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الدورة الثالثة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان المدنية والسياسية والاقتصادية

والثقافية، بما في ذلك الحق في التنمية

تقرير المقررة الخاصة المعنية بحالة المدافعين عن حقوق الإنسان، السيدة مارغريت سيكاغيا*

إضافة

البعثة إلى جمهورية الكونغو الديمقراطية**

(٢١ أيار/مايو - ٣ حزيران/يونيه ٢٠٠٩)

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** يعمم الموجز بجميع اللغات الرسمية. ويعمم التقرير نفسه، الوارد في مرفق الموجز، باللغتين الإنكليزية والفرنسية.

موجز

أجرت المقررة الخاصة المعنية بحالة المدافعين عن حقوق الإنسان زيارة قطرية إلى جمهورية الكونغو الديمقراطية في الفترة من ٢١ أيار/مايو إلى ٣ حزيران/يونيه ٢٠٠٩، التقت خلالها بكبار المسؤولين الحكوميين ومجموعة واسعة من المدافعين عن حقوق الإنسان. وكان الغرض من الزيارة تقييم حالة المدافعين عن حقوق الإنسان في جمهورية الكونغو الديمقراطية في ضوء المبادئ المنصوص عليها في الإعلان المتعلق بحق ومسؤولية الأفراد والجماعات وهيئات المجتمع في تعزيز وحماية حقوق الإنسان والحريات الأساسية المعترف بها عالمياً (المشار إليه فيما بعد بالإعلان المتعلق بالمدافعين عن حقوق الإنسان).

وبعد الجزء التمهيدي من التقرير، تقدم المقررة الخاصة في الجزء الثاني وصفاً للإطار القانوني والمؤسسي لتعزيز وحماية حقوق الإنسان في جمهورية الكونغو الديمقراطية. وعلى الرغم من أن الإطار القانوني لحماية حقوق الإنسان قد تعزز بصورة تدريجية على مرّ الأعوام، فإنه لا يزال يعاني من ثغرات وأوجه نقص متعددة نتجت عن إضعاف أي فوائد يمكن أن يحصل عليها المدافعون عن حقوق الإنسان من التطورات الإيجابية. وفضلاً عن ذلك، تلاحظ المقررة الخاصة أنه توجد مؤسسات عديدة ترمي إلى دعم حقوق الإنسان وتؤثر، نظرياً، تأثيراً إيجابياً على عمل المدافعين عن حقوق الإنسان، لكن مآلها الفشل إن هي افتقرت للموارد المالية والبشرية الكافية وللدعم السياسي القوي.

وفي الفرع الثالث، تقدم المقررة الخاصة معلومات مفصلة عن التحديات الحالية التي يواجهها المدافعون عن حقوق الإنسان في البلاد في سياق ممارسة أنشطتهم المشروعة. وبعد أن تقدم المقررة الخاصة نظرة عامة عن المجتمع المدني في البلاد، تشير إلى تعرض المدافعين عن حقوق الإنسان للوصم وما يتصل بذلك من شعور بعدم الأمن، حيث يتعرضون للقتل والاختفاء والتعذيب والتهديد والاعتقال والاحتجاز التعسفيين، وللوضع تحت المراقبة، والمنع من السفر والتشريد أو النفي. وثمة سبب يبعث على قلق بالغ هو انتشار حالات إفلات سلطات الدولة وأفراد المجموعات المسلحة من العقاب على الانتهاكات التي يرتكبوها ضد المدافعين عن حقوق الإنسان. وأخيراً، تعرب المقررة الخاصة عن قلقها إزاء القيود غير المشروعة المفروضة على ممارسة الحق في تكوين الجمعيات، والحق في التجمع السلمي، والحق في حرية الرأي والتعبير.

وفي الفرع الرابع، تشير المقررة الخاصة إلى الدور الهام الذي يؤديه المجتمع الدولي في المشاركة في خلق بيئة آمنة للمدافعين عن حقوق الإنسان في جمهورية الكونغو الديمقراطية. وأخيراً، تقدم المقررة الخاصة في الفرع الخامس استنتاجاتها وتوصياتها لكي ينظر فيها جميع أصحاب المصلحة.

Annex

Report of the Special Rapporteur on the situation of human rights defenders on her mission to the Democratic Republic of the Congo (21 May – 3 June 2009)

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I. Introduction

1. Pursuant to General Assembly resolution 60/251 and Human Rights Council resolution 7/8, the Special Rapporteur on the situation of human rights defenders conducted an official visit to the Democratic Republic of the Congo from 21 May to 3 June 2009, at the invitation of the Government.
2. The Special Rapporteur also visited the country in her capacity as one of the seven thematic special procedures mandated to report on the progress made with regard to technical assistance to the Government and on the development of the situation in the east of the country, further to Council resolution 10/33 adopted in March 2009. A separate report, which should be read in conjunction with the present one, will be submitted to the Human Rights Council at its thirteenth session.
3. The Special Rapporteur was unable to undertake the visit jointly with Reine Alapini-Gansou, then Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights, due to calendar restraints, as initially planned. The Special Rapporteur still believes that joint visits between United Nations special procedures and regional mechanisms constitute a best practice for raising awareness about the situation of human rights defenders and mutually reinforcing each mandate, and she will pursue such collaboration.
4. The purpose of the visit was to assess the situation of human rights defenders in the Democratic Republic of the Congo in light of the principles set forth in 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 (hereinafter "the Declaration on human rights defenders" or "the Declaration"). An examination of the legal framework in the country, the institutional policies, and the mechanisms for promotion and protection of human rights were of particular importance to this assessment.
5. The Special Rapporteur would like to thank the Government for its ongoing cooperation with special procedures of the Human Rights Council, for extending the invitation to her, and for its collaboration prior to and during the mission. During her visit, she had the opportunity to meet with the Prime Minister; the Minister for Human Rights; the Minister for Gender, the Family and the Child; the Minister of Communications; the Advisor in charge of the judicial reform within the Ministry of Justice; the President of the Senate; the President of the National Assembly; the Head of the national police (Police Nationale du Congo, or PNC); and the Special Advisor to the President on security issues. The Special Rapporteur regrets that she was unable to meet the Minister of Justice, despite repeated requests.
6. In addition to Kinshasa, the Special Rapporteur visited Kananga (Western Kasai province) and Bukavu (South Kivu) where she met with the respective governors and local authorities, including the police and the military. Due to logistical constraints, she was unable to visit Kisangani (Oriental province) as initially planned. Throughout her stay in the Democratic Republic of the Congo, the Special Rapporteur met with a broad segment of civil society and with human rights defenders engaged in a wide range of civil, political, economic, social and cultural rights work.
7. The Special Rapporteur would like to thank all organizations and individuals who worked hard to coordinate her meetings with the defender's community. In particular, she would like to thank the Special Representative of the Secretary-General in the Democratic Republic of the Congo of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), his Deputy for Rule of Law, the Director of the United Nations Joint Human Rights Office (UNJHRO), his Deputy, staff in Kinshasa, Kananga

and Bukavu, and Heads of MONUC in Kananga and Bukavu, for the excellent support provided in organizing the visit.

II. Legal and institutional framework for the promotion and protection of human rights

A. Legal framework

1. Domestic level

(a) Constitution

8. The Constitution of the Democratic Republic of the Congo, adopted in 2005 and promulgated in 2006, expresses, in its preamble, the Congolese people's attachment to human rights and fundamental freedoms, as contained in the international legal instruments to which the country has acceded. It stresses that these rights and freedoms form part of the Constitution. Article 215 further provides that duly ratified or approved international instruments, once published, take precedence over national legislation.

9. Title II of the Constitution of the Democratic Republic of the Congo encompasses a set of human rights, with the first chapter devoted to civil and political rights and the second to economic, social and cultural rights. These rights include, inter alia, the right to equal treatment before the law (art. 12), the right to be free from discriminatory treatment based upon any grounds whatsoever (art. 13), the right to life and to physical and mental integrity (art. 16), the right to liberty of person (art. 17), the right to freedom of thought, conscience, or religion (art. 22), the right to freedom of opinion and expression (art. 23), the right to freedom of the press (art. 24), the right to freedom of association (arts. 25, 37 and 38), the right to freedom of assembly (art. 26), the right to freedom of movement (art. 30), the right to private property (art. 34), the right to work (art. 36), the right to strike (art. 39), the right to education (art. 43), the right to take part in cultural activity (art. 46), the right to health and food security (art. 47) and the right to adequate housing (art. 48).

(b) The 2001 law on freedom of association

10. Law No. 004/01 of 20 July 2001 on non-profit organizations and institutions of public benefit ("établissements d'utilité publique") governs the exercise of the right to freedom of association for non-governmental organizations (NGOs) working for the promotion and protection of human rights.

(c) The 2006 circular note on freedom of peaceful assembly

11. Article 26 of the 2006 Constitution replaced the principle of pre-required authorization to hold public demonstrations with the principle of pre-required notification. The note of the Ministry of Interior No. 002/2006 of 29 June 2006 on public meetings and manifestations, addressed to provincial governors and the city of Kinshasa, endorsed this new regime.

(d) The 1996 law on freedom of the press

12. In addition to articles 23 and 24 of the 2006 Constitution, article 8 of Law No. 96-002 of 22 June 1996 guarantees the freedom of the press and spells out the modalities of the

exercise of such freedom. A draft law amending Law No. 96-002, which proposes to decriminalize a number of press offences and to reduce the harshness of the current range of sanctions, has reportedly been prepared by the Government, but has not yet been submitted to the Parliament.

2. Regional level

13. The Democratic Republic of the Congo has ratified the African Charter on Human and Peoples' Rights, and its Protocol on the establishment of an African Court on Human and Peoples' Rights. Furthermore, it has signed the Protocol to the Charter on Human and Peoples' Rights on the Rights of Women in Africa.

14. The Democratic Republic of the Congo participated in the First Organization of African Unity Ministerial Conference on Human Rights in Africa, held from 12 to 16 April 1999 in Grand Bay, Mauritius. At the end of the conference, the Grand Bay Declaration and Plan of Action were adopted. Article 19 of the Declaration states that "[t]he Conference notes that the adoption of the Declaration on the Protection of Human Rights Defenders by the fifty-fourth session of the former United Nations Commission on Human Rights marks a significant turning point, and calls on African Governments to take appropriate steps to implement the Declaration in Africa".

15. The Democratic Republic of the Congo also participated in the First African Union Ministerial Conference on Human Rights in Africa, held on 8 May 2003 in Rwanda, at the end of which the Kigali Declaration was adopted. Article 28 of the Declaration provides that "the Conference... recognizes the important role of civil society organizations (CSOs) in general, and human rights defenders in particular, in the promotion and protection of human rights in Africa; calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development; and underscores the need for CSOs to be independent and transparent".

16. The International Organization of the Francophonie (IOF), of which the Democratic Republic of the Congo is a member State, adopted the 2000 Bamako Declaration. Article 4(D)(23) states that the IOF commits itself to "establishing, mainstreaming and strengthening national institutions of promotion of human rights, consultative or not, and to supporting the creation within national administrative structures dedicated to human rights, as well as the work of human rights defenders". In 2006, the IOF further adopted the Saint-Boniface Declaration. Article 31 of the Declaration states that Ministers and Heads of French-speaking State delegations "commit to promoting the work of human rights defenders and to ensuring their protection".

3. International level

17. As at August 2009, the Democratic Republic of the Congo is a State party to the major United Nations human rights treaties, including the International Covenant on Civil and Political Rights and its Optional Protocol concerning the right of individual petition; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict as well as on the sale of children, child prostitution and child pornography.

18. The Democratic Republic of the Congo is also a party to the Geneva Conventions of 12 August 1949 and to their Additional Protocols I and II, the Convention on the Prevention and Punishment of the Crime of Genocide, as well as to the Rome Statute.

B. Institutional framework

1. Ministry for Human Rights

19. The Special Rapporteur met with the Minister for Human Rights, who apprised her of the mandate of his Ministry. Pursuant to ordinance No. 08/074 of 24 December 2008, the functions of the Ministry are, inter alia, the promotion and protection of human rights and fundamental freedoms; the popularization and education of human rights; the monitoring of the respect for human rights; the examination of blatant cases of human rights violations; and the drafting and submission of initial and periodic reports to international and regional human rights treaty bodies. The Ministry for Human Rights has reportedly started to reactivate provincial representations throughout the country.

20. The Minister for Human Rights stated that the protection of human rights defenders is a daily concern for his Ministry. The Minister reportedly meets regularly with members of civil society. He stressed the necessity to sensitize all actors on the legitimate work of human rights defenders. To this end, he mentioned the relevance of passing a national law on the protection of human rights defenders. He further acknowledged the necessity to translate the Declaration on Human Rights Defenders into the four main local languages.

2. Ministry for Gender, Family and Children

21. The Special Rapporteur met with the Minister for Gender, Family and Children. The Ministry is in charge, inter alia, of studying and implementing all measures which aim at ending all forms of discrimination and violence against women, and ensuring the participation of women in the development of the nation and a significant gender representation within national, provincial and local institutions. The Minister for Gender, Family and Children mentioned the establishment in March 2009 of local women councils (*conseils locaux de la femme*), which are participatory mechanisms.

22. The Minister for Gender, Family and Children expressed her full support for the work of women defenders and for the adoption of a national law on the protection of human rights defenders.

3. The Inter-ministerial technical committee on drafting and following up on initial and periodic human rights reports

23. This committee was established in 2001 by a decree of the Minister for Human Rights. Besides the drafting of reports, the Committee is mandated to monitor the implementation of human rights treaties, as well as the recommendations emanating from human rights treaty bodies.

4. The human rights liaison entity (*entité de liaison*)

24. On 12 August 2009, the Prime Minister of the Democratic Republic of the Congo signed a decree on the establishment, organization and functioning of the human rights liaison entity, which is designed to be a framework for consultation and collaboration with regards to human rights in the country. This entity is composed of the Minister for Human Rights, the Minister of the Interior, the Minister of Defence, the Minister of Justice, the

Minister for Gender, Family and Children, members of Parliament, the Attorney General and the Heads of the PNC, the armed forces (FARDC) and the national intelligence agency, ANR (Agence nationale des renseignements), the Head of UNJHRO and his Deputy, and two civil-society representatives. At the time of drafting the present report, the decree had yet to be implemented by the Minister for Human Rights. The Special Rapporteur would like to be fully apprised on the achievements of this entity by the Government in March 2010.

5. Superior Council of Audiovisual and Communication

25. Article 112 of the 2006 Constitution allows for the establishment of a Superior Council of Audiovisual and Communication which mission is to “guarantee and ensure freedom and protection of the press, as well as of all means of mass communication, while respecting the law”. It monitors the respect of ethics with regard to information and equitable access for political parties, associations and citizens to official means of information and communication”. At the time of drafting the present report, the draft law on the organization and functioning of the Superior Council of Audiovisual and Communication had been passed by the National Assembly and the Senate, and was pending before the Supreme Court of Justice.

6. Legislative Human Rights Network

26. The Special Rapporteur held meetings with the President of the Senate, the President of the National Assembly and groups of Parliamentarians from the Governing party and opposition. The Special Rapporteur was informed of the creation of a human rights network within the national Parliament, composed of members of the Senate and the National Assembly. The mandate of this network is reportedly to alert Parliamentarians on serious human rights issues which require the urgent attention of the Parliament, and to initiate and/or support pertinent draft laws. While the Special Rapporteur was not apprised of the achievements of this network since its inception, she nevertheless thinks it has the potential to improve the situation of human rights defenders by channelling concerns on their situation.

7. Law enforcement authorities

27. The Special Rapporteur had the opportunity to meet the heads of the national and provincial PNC, heads of provincial FARDC, and the Special Adviser to the President on security issues.

28. The national head of the PNC in Kinshasa informed the Special Rapporteur that a human rights focal point within the police collaborates with all NGOs which are willing to work with the police. This is allegedly an opening on the part of the PNC. MONUC-Bukavu praised the provincial head of the police in Bukavu for its handling of public demonstrations, in close collaboration with MONUC-police.

29. The head of the military in Kananga mentioned the existence of a human rights focal point within the army, who briefs his hierarchy about grievances brought to his attention. He added that at each military parade, the commander delivers a message concerning respect for human rights and eradication of sexual violence. The heads of the military in Kananga and Bukavu acknowledged that soldiers sometimes commit human rights violations, and drastic action is taken against them. Training on the rule of law by MONUC was delivered to army officers and members of the military court. A military prosecutor (*auditeur de garnison*) in Kananga said that NGOs are important collaborators who report violations committed by soldiers to him, which triggers action from the court.

30. The Special Rapporteur was informed by the Special Adviser to the President on security issues that the intelligence service, ANR, has its own prerogatives, different from those of the police: ANR has the competence to arrest people because, according to the Special Advisor, the boundary between public security and State security is not clearly defined.

8. Follow-up committees on human rights violations

31. Two follow-up committees were established at the provincial level in a joint effort by MONUC, the PNC and the FARDC to look at complaints brought by civilians against Congolese law enforcement authorities. These committees are supposed to meet once a month, and a monthly report is normally prepared by both committees.

9. Judicial system

32. The Special Rapporteur was briefed by the advisor in charge of judicial reform within the Ministry of Justice on the ongoing judicial reform in the country. Law No. 08/013 of 5 August 2008 established a higher judicial committee. A Supreme Civil Court (Cour de cassation) and a Supreme Administrative Court (Conseil d'Etat) are still to be established. The Plan for the Reform of the Justice System contains a human rights section, and specifically mentions the work of defenders.

C. Shortcomings in the legal and institutional framework

1. Shortcomings in the legal framework

33. While the legal framework for the protection of human rights has been progressively strengthened over the years, it remains marred by severe gaps and shortcomings that result in the diluting of any benefits that human rights defenders could draw from positive developments. Indeed, the absence of a specific legal framework protecting human rights defenders contributes to a large extent to their highly precarious situation in the Democratic Republic of the Congo.

34. The Special Rapporteur firmly believes that the adoption of a national law on the protection of human rights defenders, including women defenders, will certainly enhance and give legitimacy to their work.¹ The Special Rapporteur voiced her concern in that regard with the President of the National Assembly, the President of the Senate and groups of Parliamentarians from the governing party and the opposition. She welcomed the acknowledgement made by the President of the National Assembly and the President of the Senate of the necessity to adopt such legislation, and was encouraged by their willingness to examine a future draft law during their next session. To this end, the Special Rapporteur called on human rights defenders to unite their efforts in proposing a sound draft law on the protection of human rights defenders to Parliamentarians willing to sponsor such initiative, in consultation with key international stakeholders, including the UNJHRO. This is a unique opportunity for human rights defenders to initiate a process which aims at concretely ensuring a safer, more enabling and more accepting environment for their work.

35. The Special Rapporteur further believes that national legislation on the protection of human rights defenders is by no means incompatible with similar initiatives at the

¹ As already stated in the combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country (A/HRC/10/59) of 5 March 2009, para. 114.

provincial level. In that regard, she welcomed the recent attempt to adopt a similar law in the South Kivu province, and called on provincial parliamentarians to adopt a revised text in the near future, in close consultation with civil society and UNJHRO. A clear reference should be given regarding the legitimate work of women defenders. Such adoption at the provincial level will be landmark setting an example, not only for the whole country, but also for the African continent.

36. While meeting Parliamentarians, the Special Rapporteur inquired about the status of the draft law on the establishment of a national human rights commission in the Democratic Republic of the Congo. She was informed that the draft law was adopted by the Senate in July 2008, and was still pending before the National Assembly. At the time of drafting the present report, no progress had reportedly been made towards the adoption of this law. The Special Rapporteur calls upon the National Assembly to finalize such adoption as soon as possible. The Special Rapporteur believes that the adoption of this law has the potential to support and strengthen the work of human rights defenders, should the Paris Principles relating to the status of national human rights institutions be fully respected.

37. Another serious concern for the Special Rapporteur is the absence of a legal framework governing the activities and prerogatives of the ANR. From the discussions the Special Rapporteur had with different parties, including the Special Adviser to the President on security matters, it appears that the boundaries between the powers and prerogatives of the police, military and ANR are not clear. Human rights defenders are often held incommunicado in ANR detention facilities, with no access to UNJHRO officers and others, and with no judicial oversight, despite the fact that the President of the Democratic Republic of the Congo issued a directive on 5 July 2005 ordering all security forces, intelligence services and judicial authorities to provide unhindered access to UNJHRO staff. In fact, ANR assumes several functions which are usually carried out by the police and military services in many countries. The adoption of a legal framework for the activities and prerogatives of ANR should be in accordance with the rule of law.

38. The Special Rapporteur voices further concern about the lack of implementation at the legislative level of article 156 of the 2006 Constitution which limits the jurisdiction of military courts to offences committed by members of the armed forces and the national police. This important constitutional provision has yet to be incorporated into the Military Judicial Code, which provides the military justice system with jurisdiction over civilians, and therefore human rights defenders, in several instances.

39. At the time of drafting the present report, it was brought to the attention of the Special Rapporteur that journalists, and presumably members of NGOs, who report on conflict-related issues or criticize the army, may be tried before a military court, under article 87 of the Military Criminal Code (“insult to the flag or to the army”). The persons condemned face a prison sentence of six months to five years, and lose their media accreditation. The Special Rapporteur expresses great concern about this new practice which may be very harmful to the work of human rights defenders.

40. Finally, there is currently no legislation on the protection of victims and witnesses in the Democratic Republic of the Congo. The Special Rapporteur believes that the best way to remedy this gap is to incorporate the Rome Statute, which provides in exhaustive terms for such protection in its article 68, into domestic law.

2. Shortcomings in the institutional framework

41. The Special Rapporteur notes the existence of several institutions aimed at upholding human rights, which on paper may have a positive impact on the work of human rights defenders but, devoid of adequate financial and human resources or strong political support, are doomed to failure. There also seems to be duplication of work between these

institutions in several areas, which might be problematic given the lack of resources. Furthermore, such a proliferation of human rights institutions may have a detrimental effect in encouraging competition among these institutions for funds from donors. Streamlining of and coordination among these institutions, at both central and provincial levels, is therefore important. In this context, it is important to bear in mind the independence of the future National Human Rights Commission in accordance with the Paris Principles.

42. The Special Rapporteur welcomes the work undertaken by the Ministries for Human Rights and Gender, Family and Children respectively, but regrets that they lack resources and most of all visibility and support within the Government. Both ministries have insufficient human and financial capacity to properly identify human rights trends and lack enough political support to make sure they are taking into account in the policy-making process at the national level. Furthermore, it appears that the work of provincial representatives of the Ministry for Human Rights, as well as that of the local women's councils of the Minister for Gender, Family and Children, is not always fully respected or appreciated by local authorities.

43. Concerning the inter-ministerial technical committee on the drafting and follow-up to human rights reports, its drafting methodology to meet in a timely manner the reporting obligations of the Government to United Nations treaty bodies must be improved, with the support of the UNJHRO. This also applies to the Ministry for Human Rights, which has a severe backlog of communications sent by special procedures to which it has not yet responded.

44. The Special Rapporteur notes the establishment of the human rights liaison entity, and the future establishment of the national human rights commission. She, however, fears that these institutions may face the same fate as the two ministries. It is imperative that a substantive budget be allocated to the national human rights commission to enable it to fulfil its mandate. Similarly, it is important to support the human rights liaison entity to allow it to operate.

45. With regards to shortcomings in the performance of law enforcement authorities and in the judicial system, the Special Rapporteur stresses the main concerns raised by the seven thematic special procedures in their 2009 combined report on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the East of the country.² She is further concerned that the human rights section of the Plan for the Reform of the Justice System is neglected by donors.

46. With regard to sensitization on the work of human rights defenders, the Special Rapporteur was informed by the Ministry for Human Rights, the police and military that no training on the Declaration on Human Rights Defenders or the legitimate work of defenders has been provided for security forces or magistrates. The Special Rapporteur believes that such sensitization is essential to make the environment of defenders more enabling. The Special Rapporteur is of the opinion that the Ministry for Human Rights, with the support of the UNJHRO and civil society, is the key in this sensitization process.

47. From the discussions that the Special Rapporteur had with the military and the police, it was not clear how the police and the military address the situation of women defenders who are most at risk.³ The immediate deployment of additional female police and military officers is much needed, together with specific protective measures.

48. One major problem with regard to the follow-up committees which was brought to the attention of the Special Rapporteur is that they do not deal specifically with violations

² A/HRC/10/59, paras. 91-98.

³ See paras. 74-79.

committed against human rights defenders. Another recurring problem relates to the fact that victims of violations have difficulties identifying the perpetrators. Therefore, it is of the utmost importance to give a sense of responsibility to commanders, who must identify these perpetrators. Finally, it seems that these committees do not meet on a regular basis and follow-up on cases registered is inconsistent, because of a lack of will imputable to most FARDC and PNC authorities.

III. Current challenges faced by human rights defenders

A. Overview of the civil society in the Democratic Republic of the Congo

49. In the course of her visit, the Special Rapporteur had the opportunity to engage with members of civil society active in the field of civil, political, economic, social and cultural rights. These included members of non-governmental organizations, women human rights defenders, journalists, lawyers, trade unionists, teachers, church workers, land activists, aid workers, health workers, development actors and defenders promoting good governance. Meetings were organized in Kinshasa, notably with the Synergie des ONG des droits de l'homme (a coalition of the 13 largest NGOs in the country), in Kananga and Bukavu, during which human rights defenders were able to voice their concerns.

50. The Special Rapporteur was informed that NGO networks, including networks on the protection of victims, witnesses and defenders, are found in the capital and in all provinces. These networks are generally fairly well organized; however, most of these networks suffer from isolation. The NGO network in Kinshasa, which meets the UNJHRO once a month, reportedly hardly speaks about the situation of defenders in remote places. Furthermore, bar associations, which are influential networks of defenders, are not present outside provincial capitals. It is of the utmost importance that a strong, coordinated and sustainable national network of NGOs is developed so as to increase the protection and safety of all defenders present in the country. This is particularly important considering the fact that MONUC will one day leave the country, when its mission is over.

51. Human rights defenders suffer from a chronic lack of resources and funding, especially those who operate outside the capital and the eastern provinces where the international community mostly concentrates its efforts in assisting civil society. Such a situation generates harsh competition for funding among NGOs. Defenders throughout the country are in need of capacity building and empowerment (communication facilities, Internet access, offices, etc.). To a large extent, empowering human rights defenders contributes to increasing their protection.

52. The Special Rapporteur acknowledges the lack of professionalism of a number of human rights organizations and of some journalists, which impacts negatively on the work of credible organizations and media, and more broadly weakens civil society as a whole. The Special Rapporteur also regrets that some NGOs do not cooperate actively with the follow-up committees. In Kananga, it was reported that NGOs hardly submit any cases of human rights violations to these committees. This is a lost opportunity to voice concern directly with authorities.

B. Stigmatization of human rights defenders and related insecurity

53. The Special Rapporteur pays tribute to human rights defenders for their courage while operating under very difficult conditions, especially in the eastern part of the country. Defenders in the Democratic Republic of the Congo face numerous challenges that

seriously impede their legitimate activities: they are killed, disappeared, tortured, threatened, arbitrarily arrested and detained, under surveillance, banned from travelling, displaced or forced into exile. Perpetrators of violations against defenders range from police, military and intelligence officers to members of armed groups.

54. Pascal Kabungulu, Polycarpe Mpoy, Franck Ngycke and his wife H  l  ne Mpaka, Bapua Mwanmba, Serge Maheshe, Didace Namujimbo and Georges Kateta have paid the highest price for their peaceful engagement in promoting and defending human rights. At the time of writing this report, the Special Rapporteur was very saddened to learn of the death of another journalist, Bruno Koko Chirambiza, in Bukavu (South Kivu) on 23 August 2009. This latest murder tragically illustrates the extremely precarious situation of human rights defenders operating in the east of the Democratic Republic of the Congo, a region which has been torn by armed conflicts for years.

55. The Special Rapporteur is deeply concerned about the ongoing stigmatization by authorities in the capital and in provinces, as well as by non-State actors, of defenders who are seen as “enemies” or “opponents”. While such stigmatization is largely deliberate, it appeared that several State authorities were unaware of the definition of human rights defenders, i.e. anyone who, individually or in association with others, acts to promote or protect human rights.⁴

56. The Special Rapporteur was notably troubled by the statement of the Minister of Communication on 28 July 2009 at a press conference in Kinshasa during which he labelled three international human rights NGOs, namely Human Rights Watch, the International Federation of Human Rights Leagues (FIDH), and Global Witness, as “humanitarian terrorists”, following the publication of reports by these NGOs. This statement is extremely worrying and epitomizes the stigmatization suffered by human rights defenders in the country.

1. Repression against defenders denouncing human rights violations

57. Human rights defenders, and in particular journalists, who report on human rights abuses committed by State and non-State actors are killed, tortured, threatened or arbitrarily arrested and detained, their offices are raided and their equipment confiscated or damaged.

58. In Kinshasa, defenders who denounce the high incidence of arbitrary detention, torture and the current climate of impunity in the capital are particularly at risk.

59. On 15 March 2009, following the organization of a press conference at the premises of RENADHOC (R  seau national des ONG des droits de l’homme de la R  publique D  mocratique du Congo) in Kinshasa concerning the then inter-institutional tension in the country, Floribert Chebeya Bahizire, Executive Director of the Voix des Sans Voix pour les Droits de l’Homme (VSV) and National Executive Secretary of - RENADHOC, Dolly Ibefo Mbfunga, Executive Deputy Director of VSV, Donat Tshikaya, staff member of RENADHOC, and Coco Tanda, video cameraman at Canal Num  rique T  l  vision (CNTV), were arrested by members of the PNC, brought to the headquarters of the ANR and then detained in Kin Mazi  re prison. Computers and video cameras were reportedly seized. Those arrested were released on 17 March. The objective of their press conference was to announce a peaceful demonstration in front of the Parliament, organized by the Synergie coalition of human rights NGOs, with the intention of delivering a memorandum to the Presidents of the Senate and National Assembly concerning the “preservation of the democracy in the DRC”.

⁴ Article 2 of the Declaration on Human Rights Defenders.

60. In South-Kivu, several journalists have been killed these last few years because they denounced acts of violence in the region. On 21 November 2008, Didace Namujimbo, a journalist for Radio Okapi, was shot in the head near his home in Bukavu. Local authorities immediately opened an investigation but were unsuccessful in identifying the perpetrators or the persons who ordered the murder.

61. In 2008, in Bukavu, the UNJHRO pointed out tensions surrounding the trial at the appeal level for the murder of Serge Maheshe, another journalist with Radio Okapi killed on 13 June 2007. In March 2008, several NGO members observing the trial were subjected to intimidation by the superior military court (*auditeur militaire*) for highlighting violations of the right to a fair trial. In April 2008, four observers received anonymous death threats via phone text messages from the same telephone number: Sophie Roudil of NGO Protection Internationale, Jean Bedel, a lawyer and member of Pacte international pour la protection des journalistes, Jean-Paul Ngongo, a member of Voix des sans voix, and Dieudonné Sango, vice-president of the Réseau provincial des organisations de droits de l'homme de la RDC (REPRODHOC).

62. On 3 April 2008, Georges Kapiamba, a lawyer and Vice-President of ASADHO/Katanga, received death threats, following the joint press release ASADHO issued with two other NGOs on the decision of the provincial authorities of Katanga to prevent them from going to Kilwa. There, they were to meet civilian victims from demonstrations that were violently quashed by law enforcement authorities in October 2004. Following the issuance of this press release, Mr. Kapiamba was interviewed by the BBC, during which he criticized violations of the rights of Kilwa victims by the Congolese justice system.

63. In October 2008, church workers from the Dungu-Doruma diocese denouncing human rights violations committed against the civilian population by LRA troops present in the Garamba park (killings, rapes, disappearances, forced recruitment, looting, etc.), and who were sheltering this population, were attacked.

64. In Orientale province, Georges Mwamba Wa Mwamba, from the NGO Groupe Lotus, was arrested when he tried to deliver an invitation for a university event to the Director of ANR in Kisangani. He was ill-treated while in detention by ANR agents and accused of “espionage” and “subversion”, charges which were later changed to an “attempt to set fire” and “communication with a political prisoner”. He was released on 10 June 2008.

2. Threats against NGOs and defenders fighting impunity and supporting the work of the International Criminal Court

65. In 2008, threats against human rights defenders engaged in the fight against impunity in the Democratic Republic of the Congo intensified. Following the arrest and indictment of Jean-Pierre Bemba in May 2008, four national NGOs were threatened by people close or belonging to the Mouvement de Libération du Congo, or MLC), then led by Jean-Pierre Bemba, former candidate in the 2006 presidential elections. Dismas Kitenge, President of the Groupe Lotus and vice-president of FIDH, was accused on 28 May 2008 of having “sold Bemba to the FIDH and to the West”, and was warned that he would face consequences if Bemba was condemned. Furthermore, in the Equateur province, where Jean-Pierre Bemba is from, NGOs denouncing arbitrary arrests and detentions of MLC members are constantly harassed by authorities who accuse them of being pro-Bemba.

66. In June 2008, members of the Union des Patriotes Congolais threatened several members of the NGO Justice Plus working in Bunia following their public stand concerning the ICC’s decision of 13 June 2008 to suspend the proceedings against Thomas Lubanga. Two defenders were forced to leave Bunia in fear of their safety.

67. In July 2008, members of the family of Carine Bapita, member of the NGO Femmes et enfants pour les droits de l'homme (FEDHO) and lawyer defending victims before the ICC in the case of Thomas Lubanga, were forced to go into hiding after receiving threats.

68. The Special Rapporteur was recently informed of the case of Rebecca Agamile, treasurer for Solidarité Féminine pour la Paix et le Développement (SOFEPADI), an NGO which promotes and protects women's rights in Bunia (Oriental province). On 1 October 2009, a group of unidentified armed men threatened to kill and rape Ms. Agamile and her 16-year-old daughter, allegedly because of the work of SOFEPADI in cooperating with the ICC and sharing information about human rights violations in the Democratic Republic of the Congo.

3. Harassment of defenders protecting economic, social and cultural rights

69. Human rights defenders who denounce the damaging effects of the illegal mining and logging activities of private actors - with the reported collusion of local authorities - as well as cases of corruption, face threats and are hampered in their work.

70. In March 2008, Hubert Tshiswaka, then the director of Action contre l'impunité et pour les droits de l'homme (Action against Impunity and in Support of Human Rights), based in Lubumbashi (Katanga province), and a member of the Open Society Institute for Southern Africa, was arrested by the ANR for having distributed a flyer denouncing alleged embezzlement by local authorities. He was released shortly afterwards.

71. In early January 2009, Nginamau Malaba, president of the trade union within the Ministry of National Economy and Foreign Trade, was arrested by five ANR agents while he was about to distribute a memorandum in which he denounced the alleged embezzlement of public funds by the Minister of National Economy and Foreign Trade. On 11 and 16 January 2009, Richard Kambale Ndayango and Israël Kanumbaya Yambasa, two other trade unionists who were signatories of the memorandum, were arrested. Messrs. Malaba, Ndayango and Yambasa, who were released on 23 March, were reportedly ill-treated while in detention, but reportedly no investigation has been conducted in order to identify and prosecute the perpetrators.

72. The Special Rapporteur was recently informed of the sentencing to a one-year suspended prison sentence for "threat to national security" and "defamation" of Golden Misabiko, president of the Katanga section of Association africaine pour la défense des droits de l'Homme (ASADHO/Katanga, or African Association for the Defense of Human Rights) who was arrested on 24 July 2009 following the publication of a report by 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).

73. On 16 and 17 September 2009, Emmanuel Umpuda, executive director of ACIDH, Timothée Mbuya, vice-president of ASADHO/Katanga, Grégoire Mulumba, member of the Centre des droits de l'Homme et du droit humanitaire, and Dominique Munongo, member of the Centre de développement pour la femme, faced acts of reprisals from unknown authors because of their endorsement of the above-mentioned ASADHO/Katanga report.

4. Plight of women human rights defenders

74. During her visit, the Special Rapporteur met several women human rights defenders active in promoting and protecting women's rights in the Democratic Republic of the Congo, and in supporting victims of sexual violence. As in each mission she has

undertaken, the Special Rapporteur was genuinely impressed by their courage and remarkable commitment in promoting and defending women's rights.

75. She expresses serious concern about the plight of women human rights defenders in the Democratic Republic of the Congo - especially those operating in rural areas - who face the same gamut of human rights violations as their male colleagues, in addition to gender-specific violations. Women defenders are perceived by State authorities, and largely by the public, as rebelling against the society, bearing in mind the legal and de facto discrimination against women. Authorities often fail to take human rights violations committed against women defenders seriously. Regrettably, women defenders may face even more discrimination than their male colleagues. Finally, women human rights defenders tend to be less aware of their defender status than their male colleagues.

76. Women defenders have repeatedly risked their lives when denouncing sexual violence and those operating in the east of the country are certainly most at risk. On 18 May 2008, Wahibu Kasuba, a member of *Voix des sans voix ni liberté* and a social worker at the centre for victims of sexual violence in Panzi, was killed in South-Kivu because of her human rights activities. In March 2008, Therese Kerumbe, a member of the NGO SOFEPADI, and close collaborator of Julienne Lusenge, coordinator of SOFEPADI, received threats from unknown individuals looking for Ms. Lusenge, who was then abroad. On 6 April 2008, the house of Julienne Lusenge was raided by a group of armed militia men who were looking for her. The requests for protection by SOFEPADI to local authorities were reportedly ignored, and Ms. Kerumbe was forced to leave Bunia following the renewal of threats against her.

77. In July 2008, staff members of the psycho-medical centre for the rehabilitation of victims of torture (CPMRVT/Kitshanga) of the NGO *Solidarité pour la promotion sociale et la paix* (SOFROP) were threatened by members of the political party *Congrès national pour la Défense du Peuple* (CNDP), who wanted to obtain the medical registries containing the names of victims of sexual violence treated in the centre.

78. During the night of 7 and 8 November 2008, Noella Usumange Aliswa, a member of SOFEPADI, and her family were attacked at their home in Bunia, and were seriously injured. This attack was probably linked to the work of SOFEPADI in support of female victims of the conflict. Two militiamen were arrested but then released after reportedly paying a sum of money.

79. These are only a few of the cases brought to the attention of the Special Rapporteur during her mission, which illustrate the difficulties encountered by women defenders in their crucial work. Women defenders in the Democratic Republic of the Congo are in dire need of protection. The Special Rapporteur expresses her full support for their commendable work, and reiterates that women defenders need "specific and enhanced protection as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and accepting one".⁵

C. Culture of impunity for abuses committed against defenders

80. Another cause of great concern is the widespread impunity for violations committed against human rights defenders by State authorities and members of armed groups. Complaints filed by human rights defenders are seldom thoroughly investigated or expose

⁵ Report of the Special Rapporteur on the situation of human rights defenders to the General Assembly (A/63/288), 14 August 2008, para. 34.

defenders to reprisals from the alleged perpetrators. In Bukavu, the Special Rapporteur met with the provincial Prosecutor General and raised the issue of the lack of diligence of his office in investigating violations against human rights defenders. She also mentioned the issue of material evidence since threats by phone text messages are not considered as admissible by the judicial authorities in charge of the prosecution. The Special Rapporteur calls on the authorities to systematically seek the names of the authors of threatening phone text messages from the telephone companies, and to prosecute them.

81. The Special Rapporteur is further troubled that trials often fall short of international fair trial standards, such as the trial on the killing of Serge Maheshe. This trial was marred by several procedural irregularities at the first and appeal levels, and lawyers, journalists and national and international observers were intimidated by reprisal for their human rights activities, as highlighted by UNJRH in a special report.⁶

82. The Special Rapporteur is particularly concerned about the forthcoming trial for the murder of Didace Namujimbo. At the time of drafting the present report, no starting date for the trial had been set. The Special Rapporteur wants to stress that this trial should be absolutely free of irregularities, and should be seen as a test case for the Democratic Republic of the Congo of its will to put an end to impunity.

83. The Special Rapporteur highlights that justice is crucial for sustaining peace and encouraging and uplifting the work of human rights defenders.

D. Illegitimate restrictions on the exercise of fundamental rights

84. The Special Rapporteur expresses further concern about illegitimate restrictions on the exercise of fundamental rights in the country. Despite meeting all administrative requirements, several NGOs have not been granted legal personality, and therefore are unable to file complaints before courts and receive funding from donors. In fact, 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 receive the final decree granting them legal personality. This situation has been used by authorities to discredit them. On 9 September 2008, the Minister of Justice published a list in the national press of 140 NGOs operating illegally, despite the fact that they had received authorisation to function.

85. During the various meetings the Special Rapporteur held with civil society, it appeared that the exercise of the right to peaceful assembly has also proven to be problematic: the regime of notification introduced by the 2006 Constitution of the Democratic Republic of the Congo is often not respected in practice and defenders need to seek the authorization of the authorities to hold demonstrations. The Special Rapporteur reminds the authorities that “the right to protest is an essential element of the right to participation in any democratic dispensation, and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness”.⁷

86. As for the exercise of the right to freedom of opinion and expression, the environment in which journalists operate is largely hostile: journalists who criticize the Government or advocate for good governance are targeted. The media are sometimes suspended, and authorities discriminate against journalists who do not support the

⁶ UNJRO special report, “Observation report on the appeal proceedings against the presumed perpetrators of Serge Maheshe’s assassination”, November 2009.

⁷ Report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly (A/61/312) of 5 September 2006, para. 56.

Government. On 9 September 2008, the Minister of Communication signed a decree prohibiting the broadcasting of five television channels and two radio stations which reported on human rights violations committed by both sides in the conflict in the East of the Democratic Republic of the Congo. The Government accused them of organizing propaganda and supporting the political opposition. On 26 July 2009, the Congolese authorities interrupted the signal of Radio France International (RFI), accusing the radio service of destabilizing the Democratic Republic of the Congo by broadcasting “untrue and unconfirmed” information related to the conflict. In addition, journalists often censor themselves for fear of reprisals. Finally, journalists are denied access to information by authorities, especially when the information is deemed sensitive. This is a real problem since journalists may report wrong information in good faith. The Minister for Communications acknowledged that the issue of access to information is a serious issue. The Special Rapporteur calls upon him to tackle all the above-mentioned issues appropriately.

IV. Role of the international community in protecting human rights defenders

87. The Special Rapporteur met with the Special Representative of the Secretary-General in the Democratic Republic of the Congo, his Deputy for Rule of Law, the Director of the UNJHRO and his Deputy. The Special Rapporteur also met with representatives of United Nations agencies and diplomatic missions present in the country.

88. The Special Rapporteur commends the work of the UNJHRO, in particular the Protection Unit, which ran the Protection of Victims, Witnesses and Human Rights Defenders programme, funded by the European Union (EU), until its closure in March 2009. The programme was then absorbed by MONUC through 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 DRC. The Special Rapporteur commends the important work of human rights officers from the Protection Unit in the capital and provinces. This Unit constitutes best practice within the United Nations Department of Peacekeeping Operations, and should be replicated in other missions.

89. The Special Rapporteur also supports the work of the United Nations Protection Cluster chaired by the Office of the United Nations High Commissioner for Refugees (UNHCR) and composed of several components of MONUC (including UNJHRO), United Nations humanitarian, human rights and development agencies as well as NGOs active in protection. However, the Special Rapporteur regrets the reported lack of active participation of civil society in the Protection Cluster.

90. Finally, the Special Rapporteur welcomes the role played by diplomatic missions in assisting the Democratic Republic of the Congo in support of human rights defenders. With respect to diplomatic missions of the EU, the Special Rapporteur welcomes a series of positive actions with regards to the situation of defenders, notably in relation to the cases of Pascal Kabungulu, Serge Maheshe and Didace Namujimbo. EU diplomatic missions publicly condemned the killing of Didace Namujimbo, publicly denounced the threats made against observers of the Serge Maheshe trial, and appointed a diplomat to the sessions of the appeal trial. The Special Rapporteur further welcomes the establishment of the EU Human Rights Group, which brings together diplomatic missions and NGOs on a monthly basis to discuss the overall human rights situation in the country. However, it was brought to the attention of the Special Rapporteur that the Declaration on Human Rights Defenders, the EU Guidelines on Human Rights Defenders, the Manual for the EU Guidelines on

Human Rights Defenders, and the EU local implementation strategies for the Democratic Republic of the Congo⁸ (finalized in July 2008) may not be sufficiently known to all EU missions.

V. Conclusions and recommendations

A. Conclusions

91. Following decades of dictatorship, the Democratic Republic of the Congo is engaged in a political, economic and social transition. However, a conducive environment in which human rights defenders can operate has yet to fully emerge. The Special Rapporteur commends the political will of the Government to build a modern democratic society, and in particular the efforts of the Ministers for Human Rights and Gender, Family and Children, who, despite meager resources and limited political support, are trying to improve the prospects for the promotion and protection of human rights. However, these Government efforts are clearly not enough, given the magnitude of the violations suffered by human rights defenders, including women defenders, in the Democratic Republic of the Congo.

92. The Special Rapporteur stresses that human rights defenders are crucial and play a major role in the democratization process in the country. The Government of the Democratic Republic of the Congo must create a space for human rights defenders, notably by giving recognition to their legitimate work, and establishing a sustainable dialogue with them in all provinces, so as to put an end to their stigmatization. The culture of impunity which currently prevails in the country must finally stop.

93. The forthcoming local and presidential elections generate fear and anxiety among the human rights defenders community. The Government of the Democratic Republic of the Congo will have to fully allow human rights defenders to monitor these elections, which will echo its commitment to the principles of democracy and human rights.

94. The Special Rapporteur looks forward to a continued constructive dialogue with the Government on the situation of human rights defenders in all parts of the country. She calls on the UNJHRO, United Nations agencies and other international actors to continue assisting the Government of the Democratic Republic of the Congo in fulfilling its human rights obligations, with a view to ensuring a better environment for human rights defenders.

B. Recommendations

Recommendations for the consideration of the Government

General

95. **The Special Rapporteur recommends that the Government:**

⁸ Pursuant to EU Council's Conclusions on Human Rights and democratisation in third countries, 2839th Council meeting, general affairs, 10 December 2007, para. 20.

- Take concrete steps to give legitimacy to the work of human rights defenders, including women defenders, and to acknowledge it as human rights work;
- Support and foster the emergence of a confident and coordinated civil society that can only prosper in a state of democracy, rule of law and full government commitment to individual freedoms and liberties;
- Engage in a constructive and sustained dialogue with civil society to improve the situation of defenders on the ground;
- Recognize human rights work and criticism of the Government and its officials as a natural part of a democratic society;
- Decriminalize press offences;
- Lift illegitimate restrictions on the exercise of the right to freedom of association by immediately granting legal personality to NGOs which comply with all administrative requirements;
- Respect the regime of notification governing the exercise of the right to freedom of peaceful assembly without any arbitrary interference from the Executive power;
- Enable human rights defenders to access information in order for them to report accurately;
- Translate the Declaration on Human Rights Defenders into the main local languages and disseminate it within the State organs, in particular within the police force, the military and the judiciary, and within the civil society;
- Deliver sensitization training to the police, military, intelligence, and judicial officials the role and activities of human rights defenders, including women defenders, with technical advice and assistance from the UNJHRO and NGOs;
- Fully involve human rights defenders in the monitoring of the forthcoming local and Presidential elections.

Response to violations

96. The Special Rapporteur recommends that the Government:
- Condemn publicly the killing of human rights defenders as well as all other serious human rights violations against them;
 - Make the fight against impunity for violations against human rights defenders a priority;
 - Investigate all human rights abuses against defenders, hold fair trials of alleged perpetrators and sentence them if convicted;
 - Take proactive measures to ensure the physical and psychological integrity of human rights defenders;
 - Conduct an in-depth and independent investigation into the killing of Didace Namujimbo with a view to bringing those responsible to trial as quickly as possible, conduct the trial in accordance with international fair trial standards, and ensure that lawyers and observers of the trial can carry out their activities safely;
 - Ensure that the retrial in the killing of Serge Maheshe at the highest level take place without undue delay and that it fully meet national and international

standards on the right to fair trial, and open investigations into the threats received by lawyers and observers of the trials at the first and appeal levels;

- Incorporate the Rome Statute ratified by the Democratic Republic of the Congo into domestic law, and implement the provision pertaining to the protection of witnesses and victims;
- Grant access for the UNJHRO to all detention facilities, including ANR.

Structures

97. The Special Rapporteur recommends that the Government:

- Adopt national and provincial laws on the protection of human rights defenders, with a specific reference to the work of women human rights defenders, developed in consultation with civil society and on the basis of technical advice from relevant international agencies;
- Finalize the adoption of the law establishing a national human rights commission, which fully complies with the Paris Principles; establish a human rights defenders focal point within the commission 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, Legislature 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;
- Reform the justice and security sectors as laid out in the report of the Human Rights Council's seven thematic procedures of March 2009 on technical assistance to the Government and the urgent examination of the human rights situation in the East of the country;
- Adopt a legal framework for the activities and prerogatives of the intelligence services (ANR), in accordance with the rule of law;
- Adopt the draft bill on the organization and functioning of the Superior Council of Audiovisual and Communication, as well as the two draft bills intended to further facilitate the exercise of the right to freedom of opinion and expression (notably by decriminalizing press offences);
- Empower, both financially and politically, the Ministry for Human Rights to identify human rights trends - in consultation with civil society - and ensure that they are taken into account in the policy making process at the national level; strengthen provincial representations to make them a channel of communication for defenders on the ground;
- Set up parliamentary networks on human rights in all provinces;
- Incorporate article 156 of the 2006 Constitution into the Military Judicial Code;
- Continue cooperating with special procedures of the Human Rights Council, including through the implementation of resolution 10/33 of the Council, and extend a standing invitation to Special Procedures for country visits;
- Substantively respond in a timely manner to all communications sent by special procedures.

Recommendations for the consideration of the UNJHRO (MONUC and OHCHR)

98. **The Special Rapporteur recommends that UNJHRO:**

- Condemn publicly the killing of human rights defenders as well as all other serious human rights violations against them;
- Increase the staffing and financial capacity of the UNJHRO, ensure the continued existence of the Protection Unit, and mainstream protection within the JHRO and the civil society throughout the country;
- Continue training, especially through training of trainers, of human rights defenders on international and regional human rights mechanisms, on security measures, and ethics;
- Assist the Government of the Democratic Republic of the Congo in sensitizing the police, military, intelligence, and judicial officials on the role and activities of human rights defenders, including women defenders;
- Train the Ministry for Human Rights and the Inter-ministerial Technical Committee on drafting methodology to meet its reporting obligations before United Nations treaty bodies in a timely manner.

Recommendations for the consideration of the international community and donors

99. **The Special Rapporteur recommends that the international community and donors:**

- Condemn publicly the killing of human rights defenders as well as all other serious human rights violations against them;
- Make the situation of human rights defenders a high priority when dialoguing with the Congolese authorities;
- Continue empowering civil society, including human rights defenders operating outside the eastern provinces, by increasing their capacity, notably their means of communications (funding Internet connections, mobile phones, etc.);
- Assist the Ministry for Human Rights in fulfilling his role vis-à-vis human rights defenders;
- Support the Human Rights section of the Plan for the Reform of the Justice System;
- As soon as legislation on an independent National Human Rights Commission is adopted, provide adequate technical advice and assistance to establish the Commission, and integrate it into regional and international networks of national human rights institutions;
- Ensure that all diplomatic missions are familiar with the Declaration on Human Rights Defenders;
- Ensure that all European Union diplomatic missions are familiar with and implement on a systematic basis the EU Guidelines on Human Rights Defenders, the Manual for the EU Guidelines on Human Rights Defenders, and the EU local implementation strategies for the DRC.

Recommendations for the consideration of human rights defenders

100. **The Special Rapporteur recommends that human rights defenders:**

- Improve coordinating networks aimed at strengthening the protection of defenders, particularly those outside the capital;

- **Strategize on the adoption of national and provincial laws on the protection of human rights defenders;**
- **Make full use of existing international and regional human rights mechanisms, including United Nations special procedures, the treaty bodies, the universal periodic review, the mechanisms of the African Commission on Human and Peoples' Rights (in particular the Special Rapporteur on human rights defenders), and the EU Guidelines on Human Rights Defenders;**
- **Participate more actively in existing human rights structures, i.e. the follow-up committees on violations committed by the police and the army, the synergy on sexual violence, and the protection cluster;**
- **Collaborate actively with the National Human Rights Commission once it is established;**
- **Strive for high standards of professionalism and ethical behaviour when carrying human rights activities.**

Recommendations for the consideration of all stakeholders

101. The Special Rapporteur recommends that all stakeholders:

- **Carry out country-wide civic education, particularly through the introduction of human rights in the school curriculum, to enhance the appreciation of the activities of human rights defenders;**
 - **Disseminate the Declaration on Human Rights Defenders and the Universal Declaration on Human Rights.**
-