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Technical assistance and capacity-building

The human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted pursuant to resolution 33/29 of the Human Rights Council, the United Nations High Commissioner for Human Rights reports on the human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo between June 2016 and May 2017. He assesses, among other things, the progress made by the Government in implementing the recommendations made by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations human rights mechanisms.

The High Commissioner commends the efforts made by the Government in combatting sexual violence. He also takes note of the release of several political prisoners and prisoners of conscience in the framework of measures to reduce tension, and of the adoption by the Senate of a bill on the protection and responsibility of human rights defenders in the Democratic Republic of the Congo.

The High Commissioner nonetheless emphasizes the worrying deterioration of the human rights and fundamental freedoms situation throughout the country, in particular the significant increase in the number of violations committed by State agents, including the Congolese National Police, and the extrajudicial and summary execution of hundreds of people in the Kasai provinces by soldiers of the armed forces of the Democratic Republic of the Congo and members of the Kamuina Nsapu militia. He also refers to the situation in the eastern provinces of the Democratic Republic of the Congo, where the action of many armed groups continues to have a disastrous impact on civilian populations. He regrets the decrease in the number of convictions of State agents and deplores the continuing impunity of the perpetrators of serious human rights violations, including police officers and soldiers responsible for disproportionate use of force during demonstrations and operations against

* This document is submitted late so that the most recent information could be included.

armed groups.

The High Commissioner invites the Government to implement all the recommendations contained in this report and reaffirms his commitment to supporting the authorities in their efforts to promote and protect human rights.

I. Introduction

1. Prepared pursuant to Human Rights Council resolution 33/29 of 30 September 2016 on technical assistance and capacity-building for human rights in the Democratic Republic of the Congo, the present report provides an overview of the human rights situation and the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the country through the United Nations Joint Human Rights Office between June 2016 and May 2017.

2. The report highlights major developments concerning human rights, in particular in the context of elections, and assesses progress made by the Government in implementing the recommendations of the High Commissioner and other United Nations human rights mechanisms. The information presented was documented and verified by the United Nations Joint Human Rights Office in the Democratic Republic of the Congo in strict application of the methodology of the Office of the High Commissioner.¹

II. Main human rights developments

3. Despite the progress made at the legislative and institutional levels — including the adoption by the Senate of a bill on the protection and responsibility of human rights defenders and the establishment of an interministerial commission responsible for following up implementation of the Convention on the Rights of Persons with Disabilities — the High Commissioner is concerned about the alarming deterioration in the human rights situation during the reporting period.

4. The considerable reduction in democratic space is particularly worrying and is manifest in a sharp increase in the number of violations of civil and political rights by State agents in a political context that is tense as a result of the postponement of presidential elections. The High Commissioner condemns the acts of intimidation and violence against political opponents, journalists and human rights defenders, and the disproportionate use of force, including lethal force, by the defence and security forces during demonstrations, which directly caused the death of many people. The High Commissioner notes the release of several political prisoners and prisoners of conscience, in particular in the framework of the political agreements of October and December 2016 between the parties of the opposition and of the presidential majority. He deplores, however, the lack of will to take measures to ease tension that would calm the political situation with a view to holding credible, free and transparent elections.

5. The High Commissioner is deeply concerned about the situation in the Kasai provinces linked to the appearance of the Kamuina Nsapu militia, the repression of this militia by the defence and security forces and their impact on the civilian population. The violence affecting the region has caused the death of at least 596 persons, including 153 children, and the displacement of more than a million people. In the provinces of Kasai, Tanganyika, North Kivu and South Kivu, the number of militias and armed groups, including self-defence groups, has increased and inter-ethnic tensions have been exacerbated, resulting in a large number of attacks on the civilian population.

6. Despite the progress made in the fight against impunity for sexual violence, little progress has been made concerning State agents who have perpetrated other human rights violations, in particular those committed in the context of suppressing demonstrations and the violence in the Kasai provinces. The lack of political will and the lack of independence of the judicial authorities remain major obstacles to the fight against impunity.

¹ See chapter 7 of the Training Manual on Human Rights Monitoring, available on the website of the OHCHR (www.ohchr.org/Documents/Publications/Chapter07-24pp.pdf).

A. Human rights situation in the context of elections

7. The Human Rights Committee recommended that the Government guarantee freedom of speech and of the press and other media, noting that any restriction on press and media activities should be strictly compatible with the provisions of article 19 of the International Covenant on Civil and Political Rights (see CCPR/C/COD/CO/3, para. 22). It asked the Government to ensure that the freedoms of expression and peaceful assembly were respected, that members of political parties, journalists and human rights defenders could freely carry out their work in accordance with international norms, and that any restrictions on their activities were compatible with articles 21 and 22 of the Covenant. It also asked the Government to increase its efforts to promote women's participation in political affairs and to adopt without delay the law on the protection and responsibility of human rights defenders (see CCPR/C/COD/CO/3, paras. 11 (b), 22 et 23).

8. During the period under review, United Nations Special Rapporteurs called on at least four occasions for the lifting of restrictions on fundamental freedoms, including the prohibition of public gatherings and meetings, condemned the violent suppression of demonstrations and called for the release of people arbitrarily detained for peacefully exercising their civil and political rights.²

1. Current situation and action taken by the Government

9. The High Commissioner notes with satisfaction the release of several political prisoners and prisoners of conscience pursuant to the political agreement of 31 December 2016, in particular nine human rights defenders arrested between January 2015 and July 2016 by agents of the National Intelligence Agency (known under its acronym ANR), and 33 other persons, including 12 members of civil society and ten members of opposition parties. Nonetheless, at least 173 political prisoners and prisoners of conscience were still in detention when this report was written.

10. The sharp increase in the number of violations of civil and political rights confirms a worrying trend that began in 2015 and threatens the credibility of the electoral process. Between June 2016 and May 2017, the United Nations Joint Human Rights Office in the Democratic Republic of the Congo documented 1,080 violations connected with restrictions on democracy throughout the country, almost double the number during the previous period (553 violations), most of which were committed by Congolese national police officers. The Congolese authorities have imposed more and more unjustified and disproportionate restrictions on public freedoms, and members of the law enforcement agencies have committed acts of violence and harassment against political opponents, journalists and human rights defenders in order to silence voices regarded as critical of the current Government.

11. For example, activists of the grass-roots movement *Lutte pour le changement* (LUCHA) have regularly been targeted by attacks and threats and subject to harassment and arbitrary arrest. On 12 and 19 April 2017, in Goma (North Kivu), 50 LUCHA activists and two members of the Debts and Credits Cooperative were arrested by the police during a sit-in in front of the Central Bank of Congo protesting against the bankruptcy of the Cooperative. In accordance with the Constitution, the organizers had informed the local authorities in advance and in writing about these demonstrations. Furthermore, three journalists who were covering the 12 April sit-in were beaten up and their equipment was confiscated by police officers.

12. Freedom of peaceful assembly has been particularly restricted, including through the general prohibitions on demonstrating imposed in the main localities of the country. Their application has varied according to the political allegiance of organizers. Thus, demonstrations organized by the opposition and other civil society actors have generally been banned, while most of those organized by the presidential majority have been authorized. For example, on 3 April 2017, in Kindu (Maniema), seven members of the opposition were arrested by police officers during a motorized parade, while, on 1 April

² See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21048&LangID>.

2017, a similar activity organized by the presidential majority had gone ahead without restriction. No progress has been observed on the adoption of a law setting out measures for application of the freedom to demonstrate, bringing national legislation into line with the Constitution, which requires organizers only to give prior written notification.

13. Despite the prohibitions, demonstrations against the current Government have been organized and have often been suppressed by an excessive and disproportionate use of force, including lethal force. For example, on 19 September 2016, the demonstrations organized by the opposition and civil society throughout the country to call upon the independent National Electoral Commission to hold presidential and legislative elections were banned and/or put down in 11 cities. In Kinshasa, disproportionate use of force against demonstrators led to the extrajudicial execution of at least 48 people, including six women and two children, by police officers and soldiers of the Armed Forces of the Democratic Republic of the Congo.

14. Similarly, on 19 December 2016, the day that marked the end of the second term of office of President Kabila, large numbers of elements of the police and armed forces were deployed in the major cities of the country to prevent and put down any protests against the Head of State remaining in power. At least 40 people, including five women and two children, were killed by State agents following a disproportionate use of force in Kinshasa, Lubumbashi (Upper Katanga), Boma and Matadi (Central Congo). At least 147 people, including 14 women and 18 children, were injured in eight localities, and at least 917 people, including 30 women and 95 children, were arrested in 13 localities for participating in the demonstrations.

15. In Central Kongo Province and Kinshasa, the United Nations Joint Human Rights Office in the Democratic Republic of the Congo recorded several incidents between sympathizers of the political party Bundu Dia Mayala (BDM) — the leader of which, the Member of the national Parliament Ne Mwanda Nsemi, had just adopted a position hostile to President Kabila — and police officers, including the looting of the home of a Member of Parliament who was a rival of Ne Mwanda Nsemi and an attack on a police station that resulted in at least four people being killed by the police. When Ne Mwanda Nsemi was accused by the authorities of assembling activists to launch attacks and destabilize the State, his home in Kinshasa was besieged by the security forces for two weeks in February 2017. On 3 March 2017, he was arrested with several of his sympathizers and transferred to the Central Prison of Kinshasa, where he remained until the attack on the prison by armed men presumed to be his partisans on 17 May 2017, which resulted in the escape of about 4,000 prisoners, including Ne Mwanda Nsemi.

16. On 10 April, 2017, the local authorities banned the demonstrations that the opposition political parties planned to organize in the principal cities of the country to protest against the failure to respect the 31 December agreement and the appointment of Bruno Tshibala as Prime Minister. In addition, a substantial deployment of defence and security forces prevented the demonstrations taking place. A total of five men were injured and 140 people, including 14 women and 21 minors, were arrested.

17. The media and journalists have also been targeted by the Congolese authorities in the context of disproportionate restrictions on freedom of expression, such as the suspension of the signal of Radio France International from 5 November 2016.³ On 12 November 2016, the Ministry of Communication and Media adopted a decree that had the effect of limiting the possibility of foreign media broadcasting in the Democratic Republic of the Congo. On 14 December 2016, the provincial security council of Kasai-Oriental, chaired by the Governor of the province, decided to suspend political broadcasts in the province, a decision that was reversed in February 2017. On 5 April 2017, in Kolwezi (Lualaba), a journalist was the victim of arbitrary arrest and unlawful detention by agents of the National Intelligence Agency, who accused him of relaying an opposition message calling on the people to demonstrate. He was released the following day and forbidden to disseminate any message emanating from the opposition.

³ The signal was re-established on 11 August 2017.

18. The High Commissioner regrets the loss of life during the legitimate exercise of fundamental freedoms by the people, and is concerned at the lack of prosecutions of those responsible for these violations, including those committed during the demonstrations of September and December 2016. Moreover, the repeated convictions of several representatives of the opposition seems to show the limited independence of the judicial system and its exploitation for political ends. The case of Jean-Claude Muyambo is an example of this. He is the president of the opposition party *Solidarité congolaise pour la démocratie* (SCODE)⁴ and, on 12 April 2017, was sentenced on appeal by the Gombe regional court to five years' imprisonment and 10,000 dollars in damages for fraudulent breach of trust and unlawfully retaining documents linked with acts committed 13 years earlier. This decision also runs counter to the agreement of 31 December 2016, which provides, among other things, for the dismissal of the charges against Mr. Muyambo as a means of reducing tension and ending the political impasse.

19. The High Commissioner is concerned at the proposed reform of the Constitutional Court submitted by the Minister of Justice on 5 May 2017, which would limit its composition to five members instead of nine, three of them appointed by the Head of State, and consequently runs the risk of hampering its independence.

20. Lastly, the presence of women in political affairs remains very limited. In the Government of Prime Minister Bruno Tshibala, appointed on 8 May 2017, only 6 of the 59 ministers are women.

2. Action taken by the United Nations Joint Human Rights Office

21. Pursuant to its mandate, the United Nations Joint Human Rights Office has continued its work of observation and investigation of allegations of human rights violations committed in the context of elections and to follow closely the situations of political prisoners and prisoners of conscience, despite the restrictions on access to detention centres — mainly at military detention centres and those of the National Intelligence Agency — imposed on its teams, in violation of the 1996 memorandum of agreement on the establishment of a human rights office in Kinshasa. These restrictions prevented the Office from documenting several allegations of human rights violations brought to its attention.

22. The United Nations Joint Human Rights Office has provided legal support and various forms of protection assistance, and dealt with 261 cases of threats against 130 human rights defenders, 34 journalists and 97 other victims and witnesses of violations, almost double the number during the previous reporting period (115 cases). In addition to giving advice on individual protective measures, the Office relocated several threatened persons.

23. Between June 2016 and May 2017, the United Nations Joint Human Rights Office organized or supported 118 training sessions throughout the country on human rights topics concerning the electoral process, attended by 7,142 people — representatives of civil society, the political and administrative authorities, police officers, journalists and political actors.

24. The United Nations Joint Human Rights Office continued to provide technical and financial assistance to the National Human Rights Commission, Parliament and civil society with a view to the adoption of the bill on the protection and responsibility of human rights defenders. After its adoption by the Senate, the bill was transferred to the National Assembly for examination and adoption during the parliamentary session of September 2017. The High Commissioner calls upon the National Assembly finally to adopt a bill that complies with the principles set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized

⁴ Jean-Claude Muyambo was arrested in Kinshasa and taken to the National Intelligence Agency and transferred to the Principal State Prosecutor's Office, before being moved to Makala Central Prison on 20 January 2015 for fraudulent breach of trust and fraudulent representation as to title in the course of his work as a lawyer in Lubumbashi in 2002. He had been arrested on the second day of the demonstrations of 19 to 21 January 2015.

Human Rights and Fundamental Freedoms, adopted by the General Assembly of the United Nations in resolution 53/144 of 9 December 1998.

25. Lastly, on 21 October 2016, the United Nations Joint Human Rights Office published a “Preliminary investigation report on human rights violations and violence perpetrated during demonstrations in Kinshasa between 19 and 21 September 2016” and, on 1 March 2017, a “Report on human rights violations in the Democratic Republic of the Congo in the context of the events of 19 December 2016”. The Office has also published notes on violations of human rights and fundamental freedoms connected with the restriction of democratic space, appended to its monthly analyses of the human rights situation in the Democratic Republic of the Congo.

B. Protection of civilians

26. The Human Rights Committee called upon the Government to take all necessary steps to strengthen its capacity to protect civilians in the zones of armed conflict (see CCPR/C/COD/CO/3, para. 13). During the universal periodic review, it was recommended that the Government take action to eliminate all the negative forces at work in the east of the country.

27. The Committee on the Rights of the Child urged the Government to take measures to protect children from falling victim to armed conflict and/or participating in armed hostilities, and to punish those who have been involved in killing, maiming and recruiting children (see CRC/C/COD/CO/3-5, para. 18).

1. Current situation and action taken by the Government

28. The deterioration in the human rights situation in the Kasai provinces during the reporting period is alarming. The appearance of the Kamuina Nsapu militia following the refusal of the Government to recognize Jean-Pierre Mpandi as customary chief has led, since July 2016, to violent confrontations between militiamen and the defence and security forces, accompanied by serious human rights violations and abuses committed by all parties. Since the death of their leader Jean-Pierre Mpandi, who was killed by soldiers in August 2016, the activities of the militiamen have spread through four provinces. The Kamuina Nsapu have carried out violent attacks on agents and symbols of the State. They have also used, including by force, hundreds of children as human shields or to carry out their attacks. They have summarily executed at least 48 civilians and customary chiefs, including three women, who had refused to join their cause. For example, between 8 and 15 April 2017, in several localities in the territory of Kamonia (Kasai), 13 customary chiefs, including one woman, were decapitated by Kamuina Nsapu militiamen.

29. The defence and security forces seem to have responded disproportionately to the actions of this militia, targeting people suspected of being affiliated with the Kamuina Nsapu and causing at least 548 victims of extrajudicial executions, including 34 women and 153 children, according to the United Nations Joint Human Rights Office. In particular, between 28 and 30 March 2017 in Kananga (Kasai-Central), at least 50 people, including 15 women and 12 children, were executed by soldiers during operations to track down presumed militiamen. On 31 May 2017, the Joint Human Rights Office also confirmed the existence of 42 mass graves in Kasai-Central and Kasai-Oriental, most of which were apparently dug by soldiers after clashes with presumed militiamen.

30. From April 2017, this violence fuelled intercommunity tensions, particularly in the territory of Kamonia (Kasai), between Tshokwes/Pendes — accused of supporting the Congolese defence and security forces — and Lubas/Lulus — accused of being Kamuina Nsapu sympathizers. Between 13 and 25 April 2017, at least 38 people, including eight women and eight children, belonging essentially to the Lulua ethnic group were killed during planned attacks by armed young Tshokwes in several localities in this territory. The humanitarian crisis and the mass displacements of population are likely to amplify these intercommunity tensions.

31. As at 31 May 2017, while a few convictions had been imposed on presumed militiamen, little had been done to conduct credible and independent investigations and bring to justice the perpetrators of serious human rights violations by the defence and security forces. Despite repeated requests, the United Nations Joint Human Rights Office has only had access to the detained persons since May 2017.

32. The human rights situation in the eastern provinces of the Democratic Republic of the Congo affected by conflicts — North Kivu, South Kivu, Ituri, Haut Uele and Bas Uele⁵ — also remains worrying because of the activity of armed groups. In these provinces, the United Nations Joint Human Rights Office has documented a total of 3,498 violations and abuses of human rights committed by all parties to the conflict, more than 64 per cent of the 5,454 violations documented throughout the country during the reporting period. State agents seem to have committed 1,494 violations in the eastern provinces, including the extrajudicial execution of at least 159 civilians. Armed groups were responsible for the death of at least 645 civilians in these territories. With 2,074 documented violations, North Kivu was the province most affected by human rights violations.

33. The fighters of the Allied Democratic Forces (ADF) carried out violent attacks in the territory of Beni (North Kivu), including the summary execution of at least 180 civilians. For example, on 13 August 2016, during generalized planned attacks on the people of Mbelu village, fighters executed 46 civilians, including 14 women and two minors. The United Nations Joint Human Rights Office has noted a decrease in the attacks committed by this group since January 2017, which may be explained by the joint operations of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and the army aimed at neutralizing them.

34. The conflict between the Nande and Hutu communities in North Kivu intensified as a result of the support received by various armed groups: the Nduma Defence of Congo (NDC), sometimes associated with Mai-Mai Mazembe — born of the Union des patriotes pour la défense des innocents (UPDI) — supporting the former, and the Forces démocratiques de libération du Rwanda (FDLR), sometimes allied with the Mai-Mai Nyatura, supporting the latter. For example, on 27 November 2016, 29 civilians were killed by Mai-Mai Mazembe fighters during an attack on the village of Luhanga, the population of which is mainly Hutu. The intensification of this conflict resulted in numerous internal displacements. Restrictions on freedom of movement imposed by the provincial Governor of North Kivu since May 2016 have exacerbated the vulnerability of displaced Hutus.

35. The human rights violations committed by fighters of the Forces de résistance patriotique de l'Ituri (FRPI) continue, despite the operations carried out against them by the army and MONUSCO. In the eastern provinces, this is the armed group that committed the most violations during the reporting period (517), mainly in the territory of Irumu (Ituri), primarily during looting attacks on the local communities, often accompanied by physical violence (206 victims, including 63 victims of rape).

36. In the Province of Tanganyika, the interethnic conflict between Twa and Luba militias has led to serious human rights violations, with, in particular, a great many summary executions and rapes committed by both groups. In the territory of Kalemie, at least 36 people, including six minors, were raped by militiamen of both camps between November 2016 and January 2017. Between January and May 2017, the United Nations Joint Human Rights Office documented the summary execution of 12 men and the rape of 57 people (50 women, five children and two men) by Twa militiamen, and the summary execution of 46 people (including seven women and 13 children) and physical attacks on 66 victims perpetrated by Luba elements. The Office also received credible information to the effect that in some cases soldiers were associated with Luba elements and perpetrated several violations against Twa civilians.

⁵ During the reporting period, the Joint Human Rights Office did not document any exactions committed by armed groups in Tshopo province, in the past considered to be affected by conflict. Violations were, however, committed in this province by state agents, particularly soldiers.

2. Action taken by the United Nations Joint Human Rights Office

37. The protection of civilians remains the core priority for MONUSCO and the United Nations Joint Human Rights Office,⁶ and the mandate of MONUSCO to protect civilians from violence committed in the context of elections has been maintained.⁷

38. The United Nations Joint Human Rights Office has continued its work of observation and investigation in the areas affected by the conflict. These actions, carried out with other sections of MONUSCO, including its military component, have contributed to improved documentation of violations and abuses and have served as an early warning to prevent others through their deterrent effect. The Office has also strengthened its presence in Kasai-Central in response to the deterioration of the human rights situation in this region.

3. Human rights due diligence policy and the role of the United Nations Joint Human Rights Office

39. The reporting period was marked by a deepening of the implementation of the human rights due diligence policy in cases of United Nations support to non-United Nations security forces through the implementation and consolidation of the procedure put in place by MONUSCO and the adoption of a similar procedure applicable to the United Nations country team since May 2017.⁸ Particular emphasis is placed on risk assessment and management through the implementation of preventive measures and on strengthening dialogue with the authorities.

40. During the reporting period, the secretariat of the human rights due diligence policy, placed under the authority of the Director of the United Nations Joint Human Rights Office, conducted 60 in-depth risk assessments that led to support being authorized, often with conditions, for 2,157 State agents in leadership positions, and to several hundred units of the army, the police and, in some cases, the National Intelligence Agency.

C. Sexual violence

41. The Committee on the Elimination of Discrimination Against Women has urged the Government to prosecute all acts of violence against women, to punish the perpetrators of such acts, including police officers, and to set up a comprehensive care system for victims that includes measures to provide such victims with free legal aid, medical and psychological support and access to shelters, counselling and rehabilitation services (see CEDAW/C/COD/CO/6-7, para. 22).

42. During the universal periodic review of the Democratic Republic of the Congo, it was recommended that the Government strictly enforce the 2006 law on sexual violence and its zero tolerance policy; ensure that the perpetrators of such violence are brought to justice, whatever their rank; and take adequate measures to reduce and eradicate gender-based and sexist violence, including by improving the training of the security forces. The development of mechanisms to prevent all forms of violence against women and appropriate remedies for victims was also recommended.⁹

1. Current situation and action taken by the Government

43. The High Commissioner notes with satisfaction the corrective action taken and the progress made in the fight against impunity for sexual violence and in access to justice for victims. Several inspection missions of places of detention, judicial investigations and mobile court sessions have been conducted with the support of the United Nations Joint Human Rights Office by judges of the special units of the district prosecution offices for the punishment of sexual and gender-based violence, particularly in the east of the country.

⁶ Security Council resolution 2348 (2017), paras. 28 (a) and 32.

⁷ Ibid., para. 34 (i) (a).

⁸ The human rights due diligence policy seeks to prevent the risk of elements of the Congolese security forces to which the United Nations provides support (logistical, operational or training) committing violations of international humanitarian law, human rights or refugee law.

⁹ See A/HRC/27/5, paras. 134.60, 134.68, 134.71, 134.82 to 134.85 and 134.116.

During a workshop in Goma (North Kivu) on 27 and 28 July 2016, the General Inspectorate of Judicial and Prison Services and the Supreme Council of Justice, supported by the United Nations Joint Human Rights Office, drew up assessment criteria for the investigation, prosecution, and administration of justice in sexual violence cases.

44. On 11 October 2016, The Government adopted a National Congolese Police action plan to combat sexual violence and protect children. On 25 January 2017, the Commissioner-General of Police signed a document ordering all police commanding officers to take part in fighting sexual violence in their stations. On 4 May 2017, he appointed a team of provincial commissioners and police councillors to monitor and evaluate this plan.

45. Since 2016, the Special Senate Commission on Sexual Violence and the Office of the Personal Representative of the Head of State for Sexual Violence and Child Recruitment have drafted a bill on assistance for victims of sexual violence focussing on compensation and rehabilitation. It was submitted to the Government on 26 May 2017.

46. Nonetheless, sexual violence continues to be perpetrated both by defence and security forces and armed groups. During the reporting period, at least 399 women were victims of sexual violence connected with the conflict, 93 of them raped by State agents (81 by soldiers, 11 by police officers and one by other State agents).

47. Certain social practices, the weakness of the judicial system and the persistence of impunity foster the commission of such violations, of which women and girls are the main victims. The lack of access to health, psychosocial and legal services and the lack of compensation remain major challenges.

2. Action taken by the United Nations Joint Human Rights Office

48. The United Nations Joint Human Rights Office has supported legal advice clinics in North Kivu and South Kivu, providing free legal advice and legal assistance to victims of sexual violence. One legal clinic enabled 42 victims of serious human rights violations committed by Allied Democratic Forces fighters, to attend mobile court hearings in Beni (North Kivu) organized by the Operational Military Court of Goma from 7 to 16 September 2016. At the end of these hearings, 15 persons were convicted of human rights abuses and violations, including rape.

49. The United Nations Joint Human Rights Office has also supported procedures for the execution of judicial decisions benefiting 10 victims of sexual violence and organized 18 awareness-raising activities for administrative, judicial, customary and religious authorities and civil society in order to improve victims' access to justice. It has also assisted the district prosecution offices of Bukavu (South Kivu) and Goma (North Kivu) to put in place new offices in order to improve the working environment in which victims of sexual violence are received and heard in complete confidence.

C. Fight against impunity

50. The Human Rights Committee requested that the Government take all appropriate steps to ensure that all human rights violations brought to its attention are investigated, and that those responsible for such violations are prosecuted and punished (see CCPR/C/COD/CO/3, para. 10). During the universal periodic review of the Democratic Republic of the Congo 2014, it was recommended that the Government align its national legislation with the Rome Statute and implement a zero tolerance policy for persons who have committed violations of human rights and international humanitarian law.¹⁰

1. Current situation and action taken by the Government

51. During the reporting period, at least 106 soldiers and 36 police officers were convicted of human rights violations, fewer than during the previous period, while a significant increase in convictions of members of armed groups was noted. The lack of

¹⁰ See A/HRC/27/5, para. 134.9 and 134.115.

independence of the judiciary remains a major obstacle to the fight against impunity, particularly regarding restrictions on democratic space.

52. On 20 August 2016 in Beni (North Kivu), the Operational Military Court began its mobile hearings following a popular uprising condemning the inaction of the political, administrative and judicial authorities in the face of repeated attacks by the Allied Democratic Forces and other armed groups. After more than nine months of hearings, the Court handed down 15 judgments not subject to appeal, sentencing 56 individuals, 36 of them to death. Throughout the trial, the United Nations Joint Human Rights Office offered psychological and legal support to victims and witnesses. The High Commissioner regrets the death sentences, particularly by a court allowing no appeal to be lodged.

53. On 12 September 2016, the military court of South Kivu, sitting in a mobile court hearing in Mutarule, delivered its judgement in the trial of seven people accused of the Mutarule massacre of 6 and 7 June 2014¹¹ and sentenced an officer of the armed forces to 10 years' imprisonment for disobeying orders. The trial took place in a very tense atmosphere following the murder of the most senior of the accused, a colonel, on 19 August 2016, in Bukavu. A total of 46 people, including 16 women, testified. During the investigations and the mobile court hearings, the United Nations Joint Human Rights Office supported 41 victims and the judicial authorities.

54. On 30 September 2016, the Lubumbashi appeal court passed judgment on 32 Bantu and Pygmy defendants prosecuted for crimes against humanity and genocide through murder, rape, pillage and torture in Tanganyika Province between July and August 2014. Four of the defendants, all of them Bantu, were found guilty of genocide and sentenced to 15 years' imprisonment and payment of 10,000 dollars in damages. The 28 other accused were acquitted. It was the first case dealing with offences under international law to be heard by a civilian Congolese court pursuant to the 2013 Act on the organization, functioning and competences of the ordinary courts, which gave them jurisdiction in the matter.

55. The Act amending the Military Judicial Code in implementation of the Rome Statute was promulgated on 10 March 2017. It supplements Congolese legislation by bringing it into line with the Rome Statute. Moreover, the Justice Reform Plan was approved in May 2017, in accordance with the recommendations drawn up at the end of the Forum on Justice (*États Généraux de la Justice*) held in 2015, correcting the major obstacles identified by the United Nations Joint Human Rights Office, including recognition of the right of appeal against judgments of the Operational Military Court, abolition of the death penalty and strengthening of the regional judicial cooperation framework.

56. The High Commissioner is particularly concerned about the house arrest — at the disposal of the provincial authorities of Upper Katanga — of the warlord Gédéon Kyungu Mutanga since he gave himself up on 11 October 2016 with some 115 Mai-Mai Kata Katanga fighters. In 2009, he was sentenced to death (later commuted to life imprisonment) by the military tribunal of the garrison of Upper Katanga for acts committed between October 2003 and May 2006 described as crimes against humanity, involvement in an insurrection and terrorism. On 7 September 2011, he escaped from Kassapa Central Prison during the mass escape of more than a thousand prisoners and again took up his activities as a warlord. The present situation considerably discredits the work already accomplished by the military courts, deprives victims of their rights and jeopardizes their security.

57. The inadequacies of the prison system are another major obstacle to the fight against impunity. Mass escapes have often been recorded throughout the territory, in particular because of the dilapidated state of infrastructure, prison overcrowding, the few guards assigned to detention centres and lack of training, but also because of negligence and corruption. At least 5,237 individuals escaped from prisons during the reporting period.

¹¹ On the night of 6 to 7 June 2014, at least 30 civilians, 11 of them minors, were killed and several others were wounded during an attack in a church. The people who died belonged to the Bafuliru people, while the presumed perpetrators were Barundi and Banyamulenge supported by elements of the armed forces.

58. The High Commissioner regrets the fact that the death sentence continues to be imposed despite the moratorium in force since 2003. However, he welcomes the promulgation, on 22 July 2016, of a presidential decree commuting such penalties to prison sentences. These measures are not, however, applicable to individuals convicted of conspiracy, threatening the security, authority or territorial integrity of the State, sexual violence or other crimes under international law.

2. Action taken by the United Nations Joint Human Rights Office

59. The United Nations Joint Human Rights Office has provided technical and logistical support for the deployment of judges in areas where human rights violations have been committed. Between June 2016 and May 2017, it supported 15 joint investigation missions and 16 mobile court hearings for cases connected with violations and serious abuses of human rights, including sexual violence. This assistance has in particular enabled a judicial investigation by the civilian and military justice systems of the death of at least 20 civilians following an operation by defence and security forces against a religious community in Mongala Province on 20 December 2016. For cases of sexual violence alone, these missions resulted in 86 convictions in 99 cases, half of them before the military courts.

60. The United Nations Joint Human Rights Office has several times offered its support to the judicial authorities to carry out credible and independent investigations of allegations of serious human rights violations in the Kasai provinces. As at 31 May 2017, the authorities had not followed up this offer.

61. The United Nations Joint Human Rights Office has continued to support initiatives in favour of the adoption of a national policy of prosecution for serious crimes, including by supporting the prioritization of certain cases by the judicial authorities. During the reporting period, 21 new cases were given priority status, making the revised total 38 cases, in which seven judgments have been handed down.

62. In February and March 2017, the United Nations Joint Human Rights Office trained civilian judges in Bukavu (South Kivu) and Lubumbashi (Upper Katanga) in new powers in relation to crimes under international law.

63. On 23 October 2016, the United Nations Joint Human Rights Office published a report entitled “Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges and Way forward (1 January 2014-31 March 2016)”, noting the progress made in strengthening the legislative framework regarding the fight against impunity and the prosecution of presumed perpetrators of sexual violence, but underscoring the lack of will for effective implementation of these reforms.

III. Cooperation with United Nations human rights mechanisms and national mechanisms to promote and protect human rights

A. Action to implement recommendations of universal periodic review and other United Nations mechanisms

64. The Interministerial Human Rights Committee, which is responsible for drafting reports and following up the implementation of recommendation of treaty bodies and the universal periodic review, is struggling to fulfil its mandate. The United Nations Joint Human Rights Office has provided technical, logistic and financial support to the Ministry of Justice and Human Rights for the adoption by the Committee of a consolidated action plan for the implementation and follow-up of the recommendations at a workshop organized from 26 to 30 October 2016.

65. On 17 April 2017, the second periodic report of the Democratic Republic of the Congo on implementation of the Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment was submitted to the Committee against Torture. The Interministerial Human Rights Committee had received technical and financial support

from the United Nations Joint Human Rights Office for the organization of two workshops to finalize and approve this report, on 13 and 14 December 2016 and 13 and 14 March 2017.

B. Update on national mechanisms for the protection and promotion of human rights

1. National Human Rights Commission

66. With the financial and logistic support of the United Nations Joint Human Rights Office, the National Human Rights Commission conducted several human rights training and awareness-raising activities. For example, on 2 December 2016, the Commission organized a day of discussion with political actors on the exercise of freedoms, seeking to foster citizen empowerment and promote the exercise of public freedoms with a view to a peaceful electoral process.

67. The National Human Rights Commission played an important role in promoting the bill on the protection and responsibility of human rights defenders thanks to logistical and financial support from the United Nations Joint Human Rights Office, including the organization of several awareness-raising, public information and advocacy activities. These efforts resulted in the unanimous adoption of the bill by the Senate on 15 May 2017.

68. The National Human Rights Commission has published three reports: one on the investigation of human rights violations following the public demonstrations in September 2016; a report on the situation of human rights and human rights defenders; and an annual report covering 2015 and 2016. With the support of the United Nations Joint Human Rights Office, it conducted a mission to Kananga, from 14 to 23 March 2017, during which the Commission and Joint Human Rights Office investigators worked jointly to investigate allegations of serious human rights violations.

69. In spite of the significant logistical and financial support provided by the United Nations Joint Human Rights Office and other international partners, the National Human Rights Commission is struggling to implement its mandate in accordance with the Principles relating to the Status of National Institutions (The Paris Principles). The High Commissioner regrets the lack of political will on the part of the Government fully to guarantee the independence and impartiality of this Commission.

2. Other national mechanisms

70. In the context of the implementation of the Five-Year Plan (2016-2021) for the promotion and protection of the rights of persons with disabilities, adopted on 20 and 21 May 2016, an Interministerial Commission responsible for monitoring the implementation of the Convention on the Rights of Persons with Disabilities and its Optional Protocol was established by ministerial order on 11 November 2016.¹² The proposed basic law on the protection and promotion of the rights of people with disabilities has been blocked in the National Assembly since 27 March 2016 in a combined sociocultural, political, administrative, legal and foreign relations commission.

IV. Conclusion and recommendations

A. Conclusion

71. **During the reporting period, the human rights situation in the Democratic Republic of the Congo was marked by a considerable reduction in democratic space and a sharp increase in the number of infringements of fundamental freedoms. The intimidation and violence targeting political opponents and other civil society actors and the disproportionate use of force by State agents have helped to exacerbate instability and insecurity in the Democratic Republic of the Congo. The violence**

¹² Ministerial Order No. 350/CAB.MIN/AFF-SAHSN/2016 of 11 November 2016.

connected with the activity of the many armed groups and militias has had a very negative impact on civilians and continues to be fuelled by the impunity enjoyed by perpetrators of serious human rights violations, particularly in the Kasai region. Strong political commitment is crucial if democratic space is to be re-opened and human rights violations are to cease — both essential conditions for the holding of credible elections.

B. Recommendations

73. The High Commissioner recommends that the Government of the Democratic Republic of the Congo:

(a) Release immediately and without condition all political prisoners and prisoners of conscience; and guarantee the protection of the fundamental freedoms of everyone, including political opponents, journalists and other civil society actors;

(b) End the de facto ban on demonstrations imposed throughout the country; and ensure that any restrictions on fundamental freedoms respect the principles of legality, necessity and proportionality;

(c) Limit the use of lethal weapons by the defence and security forces during crowd management operations and use force only as a last resort, respecting the principles of necessity, proportionality and legality, in compliance with international norms;

(d) Conduct as soon as possible independent, in-depth, credible, transparent and impartial investigations into allegations of human rights violations committed by State agents in the context of suppressing the demonstrations of September and December 2016; and bring the presumed perpetrators to justice;

(e) Speed up implementation of measures to reduce political tension with the aim of ensuring the organization of credible elections by the end of 2017, in accordance with the agreement of 31 December 2016;

(f) Encourage Parliament to adopt as soon as possible the bill establishing the procedure for application of the freedom to demonstrate, which guarantees compliance of the law with international norms, and the bill on the protection and responsibility of human rights defenders;

(g) Increase the participation of women in political affairs, including by adopting special and temporary measures; and amend the electoral law in order to include special measures favourable to the participation of women, including compulsory quotas in political party lists and of members of electoral authorities;

(h) Immediately put an end to the disproportionate punishment of communities suspected of affiliation with the Kamuina Nsapu militia;

(i) Conduct as soon as possible independent, in-depth, credible, transparent and impartial investigations of allegations of serious human rights violations and abuses committed in the provinces affected by the Kamuina Nsapu crisis by all parties, including the defence and security forces; and bring to justice the presumed perpetrators, whatever their rank and position;

(j) Guarantee respect of the right to a fair trial for all accused persons, including by guaranteeing the independence of the judicial authorities and refraining from any interference in their functioning; and ensure that the perpetrators of human rights violations are tried without undue delay and respecting the rights of the defence;

(k) Adopt a programmatic law to ensure effective implementation of the objectives set by the Justice Reform Plan of May 2017, including the right of appeal against judgments of the Operational Military Court, and abolish the death penalty;

(l) Take action regarding the causes that encourage or perpetuate violence against women — especially sexual violence — and ensure that comprehensive judicial measures are put in place to remedy it;

(m) Ensure that the National Human Rights Commission is fully operational, including by allocating to it appropriate financial and logistic resources and guaranteeing its independence.

(n) Strengthen the national institutions and mechanisms responsible for coordinating and following up the application of recommendations of United Nations human rights mechanisms;

(o) Strengthen its collaboration with the United Nations Joint Human Rights Office, MONUSCO and other partners, particularly regarding the fight against impunity for serious human rights violations committed in the context of electoral violence and the fight against armed groups and militias; and guarantee the staff of the United Nations Joint Human Rights Office full access to all detention centres, including military centres and those of the National Intelligence Agency, in accordance with the 1996 memorandum of agreement on the establishment of a human rights office in Kinshasa.
