

Embargoed to 14.30 (Kinshasa time, 15 October 2009)

Press statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions. Mission to the Democratic Republic of the Congo, 5-15 October 2009

I visited the Democratic Republic of the Congo from 5-15 October, and held meetings in Kinshasa, Bas Congo (Kisantu), North Kivu (Goma), South Kivu (Bukavu and Minova), and Province Orientale (Dungu and Doruma).

Across the DRC, I met with central, provincial and local Government officials, members of the military and police, judges and prosecutors, MONUC officials, members of the diplomatic community, representatives of civil society at all levels, humanitarian agencies, representatives of religious groups, prison detainees, and former combatants from the Forces Démocratiques pour la Libération du Rwanda (FDLR) and Lord's Resistance Army (LRA). I also met with many witnesses to human rights abuses and family members of victims.

I express my deep appreciation to the Government of the DRC for having invited me to visit the country. This indication of its willingness to cooperate with the work of the UN Human Rights Council deserves full recognition. I am also grateful to MONUC which has done an enormous amount to facilitate the success of my mission. The two DSRSGs, Leila Zerrougi and Ross Mountain, the Force Commander Babacar Gaye, and Todd Howland, Director of the Joint Human Rights Office, have done far more than could reasonably have been expected. They are, however, not responsible for any of the recommendations or analysis offered in my capacity as an independent expert.

The international law definition of extrajudicial execution is far broader than that under DRC law. It encompasses any killing by Government forces as well as killings by any other groups or individuals which the Government fails to investigate, prosecute and punish when it is in a position to do so.

One of the most troubling overall issues in the DRC is the radical privatization of the state. The military is poorly paid and often not paid at all, but it is understood that soldiers will extract their own rewards from the community, through extortion and theft. MONUC provides much of their rations. An ineffectual justice system tolerates and perhaps even encourages 'popular justice' exacted by the local community. Healthcare and education are outsourced to international agencies, and Government officials expressed anger that the latter were not doing far more. The central Government provides funds to only one prison in the entire country. The rest function on the basis of exactions that their often unappointed administrators can obtain from prisoners, their relatives, and others. The privatization phenomenon relieves most of the pressure for fiscal reform and accountability. The Government needs only to find resources for itself. The response to this phenomenon is beyond the scope of my report, but until the problem is confronted robustly, the ability of the state to provide security, ensure justice, and respect human rights will continue to erode dramatically. And the billions of dollars provided by the international community will have yielded no sustainable institutional framework.

Killings by the Congolese army and FDLR in North and South Kivu

Kimia II – the ongoing MONUC-supported Congolese army (FARDC) military operation in the Kivus against the FDLR armed group that began formally in February 2009 – has a range of objectives. But, from a human rights perspective, it has produced catastrophic results. Hundreds of thousands have been displaced, thousands raped, hundreds of villages burnt to the ground, and at least 1,000 civilians killed. In addition, the mines in the Kivus have not been demilitarized and continue to be exploited by armed groups, especially the FARDC.

A lack of planning, coordination and cooperation in Kimia II have led to predictable and repeated killings – including massacres in Southern Walikali and Masisi – by the FDLR. Villages left without protection by the FARDC or MONUC have been easy targets for the FDLR forces. Since January 2009, the FDLR have committed an average of 50-60 killings per month, compared to less than 10 killings per month in 2008. Violent rape has accompanied these atrocities. Many of the killings have been in retaliation against civilians who were believed to have cooperated with the FARDC when they were in control of the area. Senior FDLR commanders, including those currently residing in Germany who play a critical role in FDLR operations, remain free.

In many areas, it is the FARDC themselves who pose the greatest direct risk to security. The lack of vetting, training, and planning of the integration of former armed group members, especially the ex-Congrès National pour la Défense du Peuple (CNDP) into the FARDC in the Kivus has, not surprisingly, escalated the abuses committed by the army against civilians, and failed to break down parallel ex-CNDP command structures within the army. The process of developing a professional military has not yet begun in earnest. Training has often been perfunctory at best, even for many commanders. The precise number of soldiers is unknown, and the composition of military units is unclear. Soldiers' uniforms rarely identify their name or brigade. Ongoing efforts by EUSEC to carry out a much needed census of the army are indispensable to professionalizing the armed forces.

I have received credible information of significant and largely unreported killings by the FARDC in the Kivus during 2009. In Shalio (near Busurungi in North Kivu) it appears that the FARDC, led by Colonel Zimulinda, attacked a makeshift camp of Rwandan Hutu refugees on 27 April 2009. The FARDC surrounded the camp, shot and beat to death at least 50 refugees and burnt the camp to the ground. It also appears that some 40 women were abducted from the camp. A small group of 10 who escaped described being gang raped, and had severe injuries; some had chunks of their breasts hacked off. It is not known what has happened to the other 30 women. On 10 May, at least 96 civilians were massacred by the FDLR in Busurungi largely in retaliation for the Shalio killings. I have also received early indications of many killings by the FARDC on the Nyabiando to Pinga axis in North Kivu. A thorough investigation should be launched.

In addition to these large-scale killings by FARDC units, there have been many cases of opportunistic murder by soldiers. Regular failures by the Government to provide soldiers

their rations and pay, together with embezzlement by commanders, forces soldiers to literally prey on the population. I received extensive testimony of such cases, including many killings during attempts to steal food and other basic items, or deaths in the context of the FARDC forcing civilians to carry items for them. It is clear that abuses by the FARDC are dramatically reduced in areas where they are paid and fed.

Province Orientale and the Lord's Resistance Army

In the past year, over 1,200 civilians have been brutally killed by the LRA. Many of these killings have been revenge massacres following Government military operations. Both Operation Rudia I (a September 2008 joint FARDC-MONUC operation) and Operation Lightning Thunder (a December 2008 joint FARDC-Uganda-Sudan People's Liberation Army operation, with US logistical support) were immediately followed by retaliation killings by the LRA. In Dungu and in Doruma, I spoke with adults and children abducted by the LRA, children forced to serve as soldiers and trained to kill, and family members who watched their relatives bashed to death with machetes and sticks in coordinated LRA attacks. Given the longstanding pattern of LRA retaliation killings in Uganda and Sudan, these massacres were predictable, and far more should have been done by the Government and by MONUC to prioritize civilian protection in planning the military operations. This is required by both international humanitarian and human rights law.

There is a stark and troubling difference between the rhetoric of the armed forces about the success of Operation Rudia II (March 2009-present joint FARDC-MONUC operation) and the reality on the ground. The FARDC commander of Rudia II insisted to me that his mission of ridding the Congo of the LRA has been accomplished. But while there has been no repetition of the horrendous September-December 2008 massacres, regular LRA attacks continue. In July 2009, for example, there were at least 56 LRA attacks, with 40 killed and 157 people kidnapped. In August, there were 32 reported attacks, with 15 killed and 39 kidnapped. At least 22 were murdered in September and 33 kidnapped. One witness described an attack just two weeks ago, when LRA members robbed and tried to abduct the man's sister from the fields in which she was working.

The international community has paid insufficient attention to the security needs of Orientale. The challenge is a difficult one because of the vastness of the territory and its relative inaccessibility. There is a small MONUC presence, but it lacks the numbers and capacity necessary to respond effectively to threats. For all MONUC's efforts, communication between it and the population leaves much to be desired. MONUC's outreach to the local population has been inadequate. In part, this is a simple public relations failure. Too little effort has been made to: (i) explain MONUC's role to people; (ii) bring tangible benefits to the community, such as restoring electricity supplies and providing basic radio coverage; and (iii) establish a community-based communications network to enhance security and improve the ability of MONUC and the FARDC to respond rapidly to attacks or credible threats. In addition, there must be more timely monitoring and reporting on major incidents of killings. Although MONUC's Joint Human Rights Office conducted investigations into the LRA massacres of late 2008, over nine

months later, these reports have still not been published. Delays in publication approval appear to be undermining effective work on the ground.

The LRA has moved through Bas-Uélé, Haut-Uélé, and southern Sudan, up to the Central African Republic, and it remains a real threat in the DRC. In the face of the Government's denials of this fact, the population has voted with its feet. The large number of displaced persons have not been prepared to return to their homes.

The LRA has also become a full-fledged regional threat, having attacked civilians in northern Uganda, the DRC, southern Sudan, and the Central African Republic. An estimated 65,000 civilians have been killed over the last 20 years, and over 2 million people displaced. Despite its small size, the LRA has wrought havoc and will continue to do so unless a regional solution is found. There is a need for renewed strategic military thinking, along with tactical measures designed to more effectively entice and facilitate desertions from the ranks of the LRA.

As in the Kivus, a range of interlocutors have identified the FARDC as the most serious growing security threat in Orientale. For much of this year, the Republican Guard has been deployed in Orientale. However, in the last few months, a new integrated FARDC brigade – including ex-CNDP members – has been deployed to Orientale from North Kivu to replace the Republican Guard. Predictably, the new brigade has brought with it the harassment, looting, rape, and killing committed by the same forces in the Kivus. Most abuses are committed with impunity – members of the population have no idea that it is possible to complain about FARDC abuses, let alone who they should complain to. A military prosecutor was sent to Dungu for the first time only last week. At least 15 killings have been committed by the FARDC in Haut-Uélé in the last two and a half months. Most of these killings were in the context of FARDC looting and robbery attempts. In one case, two women were killed when they resisted a gang rape by soldiers. As the Republican Guard leave Orientale, and further integrated brigade soldiers continue to arrive, increased abuses should be anticipated. In turn, village self-defence groups are likely to be reinvigorated and to consider taking up arms against the FARDC if it continues to abuse the population with impunity. Orientale is at a critical juncture and all the warning signs are there for a repetition of the patterns of violence that have plagued the Kivus.

Political killings in Bas Congo and Kinshasa

The politically motivated killings of hundreds of civilians by the DRC's security forces in Kinshasa (Bemba party supporters) and Bas Congo (Bundu dia Kongo supporters) in June 2006, early 2007, and January and March 2008, have been denied by the Government, and received little attention from the international community. None of the agencies responsible for the repression and killings have been held accountable. They include the police (particularly Simba Battalion, the Integrated Police Unit, and Services Spéciaux), the National Intelligence Agency (ANR), the Republican Guard, and military intelligence (DEMIAP).

The continued dominance of a highly repressive state apparatus in this area was brought home to me dramatically when I traveled to Kisantu in Bas Congo earlier this week to speak with witnesses to killings of BDK supporters. In a blatant violation of the freedom of movement and communication owed by the host Government to a UN Special Rapporteur, I was prevented from speaking with witnesses or holding any meetings within the district. Flimsy and transparent pretexts were offered to justify this repression, which was ordered by the Governor and carried out by the Mayor of Kisantu. As soon as I left Kisantu, the person who had arranged the planned meeting for me was detained by the police. My return to Kisantu was required in order to secure his release. I remain deeply concerned about the security of this person and the witnesses, and will do all in my power to continue to monitor the situation. I have lodged an official protest with the Government in relation to this violation of their obligations to the UN Human Rights Council.

Deaths in prisons

My interlocutors, including the Minister of Justice, who is responsible for the penitentiary system, unanimously agreed that prison conditions are atrocious. I visited the Central Prison of Goma and spoke with detainees there. In a prison built to hold 150, over 800 prisoners live in squalor. They receive one inadequate meal per day from the prison authorities, and rely essentially on food brought by their families. Because internal control of the prison is entirely left to the inmates, the stronger prisoners take the lion's share of the provided food. The weaker prisoners and those without family nearby gradually become emaciated, and especially vulnerable to disease. Not surprisingly, many die in prison.

The number of prisons and prisoners in the Congo is unknown. Totally inadequate records of prisoners are kept and many are left rotting in prison even after their sentence has been served. The great majority of prisoners have never been tried before a judge. In essence, the prison system seems to be a depository for the enemies of the state and for those too poor to buy their way out of the justice system. The abominable conditions, together with corruption and minimal state control, mean that escapes are common, thus adding further to impunity.

Sexual violence and extrajudicial executions

Widespread sexual violence continues largely unabated. The sheer number of attacks does not convey the horror of the violence. Women and girls – including babies – have been gang raped, had guns, wood, sand or glue inserted into their bodies, and had their genitals mutilated. Some women have had fetuses ripped out of their wombs by perpetrators. Victims have, in fact, quite literally been raped to death. I received accounts in the Kivus of gang rapes so brutal that women died from bleeding, and other accounts of severe rape-related injuries that resulted in death days or weeks later. Victims have also been murdered immediately following a rape, and family members who attempt to stop a rape have been killed. Although numerical evidence is still being gathered, anecdotal evidence from a variety of sources indicates that rape and related killing may be particularly vicious when armed groups retaliate against communities they suspect of collaborating with an opposing force. Those working to assist rape victims have also been attacked and threatened.

Despite this nightmare situation and the political attention it has garnered, key officials continue to deny the extent of the problem. When I asked one senior military official in Eastern DRC about sexual violence in the area under his command, he told me that only 15% of rapes alleged by NGOs and others actually occurred, that most cases were “imaginary”, and that it was in the nature of women to be unfaithful. The truth is that the number and severity of attacks continue unabated and appear to be on the rise. This is especially the case in the Kivus, where the already enormous number of rapes increased after the start of military operations in early 2009. Members of armed groups commit the majority of rapes in the Kivus.

Impunity and the criminal and military justice systems

Impunity is a key cause of continuing killings, and results from deficiencies at every stage of the justice system. Impunity is so pervasive that even Bosco Ntaganda – wanted by the ICC for enlisting and using child soldiers in Ituri – was integrated into the FARDC and now holds an unofficial yet widely acknowledged senior command position in Kimia II. Many others with their names on thick files that detail war crimes and other grave abuses, also hold senior positions in the army. This includes Sultani Makenga, Bernard Byamungu and Salumu Mulenda.

Across the country, endemic corruption and political interference ensure that anyone with money or connections can escape investigation, prosecution, and judgment. In meetings with magistrates, I was told of threats they have received in the course of their work, attempts to bribe them, and their crippling lack of resources. Judges’ appointments, removals and promotions are subjected to frequent political interference. The new Operational Military Court for Kimia II has made some progress in prosecuting a small number of low-ranking perpetrators. But it does not have adequate staff, the ability to conduct its own independent investigations, or the power to undertake high-level prosecutions.

Fear on the part of victims and potential witnesses greatly inhibits the reporting of crimes. There is no Government witness protection program whatsoever in the Congo. MONUC operates an invaluable but very small protection program, and limited staff and resources restrict its ability to protect those in need.

The role of MONUC

MONUC is carrying out a mission of the utmost importance. I was deeply impressed by the professionalism and dedication of its officers, but the human rights dimension of its activities needs to be rethought. The Joint Human Rights Office has done much excellent work and the new Joint Protection Teams, set up to provide early warning on security threats, are a step in the right direction for civilian protection, although they face serious resource and access obstacles, and their recommendations are not always acted upon.

The main problems that should be acknowledged are twofold. The first stems from the unavoidable tensions of having a human rights monitoring component under the authority of a peace-keeping mission. Human rights reporting is always going to be seen by some as a hindrance or obstacle to securing political reform, and it will thus be delayed, diluted, or discouraged according to the circumstances. While this will usually be done in good faith, it is deeply corrosive of the credibility and effectiveness of the human rights work. This issue seems to be far from being satisfactorily resolved in the current arrangements within MONUC, and it is not at all clear that the OHCHR is playing the constructive role that it should.

The second problem concerns the fact that the Security Council's mandate has transformed MONUC into a party to the conflict in the Kivus. This inevitably creates a conflict of interest in terms of its ability and willingness to investigate allegations of abuses by the FARDC or by its own forces. Even if it had been performing these tasks impeccably, a perceived lack of independence is unavoidable. Consideration needs to be given to the creation of a new mechanism to ensure that the necessary monitoring and reporting roles are carried out independently, effectively, and credibly.

The UN system has expended significant effort on a mapping project that has documented human rights violations committed between 1993 and 2003. This project is an absolutely indispensable step on the path to accountability for abuses, and its findings should be released within the next three months.

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In addition to the issues discussed above, the report I will present to the Human Rights Council will also consider problems relating to the role of the police vigilante and mob justice killings, the killing of journalists and "witches", and the protection of human rights defenders. The latter issue is of particular importance given the constant harassment and intimidation to which the defenders are subjected.

Recommendations

The DRC has long suffered from 'recommendation fatigue'. Hundreds of reports have proposed thousands of reforms. Most have gone nowhere. Prioritization is unavoidable. The following six reforms are both necessary and achievable within the next six months. In June 2010, I will report to the Human Rights Council on the progress achieved on each.

1. Impunity is chronic. The FARDC often gets away with murder. Its soldiers also face no significant risk of punishment for raping and looting the civilian population. Their anonymity, combined with their arms, provides the perfect cover for criminality that goes unpunished. As an immediate step, all of its members should be required to wear uniforms that identify their individual names and unit affiliation. The Security Council should make this a pre-condition for UN assistance.

2. Permitting key members of the military who are alleged to have committed war crimes, crimes against humanity and other serious offences to serve in the armed forces sends an immensely powerful message to the rest of the military. The message is that impunity rules and that brutality and power prevail over law. The slogan that peace will come first and justice later fundamentally misunderstands the dynamic involved. Peace will not come, nor will justice, until the Government and the international community take seriously the notion that those accused of heinous crimes must be indicted immediately. Giving individuals like Bosco Ntaganda, Innocent Zimulinda, Sultani Makenga, Bernard Byamungu and Salumu Mulenda a get out of jail free card, even if ostensibly “just for a few years”, only serves to mock human rights. No amount of sophisticated strategic rationalization should be permitted to obscure that fact.

3. Early warning is a key function of my reports, and alarm bells are ringing loudly in the DRC. At present, Kinshasa and Bas Congo are ripe for further killings by the security forces as elections approach. In Orientale, increased FARDC abuses and continued sporadic LRA attacks should be expected. Fighting between self-defence groups and the FARDC is also likely to flare up unless preventative measures are urgently taken. In the Kivus, FDLR retaliatory attacks will exact a huge civilian toll unless vastly improved protection measures are put in place. The likelihood of all of these developments places a particular responsibility upon the Government and the international community to take immediate preventative measures.

4. Security sector reform is complex and time-consuming. An all but neglected issue is the future of the Republican Guard. This is a ticking time bomb. Unless the RG is fully integrated into the FARDC, it has the potential to become an uncontrollable and explosive obstacle in the way of free elections and democratic governance.

5. Being imprisoned in a DRC jail is often a fate worse than hell. Far too many detainees are killed by a negligent and callous prison system. The actual number of prisons and prisoners is unknown. Prison over-crowding is shocking, even by the standards of a very poor country. Vast numbers are held without trial for years on end, and many are starved slowly to death. A reasonable budget for every prison should be established, and a census of the prison population undertaken within six months. The amount of time prisoners are kept in pre-trial detention must conform to international human rights standards. Prisoners detained in violation of these standards should be released, and all facilities operated by actors without the lawful authority to do so should be closed.

6. Urgent consideration needs to be given to improving and restructuring the ability of the UN to monitor and report effectively, independently and credibly on human rights abuses within the DRC. While the existing arrangements are strong in certain respects, much more needs to be done.