

In its last Universal Periodic Review in December 2009, the Democratic Republic of Congo (the DRC) received 15 recommendations regarding human rights defenders (HRDs), accepting seven. The DRC committed to adopt protective measures for HRDs against attacks, threats and arbitrary detention, to prosecute crimes against them, and to develop a legal framework for protection in line with the UN Declaration on HRDs. In February 2010, the UN Special Rapporteur on the situation of human rights defenders (the UN Rapporteur) reported on her visit to the DRC, making important recommendations.<sup>1</sup> Four years on, however, HRDs remain at risk and under-protected.

## 1. Risks facing human rights defenders

- According to the UN Rapporteur the situation for HRDs in the DRC ‘remains extremely concerning... especially in the Eastern regions of the country’, with many HRDs forced into hiding or exile.<sup>2</sup>
- Amnesty International states that in 2013 ‘the security situation for HRDs in the east deteriorated throughout the year. Defenders faced increasing intimidation and were often subjected to arbitrary arrests or death threats by state security forces, the M23, and unidentified armed men’.<sup>3</sup>
- OMCT recorded three murders of activists in the DRC between March 2012 and October 2013.<sup>4</sup>
- HRDs risk physical attacks, sexual abuse and rape, death threats, surveillance and harassment.<sup>5</sup>
- The African Commission on Human and Peoples’ Rights has documented abduction and attacks of HRDs.<sup>6</sup>
- The UN Rapporteur has expressed special concern regarding the death threats and intimidation perpetrated by armed groups, including State forces, against HRDs who expose abuses by these groups.<sup>7</sup>
- According to the US State Department’s 2012 human rights report, ‘elements of the State security forces continued to harass, beat, intimidate, and arbitrarily arrest and detain domestic human rights advocates’.<sup>8</sup>

## 2. Official restrictions on the space for human rights defenders

- Whilst the DRC constitution guarantees the right to freedom of peaceful assembly, this is sometimes restricted by the Government through its requirement that public events be registered previously with local authorities, its occasional denial of permission and subsequent reprisals against these events.<sup>9</sup>
- The Observatory for the Protection of Human Rights Defenders (the Observatory) and the UN Rapporteur have documented cases of defamation against activists by authorities.<sup>10</sup>

## 3. Intimidation and reprisals against defenders accessing international human rights mechanisms

- HRDs fighting impunity through the International Criminal Court have been victims of death threats and abduction, from State agents and non-State actors, with several leaving the country and stopping their work.<sup>11</sup>

## 4. Human rights defenders facing particular risks

- According to the Observatory’s 2011 report, ‘Women defenders who denounce sexual violence, defenders who fight against impunity for international crimes, who denounce women’s poor working conditions or who work on issues linked to the management of natural resources, continued to be especially vulnerable’.<sup>12</sup>
- Women HRDs face an elevated risk of sexual violence and additional risks for challenging gender norms.<sup>13</sup>
- HRDs highlighting the illegal exploitation of natural resources in Eastern DRC are particularly vulnerable to harassment, arbitrary arrest and detention, and other abuses by State security forces.<sup>14</sup>
- In December 2013 Amnesty International released a report highlighting the additional risks faced by HRDs in North Kivu due to the constantly shifting balance of power between armed groups and political factions.<sup>15</sup>

## 5. The response of the State regarding the protection of human rights defenders<sup>16</sup>

- A Cell for implementing protection measures to HRDs was created in 2011 by Decree 219/CAB/MIN/JDH/2011. So far the mechanism has had limited impact in the capital city only.
- Civil society organisations submitted a second proposal for a national bill on the protection of HRDs to the National Assembly in June 2011. The bill has since stalled in various Senate committees. Amnesty International has expressed concern at clauses in the current draft which could limit human rights activities.<sup>17</sup>
- South Kivu civil society has proposed regional legislation (Édit provincial) on HRD protection since 2007. The Provincial Assembly has continually stalled on the latest proposal, introduced by HRDs in January 2011.

- The national and provincial Liaison Entities, created by Decree 09/35 in 2009 to guarantee dialogue between HRDs and authorities on issues including HRD safety, continue to lack resources and fail to provide services.
- Following consultation with NGOs, law no. 13/011 was promulgated on 21 March 2013 to create a National Commission on Human Rights (CNDH). The CNDH is yet to receive a budget and Commissioners yet to sit.
- The persistence of widespread impunity in the DRC leaves perpetrators free to reoffend against HRDs. The trial of eight police officers for the 2010 murder of Floribert Chebeya, Executive Director of the NGO *Voix des sans voix*, has been criticised for irregularities and the refusal to investigate then Police Chief John Numbi.<sup>18</sup>
- Article 156 of the 2006 Constitution, limiting the reach of military jurisdiction, is yet to be incorporated into the Military Judicial Code, meaning that military jurisdiction remains applicable over civilians including HRDs.
- The lack of a legal framework regulating the activities of the State intelligence service (ANR) remains a concern, given the aggressions against HRDs by the ANR documented by the UN Rapporteur.
- There is currently no legislation on the protection of victims and witnesses in the DRC.

## 6. Recommendations to the Government of the Democratic Republic of Congo

- Authorities should make public statements recognising the important role of HRDs in the transition of the DRC, the situations of risk which they face due to their activities, and the State responsibility to protect them.
- The State should guarantee the investigation and prosecution of all aggressions and defamation against HRDs, and in particular those committed by State security and intelligence forces.
- The State should guarantee the constitutional right to freedom of assembly, by minimising administrative obstacles and sanctioning the excessive use of force against public protest.
- The Parliament should pass a national bill on the protection of human rights defenders, guaranteeing civil society participation in the draft of the approved bill, ensuring compliance with international standards and eliminating clauses which could be used to restrict their freedom of expression and freedom of association.
- The Parliament should guarantee sufficient resources for the national and provincial Liaison Entities.
- Provincial Assemblies should consult civil society to pass provincial legislation on HRD protection legislation.
- The State should create a National Commission on Human Rights which complies with the Paris Principles and which includes a HRD focal point with a mandate reflecting the recommendations of the UN Rapporteur.<sup>19</sup>
- The State should engage with local and international experts to ensure that all HRD protection mechanisms analyse the particular risks facing Women HRDs and those highlighting the illegal exploitation of natural resources, and implement protective measures which respond to their specific circumstances.
- The State should reform its Military Judicial Code, incorporating Article 156 of the Constitution.
- The State should establish, in consultation with civil society, a regulatory framework for the ANR.
- The State should pass legislation guaranteeing the protection of victims and witnesses.<sup>20</sup>
- The State should fully implement the recommendations made by the UN Rapporteur in her report on the DRC.

**The conclusion of the Kampala Peace Talks in December 2013 represents a key step in the transition of the DRC. However, a successful transition to peace and human rights will rely upon the participation of civil society in decision-making. It is therefore vital that the Government of the DRC guarantee the protection of human rights defenders.**

<sup>1</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2_English.pdf)

<sup>2</sup> [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-4\\_EFS.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-4_EFS.pdf)

<sup>3</sup> <http://www.amnesty.org/en/region/democratic-republic-congo/report-2013#section-37-12>

<sup>4</sup> Rocksy Tshimpaka, Godefroid Mutombo and Mbatswe Mushunju:

<http://www.omct.org/human-rights-defenders/urgent-interventions/congo-dem-republic/?n=2>

<sup>5</sup> [http://www.frontlinedefenders.org/files/drc\\_francophonie\\_summit\\_human\\_rights\\_defenders\\_are\\_increasingly\\_vulnerable.pdf](http://www.frontlinedefenders.org/files/drc_francophonie_summit_human_rights_defenders_are_increasingly_vulnerable.pdf)

<sup>6</sup> <http://www.achpr.org/press/2010/09/d36/>

<sup>7</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2_English.pdf)

<sup>8</sup> <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>

<sup>9</sup> <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>

<sup>10</sup> <http://www.omct.org/human-rights-defenders/statements/2013/11/d22424/>

<sup>11</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2_English.pdf)

<sup>12</sup> [http://www.omct.org/files/2011/10/21443/obs\\_2011\\_uk\\_afriqsub.pdf](http://www.omct.org/files/2011/10/21443/obs_2011_uk_afriqsub.pdf)

<sup>13</sup> [http://www.omct.org/files/2011/10/21443/obs\\_2011\\_uk\\_afriqsub.pdf](http://www.omct.org/files/2011/10/21443/obs_2011_uk_afriqsub.pdf)

<sup>14</sup> [http://www.defendingwomen-defendingrights.org/pdf/WHRD\\_IC\\_Global%20Report\\_2012.pdf](http://www.defendingwomen-defendingrights.org/pdf/WHRD_IC_Global%20Report_2012.pdf), pp. 34-36 and pp. 90-91

<sup>15</sup> <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204107>

<sup>16</sup> <http://www.amnesty.org/en/library/info/AFR62/008/2013/en>

All legislative information is resumed from information provided by Campagne pour les Droits de l'Homme au Congo and Dynamique de la Jeunesse Féminine and complemented by <http://protectioninternational.org/publication/focus-report-2013-on-public-policies-for-defenders/>.

<sup>17</sup> <http://www.amnesty.org/en/library/asset/AFR62/008/2013/en/c174bf31-86b0-4563-927d-d148a3f7b0a8/af620082013en.pdf>, p. 30

<sup>18</sup> <http://www.omct.org/fr/human-rights-defenders/statements/congo-dem-republic/2013/06/d22263/>

<sup>19</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2_English.pdf), paragraph 97

<sup>20</sup> For a comprehensive study on the needs of victims and witnesses in the DRC, and proposals for their protection, see

<http://protectionline.org/files/2012/10/R%C3%A9sum%C3%A9-ex%C3%A9cutif-d%E2%80%99une-%C3%A9tude-sur-la-protection-des-victimes-et-des-t%C3%A9moins-en-R.D.-Congo.pdf>