



## UPR Submission

### Democratic Republic of Congo April 2009

#### 1. Summary

The Democratic Republic of Congo (DRC) held historic elections in 2006 that brought to office President Joseph Kabila. Despite widespread optimism that elections would usher in peace and stability, horrific violence against civilians, political repression, and impunity have continued. Since 2006, thousands more civilians have been killed, more women and girls have been raped, hundreds have been arbitrarily detained and 1.2 million remain internally displaced from their homes, adding to the growing number of victims from previous years.

The conflict in eastern Congo continues and all sides -- local militia groups, foreign armed groups, the Congolese army, police and other law enforcement services -- commit atrocities against civilians. Rebuilding the Congolese state into one where the rule of law is respected after years of brutal conflict is daunting and challenging. Yet to date little progress has been made. The government has failed to investigate abuses committed by its own soldiers and police, promoted those responsible for abuses, interfered with the independence of the judiciary, and brutally repressed those who opposed government policies, including the press and human rights defenders.

This submission focuses on the behavior of the Congolese government -including soldiers, police and agents under its control -and details key areas where it has failed to take steps to end human rights violations since the 2006 elections. For abuses committed by other armed groups, please refer to the numerous briefing notes and reports on Congo on the Human Rights Watch website.

#### 2. Abuses in Eastern Congo by the Congolese army

Many human rights abuses committed in Congo are perpetrated by soldiers of the Congolese army, the FARDC. Poorly trained and disciplined as well as frequently unpaid and lacking essential supplies, government soldiers commit many crimes including summary executions, arbitrary arrests, torture, beatings and rape. Only a handful of soldiers responsible for such crimes have been arrested and punished. No commanding officers have been held to account. Human Rights Watch has recorded scores of instances of abuses by Congolese army soldiers between 2006 and 2009. In one such incident, on October 29, 2008, Congolese army soldiers rampaged through the eastern town of Goma, killing at least 20 civilians, including five children, and injuring more than a dozen others. They raped over a dozen women and girls and looted shops and homes alike. More recently, in March 2009, at least 21 women and girls were raped by Congolese army soldiers in southern Masisi

(North Kivu) and northern Kalehe (South Kivu) territories. Many of the victims were violently gang raped while the soldiers were carrying out looting sprees.

Congolese army officers and law enforcement personnel also arbitrarily arrested individuals they suspected of supporting their enemies, especially those linked to the National Congress for the Defence of the People (CNDP), a rebel group formerly led by renegade general Laurent Nkunda, a Congolese Tutsi. At least 40 persons, including 12 children, were arbitrarily arrested in Goma between late August and November 2008. Most were held without charge, tortured, and only released after paying substantial bribes to the authorities.

In the eastern town of Bukavu between March 12 to 14, 2009, in advance of President Kabila's visit, soldiers and security agents arbitrarily arrested 99 civilians in what officials said was an attempt to ensure security. Those arrested included vendors, porters, hairdressers, restaurant workers, and 41 children, some as young as 11 years old. Most were not charged and at the time of writing, at least 38 were still held at the Central Prison in Bukavu.

### **3. Political Repression**

The government of President Kabila has used violence and intimidation to eliminate its political opponents. Between August 2006 to September 2008, state security forces deliberately killed or summarily executed more than 500 persons in Kinshasa and the western province of Bas Congo and arbitrarily arrested and detained about a thousand more, many of whom were tortured or ill-treated. Many of the detainees were from Equateur, the home province of Kabila's election rival, Jean Pierre Bemba or were members of Bundu Dia Kongo (BDK), a political-religious group based in Bas Congo that promotes greater provincial autonomy and in August 2006 allied itself with Kabila's electoral rival, Jean Pierre Bemba.

#### ***(a) Summary Executions and torture in Kinshasa***

In Kinshasa, Kabila launched military operations against his electoral rival Bemba in August 2006 and again in March 2007. During and after the military operations, soldiers, police officers, and intelligence agents deliberately killed, injured, arbitrarily arrested, and tortured hundreds of persons.

One of the state security forces responsible for the abuses was the Republican Guard, a special military unit responsible for presidential security. Between August 2006 and May 2008, Republican Guard soldiers summarily executed or caused the enforced disappearance of more than 125 people, many of whom were killed at Camp Tshatshi, the Republican Guard military base on a hill just outside central Kinshasa. Together with agents from military intelligence and from other army units, Republican Guards also arbitrarily arrested over 600 persons and subjected many of those in their custody to torture and inhuman treatment. Republican Guards have no legal authority to carry out arrests.

Arbitrary arrests and torture against at least 200 perceived opponents were also perpetrated by other law enforcement personnel including those of the

special services of the police who operate out of Kin-Mazière police station in central Kinshasa. Victims detained at Kin-Mazière prison and interviewed by Human Rights Watch consistently described the means of torture used against them, including the use of electric batons on their genitals and other parts of their bodies, beatings, whippings, and mock executions. They were forced to sign confessions saying they had been involved in coup plots against President Kabila. Some were kept chained for days or weeks.

In July 2008, the government released 258 prisoners from prison, including many who had been illegally detained since March 2007. The decision was taken to resolve problems of overcrowding in the jail and did not appear to have been based on a judicial review of the cases. At least 200 other political prisoners remain in detention. As of April 2009, none of their cases had been brought to trial.

#### ***(b) Killings in Bas Congo***

In Bas Congo in February 2007 and March 2008, army soldiers, police and other state agents used unnecessary or excessive force against Bundu Dia Kongo (BDK), a political-religious group. When BDK demonstrators protested, at times violently, against electoral corruption in early 2007, police and government soldiers shot or stabbed to death 104 BDK adherents and bystanders. In March 2008 police made a preemptive strike in anticipation of further protests, in what United Nations investigators said appeared to be a deliberate effort to wipe out the movement. Over 200 BDK supporters and others were killed and the BDK's meeting places were systematically destroyed. The police deliberately killed persons who were wounded, running away, or otherwise in no position to threaten them. The police attempted to hide the extent of the carnage by dumping dozens of bodies in the Congo River and hastily burying others in mass graves. Police arrested over 150 persons suspected of supporting the BDK and tortured or ill-treated some of them. On March 21 the government revoked the authorization of the BDK to operate as a social and cultural organization, effectively making it illegal.

#### **4. Threats to Journalists and Human Rights Defenders**

Government agents have also killed, threatened, arrested, tortured, and otherwise harassed journalists and members of civil society who were linked to political opponents or who protested abuses against them. The government closed down radio stations and television networks, such as those linked to Bemba, sometimes temporarily, sometimes permanently. Hundreds of other perceived government opponents have been harassed and intimidated through anonymous phone calls, threatening cell phone text messages, and middle-of-the-night visits by army or police. Some went into hiding, others fled the country.

In South Kivu, Serge Maheshe, the Bukavu bureau chief for Radio Okapi, a United Nations-supported radio station, was murdered on June 17, 2007. The military court trial which followed and the subsequent appeal procedure were characterized by intimidation, injustice and a failure to establish the truth of what happened. Three civilians were convicted and sentenced to death. During the hearings, Congolese and international observers who

raised alarm at the lack of fair trial as well as the defense lawyers were threatened and harassed.

On March 7, 2008, Nsimba Embete Ponte, editor of *L'Interprète*, was illegally detained at the National Intelligence Agency (ANR) prison in Kinshasa for writings critical of President Kabila. His colleague Davin Ntongo Nzovuangu was arrested a few days later. On September 12, state agents raided the offices of Global TV, a private television station in Kinshasa, arrested journalist Daudet Lukombo, and confiscated essential broadcasting equipment following the station's coverage of a press conference by a BDK leader.

## **5. Sexual Violence**

Sexual violence, a crime regularly found in situations of armed conflict in eastern Congo, continued at high levels during the military operations from 2006 to 2009. All armed groups, including the Congolese army, have been responsible for rape. Despite greater awareness and more assistance to the victims, crimes of sexual violence committed by soldiers and combatants have continued at a horrific rate. In March 2009, at least 21 women and girls were raped by Congolese army soldiers in southern Masisi (North Kivu) and northern Kalehe (South Kivu) territories. Many of the victims were violently gang raped while the soldiers were on looting sprees. In 2006, Congo's parliament passed a law on sexual violence broadening the definition of rape and increasing the penalties against it, but its application has been weak. While the law has led to more convictions of soldiers and civilians for the crime of rape, there have been no convictions against senior commanders or army officers whose troops were responsible for mass rape limiting its deterrent effect.

## **6. Child Soldiers**

As the Congolese government began working to create an integrated national army, Congolese and international workers between 2003 and 2006 identified and removed some 30,000 children from the ranks of both regular military units and other armed groups and returned them to civilian life. But recruitment intensified again from 2006 to 2008, particularly in North Kivu where conflict continued. In 2008, child protection workers separated 4,657 children, including 598 girls, from the army and other armed groups, mostly in North Kivu province. Between January and March 2009, an additional 1,361 children were separated from the army and armed groups in North Kivu, some of who had been re-recruited after earlier demobilization. In late March 2009, UNICEF estimated that 8,000 children remained in armed groups, including some in the Congolese army.

## **7. Justice and Accountability**

Near total impunity for grave violations of international humanitarian law continued, with very few perpetrators arrested and prosecuted by national authorities. In one exceptional case in March 2009, a military court in Katanga found rebel Mai Mai commander Gédéon Kyungu Mutanga and 20 other Mai Mai combatants guilty for crimes on major charges, including crimes against humanity. In other cases, the government promoted those responsible for human rights abuses rather than holding them to account:

- Bosco Ntaganda, wanted on an arrest warrant by the International Criminal Court for crimes he committed in Ituri between 2002 and 2004, was promoted to the position of general in the Congolese army in January 2009. Ntaganda was also implicated in the massacre of over 150 civilians in Kiwanja, North Kivu, in November 2008.
- Jean-Pierre Buyoyo was appointed a colonel in the Congolese army despite being found guilty by a Congolese military court for the arbitrary arrest and illegal detention of children (de facto child recruitment) in March 2006 in a landmark case. Buyoyo escaped from prison in June 2006 and joined a rebel group, the CNDP, which in January 2009 signed a peace deal with the Congolese government.
- Delphin Kahimbi resumed his duties as a colonel and deputy commander of the 8<sup>th</sup> military region in early 2009 despite repeated allegations by UN officials as well as Human Rights Watch that he was involved in arbitrary arrests, torture and cruel or degrading treatment. Colonel Kahimbi was temporarily absent from his position after his troops suffered a humiliating military defeat in October 2008.

## **8. Recommendations to the DRC Government**

- Release immediately all individuals detained without charge, including political prisoners.
- Investigate and prosecute as appropriate soldiers, police officers, intelligence agents, and any other official, regardless of rank, implicated in killings, torture, rape and other serious violations of international humanitarian law.
- Establish a special judicial mechanism within the Congolese justice system to prosecute war crimes and crimes against humanity by members of all armed groups including the Congolese army.
- Establish a task force under the supervision of the Ministry of Justice comprising military and civilian judicial officials, and international and national human rights experts, to establish the number and identities of persons detained without charge or trial, to monitor the release of detainees, and to document cases of torture and ill-treatment of detainees for future judicial action.
- Ensure full implementation of the 2006 law against sexual violence.
- Ensure that no statement obtained under torture or duress can be invoked in criminal proceedings.
- Implement urgent judicial reform to combat impunity and end long-term pre-trial detention.
- Ensure that members of the political opposition, the media, and civil society are permitted to exercise freely their rights to free expression, association, and peaceful assembly as guaranteed by the International Covenant on Civil and Political Rights.
- Permit national and international human rights monitors access to all places of detention and interviews in private with those detained.
- Ensure all prison conditions are consistent with international standards.

- Establish an independent vetting mechanism to remove and exclude, with appropriate due process mechanisms, members of the security forces responsible for serious human rights violations.
- Take all necessary action to stop government officials from interfering in judicial proceedings.
- Prohibit, in accordance with Congolese law, trial of civilians by military courts.
- Abolish the death penalty.