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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by the Carter Center, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Situation of human rights defenders in the DRC*

This report addresses the situation of Human Rights Defenders in the DRC. It has been drafted by six Congolese human rights NGOs,¹ with support from The Carter Center. It evaluates the implementation of Universal Periodic Review Recommendations 104 and 106, which were addressed to and accepted by the Congolese state in 2009.

1.1 Impunity for human rights violations against human rights defenders

According to UPR Recommendation 104,² the Congolese government should ensure that persons who violate the rights of HRDs are subject to effective investigation and prosecution, as appropriate. However, in practice this is not always the case; there have been recent cases in which persons in positions responsible for ensuring the rights of citizens have in fact violated the rights of HRDs and continue to act with impunity, most notably in the case regarding the assassination of Floribert Chebeya Bahizire (henceforth - Chebeya), and the disappearance of Fidel Bazana Edadi (henceforth - Bazana). This impunity remains a constant concern for the work and protection of HRDs in the DRC.

On 2 June 2010 Chebeya, the Executive Director of the NGO Voice of the Voiceless for Human Rights (VSV), was found dead in his car in Kinshasa. His driver who was with him at the time, Bazana has been missing since and is believed to be dead. Both were allegedly killed by members of the Congolese National Police (CNP), either with the knowledge or under the direction of *Commissaire Divisionnaire Principal* (CDP) of the CNP - John Numbi Banza Tambo (henceforth CDP Numbi). However, the investigation conducted by the Military Prosecutor³ and both of the trials (1st⁴ and 2nd⁵ degree) organized by the High Military Court have not lead to an investigation of the CDP of the CNP, John Numbi.

The following evidence strongly suggests that CDP Numbi was aware of, if not directing, the death of Chebeya and the disappearance of Bazana:

* The Association Africaine pour la défense des Droits de l'Homme (ASADHO); Forum de la Femme Menagere (FORFEM); Ligue des Electeurs (LE); Amis de Nelson Mandela pour les Droits de l'Homme (ANMDH); Fonds pour la Femme Congolaise (FFC) and Toges noires NGOs without consultative status, also share the views expressed in this statement.

¹ Association Africaine pour la efense des Droits de l'Homme (ASADHO); Forum de la Femme Menagere (FORFEM); Ligue des Electeurs (LE); Amis de Nelson Mandela pour les Droits de l'Homme (ANMDH); Fonds pour la Femme Congolaise (FFC) and Toges Noires

² Human Rights Council (4 January 2010), "Report of the UPR Working Group on the Democratic Republic of Congo" (A/HRC/13/8), p.21

³ The investigations were undertaken by the Prosecutor of the High Military Court between the 2 June 2010 and 14 October 2010.

⁴ The trial took place between 12 November 2010 and 23 June 2011 and resulted in the condemnation of 5 police officers from the 8 persons accused.

⁵ On the 19th of June 2012 the Appeal process was started at the High Military Court at the request of all parties. However, on the 7th of May 2013 the process was suspended because the plaintiff argued that there had been an irregularity. The High Military Court requested an intervention from the Constitutional Court. The Constitutional Court has not yet issued a response to this question.

1. On the day of his death, Chebeya was asked by CDP Numbi to come to his office: On 31 May 2010, the *Commissaire Supérieur Principal* Daniel Mukalay (Mukalay henceforth) called Chebeya at 21:17 to tell him that the CDP Numbi requested that he come to his office. On the 1st of June 2010 at 9:56, Mukalay confirmed to Chebeya that the CDP Numbi would meet with him between 16:30 and 17:30 that day. At 17:24, Chebeya called Mukalay and sent his wife and an informant at the BCNUDH a SMS message informing them that he was at *Commissariat général* of the CNP,⁶ waiting to be received by CDP Numbi.
2. Telephone records suggest that CDP Numbi was at least aware, if not orchestrating, the death of Chebeya and the disappearance of Bazana: The phone records produced by the telecommunications company VODACOM during the investigations showed that there were numerous telephone calls between Mukalay, Christian Kenga Kenga, Paul Mwilambwe⁷ and CDP Numbi on the 1st of June between 16:30 and 21:30.⁸ These phone records traced the route taken by the police from the office *Commissariat général* of the CNP, to the road taken to the where the body of Chebeya was found (Mitendi), to the home of Mukalay (Ma Vallee – Righini).⁹
3. The justice system has failed to follow-up on formal complaints against CDP Numbi: On 4 June 2010 the widow of Chebeya, Mrs. Annie Mangbenga Nzinga, filed a formal complaint against CDP Numbi for the death of her husband.¹⁰ However, this complaint did not trigger any further action from the judicial institutions, as required by the Criminal Procedure Code. On 30 July 2012, the brothers and sisters of Chebeya filed another complaint against CDP Numbi. Similarly, their case has not been heard.¹¹
4. CDP Numbi was suspended from his position due to allegations that he was implicated in the death of Chebeya and the disappearance of Bazana: On the 5th of June 2010, the National Security Council, presided by the President of the DRC – Joseph Kabila, suspended CDP Numbi from his duties and put him under house arrest, where he remains.¹² However, the government has not encouraged Numbi to be subjected to legal proceedings. Notably, he retains his rank as *Commissaire Divisionnaire Principal*.¹³

Thus, the group believes that CDP Numbi should be tried and officially dismissed from the CNP. To these ends, the group recommends that:

⁶ ACIDH (May 2012) “Report on the Observation of the Trial on the Assassination of Floribert Chebaya and the Disappearance of Bazana”, p.15; ANMDH (July 2010) “Situation of HRDs: There is still danger”, Bulletin No. 007.

⁷ Eight persons were accused by the Prosecutor of the Military Court in Kinshasa, namely : Chief Inspector Daniel Mukalay Wa Mateso, Inspector Georges Kitungwa Amisi Itung, Adjoint Inspector François Ngoy Mulongoy, Commissaire Michel Mwila Wa Kubambo, Sub-Commissioner Blaise Badiangu Buleri, Inspector Christian Kenga Kenga, Inspector Paul Mwilambwe Londe and Sub-Commissioner Jaques Mugabo.

⁸ ACIDH (May 2012) “Report on the Observation of the Trial on the Assassination of Floribert Chebaya and the Disappearance of Bazana”, p.52

⁹ ACIDH (May 2012), “Report on the Observation of the Trial of the Assassination of Floribert Chebaya and the Disappearance of Bazana”, p.74

¹⁰ ACIDH (27 January 2011), “Juridical Chronicle: No. 12”, p.2

¹¹ ASF (Brussels: 29 November 2012), “Chebeya Trial: Where is the complaint against General Numbi?”, Press Release.

¹² Protection International (Bukavu: November 2011), “Report on the Observation of the Trial of Chebeya-Bazana in the First Instance”, p.35

¹³ A General can only be tried by someone of equal or higher rank (Article 120 of Law 023-2002 of 18 November 2002, Code of the Military Court of Justice)

The Congolese government take all measures to ensure that all sponsors of the death of Floribert Chebeya Bahizire and the disappearance of Fidel Bazana Edadi are prosecuted by May 2014, most notably Commissaire divisionnaire principal John Numbi Banza Tambo against whom Annie Mangenga Nzinga filed a complaint on 4 June 2010.

1.2 Absence of a law on the protection of human rights defenders

With reference to UPR Recommendation 106,¹⁴ on 30 May 2011 the Ministry of Justice and Human Rights sent a bill to the National Assembly regarding the promotion and protection of HRDs and persons who denounce corruption and the misappropriation of public funds.¹⁵

While welcoming this initiative, the authors of this submission are concerned that:

- The bill contains provisions that are not in accordance with the 1998 UN Declaration on HRDs;¹⁶ and
- The bill has yet to be adopted due to a lack of political will and understanding of its importance.

In regards to the former, Article 1¹⁷ of the draft bill has a narrow definition of human rights defenders in comparison with Article 1 of the UN Declaration. If the draft bill is adopted with its current definition, a large number of HRDs will not be afforded protection under this law.

Article 23a13¹⁸ of the draft bill requires that HRDs do not compromise the ‘security of the state’. Congolese law does not clearly define the term ‘state security’. As such, Article 23a13 dangerously exposes HRDs to judicial harassment, particularly as the regime has shown limited tolerance for the work of HRDs. This provision is not in accordance with Articles 11, 12 and 17 of the UN Declaration.

In regards to the latter concern,¹⁹ since sending the bill to the National Assembly, the Ministry of Justice has not been proactive in pushing the bill forward.²⁰ The National

¹⁴ Human Rights Council (4 January 2010), “Report from the Working Group of the UPR on the Democratic Republic of Congo”(A/HRC/13/8), p.22.

¹⁵ Extraordinary Parliamentary Session – August 2011 (October 2011), “Report on the participation of Human Rights NGOs in the work of the parliamentaries in regards to the examination and adoption of the draft law regarding the promotion and protection of Human Rights Defenders in the DRC”, p.5

¹⁶ FORFEM, Toges noires, ANMDH, Groupe Lotus and RENADHOC (June 2012), “Proposed amendments from the civil society on the draft law regarding the protection of human rights defenders in the DRC”.

¹⁷ Article 1 of the bill introduced by the Government, states: This law has the objective of clarifying the rights and duties of human rights defenders and persons who denounce corruption and misappropriation of public funds is to and to define the obligations of the State as the main guarantor of the respect and protection of the rights, freedoms and the work of these actors.

¹⁸ Article 23 provides that human rights defenders also have a duty to: Preserve the harmonious development of the family and to work for the cohesion and respect of the family, to respect their parents at all times, to feed them, and assist them in case of need; Serve their national community by placing their physical and intellectual abilities at its service; To not compromise the security of the State whose national or resident they are.

¹⁹ Toges noires, FFC, FORFEM et ASADHO (July 2013), interview with ASF, Unité de Protection du BCNUDH, RENADHOC and ANMDH

²⁰ Toges noires, FFC, FORFEM and ASADHO (July 2013), interview with ASF, Unité de protection/BCNUDH

Assembly has never considered the bill and has yet to include it in its Agenda.²¹ On 23 August 2011 the Senate requested that the bill be reviewed by a Joint Commission;²² however, the Commission has never met.²³ In addition, some of the interviewed parliamentarians indicated that they do not support the draft bill because they incorrectly believe it will make HRDs legally untouchable.²⁴

The group recommends that,

In consultation with Congolese civil society organizations, that the Congolese government revise the draft bill on the protection of human rights defenders in accordance with the UN Declaration on Human Rights Defenders and take all measures to pass the bill by May 2014.

1.3 The inefficiency of the protection cell for human rights defenders

In accordance with UPR Recommendation 106,²⁵ the Ministry of Justice and Human Rights issued decree No. 219 (25 June 2011) and decree No. 370 (6 April 2012) establishing a Protection Cell for HRDs. Unfortunately, the Cell has yet to be operational due to lack of material, financial resources and technical capacity.

The Secretary-General for Human Rights²⁶ said that the Cell is functional, claiming that it meets regularly as necessitated by its Rules of Procedure. However, she highlighted that it has critical financial and material problems. In contrast, a source at the Ministry of Justice and Human Rights²⁷ claimed that the Protection Cell has not been functional since its inception due to the following problems:

- Material resources: It does not have an office, files, computers or other office material.²⁸
- Technical capacity: Its three organs²⁹ have not been established and thus it cannot deal with individual cases of HRDs. According to the UNJHRO, the Cell has yet to have a case.³⁰
- Financial resources: Both the 2012 and the 2013 national budget included an insufficient allocation of funds for the operation of the Cell. Additionally, even the allocated budget was never disbursed.³¹

²¹ Agenda of the National Assembly, Sessions in 2011, 2012, and 2013

²² « Blue Book » of the Senate, consulted by Toges noires, FORFEM, and ASADHO on 22 July 2013

²³ Toges noires, FORFEM, ASADHO (23 July 2013), interview with Senator Professor Bongongo (President of the Socio-Cultural Commission of the Senate)

²⁴ Toges noires, ASADHO, and FORFEM (26 July 2013), interview with ASF

²⁵ Human Rights Council (4 January 2010), "Report from the Working Group of the UPR on the Democratic Republic of Congo"(A/HRC/13/8), p.22

²⁶ Toges noires, FORFEM, and FFC (24 July 2013), interview with the Secretary General for Human Rights

²⁷ The source has not given his authorization for his name to be cited in this report.

²⁸ This information is supported by the UNJHRO, ASF, and the Human Rights House

²⁹ Article 4 of the Ministerial Decree (No. 370 CAB/MIN/JetDH/2012) of 06 April 2012 on the Rules of the Protection Cell of human rights states: The Protection Cell of Human Rights Defenders will work with three organs: the National Alert Committee, the Provincial Alert Committees, and the Technical Secretariat to help with coordination.

³⁰ Toges noires, ASADHO, and FORFEM (20 July 2013), interview with Didi Kalal (Protection Officer of the Protection Unit of UNJHRO)

Year	Financial requirements, as identified by the Secretary General for Human Rights		Budget approved by law		Budget disbursed	
	CF	\$ US	CF	\$ US	CF	\$ US
2012	277,500,000	300,000	99,892,333	107,992	00	00
2013	322,500,000	348,648	80,840,940	87,396	00	00

As such, the group recommends:

That by the end of 2014 the Congolese government take the necessary steps to ensure that the Protection Cell for Human Rights has adequate materials, financial resources, and technical capacity to carryout its mandate.

That the Congolese government accelerate and facilitate the implementation of the law regarding the establishment and function of the National Commission for Human Rights by 2014.

Kinshasa, 2 August 2013³²

³¹ Figures available at: http://www.ministeredubudget.cd/2012/esb_avril2013/global/esb_global_par_nature_detail.pdf and http://www.ministeredubudget.cd/2012/esb2012/esb_fin_dec_2012_new/esb_dlcp_par_nature_detail.pdf. The figures in this chart have been confirmed by the Ministry of Budget.

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