



International Service for Human Rights

The Reports in Short

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The Independent Expert on the situation of human rights in the Democratic Republic of the Congo¹

Mandate holder

Titinga Frédéric Pacéré

Mandate

The mandate was initially created as a Special Rapporteur in 1994 but was modified in 2004². It was established due to concern about the serious violations of human rights, particularly the practices of torture and cruel, inhuman and degrading treatment or punishment, arbitrary detention, inhuman and degrading prison conditions, enforced disappearances, summary and arbitrary executions of persons exercising their right to freedom of opinion and expression, denial of the right to a fair trial, and reports of mass forced displacements of more than 750,000 persons belonging to ethnic minorities. The Independent Expert is mandated to establish direct contacts with the authorities and the people of the Democratic Republic of the Congo (DRC); provide assistance to the Government in the field of human rights; and study the evolving situation of human rights and verify that the Government is fulfilling its human rights obligations.

Activities

- Mission to the DRC from 16 to 27 August 2005;
- The Independent Expert issued a joint appeal to the government authorities and the UN Organisation Mission in the DRC (MONUC) regarding massacres perpetrated in July 2005;
- In January 2006, the Independent Expert sent a memorandum to the Government containing an analysis of the human rights situation in the country and recommendations in this regard.

Annual report³

Scope

The report is based on information transmitted by the Office of the High Commissioner for Human Rights (OHCHR), United Nations Organization Mission in the Democratic Republic of Congo (MONUC), and representatives of institutions, churches, NGOs, political parties and associations up to 10 January 2005, and on information gathered during a mission to the DRC from 16 to 27 August 2005, during which the Independent Expert met with the country's authorities, members of the diplomatic corps, representatives from the UN and NGOs, and political and religious leaders. The Independent Expert also visited detention facilities.

Summary and key conclusions

- A number of **legislative** and **institutional developments** occurred in 2005, including the adoption of the draft Constitution, the extension of the transitional period until June 2006, the technical restructuring of the Transitional Government, the launching of an anti-corruption operation, and the promulgation of the

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission *Resolution 2004/84*.

³ E/CN.4/2006/113, 15 February 2006.

Amnesty Law that grants amnesties to all Congolese for acts of war, political offences and crimes of opinion committed between August 1996 and June 2003;

- The **Constitution** was **adopted by referendum** in January 2006. Almost 25 million Congolese, out of an electorate estimated at between 22 and 30 million, registered to vote and there was a 60 per cent turnout. The polling passed off relatively peacefully though with a few incidents of concerns such as the death of 10 persons and the lack of participation of some voters on account of lack of security;
- In a December 2005 judgement, the **International Court of Justice** found that the **Republic of Uganda** had violated the 'principle of non-use of force' in international relations and the principle of non-intervention with regard to the DRC and more generally had **violated its obligations under international human rights law** and **international humanitarian law**, thereby placing itself under the obligation to make reparation to the DRC. Uganda has announced that a team has been set up to negotiate compensation with the DRC;
- Considerable progress has been made in the **disarmament** and **community reintegration** programs: 15,607 combatants have been registered and 6,300 weapons confiscated. Coordination between State authorities, political and judicial action, and MONUC has improved in this regard and an agreement was signed with the USA on the reintegration into the economy of over 10,000 demobilised combatants;
- Recently pockets of the country, which remained outside the State's control, especially in the Ituri region, have been steadily diminishing;
- The **human rights situation** continues to be a matter of concern throughout the DRC, especially in the eastern regions and in northern Katanga, where militias and other armed groups, both Congolese and foreign, as well as the Armed Forces of the DRC (FARDC) and the Mai-Mai, are committing atrocities and other massive human rights violations with impunity;
- The Independent Expert noted **efforts to stamp out these human rights violations**, notably efforts to prosecute persons responsible for sexual abuse and harassment;
- The **main sources of concern** include the lack of consensus on joint management of the transitional period, the steady deterioration of law and order in the Ituri region following repeated attacks by armed militias, lack of an independent judiciary, insecurity, the situation of women and children, trafficking and illegal exploitation of natural resources;
- There is growing insecurity, which acts as a background for human rights violations. Massacres of civilians, pillage, mass rape of women and girls, for which often soldiers are responsible, and summary executions have seriously undermined the Transitional Government's efforts to improve the situation;
- The humanitarian situation remains precarious, notably for hundreds of thousands of **internally displaced persons** fleeing acts of plunder and violence;
- The **situation of children** is a cause for major concern: they are used in armed conflict, abandoned on the streets and massacred. There are ongoing efforts to withdraw children from FARDC units and armed groups;
- The DRC ranks third in the world among countries of origin of **refugees**, but efforts are being made, with the repatriation of 152,000 refugees who had been in Tanzania for more than six years in October 2005;
- The **prison situation** throughout the DRC is deplorable and inhumane, and conditions of detention are appalling: there is no decent food, health care, hygiene, or separation of categories of detainees;
- The funds allocated to the Congolese **judicial system** are negligible in view of the multitude of problems it faces, including dilapidated buildings, shortage of magistrates and judges, and unbearable working conditions;
- The meagre salaries of judges and magistrates mean that they cannot assert themselves, pass independent, fair and equitable judgements, or be guaranteed protection if they ever try to convict a criminal or warlord;
- The Office of the Prosecutor of the **International Criminal Court** has declared its intention to prosecute crimes within its jurisdiction committed in the DRC and has set up a field office in Kinshasa in this regard.

Key recommendations

- The Commission should establish a **special international criminal tribunal**, or failing that, consider the establishment of **mixed criminal chambers** within existing Congolese courts to try crimes committed between 1994 and 2002;
- The Government should take measures to affirm and **consolidate the State's authority** throughout the country and ensure the effective **integration, reinforcement** and **equipment of the army and the police**;
- The Government should **improve** the physical and intellectual **conditions** and **equipment of institutions** and **employees of the State**, especially the judiciary;
- The Government should **combat all the crimes** that continue to be committed, particularly rape and sexual violence used as a weapon of war and arson of homes and property;

- The Government should **oppose the continuing use of children in armed conflict** and **disarm militias**;
- The Government should **combat impunity** and dismiss all suspected perpetrators of crimes against humanity and serious human rights violations;
- The **international community** provide support to the Government in all these recommendations, as well as increase support for MONUC and assist the field office of the OHCHR.