In addition to providing focused attention and resources to addressing a situation of grave and long standing concern, a country specific mandate would facilitate regular engagement with the Government, as well as regional and international stakeholders, and allow the different actors to work in a concerted and sustainable fashion towards the implementation of both existing and future recommendations.**

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<sup>13</sup> See report of the mapping exercise, August 2010, published on 1 October 2010.

## Annex I

### **Summary of recommendations of the thematic Special Procedures mandate-holders to the Government of the Democratic Republic of the Congo contained in the initial report A/HRC/10/59**

In their letters dated 23 September 2009 and 24 September 2010, the thematic Special Procedures mandate-holders requested the then Minister for Human Rights to provide information on the steps taken by the national authorities to implement the recommendations contained in their initial 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 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;
- the deployment, at least in conflict affected provinces, of experienced military advocates from the militaries of countries contributing peacekeeping troops as advisors 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 Ministries of Justice and 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 substantial 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.

Furthermore, the experts requested information on the mandates, functioning and activities of the "Agency to Combat Violence Against Women" and the human rights liaison entity.



## Annex II

### **Recommendations of the thematic Special Procedures mandate-holders to the Government of the Democratic Republic of the Congo contained in the initial report A/HRC/10/59**

#### **A. Priority objectives and technical assistance needs in this regard**

- The baseline assessment carried out by the seven thematic special procedures highlights that the human rights problems in the entire territory of the DRC are serious, multifaceted and deeply rooted in the political, economic and social dynamics at the local, national and regional levels. On the basis of their assessment, the authors have identified eight priority objectives for Government action along with technical assistance needs in this regard. While several of them are reform areas where human rights actors (e.g. the human rights and rule of law components of MONUC)<sup>14</sup> have key roles in assisting the Government, other actors will have to take the lead in other areas that are equally important from a human rights perspective, with human rights actors only playing a complementary role.
- To a large extent the seven thematic special procedures have drawn on existing recommendations that are longstanding and have been reiterated many times by the United Nations, civil society organizations and experts. These include the sets of recommendations formulated by those among the seven mandate holders who visited the DRC on prior occasions, which remain overall valid since the authorities have heeded few of them. Some of the recommendations call for full implementation or expansion of existing programmes and projects undertaken within MONUC or on a bilateral basis while others complement existing with new reform activities.

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

- Fighting impunity should be the number one priority as tolerance for killings, rapes or arbitrary displacement is a key reason for the continuing prevalence of these and similar human rights violations. The fight against impunity requires a strong political will on the part of the DRC authorities to take action against identified perpetrators of international crimes regardless of their rank or connections. The work of the International Court of Justice may supplement, but not replace national efforts. However, the impunity problem undeniably also has a capacity dimension. On the basis of the various action plans drawn by relevant Ministries, donors should continue to prioritize reform across the entire justice chain – police, prosecution, courts and especially also the penitentiary system. In the medium- and long-term such efforts will only be useful and sustainable if the Government itself shows a willingness to increase the justice portion of the national budget further to an acceptable level comparable with other countries (2-6 per cent).
- At the national level, donors should emphasize support for the newly established Higher Council of Judges. Support for other elements of the judicial architecture set

<sup>14</sup> As of 1 July 2010, MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

out by the Constitution, including the Cour de cassation, the Constitutional Court and the Conseil d'État, will also be needed, once the legislation to establish these institutions has been passed. Civilian jurisdiction needs to be further strengthened through legislation assigning criminal jurisdiction over perpetrators from among the police or civilian population to civilian prosecutors and courts. Nevertheless, the military justice system should not be neglected in donor efforts. Security sector reform partners should consider providing, at least in the conflict affected provinces, experienced military advocates from their militaries as advisors to military prosecutors and courts. They would assist in and monitor the daily work of these organs without, however, assuming any decision-making authority.

- Perhaps even more important is the expansion of the state justice system in the rural territories. One state measure worth supporting would be the establishment of a network of justices of the peace that are linked up with traditional modes of dispute-settlement as well as of mobile higher courts to address more serious cases. Measures to increase payment and other support for those officials who are willing to serve in conflict zones, remote areas or other hardship posts may help addressing the chronic lack of qualified personnel in these areas.
- International law does not only oblige the State to duly punish perpetrators of killings, sexual violence and other violent crime, but the State also has to ensure that the victim or surviving family receives compensation from the perpetrator's side. Moreover, ensuring compensation payments will motivate victims to claim justice, rather than accepting amicably settlements or staying silent altogether. Consideration should be given to establishing a compensation guarantee fund, managed jointly by the Government, participating donors and civil society, which would pay out compensation awarded by national courts or the International Criminal Court to victims of serious human rights violations. The fund would initially rely on matching government and donor contributions, but then seek repayment of disbursed amounts from the State or private individuals cited as responsible. In a pilot stage such a fund could cover one or two provinces and focus in particular on awards based on sexual violence cases.
- Transitional justice for the massive violations that took place between 1993 and 2003 is another area that should be prioritized. These violations are generally outside the jurisdiction of the International Criminal Court, which can only be seized of cases that took place after 1 July 2002. The establishment of joint benches, comprising national and international judges and sitting in national courts, might be an appropriate transitional justice tool for the DRC that can also be combined with truth seeking initiatives.

## **2. Reforming the security sector**

- The police, intelligence services and in particular the FARDC all remain in need of serious and comprehensive reform. In many ways, the operational weakness of FARDC and also the present lack of capacity of the police constitute a human rights concern that should rank very high on the list of priorities. Not only does the FARDC often prove incapable of protecting the civilian population from attacks by armed groups, but it also becomes a perpetrator of violations because it lacks the command and control structures and accountability mechanisms to prevent abuses from within its ranks. The minimum training provided in the brassage process has proven inadequate. There is a need for more comprehensive training programmes. Coordinated training should target officers and systematically include international humanitarian law and human rights in the curriculum. This will not only require substantial resources, but also willingness among the various countries to agree on a

curriculum and coordinate their efforts generally on the basis of a shared national security reform strategy. As an accompanying measure donors should also continue and expand programmes to provide units, particularly in conflict areas, with supplies and ensure that they receive their salary. The construction of barracks would allow keeping soldiers away from civilian populations.

- The Government should remove perpetrators of serious human rights violations that have already been identified as such from its ranks and files without further delay. In addition, the Government and its major partners in security reform should set up a comprehensive and adequately resourced secondary screening mechanism, where each officer is vetted for his past human rights record and subjected to a determination of his ability to command in accordance with principles of international humanitarian law and the values embodied in the Constitution of the DRC. Candidates who fail should be excluded and blacklisted from joining the military, police and intelligence services, with appropriate due process mechanisms and transparent processes. The international community should technically assist this process by providing specialized international staff as well resources.
- Donors should insist that training and support and accountability for human rights violations are mutually reinforcing elements and make extension of programmes contingent on serious government efforts to clean the ranks of the security forces. Similarly, MONUC should not cooperate with FARDC commanders and units implicated in human rights violations.

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

- All parties to the conflict must cease any new recruitment of children and release unconditionally all those currently associated with their forces. They must prepare, in the framework of Security Council resolution 1612 (2005), 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. Reintegration strategies should be community-based and in line with the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups.
- Demobilization, disarmament and reintegration (DDR) processes need to include procedures to recognize and assist women and girls associated with armed groups, in particular survivors of sexual violence. To mitigate the re-recruitment of children due in part to insufficient reintegration support from earlier DDR processes, all stakeholders, including relevant government institutions, United Nations entities, NGOs and donors, should ensure the provision of flexible and multi-year funding.
- The Governments of the Democratic Republic of the Congo and neighbouring countries should enhance their cooperation to prevent cross-border recruitment and to ensure the successful repatriation and reintegration of children formerly associated with groups in the DRC to their countries of origin. To help address cross-border dimensions of the conflict and implications for children, United Nations country teams and peacekeeping operations should develop a joint strategy to monitor and report on grave child rights violations by groups such as LRA.

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

- There are clear indications that violence against women will remain pervasive even once armed conflict ends and relative stability has been established. Building on existing initiatives, while enhancing their coordination, donors should therefore

continue to address violence against women and support to its survivors as a priority. Government initiatives with clear and tangible objectives such as the roadmap to fight impunity for sexual violence of the Ministry of Justice are worth supporting. The formation of specialized police units is another area that deserves donor support. Particular emphasis should lie on the hitherto largely neglected and underfunded area of socio-economic reintegration of survivors of rape. Programs should not only cover the eastern provinces but also other parts of the country with high prevalence of violence against women and involve local women organisations.

- The Ministry of Gender, Family and Children is drawing up essential legislation to reform the Family Code and implement the gender parity provision of the Constitution. Beyond technical advice, donors should support advocacy and awareness-raising programmes to make sure that these draft laws will be passed by parliament and signed into law.
- The plans of the Minister of Gender to reconstitute the Conseil national de la femme would need to be closely examined. Technical assistance provided to this plan should not detract from crucial donor support to local Congolese women non-governmental organizations.

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

- The illegal exploitation of natural resources in the eastern DRC benefits armed groups and rogue elements in the state security forces; it perpetuates the armed conflicts and is often accompanied by serious human rights violations, namely forced labour. Seriously addressing the illicit exploitation of natural resources in the DRC will require exporters and consumers of Congolese mineral products to step up their due diligence efforts and publicly disclose what steps they have taken to prevent the purchase of mineral ore or its products mined in conflict areas of the DRC. Similarly, it also requires to develop concurrently the same requirement for due diligence at the DRC state level, to build the necessary capacity at the national level and to identify what role international technical cooperation should play in supporting it. Technical assistance partners can help the Government implement the Extractive Industries Transparency Initiative, for which the DRC was accepted as a candidate country in February 2008, or similar accountability mechanisms that will help prevent illegal diversion of state revenues and increase the resources available to the State.
- With much of the international discourse focusing on illegal mining, many still fail to recognize the important role of local conflicts over land, exacerbated by several waves of displacement and returns. Beginning in provinces of particular concern such as North Kivu, community-based land commissions should be set up, involving traditional leaders, provincial state officials and community representatives, in particular also women, returnees and minority groups, to address local disputes over land. The commissions should be provided with the resources to offer compensation as a last resort where there are competing legitimate claims or where a redistribution of land to marginalized sections of society is necessary to resolve conflicts and ensure justice. An alternative would be to give this role to the justices of peace as described above. A thorough analysis of existing mechanisms of alternative dispute resolution based on customary law would be needed in order to set up a system within the framework of the State that is acceptable and supported by the population.

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

- The Government, in particular the Ministry of Social and Humanitarian Affairs and its provincial counterparts in the eastern DRC, has to assume its responsibilities

regarding protection and assistance for the internally displaced emanating from international and regional human rights treaties and the Protocol on Protection and Assistance to Internally Displaced Persons adopted at the International Conference on the Great Lakes Region which obliges the DRC to incorporate the United Nations Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) into its domestic law. As a first step the Government, with expert technical advice, should develop a legislative framework, a strategy and a plan of action for the implementation of these obligations. Meanwhile, the donor community should begin prioritizing support to vulnerable host communities in areas of refuge as well as early recovery activities in return areas.

- There is a risk that internally displaced persons cannot exercise their right to vote and be elected if the local elections planned for 2009 would take place before they can return. The National Election Commission, in cooperation with MONUC and other partners, should ensure registration of the displaced as voters and be supported to find ways to ensure (e.g. through provisions on absentee voting) that the displaced can in fact exercise their political rights.
- In addition, and also to build a more inclusive society generally, the Government should launch a campaign in the eastern DRC to provide national identification and electoral cards to anyone qualifying for DRC nationality under the new nationality law of 12 November 2004. Implementation should be guided by a rebuttable presumption that those who currently live or prior to the armed conflict have lived in the DRC are considered nationals of the DRC. Solving the problem of nationality of Kinyarwanda-speaking Congolese would enhance their sense of belonging, their participation in social life and contribute to reverse the widespread prejudice that this group is composed of ‘foreigners’.
- These initiatives should be complemented by local conflict resolution and ethnic reconciliation initiatives involving all sectors of society including women, returnees as well as IDPs and refugees awaiting their return.

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

- In line with its human rights obligations, the Government has to make efforts to progressively re-establish a functioning and accessible health system in the country, while ensuring minimum standards right away. It should prioritize immediate action to ensure that displaced populations have access to medical services, safe water and sanitation in order to avert the growing public health crisis. The specific health needs, especially those of particularly vulnerable groups, like women and children, need to be identified to ensure provision of adequate medical care and prevention of further health problems. In particular, urgent steps must be taken to ensure that fees do not become an obstacle for poor and vulnerable populations to access essential health care as such fees often are a key reason why persons with illnesses that could easily be treated die. The immediate abolishment of fees for forensic medical certificates for victims of sexual and gender-based violence should be a first step. The seven thematic special procedures call upon the donor community to continue supporting the national health system as a priority, in particular its support for groups in a vulnerable situation. In areas of crisis, relevant agencies should focus on improving coordination mechanisms to ensure adequate and prioritized response to the health crisis.

#### **8. Strengthening state and civil society structures to promote and protect human rights**

- As soon as legislation on an independent national human rights commission is adopted, donors should provide adequate technical advice and assistance to establish

the Commission and integrate it into regional and international networks of national human rights institutions. Within the commission, a human rights defenders focal point should be established whose tasks would include: investigating human rights violations against defenders; raising awareness on international and regional human rights instruments pertaining to the work of human rights defenders; ensuring that national legislation is in conformity with these instruments; making recommendations to the Government, Parliament and other state institutions with regard to the situation of human rights defenders, and following up on these recommendations; and offering legal assistance to human rights defenders.

- Parallel to that, the Ministry of Human Rights should be empowered to identify human rights trends -in consultation with civil society- and ensure that they are taking into account in the policy-making process at the national level. Donors should consider assisting the Ministry with funding to re-establish small offices in the provinces and enable them to deal with complaints of the population against government officials regarding human rights issues. Furthermore, the Ministry should be trained by OHCHR on drafting methodology to meet in a timely manner its reporting obligations before United Nations treaty bodies. The Ministry should also translate the Declaration on Human Rights Defenders in the main local languages and disseminate it within the state apparatus and civil society, and deliver awareness-raising training to the police, military and judicial officials on the role and activities of human rights defenders, including women defenders, with technical advice and assistance from OHCHR and NGOs.
- More generally, the emergence of a confident and coordinated civil society that can only prosper in a state of democracy, rule of law and full government commitment to individual freedoms and liberties should be fostered and supported. The Government should recognize the legitimacy of the work of human rights defenders, including women defenders, and acknowledge it as human rights work. It should further remove all obstacles that impede their work, protect them from reprisals, and take proactive measures to support their work. The adoption of national and provincial laws on the protection of human rights defenders, developed in consultation with civil society and on the basis of technical advice from relevant international agencies, would be a particularly strong signal. OHCHR, MONUC, and the European Union should continue their witness protection programme and expand its ambit to human rights defenders in all provinces.
- In addition, illegitimate restrictions on the exercise of the right to freedom of association should be lifted: when NGOs applying for registration comply with all administrative requirements, legal personality should be immediately granted to them. Furthermore, the regime of information governing the exercise of the right to freedom of peaceful assembly (article 26 of the Constitution) should be respected without any arbitrary interference from the executive. Finally, the draft bill on the organization and functioning of the Superior Council of Audiovisual and Communication, as well as the two draft bills contributing to the better exercise of the right to freedom of opinion and expression (notably by decriminalizing a number of press offences), should be adopted.
- Donors can assist these efforts by continuing to fund protection and empowerment programmes benefitting the fledgling community of local NGOs, in particular groups representing women or marginalized groups such as the BaTwa. Donors should also prioritize support for local organizations by earmarking a portion of their budget for direct support to such groups.

## **B. Recommendations on follow-up to this report**

- In the light of the large ambit of human rights challenges in the DRC, the seven thematic special procedures have focused on identifying priorities for government action and technical assistance within the limitations of their respective mandates, while also developing a few exemplary proposals that can be implemented in the short- to medium-term with little resources.
  - In conducting their work, the authors noted that despite extensive efforts of the donor community to technically assist the Government in improving the human rights situation, there are no benchmarks against which to measure progress achieved by the Government. Benchmarks, established by the United Nations in consultation with the Government, civil society and donors, would be an important accountability measure and also of help in steering donor priorities.
  - The seven thematic special procedures urge the Council to continue taking a leadership role in ensuring that the human rights dimension of the peacebuilding process in the DRC is duly addressed. The situation in the east of the country is characterized by systematic and gross human rights violations, in particular committed by armed groups controlling territory and the state security forces. Another military escalation in the Kivus – with potentially devastating human rights implications – was underway when this report was finalized. The authors therefore recommend devising a dedicated follow-up and monitoring mechanism that extends beyond the Universal Periodic Review Mechanism and ensures continued direct engagement with the Government and civil society. The Council should strongly consider creating a special procedures mandate on the human rights situation in the DRC, in particular areas affected or threatened by armed conflict. This would build on paragraph 6 of Council resolution 9/9 on the Protection of the Human Rights of Civilians in Armed Conflict, in which the Council calls upon States involved in such conflicts to facilitate the work of any mechanism that the Council may decide to establish, as and where appropriate, in response to such violations.
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