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## Aide-Mémoire

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# Democratic Republic of Congo

## Continuation of human rights violations by armed groups

### Overview

In 2009 the humanitarian situation in the DR Congo deteriorated. Grave crimes against humanity, war crimes and human rights violations were common. Acute conflicts and continuous structural insufficiencies dominate the living conditions of the population, as the report of the High Commissioner on the Situation of Human rights (A/HRC/10/58) stated in March 2009. According to MONUC, more than 800,000 new internally displaced persons were counted in the provinces of north and south Kivu; about 92,000 people had to flee their homes due to violent fights in their communities in Equateur. The tension between Angola and the DR Congo over illegal immigration into both countries erupted in the expulsions of illegal immigrants toward their respective home countries in November 2009, resulting in several thousand households homeless. In total, within the DR Congo more than 1.7 million persons are internally displaced due to armed conflict within the whole country.

### Military missions against FDLR militias

The Congolese government has made several attempts to solve the problem of the remaining approximately 5000 Hutu militias of the FDLR who are still active in the provinces of south and north Kivu, up to Ituri. The first military mission called “Umoja Wetu”, conducted with support of the Rwandese national Army RPF, was soon replaced by the joint military mission “Kimia II” of the Congolese national armed forces FARDC in cooperation with the UNO Mission in the DR Congo MONUC. As a reaction on allegations of severe crimes committed by FARDC, the Congolese government has declared a “zero tolerance policy” against corruption and human rights violations. However, the FARDC are responsible for at least the same number of killed civilians, lootings, rapes and torture as are the FDLR. Especially during the military “Kimia II”, which aimed at disarming the FDLR militia, combatants of the FARDC committed numerous crimes against humanity and war crimes against the population in the affected area. In contrast to the success of disarming 1,078 demobilized FDLR fighters, Human Rights Watch in their most recent report from December 2009.<sup>1</sup> prove more than 476 civilians killed by FARDC, and at least 7,500 rapes of women and girls.

<sup>1</sup> Human Rights Watch: „You will be punished – Attacks on Civilians in Eastern Congo”, December 2009, [www.hrw.org/publications](http://www.hrw.org/publications)

During the operation “Kimia II”, the Congolese army received substantial logistical support of the MONUC. Regarding the severe human rights violations and the fact that there are still a number of suspected war criminals active in the ranks of the FARDC, like Commander Bosco Ntaganda, who holds an arrest warrant to the ICC The Hague, MONUC, has been accused of being complicit to these crimes. We therefore acclaim the joint decision of the government of the DR Congo and MONUC to stop “Kimia II” and relaunch the attempt to overcome the FDLR by a new military mission that shows a strong focus on the humanitarian needs of the population in the affected areas, called “Amani Leo”.

Despite some initiatives by the government, MONUC and international donors, the programme for the reform of the security sector has not yet achieved a substantial change in the performance of the national army. Members of the FARDC have been accused by the local population and by human rights groups of repeated rapes, lootings, abductions and killings even outside the Kimia II mission. Obviously the former integration of different rebel groups like Mayi Mayi or CNDP has not succeeded, leaving the army with complete brigades who are not acting according to the command of the Ministry of Defence, but who are only loyal to their commanders and their strong personal financial and strategic interests. Also the recruitment and deployment of child soldiers, some even younger than 12 years, continues within the FARDC and the FDLR. According to MONUC, a total of 2,134 children were released from the armed groups between January and September 2009. Of the 285 recorded cases in 2009, 127 were attributed to PARECO militias, 107 to FARDC and 29 to the FDLR<sup>2</sup>

### ***Impunity***

Members of the national security forces as well as militia fighters are still undeterred from committing human rights violations, due to the lack of legal prosecution. In 2009, fewer than 20 officers of the FARDC were indicted of personal or command responsibility for the attacks on civilians in the Kivu-Region. And even less officers were tried and convicted. Bosco Ntaganda, the former commander of the CNDP, who is wanted by the International Criminal Court of The Hague by an international arrest warrant, remains free to command a FARDC brigade in the Kivu under the administration of the Congolese Ministry of Defence.

Several human rights groups like ASADHO, APRODEPED or Human Rights Watch are currently suggesting the implementation of a mixed chamber consisting of local Congolese and international judges to enforce the justice sector and to enable local courts to handle the high number of human rights violations by armed groups. These mixed chambers should be installed on a district or provincial level to convict the accused perpetrators on a local basis. Also the international program for the support of the justice sector REJUSCO aims at strengthening the courts and procedures logistically, but with little success so far. Therefore the majority of district courts are marked by corruption, insufficient human and material resources and the lack of funds, making it almost impossible for the local population to seek and achieve justice.

The situation in the national and local prisons is totally inadequate. Detainees who are not able to bribe their way out of the prisons have to face inhumane conditions, lacking even basic hygiene or food, leaving many of them to become sick or even die within months. Children under the age of 14 are regularly held in custody under inhumane detention circumstances.

### **Illegal exploitation of mineral resources**

In their recent report the members of the Group of Experts on the DR Congo of November 2009 (S/2009/603) have offered detailed evidence on the illegal network of mineral and arms trades by

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<sup>2</sup> UN Experts Group Report, Dezember 2009

armed groups in the DR Congo. Members of the FDLR-militia have established tight economic relations with international mineral traders to gain profit from the export of coltan, cassiterite and gold. They also receive substantial funding from political partners and supporters throughout Europe, Canada, the USA and different African countries. The report of the Experts Group also shows many relations between the FDLR and the FARDC who seem to be cooperating in many cases for the illegal export of goods towards Burundi and other neighbouring countries with the knowledge or even consent of the government of the DR Congo.

### ***Lack of democratic space for media and human rights defenders***

2009 was marked by a significant increase in arbitrary arrests of human rights defenders and opposition forces. The most prominent were Mr. Golden Misabiko (ASADHO) and Mr. Floribert Chebeya (Voix des sans Voix), who were both only liberated after international campaigns of protest against the Congolese Ministry of Justice. Currently, about 160 political detainees are kept in illegal detention.<sup>3</sup> Many of them have reported ill-treatment and torture by members of the Military Intelligence or members of the National Police PNC.

Next to arbitrary arrests without correct legal procedures, the amount of intimidations, anonymous phone calls and text messages, open threats and even violent attacks against human rights defenders and their relatives remains high. This creates an atmosphere of anxiety and self-censorship among the staff of human rights monitoring organizations. Also journalists have reported a number of killings, intimidations and attempts to censor their work. The murder of Serge Maheshe is just one out of several assassinations of media persons. It was a military court which declared itself competent to have jurisdiction over civilians thus violating article 156 of the Congolese Constitution.

### ***Conclusions***

Life in Eastern and North Eastern part of the Democratic Republic of Congo is still marked by massacres, rape, extra judicial killings, looting, and forced recruitment, including forced recruitment of child combatants, slavery, including sexual slavery on a large scale. These atrocities are committed mainly by FARDC troops, but also by militias like FDLR or other armed groups. Therefore the population continues to be suffering from military attacks, displacement and economic exploitation. There is still a high need for international attention and pro-active efforts of the international community.

In view of

- a) the failures of the Government to implement security sector reforms that would guarantee the protection of the population from further violence;
- b) the failure of the Government to adequately secure justice, law and order;
- c) the failure of the Government to secure the right to free expression;
- d) the failure of the Government to reconstruct state institutions;
- e) the failure of the Government to build up transparent mechanisms in the resource sector for the benefit of the country; and
- f) the involvement of external powers in the violence occurring in the East of the country as well as the exploitation of the natural resources,

the technical assistance offered by the MONUC offers –despite its past shortcomings- an irreplaceable contribution to restrict the severe human rights violations committed in DR Congo by government forces, as well as armed militias. We acknowledge the desire of the legitimately elected government of the DR Congo to end the presence of peace keeping forces in it's country and to take over full respon-

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<sup>3</sup> Report of the High Commissioner on the Situation of Human rights 2009 (A/HRC/10/58)

sibility in the DR Congo. But as long as the government is not able to offer a sufficient justice sector, and as long as the national security forces are not adequately controlled by the Ministry of Defence, a withdrawal of MONUC troops would inevitably cause a power vacuum that will most likely be filled by armed groups outside control of the central government, leaving the local population prey to ever greater military abuse and human rights violations and thereby cause another humanitarian disaster. We therefore advise the UN Security Council do develop a withdrawal strategy that is guided by clear benchmarks like the safety of the local population, the protection of human rights, the reform of the security and the justice sector or the compliance to the humanitarian needs by the government of the DR Congo and it's bodies.

### ***Recommendations***

**The Human Rights Council should use all its means and mechanisms to challenge the Government of the DR Congo for the re-establishment of human rights protection functions of the state. We call on the Council to adopt a strategy that addresses the human rights violations in their full dimensions. This strategy shall, at least**

- Call on the government of DR Congo to ensure the safety of all its citizens in the country;
- Call on all parties to the conflict in the DR Congo to instruct their combatants to end all human rights abuses and to adhere to international human rights and humanitarian law;
- Call on the government of DR Congo to professionalize and enlarge all organs of the justice sector to ensure that all citizens victims of crime or violations of their human rights have access to fair and correct legal procedures in their local area.
- Call on the government to ensure international and national fair trial norms, which include the supremacy of the Supreme Civil Court of Justice over the Military High Court and support the establishment of an independent witness protection programme.
- Name and condemn the gross and continuing human rights violations of the various actors, either from illegal militias, or from the national armed forces FARDC, the national Police PNC or other members of the national security system.
- Require the HCHR to deploy, apart from the MONUC, again a permanent independent international observer for the monitoring, verification, recording and reporting of human rights violations, as well as monitoring of government activities directed towards the reconstruction of the justice and police system in the DR Congo, the eradication of torture and ill-treatment in custody and the uplift of the prisons. The observers should also collaborate with the prosecution authorities;
- Call on the government of DR Congo to ensure sufficient human rights training and monitoring for the national army and police.
- Support the establishment of an international/national mixed chamber on the level of provincial and district courts for the inquiry into allegations of grave abuses of human rights. The mixed chambers must also have the competence to investigate and judge crimes and human rights violations committed by members of the national security forces.
- Call on the government of the DR Congo to implement a national certification system for the legal production and export of minerals such as coltan, cassiterite, gold or diamonds to establish a system of controlled trade chain for the mining and marketing of the national mineral resources, thus ensuring that the revenues of the mineral trade are directed towards a tax-funded national social sector for the benefit of the local population.
- Call on the UN Security Council to define, in close cooperation with the government of the DR Congo, clear benchmarks as the basis of an exit plan for the MONUC in the DR Congo.