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Democratic Republic of the Congo: From occasional outrage to sustained response - the need for the Human Rights Council to play a role in the areas of judicial reform and the fight against impunity

Amnesty International submitted the following written statement to the 18th session of the United Nations Human Rights Council (Geneva, 12-30 September 2011).

Judicial reform and fighting impunity in the Democratic Republic of the Congo (DRC) are two areas that require the Human Rights Council (HRC)'s sustained attention. With so much focus on the situation in other parts of the world, the DRC risks becoming more and more one of the situations neglected by the HRC, while serious violations of human rights continue to be committed, such as the mass rapes committed in Fizi in June 2011. Receiving an annual report on the situation in the DRC is far from being an effective measure to support efforts by the DRC government and other actors at judicial reform and fight against impunity. The HRC must do more and do better to contribute to end the culture of impunity in the DRC.

In this statement Amnesty International elaborates on its recommendation, made at previous HRC sessions, for the urgent establishment of a technical assistance mandate for the DRC with a focus on these two areas.

The need for a comprehensive and long-term strategy to reform the DRC national justice system

Crimes under international law have been committed by Congolese and foreign security forces and armed groups in almost every corner of the DRC over the past two decades and continue to be committed, notably in the east of the country. The UN Mapping Report published in October 2010 documented over 600 serious violations of human rights and international humanitarian law committed between March 1993 and June 2003 in the DRC. That report also concluded that the Congolese justice system did not have the capability to address crimes under international law due to various significant structural and chronic shortcomings, including the limited engagement of the Congolese authorities in strengthening the justice sector, the very limited resources allocated to the judicial system, the lack of independence of the justice system due to interference by political and military authorities, and the inadequacy of the military justice system to deal with crimes under international law committed by the security forces. The UN Mapping Report made a series of recommendations in this regard.

In a report published on 10 August 2011¹, Amnesty International highlights that despite some efforts at reform, the Congolese justice system is largely unable to deliver accountability, address impunity and secure reparation for victims after decades of neglect, mismanagement and poor governance. The report argues that the DRC authorities have failed to ensure justice, truth and reparations for the victims of crimes under international law. Impunity remains pervasive: while millions of men, women and children have suffered as a result of the violence, only a handful of perpetrators have ever been brought to justice. The failure to hold those responsible for violations to account has a pernicious impact: it further entrenches a culture of impunity; it fosters cycles

¹ Amnesty International, *Democratic Republic of the Congo: The time for justice is now: New strategy needed in the Democratic Republic of the Congo*, 10 August 2011, AFR 62/006/2011.

of violence and violations; it undermines any efforts to create a culture of respect for the rule of law; and it damages the credibility of the justice system in the eyes of the Congolese people.

A major obstacle to ensuring accountability and reparation for past and current violations is the weakness of the Congolese justice system and the lack of a comprehensive strategy to rebuild and reform it. Amnesty International identified fundamental flaws within the justice system that are often overlooked by current policies and programmes. These include the lack of a national witness and victim protection programme; endemic corruption; the lack of independence of the justice system; lack of personnel, training and resources; the lack of enforcement of court judgments, including in the payment of financial compensation when the State is held accountable; and the poor prison conditions. Furthermore, insufficient coordination among the Congolese authorities and the various international donors leads to duplications and gaps in the reform efforts.

A variety of justice reform projects are currently being carried out in the DRC. Some are run by the United Nations, some by donors, and some by non-governmental organizations, both international and Congolese. Despite their merits, taken together they fail to provide the long-term and comprehensive approach that is needed to ensure accountability and reparation for past and current violations. In light of the scale and nature of the violations committed in the DRC and the widespread impunity that prevails, Amnesty International believes there is an urgent need to develop a more long-term and comprehensive justice strategy that can deliver sustainable reform of the Congolese justice system in order to overcome impunity.

The need for a human rights council technical assistance mandate for DRC with a focus on the areas of judicial reform and the fight against impunity

In the latest resolution on the DRC² the HRC only invited the Office of the High Commissioner for Human Rights to increase and enhance its technical assistance programmes and activities and to report to the HRC at its 19th session in March 2012. With just one annual OHCHR's report on the overall situation in the DRC, the HRC is not receiving sufficient information on the implementation by the DRC Government of UN recommendations on the fight against impunity and reform of the justice system. Amnesty International believes that the DRC would benefit from more sustained support for its efforts at judicial reform and at fighting impunity. For this reason, our organization has recommended the establishment of an HRC technical assistance mandate for DRC with a focus on the areas of judicial reform and the fight against impunity. A well-conceived Council technical assistance mandate could help to catalyze and maintain such support, including by assisting the DRC government's efforts to implement UN recommendations aimed at reforming the justice system and tackling impunity. It could also help to ensure that donors' contributions directed to judicial reform and impunity are better coordinated, including with the DRC authorities, and hence be more effective. Once established, a mandate must be provided with the resources necessary to discharge it effectively.

A technical assistance mandate focusing on judicial reform and impunity would cover a wide range of existing recommendations that have received the HRC's attention, which include those made during the Universal Periodic Review of the DRC, in the reports of the Council's seven thematic procedures previously tasked with assisting the DRC, in the reports of the UN High Commissioner for Human Rights, in the "*Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights*"³ and in the above-mentioned Mapping Report.

Amnesty International urges HRC members and observers to pay attention to judicial reform and the fight against impunity in the DRC and to work towards the establishment of a focussed technical assistance mandate for the DRC at the Council's 19th session in March 2012.

² The Human Rights Council Resolution 16/35 "The human rights situation in the Democratic Republic of the Congo and the strengthening of technical cooperation and advisory services" of 25 March 2011

³ At: http://www.ohchr.org/Documents/Countries/ZR/DRC_Reparations_Report_en.pdf.