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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15 (a)  
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1\***

**Democratic Republic of the Congo**

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\* The present document was not edited before being sent to the United Nations translation services.

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## **Introduction**

1. This national report on the human rights situation in the Democratic Republic of the Congo is being submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 of 18 June 2007. Its preparation has been based on the provisions set forth in paragraph 5 (e) of General Assembly resolution 60/251 of 15 March 2006 concerning the creation of the Human Rights Council and on Human Rights Council resolution 5/1.

### **I. METHODOLOGY AND BROAD CONSULTATION PROCESS USED IN THE PREPARATION OF THE NATIONAL REPORT**

2. The preparation of this report involved the following stages:

(a) A draft report was prepared by a core team of the Ministry of Human Rights. This report was then refined by the inter-ministerial committee responsible for preparing human rights reports at a special session held from 2 to 4 July 2009;

(b) A joint workshop on the universal periodic review was organized for public-sector stakeholders and human rights NGOs on 22 and 23 July 2009 with support from the International Organization of la Francophonie (OIF). This workshop served as a forum for preliminary observations on the part of civil society and the provinces regarding the structure of the national report to be submitted as part of the universal periodic review process;

(c) An outline for the national report was prepared as a basis for consultations with various institutions, ministries and services in civil society (NGOs, trade unions, churches) and other sectors, which were asked for their input on the items covered in the report. Provincial missions were sent for this purpose to, inter alia, the provinces of Équateur, Province Orientale, Katanga, Kasai Occidental, Sud Kivu and Nord-Kivu;

(d) A national commission was created and tasked with preparations and follow up for the universal periodic review of the Democratic Republic of the Congo. This commission, which is made up of representatives of various ministries, the national human rights institution, human rights NGO networks, scientific institutes, the provinces and parliament. In addition to the preparation of the report and the formulation of replies to questions about it, this commission is also responsible for following up on any recommendations made in the course of the interactive dialogue with the Human Rights Council;

(e) The Second National Conference on Human Rights and the Rule of Law was held from 18 to 21 August 2009 with support from the United Nations Human Rights Field Office, European Union and Open Society Initiative for Southern Africa (OSISA). Conference participants, who included representatives of civil society in all the country's provinces and of national and provincial institutions, approved the draft national report for the universal periodic review;

(f) In a meeting of the Council of Ministers presided over by the Prime Minister, the Government approved the national report for the universal periodic review on 28 August 2009;

(g) In accordance with the rules of the Human Rights Council, the report was aligned with the harmonized guidelines before it was forwarded to Geneva.

## II. COUNTRY BACKGROUND

3. The Democratic Republic of the Congo is located in central Africa. It is bordered by the Central African Republic and the Sudan to the north, by Uganda, Rwanda, Burundi and the United Republic of Tanzania to the east, by Zambia and Angola to the south, and by the Republic of the Congo, the Atlantic Ocean and the enclave of Cabinda to the west.
4. With an area of 2,345,409 km<sup>2</sup>, the Democratic Republic of the Congo is the third largest country in Africa. It is currently divided into 10 provinces (Orientale, Bas-Congo, Bandundu, Équateur, Sud-Kivu, Nord-Kivu, Maniema, Katanga, Kasai Oriental and Kasai Occidental). In accordance with the Constitution, however, the number of provinces is soon to be increased to 25. Kinshasa, the capital city, has the status of a province in its own right.
5. Its population is estimated at over 61,487,300 (cf. *Condensés d'informations statistiques* of the Banque Centrale du Congo, Nos. 52/2005 and 2006).
6. The country is a secular State. The largest congregations are the Catholics, Protestants, Kimbanguists, Muslims, Orthodox and Evangelists, along with other religious groups.
7. Joseph Kabila Kabange was elected President in 2006 in free, democratic, transparent elections organized by an independent electoral commission with support from the international community. Legislative elections have also been held for Parliament and the provincial assemblies.
8. The country's currency is the Congolese franc and its national anthem is *Le Debout Congolais*. More than 450 tribes (ethnic groups) inhabit the country, which has four national languages: Kikongo, Lingala, Swahili and Tshiluba). French is the official language. The State ensures the promotion and protection of all these languages and of other dialects constituting part of the nation's cultural heritage.
9. The country's economic growth rate for 2008 was projected at 8 per cent but proved to be around 6 per cent. The shortfall is attributable to slackening activity in the mining sector in response to weakening world commodity prices and a slowdown in public works owing to a shortage of cement. As these factors are likely to persist, the growth rate is expected to continue to decline in 2009, falling to 2.7 per cent, whereas initial projections made in December 2008 had estimated it at 4.4 per cent. The decrease in mining exports and its impact on the rest of the economy are clearly the reasons for this downturn.
10. In December 2008 the inflation rate was 28 per cent (the target rate was 23.6 per cent) as a consequence of the public sector's deepening deficit in the fourth quarter. Inflation rose during the first three months of 2009, when the country posted a rate of 21.61 per cent as against a provisional target figure of 25 per cent.
11. The international reserves of the central bank (Banque Centrale du Congo (BCC)) have risen considerably since end of March 2009, however.
12. The Democratic Republic of the Congo plays an important role in global environmental conservation thanks to its vast equatorial rainforest and extensive hydrographic network, which includes the Congo River (the second largest river in terms of volume of flow in the world, after the Amazon). It also abounds in mining and mineral resources (gold, diamonds, cobalt, columbite-antalite, methane gas, silver, copper, uranium, manganese, tin, zinc, hydrocarbons) as well as agricultural resources.

13. The country places a high priority on regional and international cooperation:

(a) It is a member of the African Union and of a number of other international African organizations, including the Southern African Development Community, Common Market for Eastern and Southern Africa, African Development Bank, Economic Community of the Great Lake Countries and the Economic Community of Central African States; it will also chair this latter organization in 2009. The country holds the post of Deputy Executive Secretary in the Economic Community of the Great Lake Countries since it was relaunched and plays an active part in its subsidiary bodies (the International Electricity Society for the Great Lakes Region, the Development Bank for the States of the Great Lakes, etc.). Several months ago, the Democratic Republic of the Congo re-established the diplomatic relations with two neighbouring States (Uganda and Rwanda) which had been broken off due to the war of aggression waged by them;

(b) As a State member of the United Nations, the country works with its specialized agencies (the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the Food and Agriculture Organization of the United Nations, the International Telecommunication Union, the Universal Postal Union, the International Labour Organization, the United Nations Industrial Development Organization) and with a range of other international bodies (the International Committee of the Red Cross, the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Population Fund, the World Food Programme, the United Nations Development Programme, the International Organization of la Francophonie). The country maintains good relations with other States and regions of the world, including the European Union. The Bretton Woods institutions (International Monetary Fund, World Bank) are also joining in the effort to put the country's economy on a sounder footing.

### **III. NORMATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

#### **A. Normative framework**

14. Once duly ratified, international treaties and agreements become part of the country's array of regulatory instruments. They take precedence over domestic laws, provided that those treaties and agreements are reciprocally applied (article 215 of the Constitution of 2006).

15. Following the transitional period governed by the Constitution which was adopted on 4 April 2003 upon completion of the inter-Congolese dialogue, a constitutional referendum was held. That referendum resulted in the promulgation of a new Constitution on 18 February 2006. The 2006 Constitution now governs the organization and exercise of power in the Democratic Republic of the Congo and guarantees the rights and fundamental freedoms of its citizens.

16. Over 60 of the Constitution's 229 articles are devoted to human rights, including civil and political rights, economic, social and cultural rights, collective rights and the rights of specific groups.

17. In addition, there are many ordinary and organization laws governing national affairs, including the Family Code, the Labour Code, the Child Protection Code, the Military Justice Code, a framework law on education, a law protecting the rights of persons living with or affected by HIV/AIDS, the Nationality Code, the Mining Code, the Forestry Code, a law governing the overall organization of defence and the armed forces, a statute governing the judiciary, a law on the

organization and activities of political parties, the Investment Code, laws on sexual violence and on corruption, a law on the status of opposition parties, a law on the civil service, and a law on the organization of the High Council of the Judiciary. These statutes ensure the implementation of the rights guaranteed by the Constitution.

18. There are also numerous ordinances, decrees and regulations governing various matters in accordance with the Constitution.

19. The Democratic Republic of the Congo has ratified or signed most of the existing international and regional human rights and humanitarian instruments, including the following:

- Convention on the Rights of the Child and its two Optional Protocols
- Convention on the Political Rights of Women
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
- Convention on the Elimination of All Forms of Discrimination against Women
- International Convention on the Suppression and Punishment of the Crime of Apartheid
- Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Geneva Conventions of 12 August 1949 and the two Additional Protocols of 1977
- Convention relating to the Status of Refugees and its Protocol
- International Covenant on Civil and Political Rights and its First Optional Protocol
- International Covenant on Economic, Social and Cultural Rights
- Convention Governing the Specific Aspects of Refugee Problems in Africa
- African Charter on Human and Peoples' Rights and its two Protocols concerning the establishment of an African court on human and peoples' rights and the rights of women in Africa
- African Charter on the Rights and Welfare of the Child
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Labour Organization (ILO) Convention concerning the Minimum Age for Admission to Employment (No. 138)

- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)
- Rome Statute of the International Criminal Court

20. For a number of years now, Congolese courts have been basing their decisions on international human rights treaties. For example, in refusing to conduct criminal proceedings against a child aged 17, the Magistrate's Court of Kinshasa/Assosa cited articles 2 and 17 of the African Charter on the Rights and Welfare of the Child, which establishes 18 years as the minimum age of criminal liability. The minor in question was then returned to the Prosecutor's Office for referral to the juvenile court (cf. RP 4215/IV of 3 April 2006).

### **B. Institutional framework**

21. Under the Constitution of 18 February 2006, the institutions of the Democratic Republic of the Congo are the President, Parliament, the Government, and the courts and tribunals.

22. At the central level, Parliament is made up of two administratively and financially autonomous chambers: the National Assembly and the Senate.

23. There are provincial assemblies and provincial governments as well.

24. The nation's court system is made up of a constitutional court, a court of cassation, a council of State (the Supreme Court currently performs the functions of these three courts in accordance with article 223 of the Constitution), the Military High Court, the ordinary and military courts of justice and the public prosecutors' offices.

25. The Constitution provides for the separation of the three traditional branches of government (the legislature, the executive and the judiciary) in order to effectively ensure that human rights are respected.

26. Under article 203 of the Constitution, the central and provincial governments are jointly responsible for establishing the mechanisms needed to promote and protect human rights and fundamental freedoms.

27. The Constitution provides for two other institutions in support of democracy: the Independent Electoral Commission and the Higher Broadcasting and Communications Council. It also allows for the creation of other such institutions (art. 222, para. 3). The process of establishing the National Human Rights Commission is on track.

28. A bill to establish the National Human Rights Commission, which is to take the place of the human rights watchdog body in place during the transition (the Observatoire national des droits de l'homme (ONDH)), was passed by the Senate in July 2008 and is now being considered for passage by the National Assembly in accordance with the Paris Principles.

29. The Commission is to be a consultative, independent body endowed with legal personality. It will be its job to promote and protect human rights by advising the Government and making proposals concerning human rights, international humanitarian law, humanitarian action and fundamental guarantees for the exercise of civil liberties, as well as any other general issues falling within its purview (cf. article 4 of the bill).

30. Other public institutions include the General Accounting Office (*Cour des Comptes*), which monitors the management of public finances, public property and the accounts of provincial governments, decentralized regional bodies and government agencies.
31. The Constitution also provides for the establishment of an equalization fund and an economic and social council, both of which are to play a vital role in protecting the population's economic and social rights.
32. Private-sector stakeholders (e.g., associations, trade unions, the media and political parties) are also involved in promoting and protecting human rights. Human rights NGOs operate in accordance with Act No. 004/01 of 20 July 2001 on non-profit organizations and charities. As of December 2000, there were 424 Congolese human rights and development NGOs. Political parties and groups are governed by Act No. 04/002 of 15 March 2004; as of 6 July 2009, a total of 295 political parties were registered in the country.
33. A specific legal framework for the protection of human rights defenders is not yet in place, but the Ministry of Human Rights takes prompt action whenever the Government learns of a violation of activists' rights. (The liberation of human rights defenders Floribert Chebeya, Dolly Ibefo, Donat Tshikaya, Robert Ilunga Numbi and Golden Misabiko on 20 August 2009 is a recent example.) It is clearly important to have a code of ethics concerning the activities of human rights defenders in keeping with the declaration concerning the rights and responsibilities of human rights defenders adopted by the United Nations General Assembly in 1998.
34. The personal intervention of the Head of State on behalf of two human rights defenders attests to the cooperation that takes place between ONDH and the Government. The President has ordered that an investigation be undertaken into the case of Mr. Lukando, whose complaint against a superior officer was submitted by ONDH to the Military Prosecutor's Office of the Armed Forces (FARDC) in November 2005. Medical care (at the Nganda medical centre) and social services have also been made available to the victim. In another case, after outlaws broke into the residence of the Chairperson of ONDH, the Head of State ordered that security be tightened around the domicile in response to a request by the Geneva-based International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

## **IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS**

### **A. Civil and political rights**

#### **1. The right to life and to physical integrity**

35. Article 16 of the Constitution guarantees the right to life, to physical integrity and to unfettered personal development subject to respect for the law, public order, the rights of others and accepted principles of morality.
36. The Constitution of 18 February 2006 retains earlier constitutional provisions that lay the foundations for the elimination of the death penalty (arts. 16 and 61). A bill to abolish capital punishment is currently before Parliament.
37. In respect for the sanctity of human life, no death sentence has been carried out in the Democratic Republic of the Congo in over seven years, even though the moratorium on the death



penalty was lifted on 23 September 2002. Article 61 of the Constitution includes the right to life among those rights which cannot be abrogated even under exceptional circumstances. A bill criminalizing torture is currently making its way through Parliament together with amendments to the Criminal Code. The law on the protection of children of January 2009 already defines and punishes acts of torture committed against minors (art. 151).

38. Numerous offences against life and acts of torture have occurred in the course of the war waged against the Democratic Republic of the Congo, which has taken a toll of approximately 5 million lives. Justice must be done for the victims of all war crimes, crimes against humanity and other heinous acts, such as the murders of Frank Ngyke, Didace Namujimbo, Serge Maheshe and Bruno Koko Chirambiza; mass rapes committed in Shabunda by soldiers in April 2009 and in the main prison in Goma; summary executions of civilians in Kiwandja by members of the Congrès National pour la Défense du Peuple (CNDP); and the massacres and displacement of children in Bas-Uélé and Haut-Uélé by the Lord's Resistance Army (LRA) which are still going on today. Members of the armed forces and the police force, including senior officers, who have committed serious human rights violations in the eastern part of the country are being tried and sentenced.

## **2. Civil liberties**

39. The Constitution guarantees numerous civil liberties, including the freedom of movement (art. 30), freedom of information (art. 23), the right of peaceful unarmed assembly, the right to demonstrate and freedom of association (art. 37).

40. The Government has worked with the national human rights institution to uphold the right to demonstrate and to protect citizens' rights more fully, as attested to by the Ministry of the Interior's acceptance of the recommendation made by ONDH (established by Act No. 04/019 of 30 July 2004) in 2006 regarding the issue as to whether prior authorization would be required or if a simple notification would suffice.

41. Circular No. 002/2006 on public demonstrations and meetings, which the Ministry of the Interior sent out on 29 June 2006 to all the provincial governors and the governor of Kinshasa, takes into account ONDH document No. 011/ONDH/2006 of 21 June 2006 and is in keeping with the Constitution of 18 February 2006. This circular sets aside the rule regarding prior authorization and states that prior notification of public meetings or demonstrations is sufficient.

42. The current regulation governing public demonstrations is in accordance with articles 26 and 29 of the Constitution of 18 February 2006, with article 29 of Elections Act No. 06/006 of 9 March 2006, which applies only during election campaigns, and with Decree-Law No. 196 of 29 January 1999 in a manner that is also in keeping with the Constitution.

43. When people break the law, the authorities take the necessary steps to protect the rights of others.

44. The law on opposition parties has already been passed (Act No. 07/008 of 4 December 2007), and such parties are free to organize both in Parliament and elsewhere.

45. Freedom of the press, which is guaranteed in articles 23 and 24 of the Constitution, is also being upheld. Article 8 of Act No. 96-002 of 22 June 1996 governs its implementation.

46. The legal reforms now under way will certainly take into account the arguments put forward for decriminalizing press offences. As of 2009, the country has 201 written press outlets, 55 television channels and 212 radio stations. The creation of the Higher Broadcasting and Communications Council (the relevant law is in the process of being passed in Parliament) will surely allow the freedom of the press to be promoted more effectively.

### **3. The right to access to justice and a fair trial**

47. This right is guaranteed by the Constitution, but some difficulties in gaining such access do exist, owing, in particular, to the following factors: the distance some people must travel to reach courts of justice, a shortage of judges, high court costs, judicial corruption and budget shortfalls.

48. Remedial measures include free legal assistance and the implementation of comprehensive justice system reforms. Substantial wage increases for judges are being phased in, and persons found to be engaging in corrupt practices are being punished. A considerable number of judges have recently been dismissed from their posts.

## **B. Economic, social and cultural rights**

### **1. The right to education**

49. The Constitution provides that everyone has the right to receive an education through the national school system, which is composed of public and accredited private schools. Article 43, paragraph 5, of the Constitution states that primary schooling is compulsory and is provided free of charge in public schools (see also article 38 of the Child Protection Code).

50. Although this provision is not yet fully in effect, the Congolese Government is working to increase the budget allocation for education, which has risen from 5 per cent of the total budget in 2005 to 7.1 per cent in 2006, 7.8 per cent in 2007 and 8.2 per cent in 2008.

51. The public education system is faced with a number of challenges, however. Problems in this area include insufficient capacity, dilapidated infrastructure, shortages of teaching materials, a lack of motivation among teaching staff and a misalignment between the type of education that is being imparted, on the one hand, and students' and society's needs, on the other.

52. Considerable effort has gone into organizing State exams and publishing students' scores promptly so that the school year can start on time and so that successful candidates have time to sign up with universities and other institutions of higher learning. With assistance from UNICEF and the United Kingdom, the country has achieved a significant increase in the basic education enrolment rate, especially for girls.

53. The country is now building more classrooms in primary, secondary and vocational schools in order to boost the school system's capacity. State funds and grants from bilateral and multilateral partners are being used for this purpose.

54. Efforts are also being made to upgrade staff and make organizational improvements, in accordance with the applicable laws and regulations, in the universities and other institutions of higher learning.

## **2. The right to health**

55. Article 47 of the Constitution guarantees the right to health and to food security. The text of a statute governing the activities of physicians has been drafted in the course of discussions between the executive branch and representatives of the medical profession. This text has been endorsed by the Council of Ministers and is in the process of being passed into law.

56. Health-care services in the Democratic Republic of the Congo are structured in three tiers: health districts (*zone de santé* (ZS)), general hospitals and health centres.

57. Since 2003, the number of health districts has climbed from 306 to 515, but human resource and infrastructure requirements have also risen. There is also a disconnect between the demand for quality health care and the increasing number of unviable health districts.

58. The Government is making a considerable effort to provide greater access to health care. A law to protect the rights of people living with or affected by HIV/AIDS was passed in 2008. With support from China, steps are being taken to implement the policy on the renovation and construction of hospitals, and work is being done on the hospital in downtown Kinshasa. Financing is being provided for projects to combat such diseases as AIDS, tuberculosis and malaria, and national programmes targeting these maladies are under way. The vaccination rate for DTC-Hep. B3 was above 85.5 per cent in 2007, up from 75.4 per cent in 2006.

59. As part of the Government's policy focusing on five key priority areas, as of April 2009 at least 27 health centres had been built in the country and a total of 272 health centres, general hospitals and medical schools had been outfitted. In addition, 570 centres and hospitals receive subsidized pharmaceuticals.

## **3. The right to housing, water and electricity**

60. Article 48 of the Constitution guarantees the right to decent housing and to access to drinking water and electricity.

61. The Inga dam is still the country's main means of generating hydroelectricity. Much of its output is exported, however, and the electricity access rate is very low: 1 per cent in rural areas and 30 per cent in urban areas. The national average is 6 per cent, whereas the average access rate in sub-Saharan Africa is 24.6 per cent. Given this situation, the Government has revamped its policy with a view to expanding the Inga dam's capacity, ensuring that it receives all due export earnings, and providing the population with greater access to electrical power.

62. The population's access to drinking water is also limited, with access rates of 12 per cent in rural areas and 37 per cent in urban areas. In addition, the wells and springs where people obtain water are often not protected. The Government is working, with assistance from Germany, to expand the capacity of the public water distribution company, REGIDESO (26 of its 94 water distribution centres have been completely destroyed during armed clashes in the eastern part of the country).

63. A housing policy is in place that focuses on the phased development of the Mpasas and Mitendi sites in Kinshasa. On 24 June 2009 the environmentally-friendly Mitendi housing development was inaugurated as a public-private partnership. A total of 1,878 low-cost social housing units are to be built on this site using new construction technology and prefabricated materials.

64. The fact remains that, during the past three years, a number of plots have been expropriated in the public interest and some people have been removed from sites unfit for human habitation. Instances in which government agents have taken away people's land titles by improper means are one of the major causes of the difficult housing situation, however. In July 2009 the Government proceeded to dismiss over 200 agents of the Ministry of Land Affairs on grounds of corruption.

#### **4. The right to work**

65. Article 36 of the Constitution guarantees the right to work, protection against unemployment and equitable pay sufficient to enable workers and their families to live with human dignity. A great deal of effort has gone in to implementing this right in the face of various constraints. The General Labour Inspectorate has been raised to the rank of a General Secretariat, bonuses are being given to inspectors (starting in 2008), and the guaranteed minimum wage established in 2002 was raised to \$1.96 between July and December 2008 and to \$2.5 as of 1 January 2009.

#### **C. Collective rights**

66. Like the African Charter on Human and Peoples' Rights, the Constitution of the Democratic Republic of the Congo guarantees a number of collective rights, including the right to peace and security, the right to a healthy environment conducive to integral development, and the right to the enjoyment of national assets and the common heritage of humankind. The State has made a solemn commitment to defend these rights and to promote their enjoyment.

67. Accordingly, any act that deprives the nation or natural or legal persons of all or part of the livelihoods they derive from their resources or natural wealth or assets constitutes the offence of plundering and is punishable under the law, without prejudice to international provisions on economic crimes. If such acts are committed by a public authority, they are classified as high treason and are to be punished as such.

68. Recurrent armed conflicts have blocked the full realization of the right to peace. With support from the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the Government is striving to deal with the lack of security in the country caused by the activities of foreign armed groups (the Lord's Resistance Army (LRA), the Democratic Forces for the Liberation of Rwanda (FDLR), etc.) and local rebel groups opposed to the Goma peace process (cf. Acts of engagement signed on 23 January 2008 at the Conference on Peace, Security and Development held in Goma). The Goma acts of engagement have led to the establishment, by executive order, of the Amani programme, which has recently been converted into a larger-scale initiative known as the Stabilization and Reconstruction Plan for Areas Emerging from Armed Conflict (STAREC) for Nord-Kivu, Sud-Kivu, Nord-Katanga, Maniema and the Bas-Uélé, Haut-Uélé and Ituri districts in the Province Orientale.

#### **D. Rights of specific groups**

69. The Congolese State protects the rights of women, children, persons with disabilities, older persons and refugees. To this end, it has ratified almost all of the relevant international and regional instruments.

70. An ongoing effort is being made to introduce measures to fulfil these commitments or to adapt existing legislation for this purpose.

71. A bill to ensure gender balance is being drafted in order to give effect to article 14 of the Constitution, which guarantees women the right to equitable representation in national, provincial and local institutions.

72. Under the Child Protection Code (Act No. 09/01) of 10 January 2009, it is an offence to refrain from aiding a child in danger (arts. 191 and 193) or to refrain from assisting a woman who is giving birth (art. 146).

73. Legislation ratifying the Convention on the Rights of Persons with Disabilities is currently before Parliament. The provision of care for persons living with disabilities is ensured by the Ministry of Social Affairs and Humanitarian Action. The office within the Ministry that is responsible for coordinating rehabilitation services oversees the National Vocational Training Centre for Persons with Disabilities, the National Service for Rehabilitation and Retraining, and the National Institute for the Blind. The Government is working to systematize support services for families with disabled children, which are as yet quite limited.

74. A bill for the protection of older persons is now being drafted.

75. A law for the protection of refugees was passed in 2002. The National Commission for Refugees works with the Office of the United Nations High Commissioner for Refugees under the supervision of the Ministry of the Interior, Decentralization and Security.

## **V. COOPERATION WITH HUMAN RIGHTS MECHANISMS**

### **A. Human Rights Council**

76. As a State Member of the United Nations, the Democratic Republic of the Congo took part in all the sessions and other activities of the Commission on Human Rights until its replacement by the Human Rights Council in 2007 and has continued to participate actively in those of the Council since that time. It also cooperates with the Council's various mechanisms, including the universal periodic review, for which it will present its report in December 2009.

77. The country takes part in the various regular and special sessions of the Council and is working on an ongoing basis to implement the resolutions that directly apply to it.

78. The country also participates in the sessions of the Working Group on the Universal Periodic Review on a regular basis and, as necessary, in other working groups such as those dealing with complaints procedures and with the use of mercenaries.

79. The Council's eighth special session, held in December 2008, was devoted to the situation in the Democratic Republic of the Congo and resulted in a number of recommendations.

80. The Government is acting upon the resolution adopted by the Council on 27 March 2009 on the situation of human rights in the Democratic Republic of the Congo and plans to report on its implementation at the thirteenth regular session of the Council in March 2010.

### **B. Office of the United Nations High Commissioner for Human Rights**

81. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has had a field office in the country since 1998 and works effectively with Congolese authorities to promote and protect human rights. The High Commissioner thus has a representative on the ground in the Democratic Republic of the Congo.

82. Various activities to heighten public awareness about human rights instruments, monitor the human rights situation in conflict zones and protect citizens' rights are undertaken by the Ministry of Human Rights with support from OHCHR.

83. The Council's resolution of 27 March 2009 does, however, recommend that collaboration between OHCHR and the country be increased and that assistance be enhanced.

84. The Director and Deputy Director of the Joint OHCHR/MONUC Human Rights Office have been asked to take part, as full members, in the meetings of the recently reactivated "Entité de liaison des droits de l'homme" in the Democratic Republic of the Congo.

### **C. African Commission on Human and Peoples' Rights**

85. The Democratic Republic of the Congo has ratified the African Charter on Human and Peoples' Rights, is a full member of the African Commission on Human and Peoples' Rights, and participates in its regular and special sessions.

86. At the close of the Commission's thirtieth regular session in 2001, the Government was pleased to secure a decision by the African Union to arrange for a special session to discuss the armed aggression being directed against the country and the human rights violations it was causing. Unfortunately, that special session was never held.

87. The country has made an effort to put its reporting schedule with the African Commission back on track. Accordingly, it submitted its initial report (combining the second, third, fourth, fifth, sixth and seventh periodic reports) in 2002 and its second periodic report (combining the eighth, ninth and tenth reports) in 2007. The second report's presentation to the forty-fifth session of the African Commission on Human and Peoples' Rights is scheduled for 11-25 November 2009.

### **D. Cooperation with special procedures**

#### **1. Special procedures of the Human Rights Council**

88. The country is currently cooperating with seven Special Rapporteurs or Special Representatives holding the following thematic mandates: violence against women, its causes and consequences; the human rights of internally displaced persons; the independence of judges and lawyers; the situation of human rights defenders; children and armed conflict; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and human rights and transnational corporations and other business enterprises.

89. The Government invites specific persons to visit the country at specified points in time in order to report on the situation to the Human Rights Council. Most of the recommendations made in their reports have been taken into consideration by the country's authorities.

90. Professor Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons, and Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, recently travelled to the Democratic Republic of the Congo (in January and May 2009, respectively). In October 2009, the Special Rapporteur on extrajudicial, summary or arbitrary executions will pay a working visit to the country.

## **2. Special procedures of the African Commission on Human and Peoples' Rights**

91. The Democratic Republic of the Congo works proactively with the various bodies, commissioners and special rapporteurs of the African Commission and invariably welcomes their visits to the country to monitor the human rights situation. Ms. Reine Alapini Gansou, Special Rapporteur on human rights defenders in Africa, will be visiting the country in the very near future.

### **E. Human rights treaty bodies**

92. The Democratic Republic of the Congo has ratified the major human rights instruments and cooperates with the human rights treaty bodies through the regular submission of reports.

93. The Government is making an effort to bring its reports up to date. An inter-ministerial committee responsible for preparing the country's initial and periodic reports was set up in 2001 and continues to carry out this task.

#### **1. Reports recently submitted**

94. In January 2009, the Government transmitted its initial report on implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict to the Secretary-General of the United Nations.

#### **2. Reports recently presented**

95. On 21 January 2009, the Government presented its second periodic report on implementation of the Convention on the Rights of the Child to the Committee on the Rights of the Child at its fiftieth session and responded to the Committee's questions on the subject.

#### **3. Reports soon to be transmitted**

96. The following reports are now being finalized. The first two of these reports will be submitted to the relevant treaty bodies before the end of December 2009:

- √ Fourth periodic report on implementation of the International Covenant on Civil and Political Rights;
- √ Second periodic report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- √ Periodic report on implementation of the UNESCO Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms;
- √ Initial report on implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

#### **4. Reports scheduled for discussion**

97. The second periodic report on implementation of the International Covenant on Economic, Social and Cultural Rights is scheduled for discussion in November 2009 during the forty-third session of the Committee on Economic, Social and Cultural Rights.

98. The second periodic report on implementation of the African Charter on Human and Peoples' Rights is also scheduled for presentation in November 2009 at the forty-fifth regular session of the African Commission on Human and Peoples' Rights.

## **VI. ACHIEVEMENTS AND GOOD PRACTICES**

### **A. Institutional innovations**

#### **1. Re-establishment of the autonomous status of the Ministry of Human Rights**

99. Following the installation of the Cabinet on 26 October 2008 by Order No. 08/067, the Ministry of Human Rights, which had previously been merged with the Ministry of Justice, was converted back into an autonomous institution. Its areas of responsibility are outlined in article 1.B.35 of Order No. 08/074 of 24 December 2008:

- Promotion and protection of human rights and fundamental freedoms
- Dissemination of information on human rights
- Human rights monitoring
- Examination of flagrant human rights violations through the appropriate mechanisms, such as the Human Rights Mediator and the Monitoring Committee, without prejudice to the work of the courts or the administrative procedures provided for by law
- Cooperation with the High Commissioner for Human Rights, the African Commission on Human and Peoples' Rights and other national, regional and international human rights institutions
- Advocacy on behalf of the Democratic Republic of the Congo with international and regional human rights bodies (Human Rights Council, African Commission on Human and Peoples' Rights)
- Preparation of periodic reports for international and regional human rights monitoring bodies and the distribution of those reports

100. At the provincial government level, there are also variously named ministerial offices that are responsible for human rights, justice and gender affairs.

#### **2. The Ministry of Gender Affairs, the Family and Children**

101. The Government accords special priority to the promotion of gender equity and the equitable representation of women in the country's institutions. Children and families should also be protected. The inclusion of the word "family" in the name of this ministry reflects the practical application of article 40, paragraph 2, of the Constitution, which stipulates that the family is to be placed under the protection of the State.

102. Under the aegis of the Ministry, the National Children's Council and National Women's Council were created and are now in operation under the terms of Orders Nos. 11/CAB/V.M/AFF/SOF/98 of 13 May 1998 and CAB/V.M/AFF/SOF/015/98 of 10 July 1998.

103. These two councils also have offices at the provincial and even at the district levels.



104. The functions and authorities assigned to the Ministry of Gender Affairs, the Family and Children include:

- Consideration and implementation of all such measures as may be necessary to put an end to discrimination and violence against women with a view to ensuring women's equality with men before the law
- Reinforcement of the legal and institutional structure for ensuring women's participation in the nation's development and a meaningful level of representation in national, provincial and local institutions

### **3. Establishment of the "Entité de liaison des droits de l'homme" in the Democratic Republic of the Congo**

105. In accordance with the resolution adopted by the Human Rights Council on 27 March 2009 on the situation of human rights in the Democratic Republic of the Congo, on 22 June 2009 the Government approved a decree on the creation, organization and operation of the "Entité de liaison des droits de l'homme" as a mechanism for consensus-building and cooperation with respect to human rights in the country.

106. This mechanism is composed of human rights institutions, ministries, government services, delegates of national and international agencies, and representatives of human rights NGOs. Its job is to study the underlying causes of human rights violations and to propose solutions for these problems (article 2 of the above-mentioned decree).

### **4. Creation of a technical inter-ministerial committee for the preparation and follow-up of initial and periodic human rights reports**

107. This inter-ministerial committee was created in accordance with a ministerial decision issued by the Minister for Human Rights on 13 December 2001, which was then revised on 17 April 2007 and 12 June 2009.

108. In addition to preparing human rights reports, the committee is responsible for follow-up and for evaluating the implementation of human rights treaties and action taken in response to treaty body recommendations. It is also its job to keep relevant documents on file and to compile statistics on the situation with respect to human rights, including the rights of specific groups.

### **5. Establishment of the High Council of the Judiciary**

109. This Council, whose establishment is provided for in article 152 of the Constitution, has recently been created in accordance with Act No. 08/013, promulgated by the Head of State on 5 August 2008. Since the judiciary is the branch of government responsible for guaranteeing citizens' individual freedoms and fundamental rights (article 150, paragraph 1, of the Constitution), the High Council of the Judiciary is called upon to play a crucial role in strengthening the independence of the country's justice system. As the body responsible for managing the judiciary, it is its job to nominate judges, decide on promotions, retirements, revocations, resignations and the reinstatement of magistrates (article 2 of Act No. 008/013).

### **6. Creation of a national agency to combat violence against women**

110. The draft text of a decree creating such an agency was approved by the Council of Ministers on 28 August 2009.

## **7. Establishment of a Conference of Provincial Governors**

111. Under the terms of article 200 of the Constitution, the Conference's job is to provide policy and legislative advice and recommendations. Its first meeting was convened (Order No. 09/037 of 20 June 2009) in Kisangani in late June 2009 following the workshop that the Government organized in Kinshasa on 10 and 11 June 2009 to validate the strategic framework for decentralization.

## **8. Synergies at the provincial level in the effort to combat impunity in cases of sexual violence**

112. The stakeholders in this effort include delegates of the provincial governments, provincial assemblies, the Bar, the judiciary, NGOs, the medical profession and others. The Provincial Commission of Sud-Kivu is particularly active.

## **9. Creation of an inter-ministerial committee to develop proposals and provide guidance in regard to disarmament, demobilization and reintegration**

113. This committee, which is working to put an end to all instances in which children are associated with armed forces or armed groups, was created by Decree No. 03/041 of 18 December 2003 and has since been modified and expanded. It includes the Minister of Defence, Minister of Human Rights, Minister of the Interior, Minister of Labour, Minister of Agriculture, Minister of Rural Development and Minister of Finance.

## **B. Other good practices**

114. A human rights network has been created within Parliament. The mission of the senators and deputies belonging to this network is to draw attention to crucial human rights issues which need to be resolved as a matter of urgency.

115. A human rights section has been established within the national police force. This section plays an important role in raising awareness about human rights standards.

116. Committees to monitor human rights violations have been set up at the level of military districts and police precincts and are working hard to safeguard people's human rights.

117. In August 2009, the Government organized a national conference on human rights and the rule of law in the Democratic Republic of the Congo. Participants in the conference took stock of the overall human rights situation, assessed the outcome of the first conference on human rights, which was held in June 2001, and analysed recent trends and the outlook for improvements in the human rights situation.

118. In March 2009, the Government adopted a "zero tolerance" policy on crimes of sexual violence. This measure, which was approved by the Council of Ministers, is designed to deter persons from committing such crimes and to combat impunity in general.

119. The Government has organized a zero-tolerance campaign to combat the use of child soldiers. Between 16 June 2008 and 16 June 2009, thousands of children have been taken out of armed groups: 399 in Sud-Kivu, 2,012 in northern Nord-Kivu and 520 in southern Nord-Kivu (cf. UEPN-DDR, 2009).

120. Good practices in providing increased access to education and improving the quality of instruction include:

- The granting of scholarships to qualifying students attending universities and other institutions of higher learning in all the countries' provinces
- The organization and operation, for some time now, of advanced degree studies and doctoral courses of study at some universities
- The distribution of free textbooks and school supplies at some schools
- Translation of the Convention on the Rights of the Child into four national languages

121. Good practices in raising awareness of human rights include:

- Creating, within the University of Kinshasa
  - √ The UNESCO Chair for Human Rights, Peace, Security and Good Governance;
  - √ The Interdisciplinary Research Centre for Human Rights in Central Africa;
- Phasing in courses on human rights (in, for example, the course of study leading to a law degree at the University of Kinshasa)
- Creating and moderating radio and television programmes on human rights (children, women, health, education and the culture of peace)
- Organizing open houses in the courthouses of Lubumbashi

122. Distribution of two insecticide-treated mosquito nets per household free of charge in order to combat malaria and promote the right to health.

123. Institution of a national plan for the promotion and protection of human rights in the Democratic Republic of the Congo. This plan was drawn up in 1999 and was revised in 2001, 2002 and 2008. It was updated again at the National Conference on Human Rights and the Rule of Law, held from 18 to 21 August 2009.

## **VII. CONSTRAINTS AND MAJOR CHALLENGES IN THE IMPLEMENTATION OF FUNDAMENTAL RIGHTS**

124. The following factors hinder rapid progress in the promotion of human rights:

(a) Constraints associated with the destruction of infrastructure and superstructures in the course of the numerous armed conflicts that have plagued the country since 1996;

(b) Economic constraints and poverty. The Democratic Republic of the Congo is a poor, heavily-indebted country with one of the lowest rankings on the human development index in the world. Its shortage of financial resources has been exacerbated by the global financial crisis;

(c) The country's neocolonialist and dictatorial legacy. The country is still experiencing the after-effects of some 60 years of foreign domination and oppression (unpaid debts, litigation, the need to adapt legislative provisions that were brought in from outside sources, etc.);

(d) Illiteracy and cultural prejudices (particularly the problem posed by certain attitudes). Ignorance (and fear) prevent people from demanding their rights and ensuring that they are respected;

(e) Constraints in connection with access to the justice system and with the administration of justice. Challenges in this regard include insufficient territorial coverage of courts and tribunals, a shortage of funds for compensating victims and providing free legal assistance, problems regarding the training and/or retraining of judicial personnel and dilapidated prison infrastructure;

(f) Special problems hindering access to health, work, education and housing;

(g) The existence of a diverse range of sources of law (written law, customary law), which frequently leads to the improper application of human right standards;

(h) Non-payment of government dues to some international organizations dealing with human rights, which effectively deprives the country's representatives of their voice.

### **VIII. PRIORITIES, INITIATIVES AND COMMITMENTS**

125. The Government is taking action in the following areas in an effort to promote human rights effectively:

- Combating corruption and impunity
- Establishing the National Human Rights Commission
- Building new prisons, reforming the prison system and safeguarding prisoners' rights
- Introducing human rights courses at all (primary, secondary, university) levels of the education system and in key sectors (public administration, the police force, the armed forces, security services)
- Increasing budget allocations for health, education, the justice system and human rights
- Reforming the justice system, the police force, the armed forces, security services, and public administration
- Pursuing deliberations with a view to the ratification of international human rights instruments, including:
  - Convention on the Rights of Persons with Disabilities (12 December 2006) and its Optional Protocol
  - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (15 December 1989)
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990)

- Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (29 May 1993)
  - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (10 December 2008)
  - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (10 December 1999)
  - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (18 December 2002)
  - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
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- Operational capacity-building for human rights NGOs and other stakeholders involved in promoting human rights
  - Continuing to advocate the repeal of the death penalty, measures for putting an end to the use of child soldiers, zero tolerance of sexual violence, the criminalization of torture, and the development of a specific legal framework for the protection of human rights defenders and witnesses
  - Carrying forward activities designed to educate the urban and rural population about human rights
  - Acting upon the recommendations of the Committee on the Rights of the Child, the Human Rights Council and other treaty bodies, and raising awareness of those recommendations
  - Capacity-building for the committees responsible for monitoring human rights violations in military districts and police precincts
  - Setting up committees at the provincial level to combat the worst forms of child labour and to combat administrative and police harassment
  - Bringing domestic legislation into line with international instruments ratified by the Democratic Republic of the Congo and transmitting the corresponding instruments of ratification for treaties to which it is a party to the proper bodies
  - Furthering judicial cooperation with the International Criminal Court
  - Establishing a constitutional court, a council of State and a court of cassation
  - Raising and ensuring the effective application of the guaranteed minimum wage

**IX. EXPECTATIONS OF THE DEMOCRATIC REPUBLIC  
OF THE CONGO IN TERMS OF CAPACITY-BUILDING  
AND REQUESTS FOR TECHNICAL ASSISTANCE**

126. The Democratic Republic of the Congo requests support for appropriate technical assistance from the international community, particularly the United Nations Human Rights Integrated Office in the Democratic Republic of the Congo, to build its human rights capacity in the following areas:

- Operational capacity-building for the Ministry of Human Rights and its provincial offices (and establishment of other divisions)
- Establishment of a government-run victim and witness protection programme
- Organization of seminars for judges and other law enforcement personnel
- Support for the inter-ministerial committee tasked with the preparation of human rights reports (training in report-writing techniques)
- Preparation and distribution of information materials about human rights in national and local languages
- Support for the implementation of instructional programmes on human rights and on the culture of tolerance and peace
- Organization of human rights training seminars for members of the armed forces, police force, security services and district agents
- Human rights education (television shows, radio shows, comics, etc.)
- Support in compensating victims of serious human rights violations and in providing comprehensive care for victims of sexual violence
- Support in establishing an inter-ministerial council to find ways of lowering the cost of providing medical attention and support for the poor and indigent
- Support in setting up a fund for the promotion and protection of human rights and in administering the support fund for victims of sexual violence
- Capacity-building for civil society, the National Human Rights Commission and the UNESCO Chair for Human Rights, which will have a region-wide focus
- Support for the refurbishment and construction of prisons and custodial facilities for minors in order to ensure the existence of humane conditions

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