

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

## UNIVERSAL PERIODIC REVIEW, 4<sup>TH</sup> SESSION DEMOCRATIC REPUBLIC OF THE CONGO REVIEWED ON 3 DECEMBER 2009, MORNING

### Overview

On the morning of 3 December 2009, the Working Group on the UPR examined the human rights situation in the Democratic Republic of Congo (DRC). Mr Upio Kakura Wapol, Minister of Human Rights, led the delegation of DRC. He presented the report of its country, on behalf of a high-level, 10-person delegation.<sup>1</sup> A number of States expressed their appreciation with regards to the establishment of specific Ministry for Human Rights in the DRC.<sup>2</sup>

After a 38 minutes presentation by the State, 59 delegations made statements. The speakers followed the general practice of first noting positive developments in the country, and then issues of concern, leading to questions and recommendations. There was an equal balance of positive and critical comments. However, a number of the individual statements and the questions were repetitive. For instance, several EU States urged the DRC to adopt a legal framework in view of an effective protection of human rights defenders and journalists.<sup>3</sup> The majority of the recommendations were specific, and seemed to reflect the reality of the situation of human rights on the ground.

The head of the delegation answered only at the very end of the review. He answered a selection of questions that were posed during the interactive dialogue in a comprehensive manner, acknowledging shortcomings and challenges faced. Overall, the State exhibited its openness to dialogue and its willingness and determination to significantly improve the situation of all human rights.

### General information on the DRC

- The DRC is not a member of the Human Rights Council.
- The members of the troika for the examination of DRC were Slovenia, Gabon and Japan.<sup>4</sup>
- The DRC held a National Conference on Human Rights and the Rule of Law in Kinshasa from 18 to 21 August 2009. The representatives of civil society who participated at the conference ‘approved’ the draft national report for the UPR.<sup>5</sup>

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1 Available on the OHCHR extranet <http://portal.ohchr.org/portal/page/portal/UPR>.

2 India, Republic of Korea, Norway.

3 Belgium, United Kingdom, Netherlands, France, Ireland, Czech Republic, Hungary, Spain, Sweden, Slovakia.

4 The DRC requested that a member of its regional group be among its troika. There were no objections by the DRC or by the members of the troika to the selection.

5 A/HRC/WG.6/6/COD/1,

available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A\\_HRC\\_WG6\\_6\\_COD\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A_HRC_WG6_6_COD_1_E.pdf).

## Information submitted to the Working Group

The **national report** of the DRC is comprehensive and informative, reflecting the ambitious reconstruction process initiated in the country by the Congolese authorities, in cooperation with civil society and other relevant stakeholders.<sup>6</sup> The report places emphasis on the State's efforts to establish an effective and credible normative and institutional framework for the promotion and protection of human rights. Furthermore, the document stresses the country's commitment to fulfilling international human rights obligations or to adapting existing legislation for this purpose. In addition, the report identifies achievements and good practices, but also lists a number of constraints and major challenges that the DRC faces in ensuring an effective protection of human rights. In the last section of the document, the DRC explicitly requests technical assistance from the international community in order to enhance its human rights capacity.

The OHCHR **compilation of UN information**<sup>7</sup> focuses on: the promulgation of a new Constitution in 2006, which guarantees the rights and fundamental freedoms of citizens; the rights of indigenous peoples to their lands, resources and communal territories; the situation of human rights defenders; the human rights of internally displaced persons; violence against women, its causes and consequences; the independence of judges and lawyers; the mapping exercise related to the most serious human rights and international humanitarian law violations in the country from 1993 to 2003, carried out by OHCHR; discrimination against 'Pygmies' in the enjoyment of their rights to education, health and work; ethnic division in the east of DRC and political instrumentalisation of ethnic cleavages in the country; the illicit exploitation of natural resources as root causes of conflict; mass killings, torture, abductions, forced recruitment of children, forced displacement perpetrated by non-State armed groups such as CNDP (National Congress for the Defence of the People), PARECO (Coalition of Congolese Patriotic Resistance), Mayi-Mayi and FDLR (Democratic Front of the Liberation of Rwanda); the question of demobilisation and integration of child soldiers; the involvement of members of the intelligence services, both civil and military, and security services in human rights violations; the question of impunity and independence of the judiciary; the use of forced labour for the extraction and trade of minerals; the high level of poverty in the country; and the necessity to improve the education system.

19 other stakeholders, including 11 individual NGOs, submitted information for the OHCHR **summary of stakeholders' information**.<sup>8</sup> Amnesty International stressed that, although a number of important laws have been adopted in DRC, such as the Law on the Status of the Political Opposition (2007), two laws on Sexual Violence (2006), a Law on Protection of Rights of People Living with HIV/AIDS (2008) and the Child Protection Code (2009), they have not been implemented in a satisfactory manner so far. Furthermore, key concerns were raised in relation to: war crimes and crimes against humanity, which continue to be committed in the east of the country by government forces and non-State armed groups;<sup>9</sup> sexual violence as a widespread phenomenon and the increase in the number of rapes by civilians;<sup>10</sup> torture and ill-treatment in military and intelligence service detention;<sup>11</sup> corporal punishment as a prevalent practice countrywide;<sup>12</sup> the subordination of the judiciary to the executive<sup>13</sup> as well as political and military interference in the administration of

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6 A/HRC/WG.6/6/COD/1, available

at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A\\_HRC\\_WG6\\_6\\_COD\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A_HRC_WG6_6_COD_1_E.pdf).

7 A/HRC/WG.6/6/COD/2, available

at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A\\_HRC\\_WG6\\_6\\_COD\\_2\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A_HRC_WG6_6_COD_2_E.pdf).

8 A/HRC/WG.6/6/COD/3, available

at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A\\_HRC\\_WG6\\_6\\_COD\\_3\\_EF.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CD/A_HRC_WG6_6_COD_3_EF.pdf).

9 Amnesty International, Human Rights Watch.

10 Amnesty International, FIACAT/ACAT-RDC.

11 Amnesty International.

12 GIEACPC.

13 Joint submission 5.

justice;<sup>14</sup> regular allegations of restrictions on freedom of expression;<sup>15</sup> high levels of infant and maternal mortality and malnutrition rates; general poverty of the population.<sup>16</sup>

In general, there were no discrepancies between the sources.

## Interactive dialogue<sup>17</sup>

### **Presentation by the State**

The head of delegation introduced the national report and then replied comprehensively to individual questions submitted in advance, citing the States that had asked them.<sup>18</sup> The representative of the DRC answered to all of the questions and supported his answers with specific data, examples and cases.

At the beginning of his presentation, Mr Wapol outlined that notable progress has been achieved by his Government with regards to the improvement of the general environment for the protection and promotion of human rights, despite the financial constraints and the overall level of poverty. Moreover, he underscored that the national report resulted from broad consultations with national and provincial authorities and with civil society and other relevant stakeholders. The head of delegation added that the Government of the DRC is determined to take up a constructive partnership with the civil society.

During the presentation, the following questions were also highlighted: the adoption of a new Constitution in 2006, enshrining the right to life and the prohibition of torture; the rights of the Congolese people to live in peace; the establishment of an effective structure for the protection and promotion of human rights; the fight against sexual violence and crimes; the protection of women and children, including the question of children used in armed conflict; the fight against corruption; the improvement of economic and social rights; the abolition of the death penalty; the protection of human rights defenders; the fight against impunity and reform of the judiciary; the question of human rights violations committed by members of the armed forces of the DRC; the rational management of natural resources and the measures taken to reform the army and the police.

Furthermore, the representative of DRC made reference to the systematic destruction of infrastructure in the course of the prolonged armed conflicts that affected his country since 1996. Based on this, he requested technical assistance from the international community in order to improve State's capacity to protect human rights.

### **Themes and issues**

During the interactive dialogue, the majority of States commended the DRC for its commitment to human rights and notable legislative and institutional reforms, particularly in the difficult context of peace restoration. However, a significant number of States participating in the discussion expressed serious concern about the following issues:

The majority of States expressed serious concerns at widespread **sexual violence against women and girls committed by the armed forces, rebel groups and civilians**. Moreover, several statements referred to the situation of victims, who are socially marginalised and have very limited access to medical and psychological

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14 Amnesty International, International Commission of Jurists (ICJ).

15 Amnesty International, Human Rights Watch.

16 Joint submission 4, p. 1.

17 Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

18 Netherlands, Canada, Argentina, Czech Republic, Denmark, Latvia, UK, Germany, Switzerland, Belgium.

assistance. Numerous States recommended ensuring full implementation of the 2006 law on sexual violence;<sup>19</sup> providing material and psychological support to victims of sexual violence;<sup>20</sup> setting up a national agency to combat sexual violence and ensuring access to justice and compensation for victims of sexual violence;<sup>21</sup> initiating awareness-raising campaigns and improving the discipline of its security forces with regard to combating sexual violence against women and girls;<sup>22</sup> and strengthening measures to combat impunity for acts of violence against women.<sup>23</sup>

A number of States were alarmed **that human rights defenders and journalists** continue to be victims of recurrent intimidation practices, arbitrary detention, torture, harassment, attacks and death threats.<sup>24</sup> They urged the DRC to adopt an effective legal framework for the protection of human rights activists in line with the UN *Declaration on Human Rights Defenders*;<sup>25</sup> to take further steps to create an environment conducive to a free and independent media;<sup>26</sup> and to ensure that crimes and violations against human rights defenders and journalists are effectively investigated and prosecuted.<sup>27</sup>

Several States noted that despite the adoption of a ‘zero tolerance’ approach a **culture of impunity** still prevails in the DRC and that further efforts should be made to **ensure the independence of the judiciary**. The country under review was thus urged to pursue effectively its recently adopted Plan of Action for Justice Reform;<sup>28</sup> to strengthen the capacity of law enforcement and judicial organs;<sup>29</sup> to bring to justice all alleged perpetrators of crimes and abuses against international human rights and humanitarian law;<sup>30</sup> and to implement an effective programme to combat corruption, with the establishment of a better financed judicial system.<sup>31</sup>

Many States commented on the use of **child soldiers** and also expressed concern about the recent phenomenon of **violence against children accused of witchcraft**. Numerous States recommended that stronger emphasis should be given to the integration, rehabilitation of former child soldiers into society as well as to the prevention of further recruitment.<sup>32</sup> Furthermore, the DRC was urged to adopt legislative measures to criminalise accusations of witchcraft against children and to organise a national campaign of awareness raising on this issue.<sup>33</sup>

Although no **death sentence** has been carried out in the DRC in the past seven years, several States addressed the need to transform the *de facto* moratorium on the application of the death penalty into an abolition in law.<sup>34</sup>

States also engaged the DRC in a discussion on the following themes: the precarious detention conditions;<sup>35</sup> widespread torture in secret detention places;<sup>36</sup> the establishment of legislation for the promotion and

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19 United Kingdom, Spain, Ireland, Ghana, Luxembourg.

20 South Africa, Argentina, Poland.

21 Belgium.

22 Austria.

23 Angola.

24 Belgium, United Kingdom, Netherlands, France, Ireland, Czech Republic, Hungary, Spain, Sweden, Slovakia, Switzerland.

25 Slovakia.

26 United Kingdom, Netherlands, Sweden.

27 Norway, Republic of Korea.

28 Norway.

29 Sweden.

30 Greece, Ghana, Canada, Czech Republic, Netherlands, Denmark, Italy, Slovenia.

31 Spain.

32 United Kingdom, Argentina, Germany, Australia, Hungary, United States, Japan, Slovenia, Azerbaijan.

33 Belgium, Italy, Mexico.

34 Luxembourg.

35 Netherlands, Spain, Switzerland.

36 Austria.

protection of persons with disabilities;<sup>37</sup> the improvement of the system of education;<sup>38</sup> the illegal exploitation of and trade in natural resources;<sup>39</sup> the proliferation and trafficking of arms;<sup>40</sup> access to decent housing, safe drinking water and affordable health;<sup>41</sup> and access to health, in particular HIV/AIDS and Malaria treatment.<sup>42</sup>

### Adoption of the report

The Working Group on the Universal Periodic Review (UPR) adopted the draft report on the DRC on 7 December 2009. 124 recommendations formulated during the interactive dialogue enjoyed the support of the country under review. Nevertheless, the State considered 58 of the recommendations as already implemented or in the process of implementation.

Furthermore, the DRC kept 28 recommendations pending and rejected 11. The pending recommendations relate to: issuing a standing invitation to all United Nations human rights special procedures; improving detention conditions; establishing effective mechanisms to prevent sexual violence and ensuring that victims have access to appropriate health care; organising training seminars on human rights for personnel of the justice system and security forces; developing a specific regulatory framework to ensure the security of journalists and civil society, and it can be expected the DRC will provide answers before the adoption of the report by the Human Rights Council.

The rejected recommendations dealt primarily with granting free access to places of detention to external observers, cooperating with the International Criminal Court (ICC), decriminalising consensual same sex activity between adults, preventing the recruitment of individuals who have committed human rights violations and fighting against impunity.

At the end of the adoption, the representative of the DRC stressed that, by participating in the UPR exercise, his country had the unique chance to assess the achievements of the Ministry of Human Rights, which had started its work in 2006. The head of delegation also pledged to continue to cooperate with all the UN thematic procedures and reiterated its country request for technical assistance to the international community, with a view to bring about a consistent improvement in fundamental rights and individual freedoms.

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37 Republic of Congo.

38 Angola, Morocco, Burundi, Uruguay.

39 South-Africa, DPRK.

40 Brazil.

41 Egypt, Djibouti, Ghana.

42 Brazil.

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