



Joint NGO Submission:
UPR on the Democratic Republic of the Congo
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1. Promotion and Protection of Human Rights on the ground
1.1. General Remarks

The Democratic Republic of the Congo (DRC) has signed and ratified most of the important international human rights conventions like the International Convention against racial / ethnic discrimination, the International convention on civil and political rights, the international convention on economic, social and cultural rights, the convention against discrimination against women, the international convention against torture and the international convention for the rights of the child.

It is however to be deplored that the DRC continues to be a country with one of the world's highest rates in severe human rights violations. It is estimated that in the last 10 years, more than 5 Million people have been killed due to military fighting, through acts of violence by civilians, army and armed fighters, and as a consequence of war, displacement and non-access to humanitarian aid and basic health-care as a consequence of political unrest in the country.

In 2006 the United Nations and the European Union offered tremendous financial, personal and administrative support to organize the countries' first democratic elections since 1960 for parliament and presidency. Joseph Kabila and his «Parti du Peuple pour la Reconstruction et la Démocratie» (PPRD) have won these elections, but are since struggling to execute their powers in the huge territory of the DR Congo with its limited infrastructure, roads and communication system. President Joseph Kabila executes political powers, but his influence on the national army (FARDC) and on provincial administration in the country is still limited.

2. Impunity

2.1. Limitations of the justice system in the DRC

Although the United Nations Security Council in resolution 1468 from March 20, 2003 declares the international communities will to put an end to gross human rights violations that go unpunished, the profound lack of judicial institutions in almost the entire country continues to be appalling. Only about 2000 judges and prosecutors are officially employed by the Congolese state, with over 70 percent of these concentrated in the cities of Kinshasa, Lubumbashi, Kisangani, and Goma, while the total population is estimated over 60 million. State employees in general often don't receive their due salaries for months, and judges, staff and police lack training and knowledge on even basic rules and principles of the justice system and laws. Specialized trainings and capacity building is only provided in limited amount by international organizations, but hardly by the national universities or the justice system.

2005 the National Truth and reconciliation commission was established, but it has not produced a substantial input on the society's perception of justice or the public debate on the national history of violence. There has been criticism on the operational standards and its independence and transparency of work.

To address the widespread criminality within the national army, the Kabila government created a Cour d'Ordre Militaire (COM), but so far this new judicial body has achieved a reputation of ignorance against the rules of due process and basic elements of fair trial, including an accused right to appeal and to have a defendant of his choice.

On many occasions the government of the DRC has proven to be mistrusting or even an obstacle to independent justice. Government, the ministry of justice and even the parliament have tried to marginalize the outreach and capacities of courts, judges and prosecutors. Despite the fact that the constitution foresees a separation of powers in the DRC, in reality, a clear subordination of the judiciary under the executive is to be observed.

2.2 Limited justice system: A burden for the local population

Especially in the eastern provinces Ituri, South Kivu and northern Katanga, widespread human rights violations are caused by military clashes, massacres, lootings, murders, sexual violence, abductions or recruitments of child soldiers. Rebel groups, local militias and even the national army FARDC, and also business men and civilians commit serious crimes, but are rarely ever brought to court. A general sense of rightlessness and need for self-defense marks the general perception of justice within the population. The few legal representatives are –mostly due to the lack of payment and control - to a great extent notoriously corrupt and claim the justice sector as their private source of income generation. Therefore victims of crime or human rights abuses usually avoid contact with the judicial system and use alternative ways of conflict resolution, i.e. self-defense, traditional arbitration or paid militias who convince the opponent by force. Unprivileged groups of the rural population generally lack access to any sort of justice system or redress mechanisms.

3. Child soldiers

Since 1998 the DRC has officially signed and ratified several international human rights and humanitarian law treaties that are a legally binding obligation not to recruit or use children in the armed conflict. As member of the United Nations, the DRC has for ex-

ample agreed on the UN Convention on the Rights of the Child (CRC), Article 38(3), which prohibits recruitment of children under the age of 15. This was complemented by the Optional Protocol to the CRC on the involvement of Children in Armed Conflict from 2002, where the minimum age for participation of children in military organizations is fixed at the age of 18 years.

The DRC has also, in 2000, ratified the International Labor Organization's (ILO) Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour which forbids its members to employ soldiers under the age of 18 years, which is also regulated by Article 7 of Congolese military law.

Nevertheless the Congolese government security forces have committed serious crimes against child combatants. Whenever underage fighters were arrested, they were treated like adult soldiers, detained and even allegedly tortured.

3.1. Recruitment

In an "Act of Engagement" signed on 23 January 2008, armed groups in the operating in the North Kivu province of the DRC agreed to end the killing, rape and torture of civilians, and the recruitment of child soldiers. The recruitment of boys and girls at an age of seven years upwards has since decreased, but is still continuing. There are different ways of recruitment: by abduction and force, at schools or in the villages, but also by convincing the parents that the children could have a "successful" future in the military business. For families with a lack of alternative income, it can become necessity to give their children to an armed group, where they are at least receiving regular food. Some communities in war-torn areas even regard the nomination of child soldiers as an act of self defense against inimical militias.

To reduce the desertion of the scared children, military leaders use the cruelest and extreme forms of violence, killings and torture in front of other children to prevent escapes. Brutalization is a method to force obedience in the children, and traumatism as a way of creating an "identity as a combatant" and breaking the children into a life as outlaws and member of an exclusive group far from the logic of a civilized community.

3.2. Sexual violence against female child soldiers

Approximately 40% of the recruited child soldiers are female. These girls being abused as cooks, carriers, sex slaves and even for forced marriages. They suffer from beatings, rape, torture, forced labor, unwanted pregnancies and even death. Their risk of contracting HIV or other sexually transmitted diseases is very high.

For girls who have been in the hands of armed groups, the return to their families or communities is almost impossible. They are regarded as prostitutes with no social status, and their families in many cases refuse to accept them anymore. Therefore their only future option often lies in a long term relationship or marriage to a soldier.

3.3. Reintegration programs

UNICEF, local and international NGOs are offering programs for the disarmament, medical and psychological treatment and social reintegration of child soldiers. These programs show considerable success and were able to reduce the numbers of children detained in military groups effectively. In 2004, according to Amnesty International, approximately 30.000 children have served as child soldiers in Congolese militias, rebel groups and even the national army FARDC. Today the number is estimated to be between 4.000 and 12.000 children under the age of 18, who serve in armed groups. But the programs for child combatants show two main limitations: Up to 40% of the child

soldiers are girls. But in the reintegration camps, their number is below 10%, which indicates that there might be a difficulty to integrate girls into the welfare schemes.

A second weakness of the reintegration of child soldiers seems to be the limited framework of the aid projects. Many children are participating in medical care schemes and take advantage of educational and vocational trainings. But the long term process of reunification with their families and communities does not seem to be sufficient. Due to the extent of traumatization and psychological strains, it would take several years of regular counseling and family support, before the children as well as their environment can handle the amount of damage caused by the history of violence. Many families can not cope with their own children anymore, who have adopted an aggressive, challenging and even threatening personality. So the rate of children, who, after a short time with their families and neighbors, return to a life in an armed group, is up to 50%.

3.4. Responsible military leaders unchallenged

Only one suspect of the recruitment and abuse of child soldiers is currently being charged by the International Criminal Court: Thomas Lubanga Dyilo, Germain Katanga, and Mathieu Ngudjolo are currently in custody on charges of war crimes and crimes against humanity, including the recruitment of soldiers under the age of 15 years. Bosco Ntaganda, the new military leader of the CNDP-rebels in North Kivu is wanted by a warrant of the ICC, but currently the Congolese government prefers to deal with him as a “legitimate” political leader in order to keep stability in the region and abstains from an arrest.

4. Sexual violence

In June 2008 the UN resolution 1820 called all fighting parties in the DRC, to immediately halt all forms of sexual violence against women and girls and to act for their protection. Sexual violence is since then regarded as a war crime, a crime against humanity or as a means of genocide and can be prosecuted by the international criminal court in the Hague.

Some parts of the Congolese Law are contradicting international conventions that were ratified by the DR Congo, like the „Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)” or the “International Covenant on Civil and Political Rights (ICCPR)”.

Despite the peace agreements of Goma and Nairobi, the demobilization process and the elections of 2006, the female population of the DR Congo still suffers from massive sexual abuse and violence. But also men and boys become victims. The perpetrators come from different armies and rebel groups, but also from the national army FARDC. Especially women and girls in rural areas are targeted by the armed groups, during their work on their fields, when they fetch water or walking to markets. Often, they are members of an “inimical group”, or their families are accused to support one of the conflicting parties, so that the women get punished substitutionally.

In some cases, husbands, fathers or children are killed in front of the women, or the women get raped before their families. From July 2006 to June 2007, UNICEF counted 12.000 rapes in the Kivu region alone, one third of the victims being under the age of 16 years. An estimated 30% of the victims get infected with HIV. The officially accounted numbers do in no way reflect the real amount of the cases, as many victims and their families do not have access or avoid contact with the local police or justice system. A feeling of shame, cultural taboos and especially the lack of protective institutions and a working justice have caused a situation, where the great majority of cases is not pun-

ished, and where the victims receive no support. Care International estimates that since 2002, every third woman in South Kivu has been raped.

As a consequence of sexual violence, the survivors in most cases suffer from severe physical and psychological problems. They are traumatized, and sexually transmitted diseases have reached a very high proportion in the population. The physical damages, bleedings, hemorrhages, fistula and infections are accompanied by incontinence and later problems during pregnancies and births. As a lot of the rapes are executed violently by the force of sticks, guns, knives, stones etc, the victims suffer from enormous physical damage with long-term effects and need specialized medical treatment that is often not available in their rural areas. According to the WHO, 70% of the Congolese population have no sufficient access to basic health care facilities, not to speak of specialized treatment. Only very few institutions in Goma or Bukavu or Kinshasa have the necessary equipment and means to offer reconstructive operations on raped and maimed women, or to provide them with adequate HIV-treatment.

Especially the spread of the HI Virus over greater distances and into remote areas is caused by the tactics of militia warfare. Soldiers in the DR Congo, as well as in all other armed conflicts of the world, have a high prevalence of the HI Virus. It is estimated that within the rebel groups and the national army, who are in most cases responsible for the systematic sexual violence, the infection rate with HIV is up to 50 – 60%.

5. Arbitrary arrests of political opponents

The Congolese government regularly has used violence to intimidate and to dispose of its political opponents. Since the election in 2006, political repression is a frequent occurrence in the DR Congo, especially in the Western part of the Congo. The worst of the suppression took place in Kinshasa and in the province of Bas Congo where President Joseph Kabila could not gain sufficient support and popularity among the majority of the population before the elections in 2006. Under the pretence of fighting a planned coup d'état, President Kabila launched military operations against his opponent Jean Pierre Bemba and his supporters in August 2007 and in March 2008 in Kinshasa.

In the course of the violent conflict between Kabila and Bemba, military operations and arbitrary detentions were used against unarmed opponents and civilians. The Republican Guard and agents from the military intelligence and from other army units had to execute the assaults. They arbitrarily arrested over 600 persons, both civilian and military and illegally detained them in Camp Tshatshi. By establishing a secret Commission, which was empowered to arrest and investigate, Kabila's supporters furthermore tried to silence political opponents. Within nine months after the elections, the commission and state agents arrested at least 200 persons, including journalists, police officers and soldiers and other suspected of supporting Bemba. These detainees were, in contrast to Congolese and international human rights law, denied access to lawyers. To intimidate and criminalize them, they were accused of "public insult of the state or the president", false propaganda, inciting hatred and violence and participation in rebel movements. Many detainees were abused, threatened and tortured because of their alleged support of Bemba and their supposed disloyalty towards President Kabila.

In February 2007 and March 2008 state agents used unwarranted force against the Bundu Dia Kongo (BDK), a political-religious group based in Base Congo. Devotees of the BDK demand greater provincial autonomy and gained large electoral popularity. Furthermore they allied with Bemba. Beside unnecessary force and brutality on part of the Government, arbitrary detentions were also used. On 15 March 2009, during a parliamentary crisis, three human rights activists who supported the President of the Na-

tional Parliament, Vital Kamerhe, were arrested in Kinshasa and after a couple of days were released.

In the course of the military operations in Kinshasa and Base Congo, soldiers, intelligence agents and police officers devoted to President Kabila injured, tortured and even killed hundreds of persons and arbitrarily arrested and detained probably thousands more. Among these persons were also journalists and members of the civil society who were linked to political opponents and who protested abuses against them.

No independent and transparent judicial investigation has been conducted into the violence committed by government troops and Bemba's guards in August 2006 or March 2007 in Kinshasa, nor into the violence in Bas Congo in February 2007 and March 2008, despite some feeble promises by the government to do so. The government did not attempt to seek criminal responsibility for the August 2006 and March 2007 violence, nor even to obtain an accurate count of the lives lost. In 2008 many of the arbitrarily arrested political opponents were released. The Congolese government is neither interested in reducing the arbitrary arrests nor in bringing those responsible for the abuses to justice.

6. Military offenses against civilians cause refugees and IDPs

As a consequence of the integration of rebel groups or political opponents into the FARDC, the so called process of "mixage" and "brassage", the national army has become very fractionalized and diverse. A complicated system of dependencies and aversions, of military and economic relations and controversies now marks the leadership of the FARDC. In most regions, the military commanders follow their own agenda and financial interests as a priority. This, together with the described failure of the justice system and a national culture of impunity, enables military personnel to be acting like warlords out of control of the central government. The performance of FARDC officers is hardly distinct from the rebel groups like Mayi-Mayi, Rasta, FDLR, LRA etc, that are present in the DR Congo. All armed groups, either FARDC or the rebels, are seeking power and economic success in the trade of the rich natural resources.

Political disputes are solved by military power. Since the elections 2006, there have been military clashes in the Ituri region between the ethnic groups of Hema and Lendu and the UPC Rebels and the FARDC that had to be appeased by a special mission "Artemis" of the European Union. In 2007 the national army was fighting opponents of President Kabila in Kinshasa and Bas Kongo. Since 2006 there has been constant unrest in the Kivu Provinces caused by the rebel groups Mayi-Mayi, Rasta, FDLR, LRA and CNDP. All have been fighting in changing alliances against each other and with the FARDC. This has caused massive streams of up to 500.000 internally displaced persons (IDPs) and refugees who fled into Rwanda, Uganda, Tanzania and Sudan.

The fighting groups are causing fear and panic in the population, who flee and leave their villages empty and give up the care for their agriculture, which causes massive famine later. The local population regularly experiences looting, rape and killings by troops who are looking for food and booty. In many cases, villagers have also been used as humanitarian shields for rebel groups to guard them against attacks from the FARDC. In recent cases, rebel groups like the LRA (at Christmas 2008) or the FDLR (January /February 2009) have killed hundreds of civilians as a "punishment" for military defeats that they suffered against the FARDC before.

Unfortunately the MONUC seems unable to fulfill its mandate for the protection of the civil population against military attacks sufficiently. Due to the shortage of staff, ex-

perts, transportation and equipment, the MONUC could so far not meet the populations need for shelter and defense against military aggression.

As the FARDC and the local police are part of the problem of the offenses against civilians, the population is left with hardly any protection against the attacks. Human rights groups international humanitarian organizations and the UN offer them support in the refugee camps. But the number of up to 2,5 Mio refugees and IDPs from January 2008 can of course not be addressed in an adequate manner. It is of the highest importance to use all political, diplomatic and other means to stop the military actions in the region, and create political stability, to enable the people to return to their homes and take care of themselves.

7. Work conditions in the mines are inhuman

The mining of mineral resources in the DR Congo has changed dramatically in the past 20 years. Where in the 1980s several major mining companies controlled the majority of the mining areas, these have all vanished and are now replaced by ca. 2 Mio artisanal miners, who work independently or in groups of less than 10 persons and without any financial or social security system, and together they turn out approx. 90% of the total mineral production of the DR Congo. The miners are totally dependent on the buyers and middlemen, who dictate working conditions and prices for the products. The price span for a kilogram of Coltan, which is needed for the production of mobile phones or laptop computers, can be 1200% between the local artisanal miner and the final consumer in an American or Asian computer factory. These 1200% are divided among the middlemen of the trade-chain and the manufacturing industry.

Many mining areas are controlled by local militias, who either steal the products, force the laborers to work or impose high taxes on the earnings to finance their groups and ammunition. Workers, who are not willing to comply with the militias are threatened with displacement, torture or killing.

Even without military oppression, the living and working conditions of the artisanal miners are dire. As they have no labor rights, no governmental protection or security regulations, they are digging the minerals literally by hand out of the ground. Usual shifts last 10-12 hours, with a payment of 0,5 to 50 US\$ per day and according to the findings. Children of 10 years or even younger are used to carry sacks with minerals up to 12 hours a day.

The digging pits and tunnels into the ground can be as deep as 20 meter or more, without security measures. Landslides and caving-ins are regular dangers for the workers. No health-care or security system supports them if they get hurt by an accident during work.

To clean and to prepare the minerals, often chemical substances are used that are disastrous for the workers and the environment.

As the workers are not organized in unions or other forms of representation of interest, they have no influence on their working conditions or the prize for their products. Existing labor protection like the ILO-standards for working conditions are not controlled, and international companies who are the final users of the mineral resources refuse to show social responsibility for the working conditions in the DR Congo.