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United Nations Organisation Stabilization
Mission in the Democratic Republic of Congo



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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**UNITED NATIONS JOINT HUMAN RIGHTS OFFICE (UNJHRO)
MONUSCO-OHCHR**

**REPORT ON HUMAN RIGHTS VIOLATIONS IN THE
DEMOCRATIC REPUBLIC OF THE CONGO IN THE CONTEXT OF THE EVENTS OF
19 DECEMBER 2016**

February 2017

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LIST OF ACRONYMS

ACO	<i>Avenir du Congo</i>
AFP	<i>Agence France Presse</i>
ANR	<i>Agence nationale de renseignements</i>
ARPTC	<i>Autorité de régulation des postes et des télécommunications</i>
CCTV	<i>Canal Congo Télévision</i>
CENCO	<i>Conférence épiscopale nationale du Congo</i>
CSAC	<i>Conseil Supérieur de l’Audiovisuel et de la Communication</i>
DLCC	<i>Département de lutte contre la criminalité</i>
DRC	Democratic Republic of the Congo
DRG	<i>Direction des renseignements généraux</i>
ECIDE	<i>Engagement pour la citoyenneté et le développement</i>
EFOPJ	<i>Ecole de formation des officiers de police judiciaire</i>
FARDC	<i>Forces Armées de la République Démocratique du Congo</i>
GMI	<i>Groupe mobile d’intervention</i>
LNI	<i>Légion nationale d’intervention</i>
LUCHA	<i>Lutte pour le changement</i>
MLP	<i>Mouvement lumumbiste progressiste</i>
MONUSCO	United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCP	<i>Parti congolais pour le progrès</i>
PNC	<i>Police nationale congolaise</i>
PPRD	<i>Parti du peuple pour la reconstruction et la démocratie</i>
RFI	<i>Radio France Internationale</i>
RTE	<i>Radio Télévision Espérance</i>
RTNC	<i>Radio Télévision Nationale Congolaise</i>
RTOP	<i>Radio Télévision Océan Pacifique</i>
UDPS	<i>Union pour la démocratie et le progrès social</i>
UNAFEC	<i>Union nationale des fédéralistes du Congo</i>
UNJHRO	United Nations Joint Human Rights Office

Summary

This report was prepared by the United Nations Joint Human Rights Office (UNJHRO) and is jointly released by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The report highlights human rights violations that were committed by defence and security forces in the Democratic Republic of the Congo (DRC) between 15 and 31 December 2016, in the context of the events surrounding the date of 19 December 2016, marking the end of President Joseph Kabila Kabange's second and last constitutional mandate. The report also includes allegations received by UNJHRO of acts of criminality committed by demonstrators.

Between 15 and 31 December 2016, UNJHRO documented the killing of at least 40 people, including five women and two children, and the wounding of 147 individuals, including 14 women and 18 children, as a result of the disproportionate use of force and the use of live ammunition by defence and security forces, mainly soldiers of *Forces armées de la République démocratique du Congo* (FARDC), to prevent civilians from protesting. While the *Police nationale congolaise* (PNC) is normally in charge of crowd control operations, during the period under review, FARDC soldiers, including those of the Republican Guard (*Garde républicaine*) and of the Military Police (*Police militaire*), were deployed to control crowds, functions for which they are not adequately equipped nor trained. During that same period, at least 917 individuals, including 30 women and 95 children, were arrested by State agents throughout the territory. UNJHRO was not able to verify all of the allegations received since it was denied access to several military facilities and camps as well as hospitals and morgues. Therefore, the actual number of victims of violations may be higher than what is presented in this report.

The actions by the Congolese authorities were executed through disproportionate and illegal restrictions of public freedoms, including the right to freedoms of expression, information and peaceful assembly, in contravention with both international human rights standards and the provisions of the Constitution of the DRC. The human rights violations documented during this period demonstrate the persistent trend of shrinking democratic space in the DRC since January 2015.

The JHRO raises serious concerns about the absence of measures taken against perpetrators of human rights violations committed in the DRC in recent months in relation to the political tensions around the electoral process, which contributes to a culture of impunity, and which may have encouraged the defence and security forces to commit violations in the period detailed in this report. The report provides information on human rights violations over the period 15 to 28 December 2016, and concludes with a series of recommendations aimed at supporting the Government in improving respect for fundamental human rights and freedoms, contributing to the development of an environment conducive to the holding of free, inclusive and peaceful elections in the DRC.

I. Introduction

1. As the second and last constitutional term of President Kabila ended on 19 December 2016, widespread demonstrations were expected across the country to protest against him remaining in office beyond this date, despite bans on public demonstrations imposed in the main cities of the DRC since 2015. The Congolese authorities deployed defence and security forces on a large scale, including FARDC

soldiers of the Republican Guard and of the Military Police, in the main cities with the aim of preventing and containing expected demonstrations.

2. In its resolution 2277 of March 2016¹, the United Nations Security Council mandated MONUSCO to monitor, report and follow up on human rights violations and abuses committed in the context of the elections. This report presents the findings of human rights investigations conducted by UNJHRO into alleged violations perpetrated throughout the DRC by defence and security forces, particularly FARDC soldiers, including soldiers of the Republican Guard and the Military Police, and PNC agents during and after the events of 19 December 2016 in the DRC. It covers incidents that occurred between 15 and 31 December 2016 and that are directly linked to restrictions of political space for those opposing President Kabila remaining in office beyond the end of his second mandate
3. The present report echoes the findings and recommendations made in previous publications by UNJHRO, in particular, the Report on human rights and fundamental freedoms during the pre-electoral period in the DRC between 1 January and 30 September 2015, published on 8 December 2015², and the Preliminary investigation report on human rights violations and violence perpetrated during demonstrations in Kinshasa between 19 and 21 September 2016, published on 21 October 2016³.

II. Methodology and constraints

4. The information contained in this report was gathered by UNJHRO through its six antenna offices in western DRC, its 10 field offices in eastern DRC and its headquarters in Kinshasa. The figures contained in this report do not reflect all human rights violations committed in relation to 19 December demonstrations but relate to the cases documented and verified by UNJHRO through its specific methodology, in line with OHCHR directives⁴.
5. The figures presented in the report include human rights violations committed not only on 19 December, but also several days before and well after this day, namely between 15 and 31 December 2016, in relation to the events of that period. UNJHRO conducted numerous visits to locations where incidents had occurred or where victims had been taken, namely hospitals, health centres, morgues and detention centres. UNJHRO teams gathered information from various sources, including victims and witnesses of human rights violations, civil society actors, health professionals, Congolese authorities including representatives of the defence and security forces and judiciary and penitentiary authorities. Information was verified and corroborated through a strict methodology and cross-checking accounts of independent sources.

¹ Security Council resolution S/RES/2277 (2016), *Democratic Republic of the Congo*, 30 March 2016.

² *Report of the United Nations High Commissioner for Human Rights on human rights and fundamental freedoms during the pre-electoral period in the Democratic Republic of the Congo between 1 January and 30 September 2015*, 8 December 2015. http://ohchr.org/Documents/Countries/CD/UNJHRODecember2015_en.pdf

³ *Preliminary investigation reports on human rights violations and violence perpetrated during demonstrations in Kinshasa between 19 and 21 September 2016*, 21 October 2016.

http://ohchr.org/Documents/Countries/CD/UNJHROSeptember2016_en.pdf

⁴ See: Training Manual on Human Rights Monitoring, Chapter 7 “Gathering contextual information”, OHCHR, 2001 (under revision), available on the website of the Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/PublicationsResources/Pages/MethodologicalMaterials.aspx>

6. UNJHRO received allegations of acts of criminality committed by demonstrators but, since they do not fall within its mandate, they are only mentioned in the report only as part of contextual information.
7. The human rights monitoring, information gathering and verification were hampered by various restrictions imposed on UNJHRO staff members by the Congolese authorities, which limited the possibility to verify major allegations of human rights violations. UNJHRO teams did not have access to all detention centres where individuals had reportedly been taken after arrest, mainly in military camps and cells and detention facilities of the *Agence nationale de renseignements* (ANR). For example, in Kinshasa, access was prevented to the university campus by FARDC, where a UNJHRO team was also subjected to acts of intimidation by its soldiers while monitoring the rise of tension. In Lubumbashi, UNJHRO was denied access to different health facilities, including the hospitals of Sendwe, Cinquantenaire and the university clinics, where the security forces had taken many of the wounded. These restrictions faced by UNJHRO teams contravene the 1996 *Protocole d'Accord relatif à l'établissement à Kinshasa d'un Bureau des Droits de l'Homme* between the Government and OHCHR, whereby the Government commits to guaranteeing the freedom of movement of UNJHRO staff members across the DRC territory, including in areas where access is normally regulated and for investigation purposes. MONUSCO and OHCHR are further concerned by acts of intimidation against UNJHRO staff members.
8. As per standard practice, UNJHRO shared the present report with the Government before its publication. Comments by the relevant Congolese authorities are annexed to this report.

III. Context

9. The human rights violations documented in this report took place in the context of the end of the second and as per the Constitution last term of President Kabila, which should have ended on 19 December 2016. In protest against his remaining in office beyond this date, the main opposition political parties, including the *Union pour la démocratie et le progrès social* (UDPS), as well as coalition platforms such as the *Rassemblement des forces politiques et sociales acquises au changement*, launched several “ville morte” days throughout the country and gave President Kabila warnings in the symbolic form of two “yellow cards” and a “red card”, on 19 September, 19 October and 19 November 2016, respectively. On 26 November 2016, citizens’ movements like *Lutte pour le changement* (LUCHA) and Filimbi launched the “Bye-bye Kabila” public awareness campaign calling for respect for the Constitution in the country and demanding that the President step down on 19 December.
10. Bans on all public political rallies and meetings in the country’s main cities, including Lubumbashi (Haut Katanga province) and Kalemie (Tanganyika province), were introduced since 2015. On 22 September 2016, after a series of large demonstrations in Kinshasa that witnessed the large scale deployment of security forces and the deadly use of force, the authorities introduced a general ban on demonstrations also in the capital. In other cities, demonstrations organized by opposition movements have systematically been prohibited or suppressed by the Congolese authorities, leading to a *de facto* ban on public protests. On 1 December 2016, the general ban on demonstration was further reiterated in an instruction of the Minister of Interior to the provincial Special Commissioners in the country, reminding that activities of non-registered organizations were prohibited. The correspondence

formally banned all organizations without legal status, specifically targeting youth citizen movements such as LUCHA and Filimbi.

11. The contested National Dialogue, called for by the Head of State, concluded on 18 October 2016 with the endorsement of a political agreement between the *Majorité Présidentielle*, a fraction of the opposition and civil society representatives. The signatories agreed on elections to be held by April 2018 and on President Kabila to remain in power until the President-elect assumes office. According to the agreement, the transition would be led by a government of national unity led by a Prime Minister from the opposition. Accordingly, Samy Badibanga was nominated Prime Minister on 19 November 2016.
12. On 31 October 2016, at the request of President Kabila, the *Conférence épiscopale nationale du Congo* (CENCO) initiated facilitation efforts aimed at promoting a broader consensus on the transition and the elections. CENCO contributed, *inter alia*, to reach out to those who boycotted the National Dialogue in the hope that they would endorse a political agreement.
13. On 19 December 2016, UDPS and *Rassemblement* leader Etienne Tshisekedi, asked its supporters to “peacefully resist” and not to no-longer recognize Joseph Kabila as the President. The only leader from the opposition who publically called for protests was the President of *Mouvement lumumbiste progressiste* (MLP) and Member of Parliament Franck Diongo.
14. During the night of 19 to 20 December 2016, the composition of the new Government of Prime Minister Samy Badibanga was announced. The Government included 67 Ministers both from the Presidential Majority and from the limited number of opposition parties that had signed the political agreement reached on 18 October 2016, as well as members of civil society. At around midnight, many people in the DRC’s main cities gathered in the streets, making noise with whistles and pans to demand the departure of President Kabila. These gatherings were confronted with a strong deployment of defence and security forces targeting protestors started and during the following days.
15. On 31 December 2016, CENCO efforts led to the signing of a more inclusive political agreement.

IV. Legal framework

16. The human rights referred to in this report are guaranteed and protected by the International Covenant on Civil and Political Rights⁵, Convention Against Torture⁶ and the African Charter on Human and Peoples’ Rights⁷, to which the DRC is a party⁸. They are also protected by the Constitution of the DRC. The Congolese State therefore has the obligation to guarantee the exercise of human rights and fundamental freedoms protected by these instruments and the responsibility to prevent and punish violations of these rights.

⁵ Adopted by the General Assembly in its Resolution 2200 A (XXI) of 16 December 1966.

⁶ Adopted by the General Assembly on 10 December 1984, and entered into force on 26 June 1987.

⁷ Adopted on 27 June 1981 in Nairobi, Kenya, at the 18th Conference of the Organization for African Unity.

⁸ The International Covenant on Civil and Political Rights was ratified by the DRC (then Zaire) in 1976, and the African Convention of Human and Peoples’ Rights was ratified in 1987. Under Article 215 of the 2006 Constitution of the DRC, these instruments constitute an integral part of the Congolese legal system.

i. *Right to life and physical integrity*

17. The right to life and the right to physical integrity are guaranteed by articles 6, 7, and 9 of the International Covenant on Civil and Political Rights and articles 4, 5, and 6 of the African Charter on Human and Peoples' Rights. They are also protected by Article 16 of the Congolese Constitution, which states that “[t]he human person is sacred. The State has the obligation to respect it and to protect it” and that “[a]ll persons have the right to life, to physical integrity as well as to the free development of their personality, under respect for the law, of public order, of the rights of others and of public morality”.⁹
18. Under these laws, the Congolese Government has a very specific obligation with regard to the action of their defence and security forces. According to the United Nations Human Rights Committee, “the member States must [...] prevent arbitrary killing by their own security forces”.¹⁰ Thus, any attack on the right to life must give rise to an action by States, whether preventive or repressive, and regardless of the perpetrator.
19. Organic laws on the organization and functioning of the PNC¹¹ and Armed Forces¹² provide that defence and security forces shall use force only in cases of absolute necessity and solely to achieve a legitimate end. In accordance with relevant international standards¹³, the use of force and firearms should be exceptional, and when unavoidable, must be proportionate and joined with precautionary measures to minimize harmful consequences. If the use of force is necessary to maintain law and order, the above-mentioned principles must be respected and effective reporting and investigation mechanisms must be put in place.
20. Moreover, the Constitution of the DRC provides that no one is obliged to implement an order that is manifestly illegal or contrary to human rights and fundamental freedoms.¹⁴

ii. *Right to liberty and security of person*

21. The right to liberty and security of the person is enshrined in article 9 of the International Covenant on Civil and Political Rights and article 6 of the African Charter of Human and Peoples' Rights. In addition, articles 17 and 18 of the Congolese Constitution include a specific protection from arbitrary arrest and detention of individuals on Congolese territory, providing that arrests must comply with the procedures established by the law¹⁵ and that the individuals arrested must be informed of the reasons

⁹ Translations were made from the French version by UNJHRO.

¹⁰ *Ibid.*, para. 3.

¹¹ Organic Law n° 11/013 of 11 August 2011 on the organization and functioning of the PNC, articles 8 and 9.

¹² Organic law n° 11/012 of 11 August 2011, on the organization and functioning of the Armed Forces.

¹³ See the United Nations Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979 (Resolution 34/169), as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8th United Nations Congress on Crime Prevention and Criminal Justice, Havana, 27 August to 7 September 1990. In particular, see Basic Principle 9: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, international lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

¹⁴ DRC Constitution, article 28.

¹⁵ See the Decree of 6 August 1959 on the Code of Criminal Procedure.

for their arrest, have the right to immediately contact with their family or their counsel, and must be taken before a court within 48 hours.

22. Article 18 of the Congolese Constitution provides protection from torture and ill-treatment and states that “[a]ny detainee must benefit from a treatment which preserves his life, his physical and mental health as well as his dignity”. Persons deprived of their liberty must therefore not be subjected to ill-treatment whether under arrest or during detention, nor to threats or intimidation.¹⁶

iii. *Right to freedom of peaceful assembly*

23. Freedom of peaceful assembly is enshrined in article 21 of the International Covenant on Civil and Political Rights and article 11 of the African Charter of Human and Peoples’ Rights. While reasonable restrictions to this right may be necessary in certain circumstances “*where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights*”¹⁷. Therefore, blanket bans, including the outright ban on the exercise of the right to peaceful assembly or on the prohibition of these rights in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly¹⁸.

24. Articles 25 and 26 of the Congolese Constitution stipulate that demonstrations on public roads or in open air require the organizers to inform the competent administrative authority in writing. This requirement was not envisaged as a prior authorization system for the holding of public protests, but rather to allow competent authorities to take all necessary measures to facilitate the holding of safe demonstrations and to ensure the protection of demonstrators. In practice, however, a system of prior authorization remains in force¹⁹ despite a series of other national laws that followed and that replaced the *request for authorization* regime with the *notification to the competent authorities*²⁰. The adoption of the 2015 draft law setting out measures to hold demonstrations, once promulgated, is expected to reconcile contradictory legal provisions in this framework.

iv. *Rights to freedom of expression and information*

25. Freedom of expression is enshrined in article 19 of the International Covenant on Civil and Political Rights and article 9 of the African Charter of Human and Peoples’ Rights. Freedom of expression and freedom of the press are recognized in article 23 and article 24 of the Congolese Constitution. Article 23 states that all persons have the right to express their opinions or their convictions, notably by speech,

¹⁶ The Human Rights Committee considers that “persons deprived of their liberty may not be subjected to [cruel, inhuman or degrading] treatment, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty”. See General Observation No. 21: Article 10 (right of persons deprived of liberty to be treated humanely), para. 3.

¹⁷ Human Rights Committee, *General Comment* no 31, 2004, para. 6.

¹⁸ See *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/23/39, para. 63, 24 April 2013.

¹⁹ In application of Law n°196 of 29 July 1999.

²⁰ These include the Law n°11/003 of 2011 modifying the Law n°06/006 of 2006. This Law, in its article 81 also stipulates that “whoever prevents or tries to prevent a demonstration or gathering during the electoral campaign is sanctioned with a prison sentence of maximum 12 months and a fine of 100.000 to 200.000 Congolese Francs”.

print and pictures, under reserve of respect for the law, public order and morals. Article 24 requires the Government to promote a pluralistic media environment and states that the freedom of the press, the freedom of information and of broadcasting by radio and television, the written press or any other means of communication are guaranteed, under reserve of respect for the law, for public order, morals and the rights of others.

26. The *Conseil supérieur de l'audiovisuel et de la communication* (CSAC) is the competent authority for all decisions regarding the press, to study any violation of the law on the press.²¹ It may decide, through a formal meeting to suspend a radio or television signal for a maximum of three months.²² As part of their general policing powers, provincial and local authorities can only take precautionary measures in the event of a violation of the Law of 22 June 1996 setting the conditions for the exercise of freedom of the press, and only if this is essential for reasons of public order.²³ These precautionary measures can only consist of a ban on transmitting and broadcasting transmissions or programmes, and CSAC is required to inform the competent authorities within 48 hours. In no circumstances does Congolese law allow an administrative authority other than CSAC to interrupt the transmission signal of a radio or television station.
27. Under Article 81 of the election law, any attack on freedom of expression or the right to demonstrate during the election campaign is prohibited.²⁴ This law also sets sentences of imprisonment and fines for anyone hindering the enjoyment of fundamental freedoms during an electoral campaign.

V. Human rights violations

i. Analysis of the main trends

28. Between 15 and 31 December 2016, the Congolese authorities acted to prevent and contain public protests against President Kabila remaining in office beyond the end of his second and last constitutional mandate on 19 December. In the main cities of the DRC, defence and security forces, including PNC agents but also FARDC soldiers often armed with lethal weapons, were deployed on a large scale in order to prevent and respond to the public demonstrations expected despite bans previously imposed by the authorities.
29. In that context, UNJHRO documented the killings of at least 40 civilians, including five women and two children, and the wounding of 147 individuals, including 14 women and 18 children, as a result of a disproportionate use of force and the use of live ammunition by defence and security forces, particularly by the military, including soldiers of the Republican Guard and the Military Police who are neither equipped nor trained for crowd control operations.
30. Prior, during and after the demonstrations, defence and security forces also conducted large-scale arrests of people suspected of planning or participating in the protests, including members and militants

²¹ Article 9 of Law No. 11/001 of 11 August 2011. The most frequently applied legislation included Law No. 96/002 of 22 June 1996, setting the conditions for freedom of the press, and Ministerial Decree No. 04/MCP/011/2002 of 20 August 2002, amending and supplementing Ministerial Decree 04/MIP/020/96 of 26 November 1996 governing the application of Law 96-002 of 22 June 1996 setting the conditions for freedom of the press in audiovisual communication.

²² Article 59 of Law No. 11/001 of 11 January 2011.

²³ Article 85 of Law No. 96/002 of 22 June 1996.

²⁴ Article 81 of Law No. 06/006 of 9 March 2006.

of opposition parties and citizens' movements. Between 15 and 31 December 2016, at least 917 individuals, including 30 women and 95 children, were reportedly arrested by defence and security forces in the DRC. Although most were later released, over 70 have reportedly been charged with criminal offenses, including spiteful destruction (*destruction méchante*), looting, rebellion or participation in an insurrectional movement, and many were subjected to cruel, inhumane or degrading treatments at the time of arrest or during their detention.

ii. Rights to life and physical integrity

31. Between 15 and 31 December 2016, in relation to the protests, UNJHRO documented the killing by State agents of at least 40 civilians, including five women and two children: 17 in Kinshasa, 12 in Lubumbashi (Haut-Katanga province), eight in Boma and three in Matadi (Kongo Central province). At least 38 of the victims were killed by live ammunition by defence and security forces. During the same period, at least 147 individuals were injured by State agents, including 14 women and 18 children: 64 in Lubumbashi (Haut-Katanga province), 51 in Kinshasa, 16 in Matadi and 12 in Boma (Kongo Central province), as well as one each in Luebo (Kasaï province), Kananga (Kasaï Central province), Mbuji-Mayi (Kasaï Oriental province) and Beni (North Kivu province).
32. Although some of the incidents documented by UNJHRO occurred during clashes with violent protestors, information collected indicate an excessive and disproportionate use of force, including of lethal force and live ammunition on upper parts of the body, by the Congolese defence and security forces in response to the demonstrations of 19 and 20 December. The use of lethal weapons by heavily armed defence and security forces against demonstrators violate the rights guaranteed by international law and the provisions of the Congolese Constitution, and are in contravention with international standards concerning the use of force and firearms by law enforcement officials. In addition, many victims were injured as a result of cruel, inhumane or degrading treatment during arrest and detention, in contravention with international and Congolese norms.
33. For example, in Kinshasa, at least 17 people, including two women, were killed, and at least 51, including seven women and two children, were wounded by State agents. Most incidents in the capital started during the night of 19 to 20 December 2016, when defence and security forces began to use live ammunition and teargas to disperse the population taking to the street and making noise with whistles and pots. That evening, one man was shot and killed by bullet by FARDC soldiers while the population was protesting and using whistles in the Masina commune of Kinshasa. Violence in Kinshasa continued throughout the day of 20 December, when soldiers of the Republican Guard and of the Military Police fired warning shots to disperse crowds. Out of the 17 killings documented by UNJHRO in Kinshasa, two occurred on 19 December, and 15 on 20 December. Fifteen of the victims were killed by stray bullets or directly shot at, one man was ran over by a PNC truck, and another one, arrested in Masina on 19 December, reportedly died as a result of cruel, inhumane or degrading treatment during his detention in Kokolo military camp. On 20 December, at least 29 persons were wounded (including five women and a child), including at least 16 by live ammunition, and three as a result of cruel, inhumane or degrading treatment during arrest or detention by defence and security forces. Most of those killed and wounded were evacuated by PNC agents and taken to military camps

such as Kokolo and Tshatshi and to the morgue of Mama Yemo hospital. UNJHRO was denied access to these locations.

34. In Lubumbashi, between 15 and 31 December 2016, UNJHRO documented the killing of 12 people while 64 others were injured, mostly as a result of the use of lethal force by defence and security forces in reaction to violent public protests. Perpetrators included PNC agents and FARDC soldiers, some of whom were reportedly dressed in civilian clothes. On 20 December alone, nine men, a woman, and a 17-year-old child were killed by live ammunition when defence and security forces shot indistinctively at violent protestors. At least three of the victims, including one man shot at point blank range in the Matshipisha neighbourhood, were killed by PNC agents and six, including two men shot at point blank range in the neighbourhoods of Katuba II and Kisanga, were killed by FARDC soldiers. In addition, a three-year-old girl died from a stray bullet while she was at home with her grandmother. All victims of killings died instantly except for the female victim who had sustained bullet injuries, who died two days after as a result of her injuries. At least two corpses were taken by defence and security forces to destinations unknown to the victims' families. Also on 20 December, at least 62 people, including four women and 13 minors were wounded by bullets shot by the security forces, including at least 10 by stray bullets. Many were evacuated to different health facilities in Lubumbashi. Some were also regularly moved from one health centre to another, reportedly on instructions from the Provincial Security Council. Their families and UNJHRO teams were denied access to the victims.
35. On 19 and 20 December 2016, defence and security forces, including PNC agents as well as FARDC soldiers from the Boma regiment, the Naval Forces and the Republican Guard, were deployed throughout the city of Boma, Kongo Central province. Early in the morning of 20 December, FARDC soldiers started using lethal force as the population gathered in protest against President Kabila. At least eight people were killed by bullet, including two women, and at least 12 were wounded by bullets, including two women and a 14-year-old girl. All eight victims killed were shot at point blank range in the upper parts of their body with live ammunition. Also on 20 December, three men, including one person with disabilities, were shot at, including one by a PNC agent, but the bullets missed them. According to witnesses' account, there seem to have been a deliberate shoot-to-kill approach by the FARDC soldiers deployed in Boma, particularly in the commune of Kalamu where several witnesses allegedly heard soldiers threatening them and saying "we were sent to kill".
36. In Matadi, on 20 December, UNJHRO documented killing of 3 men and the wounding of 16 others, including one woman and two children, by defence and security forces. At midnight, during the night of 19 to 20 December, groups of people started gathering in the street and making noise in protest against President Kabila. Around 6 a.m., PNC agents and FARDC soldiers deployed throughout the city started using teargas and live ammunitions to disperse the protestors. One of those killed was shot at point blank range by FARDC soldiers in Quartier Sud, while the other two fatalities occurred during clashes between protestors and PNC agents, as police agents, reportedly feeling threatened, shot bullets indiscriminately at the crowd. Among those wounded, seven men and one woman were injured by teargas, six men were subjected to ill-treatments, including beatings, and two minors were wounded as a result of both teargas and ill-treatment during joint PNC and FARDC interventions during protests.

iii. *Right to liberty and security of person*

37. Prior, during and after the events of 19 and 20 December, the Congolese authorities proceeded to undertake large scale arrests and detention of people suspected of planning or participating in demonstrations, with a view to preventing the protests. Between 15 and 31 December 2016, at least 917 individuals, including at least 30 women and 95 children, were arrested by State agents throughout the DRC territory: 414 in Lubumbashi (Haut-Katanga province), 184 in Kinshasa, 115 in Goma (North-Kivu province), 76 in Matadi and 43 in Boma (Kongo Central province), 30 in Oicha (North Kivu province), 25 in Bukavu (South-Kivu province), 12 in Luebo (Kasaï province), eight in Mbuji-Mayi (Kasaï Oriental province), four in Beni (North Kivu province), three in Kasumbalesa (Haut-Katanga province), two in Kalemie (Tanganyika province) and one in Kananga (Kasaï Central province).²⁵ According to information available to UNJHRO at the time of drafting this report, in locations other than Kinshasa, at least 540 of those detained were released in the days following arrest. In addition, 71 people were sentenced (all in Lubumbashi) and 29 were acquitted. At least 47 people remained in detention, awaiting trial, on charges such as rebellion, incitement to civil disobedience, threat to public order, looting, robbery or spiteful destruction.²⁶
38. Although some of the arrests may have taken place in response to acts of violence by some demonstrators, UNJHRO considers that most people detained were arrested arbitrarily while peacefully protesting, therefore legitimately exercising their right to peaceful assembly. During the period covered by this report, UNJHRO has documented several cases of cordon and search operations that led to the preventive and arbitrary arrest of dozens of people. Furthermore, although many were released shortly after their arrest, a significant number of those detained were kept in detention beyond legal delays in bringing their cases to court, were denied access to a lawyer or their families, and several were subjected to cruel, inhumane or degrading treatment, in violation of international fair-trial standards and of the provisions of the Congolese Constitution relating to the treatment of detainees. Many civilians arrested by armed forces were taken to military camps, in contravention with international standards. UNJHRO monitoring teams were denied access to the military camps and ANR detention centres.
39. In Lubumbashi, where several acts of violence and vandalism by demonstrators have been reported, at least 414 people were arrested during joint operations conducted by PNC agents and FARDC soldiers, including elements of the Republican Guard. Although the arrest of violent demonstrators may have been legitimate, massive and indiscriminate arrests of hundreds of people is arbitrary and in contravention with international human rights standards. For example, on 20 December, 162 people, including 33 minors and two women, were arrested during public protests in the communes of Ruashi, Kenya, Kampemba and Katuba. Between 21 and 22 December, in the Katuba commune, 136 people, including one woman and 23 minors, were arrested during a cordon and search operation by PNC agents of the *Département de lutte contre la criminalité* (DLCC) and of the *Groupe de recherche et*

²⁵ The overall number of detained people is likely to be higher since UNJHRO staff was denied access to several military detention facilities.

²⁶ For those detained in Kinshasa, at the time of writing this report, UNJHRO was working with judicial and penitentiary authorities in order to assess the total number of people released and those who underwent prosecution in the context of 19 December.

d'investigation. On 22 December, the Minister for land affairs (“*affaires foncières*”), Mr. Kabange Numbi ordered the release of 130 people detained at DLCC, reportedly upon instructions from President Kabila. Several other detainees were released the following days, in some cases after being requested to pay illegal fees from 20 to 100 US dollars to police officers. Some of these police officers were reportedly later suspended for imposing these illegal fees. On 26 December 2016, 49 people arrested in Lubumbashi by the police for looting and vandalism of public and private properties were transferred to the *Parquet de Grande Instance* of Lubumbashi, and charged with robbery, spiteful destruction, criminal association, rebellion and voluntary arson in a flagrante delicto procedure by the *Tribunal de Grande Instance* of Lubumbashi. On 28 December, also in a flagrante delicto procedure, the same tribunal sentenced 22 demonstrators arrested between 20 and 22 December ranging from 12 months suspended (for eight demonstrators, who were subsequently released) to three years on charges of rebellion and participation in an insurrectional movement. The Court also acquitted 27 other people. During the night of 27 to 28 December 102 people, including 30 minors, were arrested by defence and security forces during a cordon and search operation in the Katuba commune searching for the goods looted during the protests of 20 December. Among these 102 people, 96 were released on 28 December, including the 30 minors, from DLCC. The six other individuals were transferred to the *Parquet de grande instance* of Lubumbashi on charges of robbery (“*vol qualifié*”).

40. In Kinshasa, at least 184 people, including two women and four children, were arrested by defence and security forces in the context of the 19 December events. The first mass arrests started on 18 December, when PNC agents arrested at least 20 young people in the Kasa-Vubu neighbourhood. On 19 December, dozens were arrested as defence and security forces started dispersing any gathering. This included the arrest by PNC agents of 20 people, including two women, in the Ndjili commune; the arrest by soldiers of the Republic Guard of 28 people, including two minors, in front of the *Ecole de formation des officiers de police judiciaire* (EFOPJ); or the arrest of nine protestors by police agents in the Barumbu commune. Around midnight, when more people took the street, PNC agents and FARDC soldiers arrested at least 50 people, particularly in the Masina commune. Arrests continued the next day, as defence and security forces systematically prevented the population protesting against President Kabila. Most people arrested during that period were taken to military camps or ANR detention facilities. UNJHRO was denied access to these locations. The number of persons arrested during those events may therefore be higher than the figures presented in the report.
41. In Goma, at least 115 people, including five women and members of opposition parties and citizens' movements²⁷, were arrested by defence and security forces in the context of the demonstrations against President Kabila remaining in office. Arrests started on 15 December, when PNC agents preventively arrested 15 young and homeless people suspected of planning to participate in 19 December demonstrations. On 18 and 19 December, 28 people were arrested during a cordon and search operation” by PNC agents. On 19 December, ANR arrested five persons and PNC agents arrested 22 persons for wearing red t-shirts symbolizing a “red card” given to President Kabila to leave office. At

²⁷ These cases are detailed, in paragraphs 53 and 59 below.

the time of writing this report, of the 115 people arrested in Goma, 102 had been released, and 13 remained in detention²⁸.

42. In Matadi, at least 76 civilians, including at least one minor, were arrested by PNC agents on 20 and 21 September, mainly from homes, shops, garages, telephone booths or bars, and not during protests. They were taken to cells in the local PNC *commissariat urbain* and the *Direction des renseignements généraux* (DRG). Of those arrested, many were released between 20 and 22 December following the payment of a sum of money demanded by PNC agents. Thirteen were transferred to the *Parquet de Grande Instance*, including seven who were released on 26 December while five were still held in the Matadi Central Prison on charges of looting or rebellion, while awaiting a hearing before the *Tribunal de grande instance* of Matadi. The case of one arrested minor was deferred to the *Tribunal pour enfants*.
43. In Boma, between 20 and 21 December 2016, PNC agents deployed throughout the city arrested 43 people, including two women and four minors below the age of 14. Twenty of these people were released after paying various amounts of money while the 23 others were transferred to the Boma *Parquet de Grande Instance*, which immediately ordered the release of the two women and the four children, and of eight additional people. At the time of writing this report, nine people were still detained in the Boma Central Prison and prosecuted by the *Parquet de grande instance* on charges of rebellion, spiteful destruction and criminal association.

iv. *Right to freedom of peaceful assembly*

44. On 19 and 20 December 2016, there were few organized attempts to demonstrate and most, if not all, gatherings were apparently spontaneous and characterized by banging of cooking utensils and the use of whistles. The demonstrations were faced by a heavy deployment of defence and security forces, virtually locking down some areas. The violations of the rights to life, physical integrity and liberty and security of the person which were committed in this context served to further restrict the right to peaceful assembly, and to intimidate the population.²⁹
45. It must be recalled that since the end of 2015, in most large cities, local authorities continued to ban public demonstrations, whilst in other cities specific demonstrations were banned after the organizers communicated the planned gatherings to the authorities. On 13 December 2016, in a telegram, PNC General Commissioner Charles Bisengimana requested all provincial PNC commissioners to adopt measures to prevent all collective marches before, during and after 19 December, referring to the necessity to do so in compliance with human rights. Local authorities in Goma and Bukavu, as well as in the Haut-Uélé province, banned demonstrations prior to 19 December. In Kinshasa, a total and indefinite ban on all public demonstrations ordered by the Provincial Governor after the events of 19 September 2016 was still in place.

²⁸ See paragraph.53: 12 members of *Rassemblement* and one LUCHA member remain in detention.

²⁹ Not all demonstrators exercised their freedom to assembly peacefully. Indeed, UNJHRO documented looting and destruction of public property in at least five locations: Kinshasa, Lubumbashi, Luebo, Matadi and Boma. See *infra*. paragraphs 73 to 76.

46. General bans on demonstrations imposed *de facto* or *de jure* in the DRC are unjustified and disproportionate with regard to the necessity to maintain public order, and are contrary to international human rights law and to articles 25 and 26 of the Congolese Constitution. The disproportionate use of force and repression against peaceful protesters on the basis of such bans should therefore be considered contrary to international human rights norms and to the provisions of the Congolese Constitution.

v. *Right to freedoms of expression and information*

47. On 14 December 2016, through a statement on local television channels and radio stations, the Governor of the Kasai Oriental province announced an indefinite ban on political debates on all media channels in the province, as a preventative measure, invoking security reasons.

48. On 15 December 2016, the *Autorité de régulation des postes et des télécommunications* (ARPTC) sent a formal instruction to internet providers to restrict access to all social media starting from 18 December 2016 at 11.59 p.m. Social media access was eventually completely cut off throughout the DRC from 20 December until 28 December 2016. Some internet providers had to cut internet access entirely during the same period.

49. On 19 December, although social media were still working, UNJHRO noted that the Canal Congo television channel (CCTV) and *Radio Liberté Kinshasa* were shut down. Both signals were re-established on 23 January 2017, as per the provisions of the 31 December political agreement. The signal of *Radio France Internationale* (RFI), which was suspended on 5 November 2016, continued to be blocked throughout the 19 and 20 December events, and was still blocked at the time of writing this report.

50. UNJHRO considers those restrictions on freedom of expression, particularly on the media, as disproportionate and in contravention with international human rights standards and the Congolese Constitution.

VI. Profile of the victims

51. Most victims of human rights violations were civilians who were killed, wounded, arbitrarily arrested or illegally detained for demonstrating, or planning to demonstrate, against President Kabila remaining in office. However, UNJHRO documented a high number of human rights violations targeting opposition leaders, civil society activists and journalists and other media workers.

i. *Arrest and detention of opposition political leaders and activists*

52. UNJHRO has documented worrying cases of intimidation and harassment by defence and security forces against members and supporters of opposition political parties particularly those of the *Rassemblement*, including arbitrary arrests, illegal detention, and violations of the right to physical integrity.

53. On 19 December, in Kinshasa, soldiers of the Republic Guards arrested at least 16 MLP members, including their President and member of the national parliament, Franck Diongo. Mr. Diongo was allegedly arrested for having neutralized, held and beaten three soldiers of the Republican Guard who

had tried to enter into his residence. Following MONUSCO intervention, Franck Diongo and his sympathizers released the three soldiers. After MONUSCO had left, several soldiers of the Republican Guard attacked Mr. Diongo's residence and arrested him and 15 MLP members, before looting and damaging the residence. In the following days, the 15 MLP members were sent to Tshatshi military camp where they were subjected to torture by soldiers of the Republican Guard. They were later transferred to Makala prison. Franck Diongo was detained at the *Etat-major du renseignement militaire* where he was subjected to cruel, inhumane or degrading treatments, then transferred on the same night to the *Police judiciaire* and the *Parquet général de la République* and finally to Makala prison. On 28 December 2016, after he received medical treatment, the Supreme Court of Justice convicted him, during a flagrante delicto procedure, to five years of imprisonment for aggravated arbitrary arrest and illegal detention.

54. In Goma, on 17 December, soldiers of the Military Police arrested 10 people suspected of planning armed attacks in Goma, including two members of the opposition party *Engagement pour la citoyenneté et le développement* (ECIDE), on charges of rebellion and participation in an insurrectional movement. After being detained in *Service de renseignements militaires* (T2), they were transferred to the *Auditorat militaire supérieur* of North Kivu then to the *Parquet de grande instance* of Goma, from where they were released on 28 December after all charges against them were lifted. On 19 December, 12 members of the *Rassemblement*, including one woman, were arrested by PNC agents for trying to demonstrate with red cards and flags, and transferred to the Goma central prison on 23 December. They were still being detained at the time of writing this report charged with offending the Head of State, and were waiting for a decision by the Supreme Court of Justice.
55. On 19 December, in Bukavu, South Kivu Province, a member of *Parti congolais pour le progrès* (PCP) was arrested and detained by PNC agents of the *Groupe Mobile d'Intervention* (GMI) for distributing invitations for a PCP meeting to be held the following day. Accused of posing a threat to State security, he was nevertheless released on 20 December 2016 on the orders of the PNC Provincial Commissioner, following advocacy by UNJHRO.
56. On 20 December, in Kalemie, Tanganyika Province, a member of *Avenir du Congo* (ACO) was arrested by PNC agents in relation to his political activities. He was released later the same day following the intervention of UNJHRO.
57. In Lubumbashi, between 20 and 22 December 2016, nine people including two UDPS members and a member of the *Union nationale des fédéralistes du Congo* (UNAFEC) were arrested in the Katuba commune by ANR agents, who accused them of being the main organizers of the 19 and 20 December demonstrations. They were detained in a cell of the provincial ANR office, and deferred on 27 December before the *Parquet général* of Lubumbashi on charges of rebellion and robbery. On 21 December, a lawyer was arrested by ANR agents who accused him of having received money from opposition leader Moïse Katumbi to distribute to the population in order to incite demonstrations against President Kabila. He was released on 28 December.
58. On 21 December, in Kasumbalesa, Sakania territory, Haut Katanga province, three UDPS militants were arrested during a joint operation by PNC and FARDC because one of them was wearing a t-shirt representing the UDPS national president. They were placed in detention in a PNC cell for incitement

to rebellion. The Prosecutor of the Kasumbalesa *Tribunal de Paix* ordered their transfer to the Musoshi prison, in Kasumbalesa, before their transfer to the *Parquet de Grande Instance* of Kipushi on charges of rebellion and public order offense (“*trouble à l’ordre public*”). They were still awaiting trial at the time of writing this report.

ii. *Arrest and detention of civil society activists*

59. Several civil society activists accused of planning the demonstrations and sensitizing the population were arrested before, during and after 19 December on charges of rebellion and participation in an insurrectional movement. Militants of citizens’ movements such LUCHA, Filimbi or *Réveil des indignés* were particularly targeted.³⁰
60. In Goma, North Kivu province, for example, one LUCHA member was arrested on 20 December by ANR agents for tagging “Bye-Bye Kabila” on a wall. He was transferred to the central prison of Goma on 23 December where he was, at the time of writing this report, still being detained under a temporary arrest warrant for incitement to civil disobedience. On 21 December, in Goma, 19 other LUCHA members, including two women, were arrested by PNC agents while protesting in front of the Governor’s office. One of the women was released the following day in the morning by the *Parquet de Grande Instance*, while the 18 other LUCHA members were transferred to the central prison of Goma on 23 December, where they were detained until their release on 27 December. The charges of incitement to civil disobedience against them were all dropped.
61. In Bukavu, South Kivu province, on 19 December, four members of *Réveil des indignés* were arbitrarily arrested by FARDC soldiers of *Forces navales* based in the Brasserie neighbourhood under the command of the 33rd regiment, and released the same day. On 21 December, 19 LUCHA, Filimbi and *Réveil des indignés* members were arrested by PNC agents of *Service des Renseignements* (P2) of the Provincial commissariat of South Kivu while they had gathered in front of the Provincial Assembly wearing “Bye-Bye Kabila” t-shirts. They were all released the same day by the P2 Director, after he considered that the facts did not constitute an infraction.
62. In Mbuji-Mayi, Kasai oriental province, on 21 December, eight LUCHA members were arrested in a bar and beaten by ANR agents for allegedly planning demonstrations in the city despite a ban on public demonstrations decided by the Mayor. Six of the victims were released on 22 December, while two were transferred in the evening to the *Parquet général* of Mbuji-Mayi for defamation (“*propagation des faux bruits*”). They were acquitted on 1 February 2017 by the *Tribunal de paix* of Mbuji-Mayi, and were waiting for their release at the time of writing this report.

iii. *Intimidation and harassment of journalists and media workers*

63. Journalists and media workers continued to be subjected to acts of intimidation or harassment during the reporting period, including arbitrary arrests and illegal detentions, allegedly with the aim of preventing them from reporting on the security situation in the main cities of the DRC.

³⁰ In a letter to provincial authorities dated 3 December 2016, the Minister of Interior reiterated his previous instruction relating to formally ban all organizations without legal status, characterizing LUCHA and Filimbi as “anarchists” and making *de facto* all their activities illegal.

64. In Kananga, Kasai province, on 17 December, at 7.30 p.m., a journalist from *Radio Télévision Espérance* (RTE) was arbitrarily arrested and beaten by two soldiers of the Military Police while he was on his way home. The perpetrators accused him of violating a curfew and extorted 83,000 Congolese Francs from him as well as his microphone.
65. In Kinshasa, a journalist from *Agence France presse* (AFP) and his assistant were arrested on 19 December by law enforcement agents of *Police universitaire* while they were covering the security situation near the University of Kinshasa. Both were then questioned by ANR agents, and one of them had his mobile phone searched. They were released the same day in the evening. On 20 December, a journalist from Vision Info was arrested, blindfolded and interrogated by ANR agents, who reportedly accused him of referring to the 19 December events during an online show he had participated in. He was released three hours later.
66. In Goma, North Kivu province, on 21 December, a foreign journalist covering the arrest of LUCHA members³¹ in front of the *Gouvernorat* was arrested by PNC agents, transferred to the P2 police station, and released the same day.
67. In Mbuji-Mayi, Kasai oriental province, on 22 December, a journalist from *Radiotélévision Nationale Congolaise* (RTNC) was beaten by PNC agents assigned to the security of the Governor. They reportedly accused him of not covering a march they had conducted throughout the city to observe the activities of the population in the context of the 19 December events. The same police agents also threatened another RTNC journalist, as well as a journalist from *Radiotélévision Océan pacifique* (RTOP).

VII. Alleged perpetrators of human rights violations

68. Human rights violations documented by UNJHRO during the period under review were for the most part perpetrated during joint operations by defence and security forces, composed of PNC agents and FARDC soldiers, including of the Republican Guard and the Military Police. For this reason, UNJHRO was not in a position to clearly identify the exact affiliation of the perpetrators of several of the violations it documented.
69. With regard to documented violations of the right to life, UNJHRO has received credible reports indicating that of the 40 fatalities, at least 28 were killed by FARDC soldiers, including by members of the Republic Guard and of the Military Police. Twenty-seven were killed by live ammunition and one as a result of cruel, inhumane and degrading treatment. Further, UNJHRO has also received credible information that at least six people were killed by PNC agents including five by gunshots (in Matadi and Lubumbashi) and one after being hit by a PNC truck (in Kinshasa). The six remaining victims were killed by live ammunition during joint PNC and FARDC operations (three in Kinshasa and three in Lubumbashi), but UNJHRO has not been able to attribute responsibility to any specific force.
70. In Boma, all eight people killed were shot at point blank range in the upper parts of their body with live ammunition by FARDC soldiers from the Boma regiment, the Naval Forces and the Republican

³¹ See para. 59.

Guard coming from Muanda, indicating a deliberate shoot-to-kill approach by these soldiers. PNC agents from the *Sous-commissariat* of Katombo, which depends directly from the *Commissariat urbain* of Boma, were reportedly responsible for some of the injuries.

71. In Kinshasa, UNJHRO documented a heavy presence of soldiers of the Republican Guard and of the Military Police, armed with heavy weaponry, together with PNC agents of the *Groupe mobile d'intervention* (GMI) and the *Légion nationale d'intervention* (LNI) armed with both lethal and non-lethal equipment. Most of the people detained during the 19 and 20 December events were arrested during joint operations by PNC and FARDC, as well as by agents of *Direction générale des renseignements supérieurs* and of ANR, and taken to Tshatshi or Kokolo military camps or to ANR facilities. UNJHRO was denied access to all these locations.
72. In Lubumbashi, PNC agents of DLCC and of the *Groupe de recherche et d'investigation* conducted large scale arrests of population between 20 and 28 December 2016. Reports also indicate that defence and security forces were accompanied by soldiers dressed as civilians.
73. Agents of the ANR were also responsible for some arrests and detentions, particularly targeting political opponents, civil society activists and media workers, including in Kinshasa, Lubumbashi, Goma and Mbuji-Mayi.

VIII. Violence by demonstrators

74. Although acts of violence by demonstrators may constitute criminal offenses under domestic law and are beyond the mandate of UNJHRO, several cases of such acts were brought to its attention during its investigations and must be condemned.
75. UNJHRO was informed of the killing of a PNC agent by demonstrators in Kinshasa, on 20 December. It was also informed that in Lubumbashi, a police officer was injured after being hit in the head by a stone thrown by protestors, on 20 December.
76. Looting, destruction of public and private property, burning of tires and the construction of barricades by some demonstrators were also brought to the attention of UNJHRO, particularly in Kinshasa, Lubumbashi, Luebo, Boma and Matadi. In Kinshasa, some protestors set on fire the headquarters of the Presidential majority party, the *Parti du peuple pour la reconstruction et la démocratie* (PPRD). In Lubumbashi, acts of vandalism and lootings against hospitals, gas stations, the *Tribunal de paix* and police stations were reported. In Luebo, several demonstrators attacked the local prison and tried to provoke the escape of detainees.
77. UNJHRO deplors all acts of violence, which are contrary to the exercise of the right to peaceful assembly and risk, if not addressed, to prevent the creation of an environment conducive to peaceful elections.

IX. Reaction of the Congolese authorities

78. While many individuals who took part in the December 2016 events were arrested and charged with looting, destruction of property and insurrection, no State agent or official has so far been investigated or prosecuted for the extrajudicial killings and other serious human rights violations committed in the

context of the authorities' actions to prevent and contain the demonstrations. This was also the case during major demonstrations and opposition activities which occurred in September and November 2016. The lack of accountability for past human rights violations, including those committed during the demonstrations in Kinshasa on 19 and 20 September 2016, may have encouraged a sense of impunity, and defence and security forces to commit further violations in December 2016.

79. Despite several calls by national and international actors, including special procedures of the United Nations Human Rights Council³², no action was taken by the authorities to create a more conducive environment for the holding of peaceful political activities. In view of the deterioration of the political and human rights situation, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders issued two joint public statements on 1 and 19 December respectively calling for the restoration of all public liberties and the lifting of political restrictions. No action has been taken by the Government in this regard.
80. The human rights violations documented in the context of the December 2016 events also show that the Government has made insufficient progress in implementing the recommendations of the most recent previous reports by MONUSCO and OHCHR on human rights and fundamental freedoms³³.

X. Conclusion and recommendations

81. UNJHRO documented serious human rights violations perpetrated by Congolese security forces in relation to the events of 19 December throughout the country. Excessive use of force, including lethal force, was used by the Congolese security forces, mainly FARDC soldiers, during protests, in a manner similar to the actions of security forces responding to previous demonstrations, such as the ones from 19 to 21 September 2016 in Kinshasa. While the responsibility to control and secure crowds normally resides with the PNC, FARDC elements, particularly soldiers of the Republican Guard and of the Military Police, were deployed in addition to PNC to perform crowd control functions, for which they are not equipped nor trained.
82. Thus, between 15 and 31 December 2016, UNJHRO documented the killing of at least 40 civilians and the wounding of 147 individuals as a result of a disproportionate use of force and the use of live ammunition by defence and security forces, particularly FARDC soldiers, to prevent and contain public demonstrations. In some cases, particularly in the city of Boma, the use of live ammunition and the fact that several victims were shot in the upper part of the body, seems to demonstrate an intentional shoot-to-kill approach by FARDC soldiers.
83. During the same period, at least 917 individuals were arrested by State agents throughout the DRC territory. Members and militants of opposition parties, civil society activists and journalists and media workers were particularly targeted. At the time of writing this report, according to information

³² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21048&LangID>

³³ See the *Report of the United Nations Joint Human Rights Office on human rights and fundamental freedoms during the pre-electoral period in the Democratic Republic of the Congo between 1 January and 30 September 2015*, published on 8 December 2015 and the *Preliminary investigation reports on human rights violations and violence perpetrated during demonstrations in Kinshasa between 19 and 21 September 2016*, published on 21 October 2016.

available to UNJHRO, in locations other than Kinshasa, at least 540 of those detained were released in the days following arrest. In addition, 71 people were sentenced (all in Lubumbashi) and 29 were acquitted. At least 47 people remained in detention, awaiting trial, on charges such as rebellion, incitement to civil disobedience, threat to public order, looting, robbery or spiteful destruction.

84. UNJHRO could not confirm any action taken by the authorities to effectively investigate and prosecute the perpetrators of human rights violations committed not only in December 2016 but also during previous incidents in the context of the electoral period, including the 19 September 2016 incidents in Kinshasa, despite recommendations in this respect by UNJHRO and United Nations human rights mechanisms. The lack of accountability and the persisting impunity for past human rights violations committed in the electoral context may have set a negative precedent, thereby indicating to defence and security forces and other authorities that they would not be held accountable for their actions.
85. UNJHRO is seriously concerned by the lack of cooperation of the Congolese authorities as illustrated by the denial of access to military and ANR detention centres, hospitals and morgues, where many of the victims of human rights violations during the 19 December events were taken. Furthermore, UNJHRO strongly condemns acts of intimidation against its staff members while conducting their human rights monitoring activities. These actions are in contravention with the Memorandum of Understanding signed between OHCHR and the DRC (Zaire at that time) in 1996, and prevent the implementation by UNJHRO of its mandate set out in Security Council Resolution 2277 of March 2016.
86. The prohibition of demonstrations and the violent actions against those exercising their right to peaceful protest demonstrate the persistent trend of shrinking democratic space in the DRC since January 2015. Whilst the signing of the political agreement on 31 December 2016 represents a positive step forward in the political process, it should go hand in hand with clear actions denoting tangible progress in opening up the democratic space and ensuring the full exercise of fundamental freedoms for all Congolese.
87. In light of the above, and in line with the recommendations made in its previous reports, UNJHRO urges the Congolese authorities:
 - to conduct prompt, independent, thorough, credible, transparent and impartial investigations into the human rights violations committed by State agents and those affiliated with State agents in the context of the crackdown on demonstrations between 15 and 31 December 2016; and to bring those responsible to justice, irrespective of their rank or position;
 - to conduct prompt, independent, thorough, credible, transparent and impartial investigations, in accordance with international standards, to determine those responsible for acts of violence during demonstrations; to ensure that detention conditions meet the requirements of international human rights law and fair trial standards; and to unconditionally release all those arbitrarily or unlawfully arrested or against whom no charge has been retained;
 - to ensure the full exercise of the right to peaceful assembly, in accordance with the DRC Constitution and international obligations; and to use all appropriate means to ensure that these

rights can be exercised freely and securely, including by guaranteeing the safety of demonstrators and the creation of an environment conducive to the full enjoyment of these rights;;

- to refrain from using military forces such as the Republican Guard and the Military Police to conduct crowd control operations, as they are not trained nor equipped for such law enforcement tasks; to limit lethal weapons from crowd control operations and to authorize the use of force strictly as a last resort and in compliance with the principles of necessity, proportionality and legality, in accordance with international standards;
- to continue providing training to defence and security forces on human rights norms and standards, especially in relation to the use of force and firearms;
- to ensure the protection of the human rights and fundamental freedoms of all individuals, including political opponents, journalists and other civil society actors, women and children; and ensure that any restrictions on those freedoms respect the principles of legality, necessity and proportionality;
- to end the pattern of interrupting social media and impose arbitrary restrictions on radio stations and media outlets so as to ensure that the right to freedom of expression and the right to information are guaranteed at all times, not least when political events and activities take place;
- for Parliament to urgently adopt the law on freedom of peaceful protests and the law on human rights defenders;
- to allow UNJHRO full and unimpeded access to all detention locations, including those of the military and ANR, at all times, in accordance with the 1996 Memorandum of Understanding signed between OHCHR and the Government of the DRC; and to cease and sanction all acts of intimidation against UNJHRO staff during the conduct of monitoring and investigations activities mandated by the UN Security Council as well as OHCHR.

UNJHRO and MONUSCO stand ready to assist the Congolese authorities in implementing these recommendations.

XI. Annexes



Ministère des Droits Humains

La Ministre

N/R : 0076 /CAB/MIN/DH/2017
V/R :

Kinshasa, le 23 février 2017

Transmis copie pour information à :

- Son Excellence Monsieur le Président de la République, Chef de l'Etat ;
(Avec l'expression de mes hommages les plus déferents)
Palais de la Nation
 - Son Excellence Monsieur le Premier Ministre, Chef du Gouvernement ;
(Avec l'assurance de ma très haute considération)
Hôtel du Gouvernement
 - Son Excellence Monsieur le Vice-Premier Ministre, Ministre des Affaires Etrangères et Coopération Régionale ;
 - Son Excellence Monsieur le Ministre d'Etat, Ministre de la Justice et Garde des Sceaux ;
 - Monsieur le Représentant Spécial du Secrétaire Général des Nations Unies en RDC ;
 - Monsieur le Haut-Commissaire des Nations Unies aux Droits de l'Homme.
- (Tous) à KINSHASA/GOMBE

**Concerne : Transmission commentaires
du Gouvernement**

A Monsieur José Maria Aranaz
Directeur du Bureau Conjoint des Nations Unies aux Droits de l'Homme et Représentant du Haut-Commissariat aux Droits de l'Homme en République Démocratique du Congo
à KINSHASA/GOMBE

Monsieur le Directeur et Représentant,

J'ai l'honneur de vous transmettre, en annexe à la présente, pour publication, les commentaires du Gouvernement sur les violations des droits de l'homme commises dans le contexte des événements du 19 décembre 2016 en République Démocratique du Congo.

Je vous remercie à l'avance de la diligence que vous voudriez bien réserver à la présente.

Veuillez agréer, **Monsieur le Directeur et Représentant**, l'assurance de ma parfaite considération.

Marie-Ange MUSHOBKWA L.

République Démocratique du Congo

MINISTÈRE DES DROITS HUMAINS



**Observations du Gouvernement de la République
Démocratique du Congo relatives au rapport de la
MONUSCO-BCNUDH sur les allégations des
violations des droits de l'homme dans le contexte
des événements du 19 décembre 2016**

Avsht

= Kinshasa, RDC février 2017 =

OBSERVATIONS DU GOUVERNEMENT CONGOLAIS

Le Gouvernement fournit à la MONUSCO ses observations sur chaque point développé dans « le rapport sur la violation des droits de l'homme en République Démocratique du Congo dans le contexte des événements du 19 décembre 2016 », publié en février 2017. La présente note suit le même plan que le rapport sous examen.

- I. Introduction ;
- II. Méthodologie et difficultés rencontrées;
- III. Contexte ;
- IV. Cadre juridique ;
- V. Violations des droits de l'homme ;
- VI. Profil des victimes ;
- VII. Les auteurs allégués de violations des droits de l'homme ;
- VIII. Violations perpétrées par des manifestants ;
- IX. Réactions des autorités congolaises ;
- X. Conclusions et recommandations.

NOTE LIMINAIRE

Le Gouvernement de la République démocratique du Congo rappelle **le principe de l'universalité des droits de l'homme**, principe sacro-saint du droit international public, imposable à l'ensemble de la communauté internationale. Ce principe est consacré notamment par la Déclaration Universelle des Droits de l'Homme, par le Pacte International relatif aux droits civils et politiques, ainsi que par la Charte Africaine des Droits de l'Homme et des Peuples. Ces instruments ont vocation à s'appliquer identiquement sur le territoire congolais et à travers le monde.

Il rappelle également **le principe de la souveraineté des Pays membres de l'Organisation des Nation-Unies**, créant une égalité parfaite entre eux. C'est dans ce contexte qu'il s'est doté depuis le 18 février 2006 d'une Constitution encore en vigueur, unique cadre de référence pour qui veut donner une opinion sur l'action de ses institutions et de ses animateurs.

Il indique aussi que ses relations avec le Bureau Conjoint des Nations Unies aux droits de l'homme sont régies par **l'accord de siège relatif à l'établissement à Kinshasa d'un Bureau des droits de l'homme** signé en 1996. Il n'est pas indiqué dans cet accord que ce dernier a un statut d'adversaire du Gouvernement. De part cet instrument juridique, le BCNUDH a un **mandat d'appui** à la République démocratique du Congo pour la promotion et la protection des droits de l'homme.

I. Introduction (Paragraphe 1 à 3)

 Le Gouvernement constate que le rapport gravite délibérément autour de la fin du deuxième mandat constitutionnel de **Son Excellence Monsieur le Président de la République Joseph KABILA** et à l'organisation de l'élection présidentielle.

Ce postulat n'est pas correct au regard des informations ci-dessous bien connues par la MONUSCO et du BCNUDH.

Le Gouvernement de la République rappelle que le mandat de Son Excellence Monsieur le Président de la République, Chef de l'Etat, prenait théoriquement fin le 19 décembre 2016. Néanmoins, l'article 70 alinéa 2 de la Constitution prévoit : « A la fin de son mandat, le Président de la République reste en fonction jusqu'à l'installation effective du nouveau Président élu ».

Saisie par la requête de 278 députés nationaux signée le 14 avril 2016, la Cour Constitutionnelle dans son **Arrêt R.CONST 262 du 11 mai 2016**, a confirmé que « pour consacrer le principe de la continuité de l'Etat, affirmé par l'article 69 de la Constitution, l'article 70 alinéa 2 de la Constitution, permet au Président de la République actuellement en exercice, de rester en fonction jusqu'à l'installation effective du nouveau Président élu ». Il en va de même pour toutes institutions de la République dont le mandat est arrivé à échéance.

Cet Arrêt de la Cour Constitutionnelle rendu en premier et dernier ressort, n'est susceptible d'aucun recours. Il est opposable erga omnes (à tous).

Par ailleurs, le Président de la République dans le souci de préserver la paix, la sécurité et la cohésion nationale a, par son **Ordonnance n°15/084 du 28 novembre 2015**, convoqué un Dialogue Politique National Inclusif.

L'Union Africaine, à la demande du Conseil de sécurité, de l'Union Européenne et de l'Organisation Internationale de la Francophonie, a nommé un facilitateur en la personne de l'ancien Premier Ministre togolais Edem KODJO. Cette nomination a été soutenue par toutes les organisations précitées.

Pendant plusieurs mois, le facilitateur a pris langue avec toutes les principales tendances politiques du pays. Il rencontrera à cet effet, feu le Président de l'UDPS **Monsieur Etienne TSHISEKEDI** à Bruxelles à trois reprises. Après avoir consulté toute les parties, **Monsieur Edem KODJO** convoquera les travaux préparatoires à l'hôtel Béatrice (avec la participation de la CENCO). À la demande du Rassemblement, le facilitateur ainsi désigné postposera les travaux de 72 heures afin de permettre une plus grande inclusivité aux travaux. Au demeurant, au terme de cette attente, les membres du Rassemblement n'y ont guère participé. C'est dans ce contexte que le facilitateur lancera le début des travaux le 02 septembre 2016.

Durant les travaux, il a été réaffirmé le principe de la porte ouverte en direction de toutes les parties hésitantes, notamment le Rassemblement, en dépit des déclarations incitant à la haine ainsi qu'à la violence, distillée dans les médias et réseaux sociaux qui ont ainsi culminé les 19 et 20 Septembre 2016, contre les personnalités ne partageant pas leurs opinions, sans épargner leurs patrimoines ainsi que l'intégrité physique de plusieurs congolais s'étant retrouvés par le hasard du sort sur le théâtre desdites violences.

Dans le but de préserver la paix et la sécurité, fort du chaos durant ces deux journées, le Gouvernement avait en date du 22/09/2016 pris la décision portant restriction de certaines libertés publiques (droit de manifestation publique).

Desto

II. Méthodologie et difficultés rencontrées (Paragraphe 4 à 8).

Concernant la méthodologie utilisée, le Gouvernement fait observer que le présent rapport ne l'a guère précisé, hormis un renvoi à un manuel général.

S'agissant des difficultés rencontrées quant à l'accès sur certains sites, le Gouvernement fait remarquer qu'à travers le **Protocole d'accord relatif à l'établissement à Kinshasa d'un Bureau des Droits de l'homme**, il n'est aucunement fait mention d'un blanc-seing accordé d'accéder en tout temps et en tous lieux à tout site, mais qu'il serait souhaitable que le Gouvernement soit tenu informé aux fins de prendre des dispositions idoines.

Le BCNUDH a eu accès aux différents hôpitaux et morgues. Cependant, l'accès aux camps militaires ne lui a pas été accordé pour des raisons de sûreté de l'Etat et de secret de défense.

III. Contexte (Paragraphe 9 à 15)

Comme démontré au point I, le retard dans l'organisation des élections ne peut justifier les violences et les violations des droits de l'homme que la RDC a enregistrées durant la période considérée par le rapport.

Le contexte réel, bien connu du Bureau Conjoint des Nations Unies aux droits de l'homme, est que pour une partie de l'opposition, le dialogue en vue de l'organisation des élections démocratiques et apaisées ne servait à rien. Pour elle, le schéma de l'insurrection était, à n'importe quel prix, l'unique moyen pour accéder au pouvoir.

Cette opposition a planifié les violences et n'a rien laissé au hasard : des pillages aux tueries, en passant par les viols et les attaques contre les symboles de l'Etat. Les leaders de cette Opposition ont préparé leurs partisans pour ces besognes et leur ont donné des mots d'ordre précis allant jusqu'à chercher à pousser la PNC à la faute.

A titre d'exemple :

- Le 11 septembre 2016, Monsieur Franck DIONGO a publié un communiqué à l'attention de ses partisans qui mentionnait entre autres qu'« à partir du 1^{er} septembre 2016, plusieurs actions sont programmées par le Rassemblement. Je vous demande de les respecter au nom du MLP. Le 15 janvier 2015, vous vous êtes mis debout. Rééditer les mêmes forfaits, refaites-le encore pour chasser M.KABILA ».

Il y a lieu de souligner que nombreux leaders de l'opposition ont appelé publiquement leurs sympathisants à manifester sans les inciter à la violence.

 Le caractère partisan du rapport sous examen apparaît lorsque celui-ci rapporte de manière simpliste, à son paragraphe 13 « ...Le seul leader de l'Opposition qui a appelé la population à manifester publiquement a été le Président du Mouvement Lumumbiste Progressiste (MLP), le député Franck Diongo » ;

- Dans une interview sur jeuneafrique.com du 18 septembre 2016, Monsieur Martin FAYULU incite la population congolaise « à emboîter le pas au peuple burkinabé qui s'est libéré des affres du Président Blaise COMPAORE en octobre 2014 ».

Effectivement, les mots d'ordre des leaders de cette Opposition ont été suivis par leurs partisans dopés aux hallucinogènes. Certains d'entre eux ont même été armés comme le démontre le *Livre Blanc sur les tueries, les viols, les pillages, les saccages, les incendies et les destructions méchantes perpétrés dans la ville de Kinshasa* publié par le Gouvernement le 15 octobre 2016.

Dans cette publication, on voit des jeunes manifestants nus, des édifices publics et privés incendiés, des policiers et civils tués sauvagement, des scènes de pillage, des jeunes armés, etc.

Cet état de choses confirme que les cas de décès déplorés et les autres violations des droits de l'homme ont été planifiés. Leurs auteurs ne s'en cachent pas.

Il faut relever, enfin, que les jeunes partisans de l'opposition ont démontré, lors du retour de Monsieur Etienne TSHISEKEDI et de son meeting public le 31 juillet 2016, que lorsqu'on ne leur donne pas un mot d'ordre négatif, ils peuvent participer à une manifestation sans piller, ni tuer.

IV. Cadre juridique (Paragraphes 16 à 27)

S'agissant du cadre juridique, le Gouvernement fait observer que les paragraphes développés sous ce point n'appellent en principe aucun commentaire particulier.

Néanmoins, il fait observer que les institutions de la République Démocratique du Congo ont respecté lesdits instruments juridiques nationaux et internationaux que le rapport rappelle. Même lorsque des civils ont agressé des policiers et tué certains d'entre eux, la Police Nationale Congolaise est restée professionnelle.

Le Gouvernement note par ailleurs que les autorités publiques et les institutions de la République ont l'obligation constitutionnelle de se soumettre aux traités et conventions internationaux régulièrement ratifiés et publiés au Journal Officiel. Ils font partie désormais de son droit international positif péremptoire.

V. Violations des droits de l'homme (Paragraphes 28 à 50)

Le Gouvernement dénonce la tendance partisane du rapport à vouloir charger par complaisance les forces de défense et de sécurité de la RDC notamment la PNC, les FARDC et la Garde Républicaine.

Le rapport soutient à son paragraphe 32 que « ... les informations collectées dénotent un usage excessif et disproportionné de la force, dont l'utilisation d'armes létales et de balles réelles, tirées sur les parties supérieures du corps par les forces de défense et de sécurité congolaises en réponse aux manifestations des 19 et 20 décembre. L'utilisation d'armes létales par des forces de défense et de sécurité lourdement armées contre des manifestants... ».

 Le Gouvernement fait observer que cette citation, symptomatique de l'esprit général autour duquel est échafaudé toute la rubrique relative aux violations des droits de l'homme (paragraphes 28 à 50) pourrait être qualifiée d'insultante pour les institutions de la République.

La vérité bien connue de la MONUSCO et du BCNUDH est que dans ce contexte des velléités insurrectionnelles, le Gouvernement avait instruit la PNC de veiller sur la sécurité de la population et ses biens et d'encadrer tout mouvement de débordement sans céder au piège des inciviques. Les FARDC sont restées à l'écart et cantonnées dans leur mission habituelle de sécurisation de l'intégrité territoriale.

La Garde Républicaine abondamment citée dans ce rapport est destinée exclusivement à la sécurisation de la personne du Président de la République ainsi qu'aux membres de sa famille.

VI. Profil des victimes (Paragraphe 51 à 67)

Le Bureau soutient au paragraphe 52 du rapport avoir « documenté des cas inquiétants d'intimidation et de harcèlement de la part des forces de défense et de sécurité contre ses membres... ».

Aussi, il demeure inexact, au vu des discours et communiqués qu'il a eu à publier (Cfr. infra) et des actions qu'il avait planifiées, de considérer Monsieur Franck Diongo comme un manifestant pacifique indûment interpellé.

Il y a lieu de rappeler que Monsieur Franck Diongo a eu à séquestrer, désarmer, détenir des membres des forces de sécurité en plus d'avoir incité à la haine tribale et à la violence. Pour tous ces faits, il a été poursuivi, jugé et condamné.

Le Gouvernement rappelle son obligation de garantir la sécurité de tous les congolais, indistinctement de leur appartenance raciale, religieuse ou politique.

Le Gouvernement rappelle également la réglementation des manifestations publiques ainsi que la Loi n°004/2001 du 20 juillet 2001 portant dispositions applicables aux associations sans but lucratif (ASBL) et aux établissements d'utilité publique. A ce titre, il ne peut autoriser **l'exercice des manifestations publiques** par une organisation n'ayant pas de personnalité juridique. Il s'agit notamment des mouvements à l'instar de LUCHA, FILIMBI, UJANA, NOGEC.

Concernant le profil des victimes, le Gouvernement a documenté de nombreux cas de victimes, allant des manifestants, aux propriétaires des biens immobiliers incendiés, aux éléments des forces de sécurité agressés, aux commerces pillés appartenant à des privés stigmatisés comme proches du pouvoir.

Le Gouvernement rappelle la non existence d'une correspondance faisant état d'intimidation dont auraient été victimes les membres du BCNUDH. Par ailleurs, cette évocation d'intimidation n'est étayée d'aucun exemple.

VII. Les auteurs allégués de violations des droits de l'homme (Paragraphe 68 à 73)

Juste Le Gouvernement note à ce sujet quelques incohérences dans le rapport. La MONUSCO affirme et accuse la PNC, les FARDC, la Police militaire ainsi que la Garde Républicaine d'être responsables des violations des droits de l'homme, mais n'est pas en mesure d'établir la filiation entre les auteurs et les faits. Le Gouvernement rejette donc cette affirmation dans la mesure où l'auteur même n'est pas parvenu à établir la filiation.

De même que le Gouvernement avait noté des incohérences semblables lorsque la MONUSCO avait déclaré, dans un précédent rapport, un décompte de 36 membres de l'UDPS tués lors des manifestations de septembre 2016 alors que le jour de funérailles seuls neuf cercueils étaient exposés. Des morts que nous déplorons du reste.

Quant aux preuves crédibles collectées par le BCNUDH selon lesquelles 40 personnes auraient été tuées, le Gouvernement demande au BCNUDH de lui faire parvenir les noms des personnes tuées ainsi que les circonstances de survenance de ces tueries.

VIII. Violations perpétrées par des manifestants (Paragraphes 74 à 77)

Le Gouvernement a noté que les manifestants ont déshabillé, filmé, tué et diffusé sur les réseaux sociaux les images d'un policier. Le Gouvernement rappelle que les autorités sont toujours à la recherche des auteurs étant entendu qu'ils détiennent encore des armes appartenant aux forces de l'ordre.

A ce propos, le Gouvernement indique que dans ce contexte où le BCNUDH avoue que des prétendus manifestants « pacifiques » ont tué des policiers et détruit des propriétés publiques et privées, il est tout à fait concevable que ceux-ci soient capables d'occasionner le nombre de morts et de blessés avancés par le BCNUDH concernant les événements de décembre 2016.

IX. Réactions des autorités congolaises (Paragraphes 78 à 80)

Le Gouvernement note, concernant les mesures qui ont été prises, que des procès en flagrance ont été organisés pour les personnes (civiles) trouvées en train de commettre des infractions de droit commun à l'occasion desdites manifestations.

La justice poursuit les enquêtes sur les auteurs intellectuels des faits déplorés ainsi qu'à l'égard d'autres auteurs matériels des violations des droits de l'homme dénoncées quel que soit leur statut.

X. Conclusions et recommandations (Paragraphes 81 à 88)

Comme indiqué dans l'introduction, le Gouvernement rappelle **le principe de l'universalité des droits de l'homme**, celui de **la souveraineté des pays membres** de l'organisation des Nations Unies, celui de **l'égalité de tous les citoyens devant la loi** ainsi que celui du **strict respect du cadre constitutionnel régissant les institutions en République Démocratique du Congo**. Il note que dans un Etat de droit, les forces de sécurité ont le devoir de veiller à la sécurité des biens et des personnes, et que tous les citoyens doivent se soumettre aux lois de la République.

Au nom du respect de ces principes, et de celui de la sécurité de l'Etat, le Gouvernement a l'obligation de faire respecter l'ordre sur toute l'étendue du territoire. Il faut noter que lorsque la sécurité d'un Etat est menacée, partout à travers le monde. Il faut noter que chaque Etat prend des dispositions nécessaires pour la rétablir. Tel a été le cas en France, à Paris, après les attentats au Bataclan le 13 novembre 2015 ; et de la prolongation de l'état d'urgence après la folie meurtrière d'un chauffard à la *Promenade des Anglais*, à Nice, le 14 juillet 2016. Il en a été de même en Belgique après les attentats de l'Aéroport de Bruxelles National, le 22 mars 2016.

Justo

Le Gouvernement rappelle également, comme signalé plus haut, que les violations des droits de l'homme dénoncées dans le rapport ont été commanditées par une partie de l'opposition, pour qui le dialogue en vue de l'organisation des élections libres, démocratiques et apaisées ne servait à rien. Pour elle, le schéma de l'insurrection était, à n'importe quel prix, l'unique moyen pour accéder au pouvoir.

Cette opposition a donc planifié les violences en ne laissant rien au hasard : des pillages aux tueries, en passant par les viols et les attaques des symboles de l'Etat. Certains leaders de cette Opposition, ont préparé leurs partisans pour ces sales besognes et leur ont donné un mot d'ordre clair de s'attaquer à la Police pour pousser cette dernière à la faute.

Il faut relever que les jeunes partisans d'une certaine opposition ont démontré, lors du retour de l'ancien Premier Ministre, Monsieur Etienne TSHISEKEDI, le 27 juillet 2016 et de son meeting public, le 31 juillet 2016 sur le Boulevard Triomphal, que lorsqu'on ne leur donne pas un mot d'ordre négatif, ils peuvent participer à une manifestation sans piller, ni tuer.

La Police Nationale congolaise, pour sa part, est restée professionnelle même lorsque des civils ont agressé des policiers et tué certains d'entre eux.

Le Gouvernement de la République Démocratique du Congo réaffirme sa volonté d'entretenir un partenariat privilégié avec le BCNUDH. A cet effet, il l'invite à plus d'objectivité et de professionnalisme. Le Gouvernement recommande qu'en cas de violation des droits de l'homme que le BCNUDH en fasse part au Gouvernement Congolais et d'associer ce dernier dans ses enquêtes.

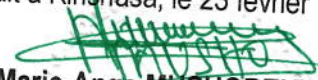
A ce propos, le rapport sous examen paraît partisan, avance certains faits inexacts, des chiffres approximatifs et des dates incertaines. Il se complait de faire des imputations fantaisistes de violations des droits de l'homme à charge des FARDC, de la PNC ainsi que des services de sécurité sans en apporter les preuves. Il n'identifie pas les individus présumés auteurs de ces faits afin de permettre leurs poursuites judiciaires.

Le Gouvernement attire ainsi l'attention du BCNUDH et de la MONUSCO sur le fait que des prises de position partisans sur la situation de droits de l'homme, dans un pays post-conflit comme le nôtre, sont contreproductives dans la mesure où des communiqués intempestifs de ces deux organes attisent des tensions et trahissent la bonne foi de la RDC qui fournit d'inlassables efforts pour la promotion et la protection des droits de l'homme.

Le Gouvernement rassure la communauté internationale de sa ferme volonté de respecter ses obligations internationales telles qu'elles émanent des conventions internationales régulièrement signées et ratifiées ou auxquelles elle a librement adhéré.

Le rapport insiste abondamment sur le fait qu'il s'agit du 2^e et dernier mandat de **Son Excellence Monsieur le Président de la République Joseph KABILA**. Le Gouvernement rappelle que cette question relève de la souveraineté nationale, et concerne uniquement le peuple congolais, et non pas les organisations internationales.

Fait à Kinshasa, le 23 février 2017


Marie-Ange MUSHOBOKWA-L.