

**Генеральная Ассамблея**

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Совет по правам человека**Четырнадцатая сессия**

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**Защита и поощрение всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав, включая
право на развитие**

**Доклад Специального докладчика по вопросу
о внесудебных казнях, казнях без надлежащего
судебного разбирательства или произвольных казнях
Филипа Алстона***

Добавление

Миссия в Демократическую Республику Конго***Резюме*

Специальный докладчик 5–15 октября 2009 года посетил Демократическую Республику Конго с целью расследования утверждений о незаконных казнях. Его расследования касались прежде всего политических убийств в Киншасе и провинции Нижнее Конго; убийств, совершаемых повстанцами и конголезской армией в регионе Киву и Восточной провинции; и случаев смерти в тюрьмах. Он также расследовал инциденты, приводившие к смерти в результате сексуального насилия, случаи убийства женщин, обвиняемых в колдовстве, убийства правозащитников и журналистов; а также убийства в порядке самосуда.

В 2009 году в ходе отдельных конфликтов в регионе Киву и Восточной провинции многие сотни людей из числа гражданского населения были убиты повстанческими группами, включая Демократические силы освобождения Руанды (ДСОР) и Армию сопротивления Господня (АСГ), а также правительственными силами. В обоих районах был проведен ряд плохо спланированных военных операций правительства и Организации Объединенных Наций,

* Представлен с опозданием.

** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на французском языке. Ввиду значительного объема добавления воспроизводятся в том виде, в каком они были получены.

которые, хотя и преследовали похвальную цель нейтрализации повстанческих сил, достигли ничтожных результатов, к тому же ценой катастрофических потерь среди населения. Повстанцы отвечали на военные операции разрушительными акциями возмездия, подвергая нападениям почти беззащитное гражданское население, повсеместно совершая акты сексуального насилия, принуждая людей к подневольному труду, занимаясь похищениями людей, грабежами, поджогами деревень и убийствами. Правительство и Организация Объединенных Наций не только не обеспечивали эффективного планирования защиты гражданского населения в ходе своих операций, но и сами правительственные силы активно совершали злоупотребления в отношении гражданского населения. В некоторых случаях злоупотребления со стороны армии имели незначительные масштабы и мотивировались плохим денежным и продуктовым довольствием военнослужащих. В других случаях конголезские военнослужащие истребляли гражданское население региона Киву, подозревая его в поддержке повстанцев или же руководствуясь соображениями межэтнической вражды или политического соперничества. Одной из основной причин этих широкомасштабных убийств была быстрая и плохо продуманная интеграция в конголезскую армию бывших повстанцев Национального конгресса народной обороны (НКНО), включая старших командиров, обвиняемых в тяжких военных преступлениях.

Несмотря на утверждения правительства о том, что оно вытеснило силы АСГ из Восточной провинции, эта группировка продолжает совершать жестокие нападения на мирных жителей. Фактически к моменту составления настоящего доклада отмечалось увеличение числа нападений со стороны АСГ, часто сопровождавшихся уродованием лиц и смертью жертв. Кроме того, развертывание частей, сформированных из бывших членов НКНО, в Восточной провинции также сопровождалось ростом количества сообщений о злоупотреблениях военнослужащих в отношении населения. Злоупотребления со стороны военнослужащих и повстанцев, которые стимулируют увеличение числа местных групп самообороны, будут создавать серьезную угрозу для долгосрочной стабильности, если правительство и Миссия Организации Объединенных Наций в Демократической Республике Конго (МООНК) не примут мер по укреплению присутствия подотчетных и эффективных сил безопасности в Восточной провинции.

На западе страны в 2007 и 2008 годах неподотчетные и политизированные силы безопасности уничтожили в Киншасе и провинции Нижнее Конго сотни сторонников оппозиции. Несмотря на весьма реальную угрозу новой волны насилия по мере приближения следующих выборов, этому вопросу уделяется мало внимания на международном уровне, и правительство не предпринимает никаких шагов для реформирования сектора безопасности.

Повсюду в стране множество людей умирают в заключении от голода и нечеловеческих условий содержания. Большинство тюрем не получают ассигнований из государственного бюджета, и питание заключенных обеспечивают их семьи. Порядок внутри большинства учреждений контролируют сами заключенные, и неудивительно, что побег и акты насилия в тюрьмах – обыденные явления. Регистрация и контроль осуществляются столь плохо, что правительство даже не знает, сколько тюрем и заключенных имеется в стране.

В стране также происходят убийства детей и женщин, обвиненных в колдовстве, причем должностные лица часто смотрят сквозь пальцы на проявления такого насилия. Аналогичным образом, обычным делом являются частные акты "отправления правосудия" в отношении лиц, подозреваемых в преступлениях, тогда как полиция реагирует на них медленно или не реагирует вообще. Кроме того, регулярно подвергаются угрозам правозащитники и журналисты, а неко-

торые из них поплатились жизнью за свои попытки бороться за соблюдение прав человека.

Нормой является безнаказанность в связи со всеми формами убийств. Это частично объясняется систематическими проблемами в системе правосудия, особенно коррупцией на всех уровнях, регулярным политическим вмешательством и острой нехваткой ресурсов. Хотя в последнее время в системе военного правосудия в восточной части страны отмечались некоторые улучшения, до сих пор действия, совершаемые старшими командирами, остаются безнаказанными. Правительство отказывается проводить расследования и задерживать лиц, подозреваемых в военных преступлениях, включая Боско Нтаганду, выдачи которого требует Международный уголовный суд. К моменту составления настоящего доклада МООНК всё еще не опубликовала директивный документ, четко определяющий политику ее поддержки операций конголезской армии, и, несмотря на злоупотребления, широко распространенные среди военнослужащих, Организация Объединенных Наций отказала в поддержке только одной воинской части конголезской армии.

При завершении миссии в октябре 2009 года Специальный докладчик рекомендовал провести шесть практически осуществимых ключевых реформ, позволивших бы сократить масштабы убийств и ввести систему подотчетности в Демократической Республике Конго. Они предусматривают следующее: а) предложить правительству в качестве предварительного условия для оказания помощи со стороны Организации Объединенных Наций ввести для военнослужащих форму, на которой были указаны их имена и звания; б) привлечь к судебной ответственности старших командиров, обвиняемых в военных преступлениях; в) обеспечить широкое применение более совершенных мер предупреждения и защиты гражданского населения; г) включить Республиканскую гвардию в состав конголезской армии; д) провести перепись заключенных в тюрьмах и установить свой бюджет для каждой тюрьмы; и е) внести улучшения в процессы мониторинга и представления докладов Организации Объединенных Наций. К моменту подготовки настоящего документа, как представляется, никакого реального прогресса в деле осуществления каких-либо из этих реформ достигнуто не было. В своем докладе Специальный докладчик подробно анализирует факторы, обуславливающие настоятельную необходимость их осуществления.

Annex

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the Democratic Republic of the Congo

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I. Introduction and applicable international law

1. On my mission to the Democratic Republic of the Congo from 5 to 15 October 2009, I visited North Kivu (Goma), South Kivu (Bukavu and Minova), Province Orientale (Dungu and Doruma), Kinshasa, and Bas Congo (Kisantu).

2. In the Democratic Republic of the Congo, in accordance with my mandate to investigate killings that violate international human rights or humanitarian law, I looked specifically at:

- Killings by Government forces and non-stated armed groups in the context of the Kimia II military operation in the Kivus, and by the Lord's Resistance Army (LRA) and the Congolese army in Province Orientale
- Political killings by Congolese security forces in the west of the country
- Killings by private actors which the Government fails to adequately prevent, investigate, prosecute and punish, including vigilante killings, and killings of human rights defenders, journalists and alleged "witches"
- Deaths in custody and prison conditions
- The extent and causes of impunity for killings
- The civilian protection responsibilities of the United Nations Organization Mission in the Democratic Republic of the Congo and its legal responsibilities with respect to killings by the Congolese army

3. As a signatory to the International Covenant on Civil and Political Rights, the Government is obligated to respect the right to life and to show due diligence in preventing and responding to violations by others.¹ The Government's military operations are also governed by the Geneva Conventions and the two Additional Protocols thereto, which oblige it to prevent civilian casualties in accordance with the requirements of discrimination, proportionality, necessity and precaution.² Non-State actors in armed conflict with the Government, such as the Forces démocratiques de libération du Rwanda (FDLR), also have obligations under international humanitarian law, including, for example, not to deliberately attack civilians.

4. MONUC is also involved in military operations in the Democratic Republic of the Congo. Its operations are governed by the Security Council resolutions, which set out the mission's mandate, customary international humanitarian law and the relevant rules of engagement. The existing Security Council mandate, renewed to May 2010, obligates MONUC to use all necessary means to ensure the protection of civilians under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict³ and only permits its participation in operations that comply with international human rights, humanitarian and refugee law.⁴

5. I am very grateful to the Government for the many comments it has provided on a draft of the present report. A number of the concerns raised have been taken into account in what follows. Many of the comments, however, simply refute my assessment of the situation. The Government suggests that more than one third of the report contains information which it considers to be false or not demonstrated. However, no detailed information is provided in order to rebut any of the contested statements. Since the comments thus reflect the Government's views on the report, rather than a correction of factual or other errors, it seems appropriate for the reply to be included in the original language as an appendix to the present report in order to ensure that the Government's views are given full consideration by the Human Rights Council.

II. Extrajudicial executions in the Kivus

6. The focus of my investigation in the Kivus was on killings in the context of ongoing hostilities. Throughout 2009, hundreds of civilians were killed unlawfully by rebel groups, including the FDLR, and Government forces.

7. The history of conflict that has plagued North and South Kivu for over a decade is well known, as are the evolution of the FDLR and the Congrès national pour la défense du peuple (CNDP) rebel groups, the shifting alliances of various armed groups and the Congolese Armed Forces (FARDC) over the years, and the many attempts at peace.⁵ The complex negotiations between the Democratic Republic of the Congo, Rwanda and the CNDP in late 2008 and early 2009 have also been examined in detail elsewhere.⁶

8. These negotiations led to a joint Democratic Republic of the Congo-Rwanda military operation against the FDLR from 20 January to 25 February 2009 (*Umoja Wetu*). It initially pushed the FDLR back from some key areas, but achieved few sustainable outcomes. The operation neither broke the group's structure nor destroyed its leadership; when it ended, the FDLR reoccupied many of their former strongholds. Most significantly, the FDLR responded to the operation by retaliating against civilians, killing at least 100 in late January and early February.

9. Following the withdrawal of Rwanda from the Congo in February 2009, the Government of the Democratic Republic of the Congo launched Kimia II, a second military effort similarly intended to "neutralize" the FDLR.⁷ The operation involved "significant joint planning"⁸ by MONUC and the Democratic Republic of the Congo, and MONUC provided "considerable means to support the FARDC",⁹ including transport, rations, fuel and medical evacuation to selected FARDC battalions in the Kivus.¹⁰

10. In early 2009, the CNDP, together with other armed groups such as the Mayi-Mayi, underwent an accelerated integration into the FARDC. Over 12,000 individuals were integrated, without vetting for criminal activity, and with little retraining or planning directed at breaking down the armed groups' own structures. Many of these new Congolese soldiers were deployed to fight the FDLR as part of Kimia II.

A. Killings by the Forces démocratiques de libération du Rwanda

1. A strategy of revenge

11. The FDLR killed many hundreds of civilians in 2009: hacking them to death with machetes, raping women so brutally that they died from their injuries, and shooting and burning families in their homes. Some of these killings were individual and opportunistic (for example, in the course of stealing money from civilians), but many were systematic large-scale revenge killings.

12. FDLR killings have been recorded every year since its arrival in the Kivus, but the numbers increased dramatically under operations *Umoja Wetu* and *Kimia II*. In 2008, there was an average of 10 civilian killings per month by the FDLR. In 2009, killings increased five-fold.

13. Most of the large-scale attacks occurred in the context of attempts by all sides to the conflict to exert control over villages or other strategic locations. Unable to successfully engage the FARDC militarily, the FDLR devised a deliberate campaign of intimidation and revenge against civilians. The campaign's central pillars were brutal rapes, killings and village burnings. The aims were two-fold. First, in order to gain an information and civilian support-base advantage vis-à-vis the army and the Government, the FDLR sought to control civilians by punishing those accused of supporting the Government of the Democratic

Republic of the Congo or of cooperating with the FARDC. The FDLR applied little distinction, however, and accused whole villages of “cooperation”, punishing them with village-wide destruction. In various locations, the FDLR sent letters to villagers threatening to burn their villages and make civilians “suffer endlessly” if the FARDC continued its attacks. Letters directed civilians to tell the FARDC to stop fighting the FDLR, and warned civilians against supporting Kimia II. Second, to discourage future Congolese army operations and reduce international support for Kimia II, the FDLR planned horrific and deadly attacks on civilians. Their intention was to make the civilian cost of military action intolerably great.

14. Many of the FDLR revenge attacks followed a pattern. First, as part of the Kimia II effort to increase Government control over territory, the FARDC would take over a rebel-controlled village. Open combat was invariably minimal, and the rebels broke into smaller groups and retreated to surroundings forests. The FARDC would then move on to the next location to expand their territorial control, often leaving the previous village poorly- or unprotected. The FDLR could then easily return and would brutalize the remaining civilians.

15. One witness described how his village was initially Mayi-Mayi/FDLR controlled, and was then taken over by the FARDC in the early stages of Kimia II. When the FARDC left two months later, the FDLR attacked, killing large numbers of civilians. Another witness, from Ufumandu, explained that his area had been controlled by the FDLR for years. When the FARDC came to the area, they managed to largely drive the FDLR out. However, the FDLR came back, looted, burned down homes and killed the villagers in retaliation. The witness’s brother and nephew were burned inside their home. Most witnesses to such attacks lost numerous relatives, and were living in camps for internally displaced persons when I met them, too afraid to return because they did not know who was in control or how they would be treated. One 34-year-old female had fled Masisi territory after her husband and three of her children were burned to death when they tried to defend their home from an FDLR attack, following FDLR-FARDC disputes over the territory. Another 37-year-old female’s husband and children were killed when the FDLR attacked her village after the FARDC had taken it over and then left it unprotected.

16. The FDLR also carried out massacres in retaliation for killings by the FARDC of Rwandan Hutus. The Shalio massacre (see also paragraph 28 below), in which the FARDC killed at least 100 civilians, was quickly followed by a massacre in Busurungi on 9 May 2009, in which the FDLR killed at least 50 civilians and burned down 700 homes.

17. On a smaller scale, the FDLR also killed civilians who refused to hand over goods or money. In one emblematic instance, a witness’s younger brother was killed in his home by the FDLR when he refused to hand over his family’s savings.

2. The FDLR leadership and responsibility for killings

18. The FDLR leadership is well known, and the group has a strong command and control structure. While many of its most senior leaders are based outside the Democratic Republic of the Congo, they are in regular contact with commanders on the ground in the Kivus. At the time of my mission, known leaders of the FDLR residing in Germany remained free. However, in November 2009, two leaders (Ignace Murwanashyaka, President of the FDLR, and Straton Musoni, Vice-President) were arrested in Germany on suspicion of responsibility for war crimes and crimes against humanity in the Democratic Republic of the Congo. This is a significant step, and I will continue to monitor the progress of the German investigations and prosecutions. Similar efforts should also be made by France, Belgium and other countries with respect to alleged FDLR leaders residing in their territories.

3. Militarized mines in the Kivus

19. Many mining sites (gold, cassiterite, coltan, wolframite) in the Kivus are militarized. They are illegally controlled by the FDLR, Mayi-Mayi groups and even the FARDC. In some areas, the rebel groups and the army cooperate to profit mutually from their unlawful activities. Demilitarization has not been a high priority, and Kimia II had little impact on mine militarization. Continued militarized control diverts valuable resources from the State into private hands, and fuels human rights abuses around mining areas, including forced labour, stealing and unlawful “taxation”, as well as life-threatening working conditions. It also exacerbates the conflict by funding violent activities.

4. Protection of civilians from retaliation attacks

20. In planning and implementing Kimia II, neither the Government nor MONUC paid sufficient attention to protecting civilians from retaliation attacks by the FDLR. The latter, of course, bears direct responsibility for the killings it has committed; but both the Government and MONUC also have international legal obligations to protect civilians and to plan military operations so as to minimize the loss of civilian life.¹¹ This is particularly important when, as here, both parties were on notice of the FDLR’s practice of retaliation killings.

21. The difficulties in achieving such civilian protection cannot be overstated. They include difficult terrain, sometimes inaccessible villages, severe resource constraints and rebels bent on destruction.

22. The nature of FDLR attacks, together with the scale and depth of violence against civilians, however, indicates that much more should have been done to protect civilians. Civilians were rarely killed in the context of open FDLR-FARDC combat. Instead, in village after village, the FDLR attacked them when there was no FARDC or MONUC presence. Such opportunities for attack often resulted from poor military planning or operational deficiencies. The FDLR attacks in January and February 2009 fitted the pattern perfectly and should have sounded alarm bells. FDLR revenge attacks following subsequent Government military operations were foreseeable and perhaps even inevitable in the absence of an adequate protection presence.

23. At a minimum, in such contexts, the civilian protection obligations of the Government and MONUC required them to take into account the risk of FDLR revenge attacks in their military planning, especially with respect to troop movements and maintaining proximity to civilian areas. In particular, humanitarian law principles of discrimination, proportionality, necessity and precaution would require decisions about whether to move into new territory or to vacate villages to be taken in the light of balancing any anticipated military advantage against the expected harm to civilians.

B. Killings by the Congolese Armed Forces

24. The Congolese Armed Forces (FARDC) have also committed both opportunistic killings and targeted massacres of civilians in the context of Kimia II.

1. Opportunistic killings

25. Individual killings have generally occurred in the context of looting or sexual violence, or for other purely subjective reasons. Soldiers have, for example, retaliated when civilians resisted attempts by soldiers to steal their food, motorcycles or other goods. I received numerous testimonies of soldiers opening fire on crowds of civilians who had refused to hand over food. In other cases, soldiers have shot at their commanders or civilians when rations or pay were delayed. I also received testimony of soldiers forcing

civilians to carry rations and other goods for them over long distances, because the soldiers do not have any other method of transport. Civilians have been ordered to do this under threat of death. Looting by the FARDC in villages they have taken over from the FDLR has also been common. Such problems are due both to the central Government's failure to provide funds and the rampant embezzlement of pay by commanders, combined with often poorly trained and ill-disciplined soldiers.

26. Victims or witnesses have difficulty in attributing responsibility for abuses because soldiers' uniforms do not identify their name and unit number. The rapid and unvetted integration of former rebels into the FARDC in early 2009 compounded these problems. The failure to support soldiers appropriately in the field led soldiers to prey on the local population, and resulted in the range of predictable parasitic abuses against civilians that were well documented by humanitarian organizations throughout 2009. Available evidence, including that provided to me by military commanders, strongly suggests that these types of abuses are reduced where soldiers are provided adequate pay and rations.

2. Targeted massacres

27. In addition to opportunistic killings, I obtained credible evidence that FARDC soldiers carried out large-scale targeted massacres of civilians in the Kivus. These killings appear to have been primarily carried out by units composed of ex-CNDP members integrated into the FARDC in the early stages of Kimia II, and led by CNDP commanders with sometimes extensive records of prior abuses. The massacres often took place against civilians located near suspected rebel group locations, or against civilians presumed to have supported the FDLR.

28. For example, I received reliable evidence of a massacre on 27 April 2009, in which the FARDC attacked a makeshift refugee camp in Shalio. Some 50 Rwandan Hutu refugees, presumed to be aligned with the FDLR, were immediately killed – either shot, cut or beaten to death. Another group of 50 were taken by the FARDC, most of whom were subsequently also killed; a group of some 40 women were raped and beaten; a further group taken from Shalio remains unaccounted for. The commander responsible for the attacks appears to have been Lt. Col. Innocent Zimurinda, an ex-CNDP leader known for his Tutsi extremism.¹²

29. Since my visit, further evidence has emerged of other similar FARDC killings, including killings near Shalio, in Bunyarwanda and Marok; two other massacres in August 2009 in Mashango and Ndoruma; and frequent killings throughout 2009 on the Nyabiondo-Pinga axis.¹³ Information provided to me indicates that many of these killings were also committed by ex-CNDP members, and that they likely took place to punish civilians perceived to be rebel “collaborators”, to destroy non-Tutsi populations and possibly to gain access to mineral resources.

30. One of the most significant causes of these large-scale killings by the FARDC were the failures to appropriately plan the integration of the CNDP into the regular armed forces, and to vet during that process, especially at senior command levels. This resulted in a context ripe for grave abuses, especially against non-Tutsi civilians. It should come as no surprise that members of the CNDP terrorized civilians when integrated into the FARDC, given that (a) the CNDP has long been known to abuse civilians; (b) most CNDP members had little formal military training, and were provided no serious training or discipline upon integration; (c) mass rapid integration and poor record-keeping resulted in confused command structures in the FARDC; (d) the ex-CNDP were deployed to fight in areas inhabited by the rebels they had previously fought, or inhabited by civilians perceived to support those rebels or simply of a rival ethnicity; and (e) the units were led by commanders with extensive records of serious human rights abuses.

31. Killings by the FARDC continued throughout 2009 because of the Government's failure to adequately respond to evidence of abuse and to hold perpetrators to account (see paragraphs 96–108 below).

3. The role of the United Nations Organization Mission in the Democratic Republic of the Congo

32. MONUC serves a crucial role in the Democratic Republic of the Congo. I met with MONUC officials across the country, and was impressed with the level of their dedication to the mission and the skill with which they carried out their functions. In the Kivus especially, the presence of MONUC has provided important protection to civilians over the years. However, its involvement in Kimia II raised serious human rights questions.

33. As described above, MONUC provided substantial support to the Congolese army in Kimia II, and also has a significant role in the Amani Leo Operation, launched in January 2010. The seriousness and extent of abuses committed by the Congolese army in the context of Kimia II brings into question whether MONUC carried out its mission in accordance with its mandate, and whether it met its international legal obligations.

34. The Security Council set out the MONUC mandate and priorities for 2009 in its resolution 1856 (2008), which authorized its deployment. Its mandate included coordinating with the FARDC and supporting its operations in the Kivus. However, and as legal advice from the Office of Legal Affairs has clarified,¹⁴ MONUC could not participate in or support operations by Congolese units where there were “substantial grounds for believing there to be a real risk of [those units] violating international humanitarian law, human rights law or refugee law”.¹⁵ The Office also clarified that, if the FARDC did violate international law, MONUC would need to take a range of measures, including, if the violations were “widespread or serious”, to end its “participation in the operation as a whole”.¹⁶ The Office stated that, if the FARDC violated international law, MONUC would need to immediately “intercede with the FARDC ... to dissuad[e] the units concerned from continuing in such violations”. If the violations continued, MONUC would need to “reassess its relations” with the relevant units. In some cases, MONUC would need to take other actions, including the use of force, to stop violations by the FARDC.

35. Some interlocutors questioned the appropriateness of the initial decision to involve MONUC in FARDC operations given the immediate history of FDLR retaliation attacks; known abuses by the FARDC and its lack of discipline and inadequate pay and rations; the poorly planned CNDP integration; and resource constraints on MONUC troops. In any event, once involved in Kimia II, MONUC's ability to fulfill its mandate and legal obligations was certainly compromised by its failure to design and implement from the outset a comprehensive civilian protection strategy, incorporating a strong conditionality policy based on monitoring and investigating allegations against FARDC units.

(a) Conditionality

36. FARDC units were supported by MONUC despite credible reports of widespread human rights violations. I was told by MONUC military officials that, when it received such reports, they were usually raised with the FARDC command. This is entirely appropriate, but it can only be a first step in a graduated response. A clear and credible conditionality policy was necessary to ensure that MONUC was not implicated in FARDC abuses. At the time of writing, MONUC had not yet published a formal policy setting out how and when it would condition support for FARDC units or the operation as such. I understand that the drafting of such a policy only began in September 2009.

37. On 16 October 2009, MONUC announced that it would “withdraw support from battalions that show a blatant disregard for international humanitarian law”.¹⁷ The following month, the Head of United Nations peacekeeping operations withdrew MONUC logistical

and operational support from the 213th Brigade, a unit implicated in the killings of 62 civilians near Lukweti in North Kivu. This positive step was long overdue, although many other units credibly accused of abuses continue to be supported.

38. During my visit, some MONUC officials argued that withdrawing support from FARDC units implicated in abuses would be counterproductive, because regular pay and rations to soldiers tends to reduce abuses. A distinction must be drawn, however, between opportunistic abuses caused by the abysmal conditions in which soldiers are deployed, and large-scale massacres motivated by ethnic hatred or a desire to punish “collaborating” civilians. The former are indeed likely, at least in part, to be addressed through the provision of adequate rations and pay to soldiers. However, the large-scale massacres in the Kivus were predominantly committed by ex-CNDP members against their perceived enemies or those supporting them. Shalio-type violence did not result from insufficient pay.

(b) Investigating and monitoring

39. An effective conditionality designed to counter FARDC impunity requires MONUC to monitor adequately the Congolese forces it supports and to investigate alleged violations.

40. MONUC took a number of important steps to improve monitoring and civilian protection in 2009. Its military officials in the Kivus told me that the number of military bases had nearly doubled in some areas in 2009, and that MONUC set up early warning and rapid-response teams to monitor FARDC units. In addition, joint protection teams formed to provide early warning on security threats and improve military-civilian relationships were an important initiative in civilian protection, and undertook some 50 missions in 2009. However, officials involved in the teams informed me that they lacked resources and staff, that their on-site investigations were truncated and that their recommendations were often ignored.

41. There is no doubt that the task of monitoring the FARDC is extraordinarily difficult, a point stressed to me by MONUC military officials. The areas where many FARDC killings occur are remote and difficult to access. The command structure of the FARDC is not always clearly known by MONUC; troops move and unit composition changes without notice, and an individual soldier’s deployment is not easily tracked. MONUC also suffers from resource restrictions (including staff levels and a lack of necessary equipment, such as helicopters) that inhibit its ability to investigate incidents. While significant, these obstacles are not insurmountable, and they do not justify continuing to support military units known to be engaging in widespread human rights abuses. The mission’s obligation to only support operations that comply with human rights law requires it to exercise due diligence in verifying that supported units are, in fact, complying with the law.

42. As a party to the conflict, the real or perceived ability of MONUC to independently and effectively investigate allegations of abuses by its FARDC counterparts or by its own forces is compromised. In the circumstances, the United Nations should consider creating a mechanism to monitor and investigate rights violations independently, effectively and credibly.

(c) Reporting on human rights abuses

43. The human rights presence of the United Nations in the Democratic Republic of the Congo comes under the authority of the overall United Nations peacekeeping mission. It is almost inevitable in such contexts that tensions arise between the human rights imperatives of investigating and reporting abuses and the political pressures to bolster the Government and minimize frictions. Finding the right balance is never easy, but it is clear that the human rights side of the equation must be accorded a degree of autonomy if it is not to be consistently kept on an overly tight leash.

44. The MONUC Joint Human Rights Office has achieved a considerable amount. Its officers work in extraordinarily difficult circumstances, and many take substantial personal risks in order to investigate abuses, and prepare detailed and sophisticated reports. Timely publication, however, is rare. Reports on political killings in the west were delayed by many months, and investigations into September–December 2008 Lord’s Resistance Army massacres were not reported until December 2009. There are no monthly human rights reports.

45. In addition, initial investigations by human rights officers have not always received the support and resources necessary. With regard to Shalio, for example, it appears that MONUC was aware early on of possible killings in the area, but human rights investigations were certainly never prioritized.

46. The United Nations has documented abuses in the Democratic Republic of the Congo from the period 1993–2003 as part of a significant mapping project. Publishing that report is an indispensable step towards accountability for serious past violations. The report appears to have been completed in early 2009 but has still not been made public. This is highly problematic.

III. Extrajudicial executions in Province Orientale

47. Over 1,300 Congolese civilians have been killed by the LRA Ugandan rebel group since September 2008. The LRA, led by Joseph Kony, against whom the International Criminal Court issued an arrest warrant in 2005, has committed some of the most calculated and horrific killings I have encountered during my nearly six years as Special Rapporteur.¹⁸ Over a 20-year period, the LRA terrorized many tens of thousands of victims; it has kidnapped children and forced them to become soldiers, hacked civilians to death or left them with mutilated limbs and faces, and it has engaged in frequent looting, pillaging and sexual violence, including sexual slavery. By some estimates, the LRA has killed over 65,000 civilians and abducted some 40,000 children. It poses a threat to civilians across the central African region. Yet regional Governments and the international community devote far too little attention to what is one of the most brutal armed groups active in the world today. Insufficient steps have been taken to protect civilians, and the various small-scale and ill-conceived military efforts launched by Governments in the region have achieved little.

A. Killings by the Lord’s Resistance Army

1. Targeted revenge massacres

48. The LRA moved from Uganda into Garamba National Park in Province Orientale in the north-east in 2005 and 2006. Since then, there have been a series of poorly planned and implemented Government and United Nations military operations against the LRA. A January 2006 MONUC operation failed to neutralize or push back the LRA, and resulted instead in the deaths of MONUC forces. In September 2008, the FARDC and MONUC jointly launched Operation Rudia I, but it again had little effect on the LRA. In December 2008, the Congolese, Ugandan and Sudan People’s Liberation armies, with the logistical support of the United States of America, carried out Operation Lightning Thunder, but it was also a failure and LRA commanders remained free. In addition, these operations failed to plan adequately for the protection of civilians, and predictably — given the conduct of the LRA over its 20-year history — the group responded to these military offensives with coordinated revenge massacres of civilians.

49. Reliable estimates indicate that the LRA massacred some 800 civilians in the five-month period from September 2008 to January 2009.¹⁹ The most concentrated and deadly set of attacks were over Christmas 2008, during which the LRA attacked entire villages, in some cases beating to death over 50 civilians in one day. In Dungu and Doruma, I spoke with witnesses to these attacks, as well as civilians who had been kidnapped and former child soldiers. Witnesses watched their neighbours and family members killed with machetes and sticks. In some attacks, the LRA tricked or forced residents to gather together so that they could maximize civilian casualties. One witness with whom I spoke described an attack on 25 December 2008 in Batande village, after which he found 50 to 60 corpses in the village's church, and more bodies in the surrounding woods. He and other witnesses testified that a number of the women showed signs of having been raped before they were killed.

50. These killings were not carried out to achieve territorial control or to steal food and goods. The LRA did not remain for longer than a day or two in the villages it attacked, and victims reported relatively minimal looting or kidnapping. The massacres were committed simply to terrorize and punish Congolese civilians for the military operations mounted against the LRA in late 2008. The attacks spread fear through Province Orientale, and drove hundreds of thousands to flee their villages. Many internally displaced persons I met near Dungu had been living in makeshift shelters for nearly a year, too afraid to return to their still unprotected homes.

2. A continuing threat

51. In March 2009, the FARDC and MONUC launched Operation Rudia II, a new operation intended to contain the LRA. During my mission, the Government contended that the LRA threat had been significantly reduced as a result of this operation. The FARDC commander of Operation Rudia II based in Dungu told me that they had accomplished their mission, and that there were "no more LRA in the Congo".

52. However, my investigations in Province Orientale revealed clearly that the LRA remains a serious threat in the Democratic Republic of the Congo. While the LRA has not repeated the massacres of Christmas 2008, it does continue to kill, rape, loot and kidnap, and the risk of further massacres remains high. In the six months before my visit, from April to September 2009, there were at least 186 recorded attacks, with 233 civilians killed, and 603 adults and 97 children kidnapped.²⁰

53. After my October mission, I continued to receive documentation of LRA violence in Province Orientale. Shortly before Christmas 2009, the LRA distributed letters to civilians, warning of forthcoming attacks. I have been provided photographic and testimonial evidence from multiple sources on the ground that the LRA killed civilians and mutilated others, including by cutting off their lips and ears. While the number of victims since December 2009 has been difficult to ascertain because of poor communications with the attacked areas, I have been provided credible data that at least 80 civilians were killed in December 2009, and over 100 in January 2010. It is clear from the planned nature of the attacks and their intent to spread fear that the LRA continues to pose a serious threat in the Democratic Republic of the Congo.

54. Indeed, the threat has now assumed regional dimensions, affecting the Democratic Republic of the Congo, the Central African Republic, southern Sudan and Uganda. In particular, increasing LRA activity has been reported in the south-east of the Central African Republic, a region with little State presence and which receives almost no international attention. It is occasionally reported that Ugandan forces have captured or killed a small number of LRA members in the Central African Republic or elsewhere. Such efforts do little to address the nature of the LRA threat. There is an urgent need for regional strategic military action, together with measures to facilitate LRA desertions and escapes.

3. Civilian protection obligations

55. The direct responsibility for killings in Province Orientale lies first and foremost with the LRA. However, as described above with respect to the Kivus, both the Government and MONUC have protection obligations towards civilians.

56. I spoke with many humanitarian actors, United Nations and Government officials, and military commanders in Province Orientale. There is no doubt that effectively protecting civilians from the LRA is a daunting task. Many villages are remote and sometimes inaccessible without days of travel or the use of helicopters, and State presence through the region is negligible. Communication systems are poor or non-existent, and villagers must sometimes run for days to deliver warnings of impending, or news of ongoing, LRA attacks. The LRA often conduct well-planned and sudden attacks, and the Government and MONUC face resource constraints that limit their capacity to have troops on the ground where needed, or to respond rapidly to attacks.

57. Despite these very real obstacles, significantly more can and should be done to protect civilians. Given the high likelihood of LRA retaliation massacres, military attacks on the LRA should not be launched without sufficient consideration given to planning for the presence of troops near villages expected to be targeted by the LRA. The regularly reported LRA attacks through 2009 also indicate the importance of increasing the number and range of FARDC/MONUC military bases and patrols. Information provided to me strongly suggests that the LRA presence in the Democratic Republic of the Congo will increase if the military presence decreases. MONUC should strongly consider increasing its troops in the province, expanding its rapid response capacity and implementing more actively its robust civilian protection mandate.

58. MONUC and the Government should work together to establish a community-based communications network so that warnings of attacks are more quickly received. In addition, effective communication between MONUC and the population has at times been lacking, and this has had negative protection consequences. MONUC has not always taken the necessary steps to explain its role to the population, resulting in misunderstanding, poor coordination and sometimes hostility. MONUC should also make a stronger effort to bring tangible benefits to the province, including by restoring electricity in population centres and extending radio coverage.

B. Killings by the Congolese Armed Forces

59. For much of 2009, there were relatively few allegations of abuses by the FARDC in Province Orientale. This is largely because the comparatively better trained and supported Republican Guard were posted to the area. Unlike the FARDC in the Kivus, they had few reasons to prey on the civilian population, and the ethnic and territorial issues motivating FARDC massacres in the Kivus were absent.

60. In mid to late 2009, however, the Republican Guard began to be replaced by FARDC units from North Kivu, including those composed of ex-CNDP members. Not surprisingly, allegations of looting, sexual violence and other violence by the FARDC increased. At least 15 killings were committed by the FARDC in Haut-Uélé in the latter half of 2009. Most were part of FARDC attempts to steal from civilians. Women resisting gang rape by soldiers were also killed. Impunity for FARDC abuses is common, partly because of the military justice system's weaknesses (see paragraphs 96–108 below), but also because people are unaware of the possibility of lodging complaints about the FARDC. A military prosecutor was sent to Dungu for the first time only in October 2009.

61. Unless significant steps are taken with respect to training, discipline and impunity, abuses by FARDC integrated brigade soldiers from the Kivus deployed to Province Orientale will continue and increase.

62. A further likely consequence of the Government's failure to ensure an accountable and effective security presence is the strengthening and reorientation of village self-defence groups. Many such groups initially formed to protect themselves from the LRA. In the absence of Government protection, they were often the only form of security for local communities. Some disbanded when FARDC operations began in Province Orientale. Others have engaged in minor skirmishes with the FARDC, or attacked police stations to obtain weapons. If FARDC abuses continue, there is a very real risk that self-defence groups will take up arms against Government forces and/or evolve into militias or criminal bands.

IV. Sexual violence and extrajudicial executions

63. Sexual violence in the Congo, and especially in the Kivus, falls squarely within my mandate because it has reached such levels of brutality that women have literally been raped to death.²¹ Many others have died subsequently. Women and girls, including babies,²² have been gang-raped, had guns, wood, sand or glue inserted into their bodies, and had their genitals mutilated. Some pregnant women have had foetuses ripped out of their wombs by perpetrators. I received multiple accounts in the Kivus of gang rapes so vicious that women died from bleeding or from ruptured uteruses. I also received numerous accounts of severe rape-related injuries (e.g., gunshots to a woman's vagina) that resulted in death days or weeks later. Such deaths are especially likely in remote areas where victims have little or no access to health services. Those who survive are often left with debilitating physical injuries, such as fistula or displaced uterus, and deep psychological harm.

64. Victims have, additionally, been killed when they resist rape, or murdered immediately following a rape. Victims are sometimes taken into sexual slavery and then killed when their captors are no longer able to rape them (because of the victim's injury or illness). Family members attempting to stop a rape have been killed, as have men who refuse the perpetrators' orders to rape female family members. Those working to assist rape victims have also been attacked and threatened and, in some instances, also raped.

65. Evidence from a variety of sources indicates that rape and related killing are particularly vicious when either the FARDC or FDLR retaliate against communities they suspect of collaborating with the opposing force. FARDC soldiers, for example, have engaged in widespread rape as punishment for alleged collaboration with rebel groups. FARDC soldiers have also raped women during the course of raids to steal food or other goods. FDLR attackers have also engaged in a campaign of rape, repeatedly telling victims the rape was "punishment" for alleged cooperation with MONUC or the Government.

66. Despite the political attention that sexual violence in the Democratic Republic of the Congo has garnered, key officials continue to deny the extent of the problem. When I asked one senior military official in the eastern part of the country about sexual violence in the area under his command, he replied that only 15 per cent of rapes alleged by non-governmental organizations and others actually occurred, that most cases were "imaginary", and that it was in the nature of women to be unfaithful.

67. However, the truth is that rape is pervasive. The United Nations Population Fund (UNFPA) coordinates and compiles statistics on sexual violence, although its staff emphasize that their numbers are an undercount.²³ According to information provided to me by UNFPA, there were 13,404 incidents in 2006, 13,247 in 2007, and 14,245 in 2008. From

January to June 2009, it provided a preliminary count of 6,433 incidents, and reports I received suggest that the annual total will exceed the deplorable heights reached in 2008.

68. Despite the prevalence and horrific nature of sexual violence atrocities, there is a shocking lack of accountability in the country's domestic legal system, both military and civilian. Although there is generally strong substantive law, it is rare for cases to be prosecuted. Between February and August 2009, less than 100 rape cases were prosecuted by the military justice system in North and South Kivu, and most of the prosecutions were of low-ranking officers.²⁴ MONUC human rights officials have made commendable efforts to assist in investigations and thus support the few prosecutions that have been made, but much more needs to be done by MONUC as a whole. MONUC launched a comprehensive strategy to address the sexual violence epidemic in April 2009, but its implementation has been delayed by staffing issues.

V. Political killings in Kinshasa and Bas Congo

69. The serious problem of politically motivated human rights abuses in the west of the country, including killings of opposition supporters, receives disturbingly little attention. Hundreds of civilians were killed by the Congolese security forces in 2007 and 2008 in attempts to counter the threat posed by political opposition. It appears that no one has been held criminally responsible for any of these killings, and nothing has been done to reform the security agencies to prevent similar abuses in the future. At the time of my visit, intimidation and arbitrary detentions of presumed opposition supporters were ongoing. There is a very high risk of further violence during the next election period if urgent steps are not taken to reform the security sector.

A. Killings in Kinshasa

70. In March 2007, over 300 people were killed in Kinshasa in politically motivated violence in the context of an attempt by the Congolese security forces (under the control of President Kabila) to end the threat posed by the private armed guards of then Senator Jean-Pierre Bemba.²⁵

71. In late 2006, Bemba lost the presidential elections to Kabila, but he continued to maintain at least 400 of his own guards. Bemba refused to integrate his soldiers into the regular Congolese army and, in March 2007, a street battle erupted between Bemba's guards and FARDC soldiers. Hundreds of civilians were killed during these clashes, with indiscriminate and excessive force used by both sides.

72. Following the initial clashes, the FARDC, the Republican Guard and other Government security forces carried out targeted killings of actual and presumed Bemba supporters, and tortured and killed those they had unlawfully detained at Republican Guard-controlled detention facilities like the one at Camp Tshatshi, or the Services spéciaux facility at their Kin Mazière base. Individuals were removed from detention and executed, and their bodies were buried or dumped in a nearby river. United Nations officials at the time found at least 30 to 40 bodies in the river.

73. MONUC and non-governmental organizations encountered serious obstacles in attempting to investigate the March events. Government officials tried to block external investigators from visiting sites such as morgues, detention facilities and the river to collect evidence. Family members seeking information about their relatives were intimidated, and sometimes arbitrarily detained. Compelling reports by the United Nations and non-governmental organizations detailing security agency abuses²⁶ have not resulted in any Government response to investigate or hold its officials to account.

B. Killings in Bas Congo

74. In Kinshasa, I met with victims and witnesses of security force violence against members of the political-religious group Bunda dia Kongo (BDK), as well as those who had investigated the incidents. In early 2007, security forces killed at least 100 BDK supporters following elections in Bas Congo, in which BDK-aligned candidates lost to Kabila supporters. There were widespread allegations of fraud, made especially by BDK supporters, and the BDK organized general strikes. In the ensuing police response, there were some killings on both sides. The army was then called in, and the police and soldiers killed over 100 people. While several security force officials were suspended as a result, no criminal charges were ever brought against the perpetrators. In February 2008, the Government launched a three-week, heavily armed police operation against the BDK. Homes and places of worship were attacked and burned, and an estimated 100 to 200 people were killed.

75. The Government argued that its forces were lawfully attempting to restrain BDK violence. It is true that there have been a small number of credible allegations of violence and killings (especially against so-called “witches”) by BDK members, and that the BDK organized large public protests. However, the security force response was grossly disproportionate to any threat, and it was targeted to suppress the BDK as a political opposition force, not to protect victims of BDK violence. The police who carried out the operation had largely military backgrounds, with little anti-riot or crowd-control training, and were armed with heavy weaponry (such as grenades and machine guns). Investigations by both the United Nations and non-governmental organizations carried out shortly after the operation documented the excessive force used by the security forces.²⁷

Government attempts to block my investigations

76. In order to further investigate these political killings, I travelled to Kisantu in Bas Congo. I had arranged to meet a large number of witnesses and family members of victims in a secure location. However, when I arrived, I was prevented by the mayor of Kisantu, backed by armed security officials, from holding these or any meetings. These orders apparently came from the Governor of Bas Congo.

77. As I left Kisantu, a Congolese lawyer who had assisted me with arranging witness meetings was detained by police. I returned to Kisantu. The police initially denied having him in custody, but after lengthy negotiations his release was secured. I formally protested to the Government but received no response. I remain deeply concerned about the security of this lawyer and others working to expose Government abuses against the BDK. The lengths to which Government officials went to prevent me from investigating political killings is indicative of the extent of the Government’s repression of its critics and political opponents.

C. Likely security forces’ abuses during the next election period

78. There are credible reports of various Government agencies having carried out unlawful killings and other serious human rights abuses, especially arbitrary detentions, in the west. They include the National Congolese Police (especially the Simba Battalion, the Integrated Police Unit, and the Services spéciaux), the National Intelligence Agency, the Republican Guard and the army’s military intelligence agency (often referred to by its former name, DEMIAP). The Republican Guard especially has been at the centre of abuse allegations. Tasked with protecting the President, it is believed to include some 10,000 to 15,000 soldiers. During the transition period in the country, there were attempts to integrate

the Republican Guard into the FARDC, but it continues to operate outside of the command structures of the army and reports directly to the President.

79. These forces are able to kill with impunity. They are subject to no independent oversight, there is little clarity with regard to their respective roles, and political elites have been able to command them outside of formal structures. The Government has shown no appetite for reform, and the international community has not always spoken out strongly against abuses, despite numerous incidents of large-scale killings.

80. I spoke with numerous individuals who had been arrested, accused of being Bemba party supporters and detained for long periods. Some had been released only a few weeks before my mission took place. A number of those I interviewed provided credible evidence of having been tortured during questioning of their political allegiances. They were subjected to lengthy and arbitrary detention in inhumane conditions without access to legal counsel or a judge. These cases are serious violations in their own right. But they also sound alarm bells ahead of the next national elections, because they highlight the security forces' ability to operate outside the law and to intimidate the civilian population.

81. Because political activity in Bas Congo is seen to threaten the Government, one may expect targeted killings designed to intimidate BDK supporters and suppress the opposition, as well as deaths from excessive use of force in quelling BDK demonstrations, as the next election approaches.

VI. Deaths in prisons

82. Prison conditions do not, per se, come within my mandate. The atrocious state of prisons across the Democratic Republic of the Congo, however, leads to frequent deaths of detainees. The Minister for Justice acknowledged to me that prison conditions are "horrible" and that many people in detention die of hunger. The Government is failing in its duty to ensure even minimum detention conditions. As a result, prisoners die from preventable causes, and there are regular riots and escapes. Almost non-existent records and monitoring mean that it is not known how many deaths in prisons there actually are, although information provided by one source recorded 23 deaths in 2009 at one prison in Kinshasa alone.

83. The central Government provides only one prison in the entire country with a budget. The rest are required to support themselves. Some receive assistance from the provincial authorities, but many rely completely on private support extracted by individual prison directors. Most prisoners survive on food brought to them by their families. Those without family assistance slowly starve.

84. At Goma Central Prison I interviewed authorities and detainees. Like the vast majority of Congolese prisons, it is controlled by the prisoners themselves; State authorities only act as guards outside the facility.²⁸ Internal prison violence is thus predictably common. Independent monitoring is heavily restricted since the security of visiting monitors cannot be assured. In June 2009, there was a mutiny and escape attempt at the prison. Security was so poor that male prisoners broke into the female section of the prison, raped some 20 female detainees, and killed a police officer and a prisoner. Before this incident, François Gacaba, a prisoner who had been convicted of rape by a military tribunal, was freed by 60 armed men who attacked the prison.

85. Prison overcrowding is also endemic across the country. The Goma Prison was built for 150, but at the time of my visit there were 793 detainees, including 11 women and 8 children. The prison director stated that there was a permanent shortage of food. Detainees reported the complete absence of medical services, leading to frequent preventable deaths

due to illnesses such as diarrhoea. They also reported significant inter-prisoner violence, and stated that, while food was received once a week from the director, the strongest prisoners took the bulk of it. Many of the prisoners had never seen a judge or prosecutor.

86. The prison system is in such disarray that even the number of prisons and prisoners in the country is unknown. Accurate records of the prison sentences of convicted criminals are not maintained. As judges from the Supreme Court explained, monitoring and record-keeping is so poor in the criminal justice system that people can serve years beyond their sentence simply because the authorities do not know to release them, greatly contributing to overcrowding, resentment and prison violence.

87. In addition, security and intelligence agencies, including the Republican Guard and army military intelligence, operate detention facilities, although they have no legal authority to detain. Their goal is to suppress political opposition, and their operations are unchecked.

VII. Killings of “witches”

88. Significant numbers of children and women are accused of being witches in the Democratic Republic of the Congo, and are subjected to torture, harsh beatings and other cruelty as a result.²⁹ Some have been killed, or have died following cruel treatment. This violence is one outcome of a widespread social phenomenon in which vulnerable members of the community are blamed for misfortunes, such as the loss of a job or illness. According to international and local non-governmental organizations, tens of thousands of children abandoned on the streets of Kinshasa and other major cities are especially vulnerable to witchcraft accusations. Unsurprisingly, this phenomenon is most prevalent in poverty-stricken communities, which lack access to education and social services, and the victims are often individuals with physical or mental disabilities who are perceived to have “brought defects” into a family or community.

89. Because of the remoteness of many communities and a level of secrecy around the practice, victim numbers are hard to ascertain. According to the United Nations Children’s Fund, at least 12 accused child witches were killed in three provinces (Orientale, Maniema and Katanga) from September 2008 to early October 2009, mostly by their own family members. In Kasai Occidental, there are credible accounts of over 21 children subjected to harsh beatings and cruel treatment for alleged witchcraft.

90. Churches and cults that practice exorcism play an especially pernicious role, often condoning victimization and subjecting children to “exorcisms” or “deliverance” ceremonies in which they are forcibly isolated and deprived of food and water. In one emblematic case from Province Orientale, one of the wives of a polygamous man accused her husband’s young son of trying to kill her. The father took the son to be exorcised and a church deacon bound the child while the father and his wife poured boiling water on him. The wife submerged the child in water heated to over 90 degrees. He died of second degree burns. In another case in Katoko, Maniema, an 8-year-old boy died in October 2009 after a local pastor imprisoned him in a “prayer chamber” for seven days without food.

91. There is almost total impunity for such killings; witnesses or family members are reluctant to report such incidents to authorities, and officials all too often turn a blind eye to preventing or investigating the violence.

VIII. Killings of human rights defenders and journalists

92. Journalists and human rights defenders have been routinely harassed and intimidated because of their work on human rights violations and impunity.³⁰ Those working in the eastern part of the Democratic Republic of the Congo appear to be particularly vulnerable to attack, as are those supporting the work of the International Criminal Court.³¹ Government officials have stigmatized human rights defenders for their advocacy, especially where it concerns violations by State actors, and officials have been implicated in a number of cases of harassment, death threats and killings of activists.

93. The intimidation aims to silence individual activists, prevent investigations and instill widespread fear among civil society. Threats and attacks against human rights defenders have gone largely unpunished, as local authorities often fail to adequately investigate and prosecute those responsible.

IX. Vigilantism and mob justice

94. Vigilante killings and mob justice are widespread, and on the rise.³² In 2008, over 20 such killings were recorded in Bukavu (South Kivu) alone.³³ There are, however, no clear national statistics on the numbers of such killings. Victims are usually suspected thieves, rapists or witches.³⁴ Often they are beaten or killed with machetes, and then set on fire, sometimes while still alive.³⁵ Local populations often appear to view this as a legitimate means of securing justice, in large part owing to the absence of a functioning criminal justice system.

95. The response from local police and other authorities to incidents of vigilante justice is often slow or non-existent; cases of investigation, prosecution and punishment of perpetrators are rare. At a policy level, little attention is paid to the issue.

X. Impunity for killings

A. Systemic problems

96. The Government's failure to hold perpetrators to account is the central factor driving continued human rights abuses in the Democratic Republic of the Congo. The justice system is in a shambles, and impunity is widespread for all forms of killings. Alleged war criminals continue to hold senior command positions in the armed forces, massacres are committed without sanction or investigation, and nearly all extrajudicial executions remain unpunished.

97. I held many meetings with military and civilian judges and other experts on the criminal and military justice systems. The institutional, financial, resource and structural problems in those systems are generally well acknowledged.³⁶ As the Ministry of Justice's recent Roadmap to Justice itself states "the background, the causes and the diagnosis of the ills and dysfunctions that plague our system of justice have been the objects of numerous reports, studies, workshops, colloquia and seminars".

98. Corruption and political interference are key problems. Accused individuals with money or connections can escape punishment with relative ease. Corruption extends through the entire justice system: police request money to arrest or release alleged perpetrators; judges take bribes to decide cases; and registrars and other officials request money to enforce judgements. Magistrates told me of frequent attempts to bribe them, and of threats against their careers and lives. Political interference

also frequently affects the appointment, career path and removal of judges, although judges rarely speak publicly of such matters for fear of retaliation. The newly established High Council of Judicature is a positive measure to increase oversight of judges and to promote independent appointments, although at the time of writing it was not yet fully operational.

99. Additional serious problems that require long-term planning and commitment from the Government, the international community and civil society include severe underfunding; a shortage of judges and prosecutors, sometimes so severe that courts cannot sit; the lack of adequate training for judges, support staff and investigators; a lack of basic resources for judicial officials, such as office space or even paper; and the lack of any forensic capacity. In the military justice system, resource deficiencies mean that judges often do not have their own transport, and so must rely on the armed forces to facilitate investigations (including reliance upon the very units under inquiry).

100. Many victims are justifiably afraid to complain to police or prosecutors. There is a very real risk that doing so would open them up to retaliation, especially because there is no witness protection programme. MONUC itself provides for witness protection for a small number of individuals and their families, but its limited resources and reach, and small staff size, mean only a small number are protected.

B. Recent limited improvements in military justice

101. Increased Government and international attention to impunity, especially in the Kivus since 2008, has brought some limited improvements.

102. The Kimia II commander in South Kivu informed me of 12 cases of extrajudicial executions sent to the courts between May and October 2009. They have so far resulted in one acquittal and two convictions (one death penalty sentence and one life sentence). In North Kivu, between October 2008 and August 2009, 16 soldiers appeared before the Goma court (in relation to nine separate killings, five of which were classified as suspected war crimes). Seven soldiers accused of one murder were acquitted; five accused of five separate killings were sentenced to death, and three to life imprisonment; one case was transferred.

103. In addition, five commanders named by the Security Council as responsible for sexual offences have been removed from command, although it seems that only two are under arrest.

C. Continued impunity for senior military commanders

104. Despite these limited improvements, impunity for senior commanders remains pervasive. The cause is not significantly related to the resource and institutional obstacles facing the Government described above; rather, it is a lack of political will to investigate, arrest or prosecute senior officers accused of grave abuses. The Government has even ordered that some legal proceedings against suspected war criminals be discontinued. The Minister for Justice confirmed to me that he addressed a letter on 9 February 2009 to military justice authorities in the Kivus, ordering them not to prosecute CNDP or ex-CNDP members.

105. On 5 July 2009, the Government took the positive step of announcing a “zero tolerance” policy with respect to ill-discipline and criminal activity by FARDC members. However, it has not been seriously implemented, and known perpetrators

have not been arrested. When I publicly reported in October 2009 on the Shalio massacre, the Minister for Communications and Information announced that the Government was already aware of the FARDC's responsibility for the massacre. He also stated, however, that Lieutenant Colonel Zimurinda would not be arrested, purportedly because they did not want to cause instability.

106. The most brazen example of impunity was the role of Bosco Ntaganda as a senior commander in the Kimia II operation. Ntaganda is wanted by the International Criminal Court for enlisting and using child soldiers in Ituri in 2002 and 2003, and has been accused of command responsibility for further war crimes, including those committed during the 2008 Kiwanja massacre. Although the Minister for Defence addressed a letter to the Special Representative of the Secretary-General for the Democratic Republic of the Congo on 29 May 2009 stating that General Bosco Ntaganda was not involved in Kimia II, his current command role is widely acknowledged and not seriously disputed. Other FARDC Kimia II commanders suspected of responsibility for killings in violation of international humanitarian and human rights law include:

Colonel Sultani Makenga (suspected involvement in massacres in Pinga and Lukweti in 2003 and 2004; the killing of children in Nyamilima in 2005; command responsibility for Buramba massacre; killings near Katwiguru, Kiseguru, Rubare)

Colonel Innocent Zimurinda (suspected command responsibility for killings in Rutshuru; Buramba massacre; Kiwanja killings; Shalio massacre)

Colonel Bernard Byamungu (suspected responsibility for killings in Kindu; massacres in Songwe, Route Camp Luama, Nyonga, in 2002; Kisangani massacre in 2002)

Lieutenant Colonel Salumu Mulenda (suspected involvement in Mogwalu attack in 2002; killings in Lipri and Bambu areas)

107. I asked officials why the above-mentioned individuals had not been arrested, despite their records of abuse and their whereabouts generally being well known. The Government's stated position is that arresting senior commanders, especially ex-CNDP members, would potentially destabilize CNDP integration, provoke the splintering of armed groups and result in further violence to civilians.

108. The complexity of the security situation in the Kivus is vast, and the barriers to peace cannot be underestimated. But the Government's blanket argument for "peace" over "justice" is profoundly mistaken. While it is not practical to immediately arrest every perpetrator, targeted arrests of key senior figures, planned so that they do not jeopardize civilian security, are realistic. The rapes, looting and massacres committed by FARDC soldiers throughout 2009 show only too clearly that peace does not come if justice is compromised, to allow those accused of serious human rights abuses to command military units. The continued leadership role of individuals such as Ntaganda sends a clear message to all soldiers that power and violence will outweigh the rule of law and respect for human rights.

XI. Conclusions and recommendations

A. Extrajudicial executions in the Kivus

109. Large numbers of civilians have been killed in the Kivus, either in revenge attacks by rebel groups, or in opportunistic attacks or massacres committed by the Congolese army. Much more should urgently be done to reduce killings and protect civilians:

(a) All FARDC soldiers should be provided, and be required to wear, uniforms that identify their name and relevant unit. The Security Council should make this a precondition for United Nations assistance to Congolese military operations;

(b) The Government should fully implement its “zero tolerance” policy, and investigate, arrest, and prosecute FARDC members responsible for abuses. This especially includes the following senior commanders suspected of involvement in war crimes: General Bosco Ntaganda, Colonel Sultani Makenga, Colonel Innocent Zimurinda, Colonel Bernard Byamungu and Lieutenant Colonel Salumu Mulenda;

(c) Senior leaders of the FDLR based outside the country, including in Germany and France, should be investigated for their role in war crimes and crimes against humanity in the Democratic Republic of the Congo, and arrested and prosecuted accordingly;

(d) FDLR commanders should immediately issue orders to their soldiers to comply with human rights and humanitarian law at all times;

(e) The conditionality policy of MONUC, setting out the terms on which it provides support to the Congolese Armed Forces, should be made public. It should be strictly adhered to, and the steps taken under it made public at an appropriate time;

(f) The United Nations should consider creating an independent mechanism to monitor and investigate rights violations in accordance with the principles of impartiality, effectiveness and credibility;

(g) The United Nations should ensure that its human rights reports are made public within a reasonable time period after investigations take place, and take steps to publish regular human rights situation updates;

(h) It is of the utmost importance that the United Nations release the results of its mapping project investigations.

B. The Lord’s Resistance Army and killings in Province Orientale

110. The LRA continues to present a serious threat to Province Orientale, as well as to the region generally:

(a) The Government and MONUC military presence in Province Orientale, and its ability to respond to LRA attacks, should be strengthened;

(b) The Governments of countries affected by the LRA, including Uganda, the Central African Republic, the Democratic Republic of the Congo and the Sudan should, with international support, renew their regional military

strategy with respect to the LRA. This should include measures to facilitate desertions from the LRA;

(c) MONUC and the Government should work together to establish a community-based communications network in Province Orientale, with a view to receiving and responding quickly to warnings of LRA attacks on civilian populations;

(d) MONUC should take steps to improve its relationship with civilians in Province Orientale, including by improving its community outreach and by better explaining its role.

C. Sexual violence

111. Sexual violence is a significant cause of death of women, especially in the Kivus:

(a) The comprehensive MONUC strategy against sexual violence should be implemented fully;

(b) The Prosecutor of the International Criminal Court should emphasize crimes of sexual violence in his investigations in the Democratic Republic of the Congo.

D. Prisons

112. Far too many prisoners die in a prison system that falls well below even the most basic standards of organization, monitoring and health:

(a) The Government, with international support, should immediately conduct a comprehensive census of the prison population. Any prisoners arbitrarily detained should be released;

(b) The Government should establish a reasonable budget for every prison;

(c) Prison officials should record the details of any deaths in prisons, and regularly report to the Ministry of Justice.

E. Election-related violence

113. With regard to election-related violence:

(a) MONUC and the international community should consider the risk of violence by Government security forces during the next election period to be high. The security situation in the west of the Democratic Republic of the Congo should be closely monitored, and contingencies put in place for civilian protection;

(b) The Republican Guard should be fully integrated into the regular Congolese army;

(c) Detention facilities operated outside the law by security agencies such as the Republican Guard should be closed immediately.

F. Witness protection

114. The MONUC witness protection programme is commendable, but needs expansion.

G. Killings of “witches” and vigilante justice

115. Far too many attacks by vigilantes and against “witches” take place and remain unpunished:

(a) The Government should make clear that killings by private actors, whether against alleged “witches” or criminals, will not be tolerated. All such killings should be investigated and punished;

(b) The Government should sanction police or other officials who fail to take reasonable steps to prevent and investigate killings by private actors;

(c) To eliminate “witch” hunts, non-governmental organizations and development agencies should strengthen public awareness campaigns, especially those directed at parents and religious leaders.

Appendix I

Programme of the visit

I visited the Democratic Republic of the Congo (DRC) at the invitation of the Government from 5–15 October 2009. I travelled to Kinshasa, Bas Congo (Kisantu), North Kivu (Goma), South Kivu (Bukavu and Minova) and Province Orientale (Dungu and Doruma).

I met with central Government, provincial and local officials, including: the Minister for Justice; the Minister for Human Rights; the President of the Senate; judges from the Supreme Court; the military Advocate-General; military and civilian judges in the provinces; the Minister for Public Works for South Kivu; army commanders, including commanders from Kimia II; prison officials, including the Director of the Central Prison of Goma; the Administrator of Dungu territory; and police officials.

I met with many civilian and military MONUC officials, including the MONUC Force Commander; the Deputy Special Representative of the Secretary-General for the DRC, Ross Mountain; the Director of the Joint Human Rights Office; military commanders in Province Orientale, North Kivu, and South Kivu; officials from Political Affairs; and human rights officials in the provinces I visited.

I also met with international, national and local NGOs across the country, as well as representatives from humanitarian agencies, journalists and other country experts.

I met with a large number of witnesses to human rights abuses, and family members of victims. I met with former combatants, including former child soldiers, from the Lord's Resistance Army, and the Forces Démocratiques pour la Libération du Rwanda. I met with prison detainees and former detainees.

Appendix II

Journalists and human rights defenders killed and threatened in the Democratic Republic of the Congo

Journalists and human rights defenders killed since June 1994 include:

- Pierre Kabeya (8 June 1994)
- Adolphe Kavula Missamba (12 November 1994)
- Akite Kisembo (3 July 2003)
- Pascal Kabingulu (31 July 2003)
- Franck Ngyke Kagundu (3 November 2005)
- Polycarpe Mpoyi Ngongo (9 December 2005)
- Kauilu Mutombo (26 March 2006)
- Louis Mwamba Bapuwa (8 July 2006)
- Daidace Namujimbo (November 2008)
- Serge Maheshe Kasole (June 2007)
- Patrick Kikuku Wilungula (9 August 2007)
- Didace Namujimbo (21 November 2008)
- Ms. Wabihu Kasuba (18 May 2008)
- Bruno Koko Chirambiza (23 August 2009)

Journalistes en Danger (which campaigns on behalf of detained/threatened journalists and for press freedom) launched a campaign about the murder of Bruno Koko Chirambiza, and then received threats and intimidation.

During the Kabila-Bemba clashes in 2006–2007, numerous journalists received death threats, were intimidated, and some went into hiding. This was especially the case for journalists working for media owned by Bemba (Canal Congo TV, Canal Kin TV, Radio Liberte – RALIK). Journalistes en Danger's staff also received death threats, allegedly from military and other Government officials.

In September 2009, three Bukavu-based journalists, Delphi Namuto and Caddy Adzouba from Radio Okapi and Jolly Kamuntu from Radio Maendeleo, faced death threats.

Gégé Katana, the founder and president of the Solidarity Movement of Women Human Rights Activists based in Uvira, has been arbitrarily arrested on several occasions and regularly receives death threats. Her movements are routinely under surveillance and between 1996 and 2003 she was completely banned from travelling.

In March 2008, Ms. Thérèse Kerumbe, member of the association Women's Solidarity for Peace and Integrated Development (SOFEPADI), received threats while she was in Europe to take part in an advocacy mission organized by FIDH on the fight against impunity and sexual violence in the DRC. Requests for protection to the local authorities went unanswered. She fled Bunia in the DRC after further

threats, and is unable to return. In November 2008, SOFEPADI Coordinator Ms. Noella Usumange Aliswa and her family were attacked at their home in Bunia. She was seriously injured and had to be evacuated to South Africa to receive appropriate care. This attack appeared directly linked to SOFEPADI's work in support of women conflict victims.

In July 2008, the staff of the Psychological and Medical Centre for the Rehabilitation of Torture Victims (Centre psycho-médical pour la réhabilitation des victimes de la torture – CPMRVT/Kitshanga) were threatened by the CNDP, which sought medical registers containing the identities of victims of sexual violence.

Appendix III

Observations au rapport du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, Philip Alston (A/HRC/14/24/Add.3) à l'issue de sa mission en République démocratique du Congo du 5 au 15 octobre 2009

1. Au niveau du Résumé

- Il est incorrect de dire que «les autorités congolaises et l'ONU n'ont pas planifié correctement la protection des civils dans le cadre de leurs opérations». Cette assertion doit être élaguée du rapport.
- L'expression «les Forces de sécurité politisées échappant à tout contrôle ont tué des centaines des partisans de l'opposition» ne correspond à aucune réalité. Cette phrase doit être supprimée du rapport.
- Plusieurs autres affirmations gratuites se retrouvent dans le résumé du rapport, notamment «les pouvoirs publics ne savent même pas combien le pays compte de prisons et de détenus»; «L'impunité est la règle pour toutes les formes d'homicide».

2. Au niveau de différents paragraphes

- Au §18: cette grave allégation doit être élaguée: «Dans certaines zones, les groupes rebelles et l'armée s'entendent entre eux pour tirer mutuellement profit de leurs activités illégales»
- Au §20, 21 et 22: il est faux d'affirmer que les représailles étaient prévisibles, voire inévitables: des trois paragraphes sont à élaguer car si responsabilité des meurtres il y a, ce sont les seuls FDLR identifiés qui en sont auteurs directs.
- Au §24: le rapport impute impunément aux FARDC la mise à sac de certains villages, sans pouvoir citer ces villages: à élaguer.
- Au §27: le rapport cite clairement le nom du commandant responsable des massacres alors qu'au §17 il se tait intentionnellement sur les noms des commandants FDLR domiciliés en France.
- Au §30: il est faux d'affirmer que «le gouvernement n'a pas mis en demeure les auteurs...» car la lutte contre l'impunité est une priorité du gouvernement et la politique tolérance zéro est pronée; le gouvernement ne cesse de rappeler les troupes à l'ordre et d'organiser des procès dans le cadre de la Cour opérationnelle à Goma avec des procès. A élaguer.
- Au §46: en citant Joseph Kony, le rapport doit ajouter clairement qu'il fait l'objet d'un mandat d'arrêt international (à l'instar du contenu du §105).
- Au §48 et 52: il y a des incertitudes sur les chiffres sur le nombre de civils tués. C'est mieux de parler au conditionnel.
- Au §54: si des tueries il y a, la responsabilité incombe à leurs auteurs, élaguer la tendance à faire porter la responsabilité au gouvernement qui s'évertue à travers son action à rechercher la paix sur le territoire, à traquer les rebelles par ses différents programmes. Au lieu de féliciter le gouvernement, on cherche à l'incriminer. La protection des civils est toujours sa priorité. Elaguer la 2^{ème} partie du paragraphe.

- §59: élaguer l'affirmation selon laquelle les actes restent impunis. Le paragraphe affirme même qu'un procureur a été envoyé à Dungu, ce qui démontre la volonté de lutter contre l'impunité et de sanctionner.
- §65: Élaguer ce paragraphe: car les autorités ont conscience du phénomène, même une stratégie nationale de lutte contre les violences liées au genre a été adoptée en novembre 2009 par le Gouvernement et la lutte contre l'impunité des violences occupe le premier volet et le Ministère de la Justice et droits Humains a une feuille de route de lutte contre l'impunité de ces violences sexuelles. Ce qui est vrai, le phénomène n'a plus la même ampleur comme du temps de la guerre.
- §67: à corriger car contient des contradictions en son sein: affirme à la fois qu'il y a des poursuites mais qu'il y en a que pour les officiers subalternes. C'est faux, il y a des poursuites pour tous car il y a des officiers supérieurs à la prison de Makala à Kinshasa pour cela. Il y a des poursuites selon le mot d'ordre Tolérance zéro. Du reste, le paragraphe 102 le confirme. Donc, les autorités aussi sont poursuivis e pas seulement les subalternes.
- §68: à élaguer: pas des tueries par les forces de sécurité contre l'opposition. Il ya eu c'est vrai des affrontements à Kinshasa après les élections qui ont fait des morts.
- Au §69: ce paragraphe doit être supprimé car il est inadmissible, dans le contexte du Conseil des Droits de l'Homme, organe non politisée, de tenter de relier certains faits allégués (et non prouvés) à un Président de la République(en citant avec désinvolture son nom).
- Au §71: ce paragraphe contient des allégations graves et mensongères qui doivent être élaguées du rapport. En effet, quels sont les noms de ces opposants qui étaient détenus et qui auraient été tués? Quels sont les noms de ceux-là qui auraient été jetés dans des rivières?
- Au §73: Le rapport semble présenter le BDK comme un parti politique pacifique, évoluant dans les normes et soucieux du bien-être de la population. Alors que nul n'ignore qu'il s'agit d'un mouvement qui évoluait en toute illégalité et qui a causé la mort et la désolation dans le Bas-Congo au sein de la population civile, dans les rangs de la Police nationale et même au sein de certaines églises traditionnelles.
- Au §76: les plaintes se font au parquet qui enquête
- Au §78: il faudrait supprimer cette allégation grave: «Ces Forces ont la possibilité de tuer en toute impunité»
- Au §80: c'est très négatif de projeter déjà une fausse imputation au gouvernement quant à l'organisation de prochaines élections: à supprimer.
- Au §81: Les déclarations imputées au Ministre de la Justice doivent être modérées et situées dans le temps car l'autorité citée avait en outre décrit les nombreux efforts réalisés par le Gouvernement dans le cadre de la réforme pénitentiaire avec le concours des partenaires. En outre, le rapport dans son entièreté n'ayant cité personne, il serait mieux de s'abstenir de citer les autorités mais des documents comme fait au paragraphe 96 parce que on ne sait pas vérifier l'allégation.
- Au §85: Il est incorrect et aléatoire d'affirmer que «la désorganisation du système carcéral est telle que le nombre d'établissements de détention et de détenus dans le pays n'est pas connu». Chaque établissement pénitentiaire affiche ses statistiques journaliers et les transmet au secrétariat général du ministère de la justice et droits humains.

- Aux §87 à 90: le rapport ne mentionne pas l'engagement du Gouvernement de la République de réprimer sévèrement les meurtres des personnes soupçonnées de sorcellerie. De plus, en date du 10 janvier 2009, le Président de la République a promulgué la loi portant protection de l'enfant qui, en son article 160 al.2, réprime les accusations de sorcellerie.
 - §91 à 92: les défenseurs des droits de l'homme travaillent en toute liberté, le rapport ne mentionne pas, preuve à l'appui, les défenseurs intimidés par le gouvernement. Il en est de même avec ceux qui travaillent pour la CPI, ils collaborent avec le gouvernement, du reste, il y a une semaine, un Forum a été organisé par le ministère de la Justice et droits Humains, en collaboration avec la coalition nationale pour la cour pénale internationale sur la conférence de révision. Paragraphe à élaguer.
 - Au §94, la police intervient toujours lorsqu'elle est saisie. Paragraphe à élaguer.
 - Au §95: le contenu de ce paragraphe est faux. De plus, les problèmes y évoqués ne sont nullement systémiques à la RDC.
 - §97: l'ingérence dont parle le rapport ne peut être prouvé dans le système congolais où l'est le Conseil Supérieur de la magistrature qui est l'organe de nomination. Elaguer cette affirmation;
 - Au §103: cette déclaration est à vérifier. Le ministre s'est-il prononcé dans ces termes? Comme dit au paragraphe 81, il serait mieux de s'abstenir de citer les autorités dans le rapport mais de citer les documents. En outre, il est faux d'affirmer que l'impunité demeure la règle pour les hauts responsables (voir affirmation contraire au paragraphe 102. Ce paragraphe 103 est à corriger.
 - Au §104: enlever la phrase «toutefois ...pas été arrêtés». la politique tolérance zéro justement est entrée dans sa phase d'application avec les diverses arrestations (voir paragraphe 102. Il faut encourager ce qui est fait et laisser le temps aux enquêtes et à la machine judiciaire d'agir.
 - Au §105: il faut au contraire féliciter la RDC qui est l'exemple modèle de coopération avec la CPI car sur quatre mandats lancés par la CPI, trois ont été exécutés et les inculpés remis à la cour, qu'en est il des pays qui ont ratifié le statut et qui n'ont exécuté aucun mandat? le paragraphe doit être atténué: il ne s'agit nullement «d'un exemple d'impunité éhonté».
 - Au §108: dans sa liste alléguée, nulle part le général déchu Nkunda Batware Laurent n'est cité. Cette omission semble être intentionnelle.
2. Au niveau de l'Appendice I
- Faute de preuves récentes, l'Annexe se réfère à un passé lointain(1994) pour élargir la liste des journalistes assassinés en RDC; ce qui est malsain.
 - De plus, en 2006-2007, il n'y a pas eu ce que le rapport qualifie d'«affrontements entre Joseph Kabila et Jean-Pierre Bemba».

Genève, le 28 mai 2010
Pour la délégation congolaise
Sébastien MUTOMB MUJING
Chargé d'Affaires a.i.

Appendix IV

Endnotes

- ¹ ICCPR, Articles 2 and 6 (requiring the Government to “to respect and to ensure” the right to life).
- ² Geneva Conventions, Common Article 2 (requiring the Government to “to respect and to ensure respect” for the Conventions); Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law* (2005) (Rules 15–20) (describing the applicable customary international humanitarian law rules on the protection of civilians); Security Council Res. 1906 (2009) (stressing the Government’s primary responsibility for protecting civilians in accordance with international human rights and humanitarian law).
- ³ Security Council Resolution 1856 (2008), paras. 3(a), 5; Security Council Resolution 1906 (2009), paras. 5(a), 6.
- ⁴ Security Council Resolution 1856 (2008), paras. 3(g), 14; Security Council Resolution 1905 (2009), para. 22. See also UN Secretary General, *Bulletin on the Observance by UN Forces of International Humanitarian Law*, UN Doc. ST/SGB/199/13 (1999) (requiring application of the rules on discrimination, proportionality, necessity and precaution).
- ⁵ For detail, see e.g. International Crisis Group, *The Congo: Solving the FDLR Problems Once and for All* (May 2005); International Crisis Group, *Congo: Five Priorities for a Peacebuilding Strategy* (May 2009); Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the DRC* (July 2009).
- ⁶ See e.g. International Crisis Group, *DRC: A Comprehensive Strategy to Disarm the FDLR* (July 2009).
- ⁷ MONUC, Press Release, “MONUC welcomes call for more civilian protection capacity” (15 October 2009). Kimia II formally ended on 31 December 2009, and was replaced by Operation Amani Leo. Amani Leo’s aims are to “protect civilian populations, clear strategic areas of negative forces, hold territory liberated from FDLR control, and assist in restoring State authority in these zones.” See MONUC Press Release, “MONUC outlines cooperation with FARDC in Amani Leo” (7 January 2010).
- ⁸ S/2009/335, para. 11; MONUC, Press Release, “MONUC shares the concerns of Oxfam” (10 April 2009).
- ⁹ MONUC, Press Release, “MONUC condemns the attack on its military observers in Buta” (8 June 2009).
- ¹⁰ MONUC provided logistical support to some 22,000 FARDC troops in North and South Kivu, and Orientale Province. In Kimia II, MONUC provided FARDC troops rations amounting to USD\$16,000 per day in the Kivus.
- ¹¹ See above, footnotes 1-4.
- ¹² Zimurinda (also Zimulinda) was formerly an officer in the UPC militia (Ituri), the commander of the second battalion of the Mixed Bravo Brigade, an officer in the CNDP, and is now a commander in the FARDC. He has been accused of being responsible for CNDP killings in Kiwanja (2008), and for killings of civilians while in the Bravo Brigade in 2007.
- ¹³ See Human Rights Watch, *“You Will Be Punished”: Attacks on Civilians in Eastern Congo* (December 2009).
- ¹⁴ The UN Office of Legal Affairs advice was prepared on a confidential basis, but its contents have been widely leaked and the text is publicly available: Jeffrey Gettleman, “UN Told Not To Join Congo Army in Operation”, *New York Times* (9 December 2009); “U.N. Correspondence on Peacekeeping in the Democratic Republic of the Congo”, *New York Times* (providing full copies of (a) April 2009 Letter from Peter Taksøe-Jenson, Assistant-Secretary-General for Legal Affairs to Alain Le Roy, Under-Secretary-General for Peacekeeping Operations on “Operation Kimia II”; and (b) October 2009 Letter from Patricia O’Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to Alain Le Roy, Under-Secretary General for Peacekeeping Operations”), available at: <http://documents.nytimes.com/united-nations-correspondence-on->

peacekeeping-in-the-democratic-republic-of-the-congo#p=1.

¹⁵ “April 2009 Letter from Peter Taksøe-Jenson”, para. 7; Security Council Resolution 1856, para. 3(g).

¹⁶ “April 2009 Letter from Peter Taksøe-Jenson”, para. 10.

¹⁷ See Reuters, “UN should continue Congo ops despite criticism: envoy” (16 October 2009).

¹⁸ See e.g. Scott Johnson, “Hard Target: The hunt for Africa’s last warlord” (Newsweek, 16 May 2009). The ICC issued an arrest warrant for Kony in 2005. He is charged with 33 counts of crimes against humanity and war crimes, including enlisting children, cruel treatment, pillaging, enslavement, murder, and inhuman acts against civilian populations.

¹⁹ For detailed reporting, see: Human Rights Watch, *The Christmas Massacres: LRA Attacks on Civilians in Northern Congo* (February 2009).

²⁰ Humanitarian actors provided the following information on LRA attacks from April to September 2009:

<i>Month</i>	<i>Number of attacks</i>	<i>Number of people killed</i>	<i>Number of kidnapped adults</i>	<i>Number of children kidnapped</i>
April 2009	17	19	67	20
May 2009	23	44	13	34
June 2009	34	56	193	12
July 2009	56	40	147	10
August 2009	32	15	35	4
September 2009	24	59	148	17

²¹ There does not appear to be any study to track how many women have died as a result of sexual violence. The difficulties of collecting information on sexual violence are exacerbated when victims have died. This is in large part because the data currently gathered is based on services provided to survivors, and also because more deaths likely take place in remote areas to which NGOs do not have access – and in which victims do not have life-saving medical support.

²² According to UNFPA statistics, between January and June 2009, 57% of victims were minors and there were 460 cases against children less than 10 years old. UNFPA recorded 17 incidents against women older than 65 during the same period. There is anecdotal evidence that male rape is increasingly being used by both the FARDC and the FDLR, but because of the stigma and associated lack of formal reporting, I was not able to obtain exact numbers. Based on credible reports, at least two male rape victims have died as a result of their injuries.

²³ The UNFPA’s statistics are an undercount and better used as trend analysis. Although a large number of NGOs provide statistics to the UNFPA, participation in reporting is not mandatory and the involvement of NGOs varies widely. Survivors and family members often do not report rape because of fear of reprisal, the social stigma attached to rape, and lack of access to support facilities.

²⁴ UN Group of Experts, Final Report, November 2009, paras. 343–344.

²⁵ Bemba was arrested in Belgium on 24 May 2008, following the lifting of a sealed arrest warrant issued by the ICC. Bemba is accused of crimes committed in the Central African Republic, including torture, rape and murder. He is currently in custody, awaiting trial at the ICC.

²⁶ Amnesty International, *Democratic Republic of the Congo: Torture and killings by state security agents still endemic* (October 2007); Human Rights Watch, “*We Will Crush You*” – *The Restriction of Political Space in the Democratic Republic of the Congo* (November 2008); MONUC, *Rapport special – Enquête spéciale sur les événements de mars 2007 à Kinshasa* (January 2008).

²⁷ MONUC Human Rights Division and Office of the United Nations High Commissioner for Human Rights, *Special Report – Special inquiry into the Bas Congo events of February and March 2008* (May 2008); Human Rights Watch, “*We Will Crush You*”: *The Restriction of*

Political Space in the Democratic Republic of Congo (November 2008).

²⁸ My 2008 annual report to the UN Human Rights Council discusses the phenomenon of prisoner control of prisons in detail: A/HRC/8/3.

²⁹ In my 2009 report to the UN Human Rights Council, I examined in-depth the complex phenomenon of the killing of witches around the world. See A/HRC/11/2.

³⁰ See Appendix II for details.

³¹ <http://www.frontlinedefenders.org/node/2148>.

³² See <http://www.afrika.no/Detailed/18627.html>; A/HRC/10/59, para. 59.

³³ “La justice populaire à Bukavu”, *Gazette de l’Abolitionniste*, Bulletin no. 2, March 2009.

³⁴ “La justice populaire fait encore une victime à Bukavu”, *Safina*, 24 October 2009; “La justice populaire à Bukavu”, *Gazette de l’Abolitionniste*, Bulletin no. 2, March 2009; *Memorandum de la Société Civile du sud Kivu au Rappporteur Spécial des Nations Unies sur les Executions Sommaires, Arbitraires et Extrajudiciaires*;

<http://www.afrika.no/Detailed/18627.html>.

³⁵ <http://www.afrika.no/Detailed/18627.html>.

³⁶ For detailed recent examinations, see: International Bar Association and International Legal Assistance Consortium, *Rebuilding courts and trust: An assessment of the needs of the justice system in the DRC* (August 2009); AFRIMAP and the OSI for Southern Africa, *The DRC: Military justice and human rights – An urgent need to complete reforms* (2009).
