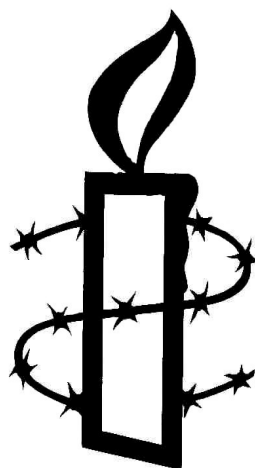

amnesty international

Democratic Republic of Congo

Submission to the UN Universal Periodic Review

**Sixth session of the UPR Working Group of the
Human Rights Council
November-December 2009**



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concerns about the disparities between the Democratic Republic of Congo's Constitution and national laws as these affect human rights, and the wide gap between law and implementation.
- In section C, Amnesty International describes its concerns over widespread serious human rights violations, including impunity, unlawful killings and extrajudicial executions, sexual and gender-based violence, the recruitment and use of child soldiers, torture and ill-treatment in detention, political prisoners, detention without trial, enforced disappearance, violations against human rights defenders and violations of the right to freedom of expression.
- In section D, Amnesty International makes a number of recommendations for action by the government in the areas of concerns listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

The Democratic Republic of Congo (DRC) enacted a new Constitution in February 2006 which contains important human rights commitments. However, it has failed to amend most of its Acts of Parliament, with the result that some enactments contain provisions that breach the Constitution. For example, Article 156 of the Constitution states that military tribunals have jurisdiction only over army and police personnel. The Military Penal Code, however, allows military trial of civilians for several offences, including firearms offences. The Constitution also guarantees the right to freedom from discrimination on several grounds, including sex, yet unreformed family law still prevents women from enjoying equal property and inheritance rights. The Constitution provides for free primary education, but in reality primary education remains fee-paying and unaffordable for many.

Although the government is reviewing its legislative enactments, this is proving to be an extremely slow process. Despite the Constitution's unconditional prohibition of torture in Article 61, there is no satisfactory definition of torture in national legislation. The definition in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although ratified by the DRC in 1996, has not been incorporated into domestic law. A proposed amendment to the Penal Code to rectify this gap has been before Parliament since 2004. Despite having ratified the Rome Statute of the International Criminal Court in 2002, the government has not enacted it into domestic law; a draft has been before the Parliament since September 2005.

The Constitution makes no reference to the death penalty, which remains in force for a number of offences, including for some crimes against state security. Scores of people receive death sentences every year, imposed overwhelmingly by military courts, although no executions have been reported since 2003.

The DRC has also enacted important laws providing enhanced human rights protection, including the Law on the Status of the Political Opposition (December 2007), two laws on Sexual Violence (July 2006), a Law on Protection of Rights of People Living with HIV/AIDS (July 2008) and the Child Protection Code (January 2009). In June 2006, the DRC completed the domestic procedure related to the ratification of the Optional Protocol to the Convention against Torture and acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 215 of the Constitution stipulates that all international treaties acceded to or ratified by the DRC take precedence over national legislation. Article 153 further provides for the direct application of international conventions by national judicial organs.

The enactment of these laws and ratification of instruments, however, have not been followed by satisfactory implementation. Relatively little has been done to encourage their application, to raise awareness of the new laws or to train judicial officials.

C. Promotion and protection of human rights at the national level

Introduction

Serious human rights violations, including war crimes and crimes against humanity, continue to be committed in the conflict zones of eastern DRC by both government forces and armed groups. These include unlawful killings, recruitment and use of children, abductions, pillaging and deliberate attacks against civilian populations and humanitarian agencies. Many of these abuses have been attributed to foreign armed groups, including the FDLR² and LRA³, acting in reprisal for government military offensives against them. Sexual violence is prevalent in all areas, particularly in the conflict zones.

Amnesty International is also concerned at reports of detention-related violations throughout the country. These include arbitrary arrests, unlawful detentions and prolonged detention without trial, and routine torture and other ill-treatment. These violations are often directed against those perceived to be critics or opponents of the government, including human rights defenders, journalists and trade unionists. Restrictions on the right to freedom of expression are regularly reported, with repeated closures of radio stations linked to the political opposition, confiscation of media equipment, and arbitrary arrests of or threats against journalists.

Justice and impunity

A number of factors underpin the persistence of gross human rights violations throughout the country. Impunity is a major obstacle, as is the slow progress by the government to reform and train the security forces to a standard that would enable them to protect civilians effectively and to act in compliance with the DRC's human rights obligations. Victims of human rights abuse almost universally lack access to justice, medical and psycho-social care and reparations and redress. Essential programmes of institutional reform to address these concerns remain largely unimplemented. Lack of state resources and capacity partly explain the lack of progress towards reform. However, in Amnesty International's view, government indifference to human rights issues is also a major element.

The justice system does not have sufficient capacity to ensure accountability and redress for human rights violations in an impartial and consistent manner. The national justice system is under-resourced, inaccessible to the majority of the population, lacks independence and is dominated by the military judiciary which retains jurisdiction over a range of non-military offences. Many trials, especially by military courts, are summary and fail to meet minimum fair trial standards. Instances of political and military interference in the administration of justice have been reported. The prisons are dilapidated and escapes are frequent.

² *Forces Democratiques de Liberation du Rwanda* (Democratic Liberation Forces of Rwanda).

³ Lord's Resistance Army, based in northern Uganda..

Despite credible allegations of serious human rights violations against a number of senior officers of the national army, *Forces Armées de la République Démocratique du Congo* (FARDC), and other branches of the security forces, documented by the UN and NGOs, the government has taken no steps to investigate these allegations or to suspend personnel from duty. Although it is in a position to do so, the government has so far refused to arrest and surrender General Bosco Ntaganda to the International Criminal Court, where he is wanted on war crimes charges. Against this backdrop, Amnesty International welcomes a small number of prosecutions for human rights abuses before national military courts, including most recently that of Gédéon Kyungu Mutanga, a *mai-mai* militia leader responsible for numerous attacks on civilians in Katanga province between 2003 and 2006. He was sentenced to death by a military court for crimes against humanity, insurgency and terrorism in March 2009. While AI opposes the death penalty, his prosecution and conviction on such important charges is a positive development.

Unlawful killings and extrajudicial executions

State security forces as well as Congolese and foreign armed groups routinely commit unlawful killings and deliberately target civilians. Killings by state security forces are not limited to the conflict zones of the east. Very few such killings have been investigated by the authorities. UN investigations have concluded that around 200 people, mainly members of the *Bunda dia Kongo* politico-religious group, were unlawfully killed during police and army operations in Bas-Congo province in early 2007 and in February and March 2008. The investigations blamed the high death toll on excessive use of force by state security forces. The government, however, has failed to investigate these allegations or initiate criminal proceedings against those allegedly responsible.

Sexual and gender-based violence

High levels of rape and other forms of sexual violence continue to be reported across the country, particularly in the east, as part of a broader pattern of violence and discrimination against women and girls. Soldiers and police, as well as Congolese and foreign armed groups, are among the main perpetrators. An increasing number of rapes by civilians is also reported. Many rapes, notably those committed by armed groups, involved genital mutilation or other extreme brutality. A number of armed groups also abduct women and girls as sex slaves.

Few perpetrators of sexual violence have been brought to justice. A 2006 law which strengthens judicial procedures and penalties for crimes of sexual violence has not been widely implemented. Rape survivors continue to be stigmatized, suffering social and economic exclusion, and few have access to adequate medical and psycho-social care. The government appears to have done little to promote greater access to justice for rape survivors.

Child soldiers

An estimated 3,000 children are associated with armed groups in eastern DRC, a large proportion of whom are under 15 years of age. Children are sometimes forcibly recruited or abducted in groups. Although the FARDC formally ended the recruitment of children aged under 18 in 2004, an unknown number of children are reportedly still serving with the FARDC, especially in unintegrated brigades. The FARDC also routinely uses children as porters in military operations. Child protection and community reintegration programmes for

former child soldiers remain under-resourced and entirely reliant on international and national NGOs and UN agencies.

Persistence of torture and ill-treatment in detention

Torture and other forms of ill-treatment are common, especially in military and intelligence service detention. Those suspected of political opposition are especially vulnerable to acts of torture and ill-treatment. The use of torture is facilitated by the routine use of arbitrary arrest, incommunicado detention, secret detention sites, preventive detention beyond the legal 48-hour limit, and the failure by state officials to respect the right of the detained to establish immediately contact with their families and legal representatives. Human rights monitors, including from the UN, are routinely denied access to military and intelligence service detention centres. Conditions in prisons and detention centres often amount to cruel, inhuman or degrading treatment, and deaths of prisoners from malnutrition or treatable illnesses are regularly reported.

Political prisoners / prolonged detention without trial

A large number of prisoners, including many accused of state security offences, remain in prolonged detention without trial. Many of them have not appeared before a court or been allowed to challenge the lawfulness of their detention for years. They include several civilians, and army and police officers arrested in late 2006 or early 2007 on suspicion of participating in an armed insurrection by supporters of opposition leader, Jean-Pierre Bemba. Amnesty International is concerned that many if not all of these individuals are detained solely because they share Jean-Pierre Bemba's ethnicity or geographical origin in Equateur province, and has repeatedly called for their prompt trial or release. Four of them have died in pre-trial detention from preventable illnesses and ill-health allegedly aggravated by torture. In July 2008, the government ordered the release of 258 military and civilian detainees from Kinshasa's central prison. The detainees had been held unlawfully without trial for long periods, some since 2004. While welcome, the releases appear to follow no organized or transparent judicial process.

Suspected enforced disappearances

Scores of army personnel, police officers and civilians are reported to have been the victims of enforced disappearance since 2006, many after allegedly being taken into detention by members of the presidential guard (*Garde Républicaine*) or the military intelligence service (*Etat-Major des Renseignements militaires*, also known as ex-DEMIAP) in the capital, Kinshasa. Most appear to have been suspected of supporting opposition leader Jean-Pierre Bemba. They include Dr. Faustin Sosso, medical adviser to Jean-Pierre Bemba, who was allegedly abducted by *Garde Républicaine* soldiers in central Kinshasa in August 2006. The authorities have taken no measures to investigate these allegations or to clarify the whereabouts of the persons missing.

Situation of human rights defenders

Human rights defenders are routinely physically attacked, abducted, arbitrarily arrested and subjected to death threats and other forms of intimidation by government security forces and armed groups. Many defenders have been forced into hiding or to flee by the escalating conflict in North-Kivu province. Others have been targeted because of their involvement in high-profile human rights cases. The killings of two prominent human rights defenders, Pascal Kabungulu, head of the human rights NGO *Héritiers de la Justice*,

in Bukavu in July 2005, and journalist Serge Maheshe, also in Bukavu in June 2007, have never been satisfactorily investigated by the authorities.

Violations of the right to freedom of expression

Amnesty International is increasingly concerned about the shrinking space for expressing political dissent or legitimate criticism of the authorities. Many radio and television stations suspected of sympathising with the political opposition have been arbitrarily closed by the authorities or have suffered suspicious power-cuts during interviews with opposition figures, allegedly on government orders. Journalists and editors are routinely threatened or arbitrarily arrested, often in relation to articles alleging corruption by state officials. Such actions have the effect of imposing a media “black out” on opposition figures and their activities and of curbing open reporting of important matters affecting good governance. Human rights organizations that defend journalists and campaign for the right to freedom of expression have themselves received death threats and been threatened by the authorities with removal of their NGO status.

D. Recommendations for action by the State under review

Amnesty International calls on the government to:

Justice and impunity

- To ensure that individuals, including members of the FARDC, police and intelligence services, suspected of committing crimes under international law or other serious human rights abuse are brought to justice in fair trials that exclude the death penalty;
- To establish an independent vetting mechanism to exclude suspected perpetrators of gross human rights violations from the army, police and intelligence services, starting with the senior officer corps, pending judicial investigation;
- To undertake a programme of reform and rehabilitation of the justice system to enable it to effectively investigate and prosecute violations of human rights;
- To establish an independent transitional justice mechanism, in consultation with national and international bodies, to address grave human rights violations committed in the DRC since 1993;
- To incorporate the provisions of the Rome Statute of the International Criminal Court promptly into national law;
- To arrest General Bosco Ntaganda and surrender him to the International Criminal Court.

Sexual and gender-based violence

- To ensure that all victims of sexual violence enjoy equal and effective protection under the law and have equal access to justice;
- To implement the 2006 laws on sexual violence and train judicial officials in their application;
- To establish, including with international support, emergency programmes of appropriate medical and psycho-social care for rape survivors, which should be free of charge;
- To develop effective mechanisms, in consultation with groups representing women’s interests, to prevent violence against women and girls, to facilitate prosecution of perpetrators and to provide full reparation for victims and survivors, in line with UN Security Council resolutions 1325 and 1820.

Recruitment and use of child soldiers

- To release all children still serving in the FARDC or police forces into the care of an appropriate child protection agency;
- To ensure that relevant UN agencies and NGOs have access to all military installations to identify and remove child soldiers;
- To thoroughly investigate cases of abduction, recruitment and use, torture and other ill-treatment of children in order to identify, apprehend and bring the perpetrators to justice;
- To ensure that children released or escaping from armed groups and forces are protected and that DDR programmes cater adequately for their long-term support and reintegration into the community, including by providing appropriate and gender-sensitive psycho-social rehabilitation, and educational and vocational opportunities;
- To implement the 2009 Child Protection Code (*Code de Protection de l'Enfant*).

Torture, enforced disappearance and other detention-related violations

- To provide unrestricted and unhindered access to all detention facilities to national human rights NGOs and international human rights monitors;
- To deposit with the UN its instruments of ratification of the Optional Protocol to the Convention against Torture and to establish an independent national monitoring mechanism for all detention centres, as required by the Optional Protocol;
- To ensure that all detainees are transferred promptly and in any case within 48 hours to a competent judicial authority to determine the legality of their arrest and detention;
- To close all unofficial military, police and intelligence service detention centres that are outside the supervision of a competent and legally-established judicial authority;
- To introduce legislation defining and criminalizing acts of torture and other cruel, inhuman or degrading treatment or punishment.

Political prisoners and detention without trial

- To bring detainees to trial promptly before courts meeting international standards of fairness and without recourse to the death penalty;
- To reform military judicial legislation in line with Constitutional guarantees so that the military no longer has the power to arrest and try civilians.

Human rights defenders

- To respect and protect the right of human rights defenders and lawyers to conduct their work without hindrance, intimidation or harassment, in line with the UN Declaration on Human Rights Defenders;
- To ensure that violations of the human rights of journalists, human rights defenders and independent civil society activists are fully and promptly investigated and that those found responsible are brought to justice in trials that meet international standards of fairness.

Freedom of expression

- To ensure that members of the political opposition, the media and civil society are able to exercise freely their rights to freedom of expression, association and assembly as guaranteed in international human rights instruments, as well as the DRC's Constitution;
- To end arrest and detention of those who peacefully express and publish their opinions.

Appendix: Amnesty International documents for further reference⁴

Democratic Republic of Congo: North Kivu – No end to war on women and children (AI Index: AFR 62/005/2008, September 2008)

Democratic Republic of Congo: Open Letter to the DRC Government regarding the death in detention of Major Yawa Gomonzza (AI Index: AFR 62/004/2008, May 2008)

[*Democratic Republic of Congo: Torture and killings by state security agents*](#) (AI Index: AFR 62/012/2007, October 2007)

[*Democratic Republic of Congo: Disarmament, Demobilization and Reintegration \(DDR\) and Reform of the Army*](#) (AI Index: AFR 62/001/2007, January 2007)

Democratic Republic of Congo: Children at War: Creating hope for their future (AI Index: AI Index: AFR 62/017/2006, October 2006)

⁴ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/democratic-republic-congo>