

COUNCIL MONITOR

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

Mandate Holder

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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.

Annual Report³

Scope:

The Independent Expert did not visit the DRC for the period covering the present report. This report is based on information transmitted by the Office of the High Commissioner for Human Rights (OHCHR) in the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and representatives of institutions, non-governmental organizations (NGOs), political parties and associations. The report reflects information received up to 31 December 2006.

Activities:

- Following the serious deterioration of the social climate after the first round of the presidential elections held on 30 July 2006, the Independent Expert sent the two winners of the first round a letter setting out his analysis of the situation and his recommendations.

¹ Report prepared by Christopher Lee, Intern, ISHR; edited by Gareth Sweeney, Information Program, ISHR.

² Commission Resolution 2004/84.

³ A/HRC/4/7, 21 February 2007.

Summary and key conclusions:

- The human rights situation in the DRC remains worrying, particularly in the eastern part of the country and in northern Katanga, where national and foreign militias, as well as the Mai-Mai and the armed forces of the DRC, commit atrocities and other massive human rights violations with impunity.
- The political situation in the first half of 2006 was dominated by the presidential and legislative elections. In the accompanying election fever, violations occurred in virtually all spheres of human rights.
- The independent expert is concerned about the weakness of the judiciary and its lack of independence vis-à-vis the executive branch, which also control judicial decisions.

Institutional and political life:

- Following the announcement of the results of the first round of the presidential elections held on 30 July 2006, violent clashes occurred between 20 and 22 August involving the close protection officers of the two winners of the first round – President Joseph Kabila and his Vice-President, Jean-Pierre Bemba. The Minister of the Interior reported 43 wounded and 23 killed, including 12 police officers, 7 civilians, and 4 soldiers.
- On 15 November 2006, the Independent Electoral Commission announced that President Kabila had won the election. On 16 November Vice-President Jean-Pierre Bemba declared that he did not accept the provisional results. On 27 November the Supreme Court rejected the application contesting the provisional results. President Joseph Kabila was sworn in on 6 December 2006.
- In the Ituri district, a peace agreement was signed on 29 November between the Armed Forces of the Democratic Republic of the Congo (FARDC) and the Forces de Résistance Patriotique de l’Ituri (FRPI) of Cobra Matata, Peter Karim’s Front Nationaliste et Intégrationniste (FNI) and Mathieu Ngudjolo’s Mouvement Révolutionnaire du Congo (MRC). However, hostilities resumed on 24 December, jeopardizing the future of the disarmament process.

Human rights violations:

- There have been reports of arbitrary arrest, illegal detention, torture, and summary execution committed by members of the Republican Guard. In addition, three mass graves were discovered near a FARDC military camp in Bavi.
- Many cases of sexual violence were reported during the first half of 2006. Statistics of the United Nations Population Fund (UNFPA) show that from 21 to 22 September over 3,000 rapes were recorded in Katanga, with members of the armed forces being allegedly responsible for 70% of them. In the northern province of Équateur, evidence was brought against a group of policemen for the systematic rape of at least 37 women and young girls, while two collective rapes were allegedly committed by a PNC commander and several PNC officers in the Bongandanga territory.
- Hundreds of street children have been arbitrarily arrested and detained.
- The prison situation remains precarious and serious. Detention conditions are on the whole deplorable almost everywhere. In prisons and holding cells, the situation is one of overcrowding, outdated facilities, a lack of hygiene, food and medical care, and disregard of proper procedures resulting in illegal detentions. Prisoner escape and prisoner mutiny have been persistent problems.

Justice and impunity

- The budget allocation for justice in 2005 and 2006 was insignificant (about 0.6 per cent) when measured against the dilapidation of infrastructures, shortages of judges and magistrates, and intolerable working conditions.
- The high crime rate in the DRC, the disturbing number of offences committed and impunity compound the impotence of the national courts. Given the powerlessness of the courts, it is necessary to use other legal mechanisms, in particular the International Criminal Court. However, the Independent Expert

emphasizes that the ICC alone cannot try all the crimes as its jurisdiction is limited to acts committed since the entry into force of the Rome Statute (1 July 2002).

- The independent expert recommends the creation of a special international tribunal for the DRC or, failing that, joint criminal chambers to try crimes committed since 1994.

Key recommendations:

To all the Congolese parties

- Promote a culture of peace, tolerance, and national unity. Reject violence and ethnic hatred and accept the democratic process.

To the new Government

- Take all necessary measures to affirm and consolidate the State's authority over the entire territory and improve the inadequate physical, intellectual and equipment conditions of institutions and employees of the State. The government should also focus on combating sexual violence against women and children, as well as preventing the use of children for war.

To the new Parliament

- Adopt laws providing for the application of the Rome Statute of the International Criminal Court, the protection of persons living with HIV/AIDS, the criminalization of torture, the reformation of the prison administration, the integration of the army and the reform of the security forces. The Independent Expert also recommends the adoption of framework law on the functioning of the new national human rights institution and the functioning of the national police, as well as harmonizing the provisions of the Military Penal Code with the requirements of the Constitution.

At the international level

- Support the new institutions arising out of elections and assist the integrated human rights presence in the DRC.
- The Human Rights Council, and through it the General Assembly, the Security Council, and the Economic and Social Council, should establish by decision of the Security Council an international criminal tribunal for the DRC or, failing that, joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002 and all subsequent crimes.

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch/hrm/council

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