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# **DEMOCRATIC REPUBLIC OF THE CONGO 2012 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

The Democratic Republic of the Congo (DRC) is a nominally centralized, constitutional republic. The president and the lower house of parliament (National Assembly) are popularly elected. Provincial assemblies choose the members of the upper house (Senate). In November 2011 the country held multiparty presidential and National Assembly elections, which many local and international observers judged lacked credibility and were seriously flawed. There were many instances in which state security forces (SSF) acted independently of civilian control and of military command.

Weak civilian control over SSF contributed to increased conflict in eastern Congo. In April integrated former rebels of the National Congress for the Defense of the People (CNDP) defected from the national army (FARDC). Subsequently, they created the M23 armed group (named after the March 23, 2009, peace agreements) and challenged government control in the eastern part of the country, which led to violence, the displacement of large numbers of persons, and significant human rights abuses, including the M23's recruitment and use of children in armed conflict. During the year the government entered into a UN-backed action plan to end the recruitment and use of child soldiers, and the government made significant improvements to reduce the presence of children in the nation's armed forces.

The three most important human rights issues were: armed conflict in the East that exacerbated an already precarious human rights situation, particularly with regard to sexual- and gender-based violence (SGBV); the lack of an independent and effective judiciary; and impunity throughout the country for many serious abuses, including unlawful killings, disappearances, torture, rape, and arbitrary arrests and detention.

Other major human rights problems included the following: severe and life-threatening conditions in prison and detention facilities; prolonged pretrial detention; arbitrary interference with privacy, family, and home; SSF members abusing, threatening, and obstructing journalists, human rights advocates, and the work of UN investigators; abuse of internally displaced persons (IDPs) by SSF and rebel and militia groups (RMG); widespread official corruption; SSF and RMG retention and recruitment of child soldiers; and use of forced civilian labor. Societal discrimination and abuse, particularly against women, children, persons

with disabilities, as well as lesbian, gay, bisexual, and transgender (LGBT) persons, and persons with albinism; enslavement of Pygmies; trafficking in persons; child labor; and lack of protection of workers' rights were also problems.

Despite some modest improvements, impunity for human rights abuses remained a severe problem in the security services. Authorities did not prosecute or punish the great majority of abusers.

RMG, some of which were supported by foreign governments and militaries, committed violent abuses against civilians, particularly in North Kivu, South Kivu, and Orientale provinces. The abuses--some of which may constitute war crimes--included unlawful killings, disappearances, torture, and SGBV. RMG also recruited, abducted, and retained child soldiers and compelled forced labor. RMG and some army units engaged in the illegal exploitation and trade of natural resources in the East. In a separate conflict in the Haut Uele and Bas Uele districts of Orientale Province, the Lord's Resistance Army (LRA) continued to commit serious human rights violations through attacks resulting in deaths, injuries, abductions, forced labor, looting, and general insecurity.

## **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

### **a. Arbitrary or Unlawful Deprivation of Life**

On several occasions during the year, SSF members arbitrarily and unlawfully killed civilians, sometimes during apprehension or while holding them in custody. For example, on February 16 in Lubero Territory, North Kivu, a man who was accused of killing a FARDC officer was killed in retaliation by another FARDC officer.

The FARDC and RMG, a number of which included FARDC defectors who had previously been integrated into the army following 2009 peace agreements, were responsible for politically motivated killings, arbitrary arrests, temporary detentions, and the abduction and disappearance of many individuals.

Human Rights Watch (HRW) reported in December 2011 that SSF killed 24 individuals, including bystanders and members of the opposition, in elections-related violence on December 9-14, 2011. In March the UN published its report of human rights violations in Kinshasa during the elections period, stating that SSF had killed 33 individuals. In response, the government issued its own report,

attributing 20 elections-related killings to SSF in Kinshasa. At year's end these killings remained under investigation.

On June 19, the courts opened the appeal process related to the 2010 killing of human rights activist Floribert Chebeya and his driver. In 2011 the civil party representing the families of the deceased claimed only "partial satisfaction" with the verdict and filed an appeal calling for former National Police (PNC) Inspector General John Numbi to be tried. On October 23, the high military court dismissed the case against Numbi but decided to investigate the assertions of Paul Mwilambwe, an absconded police officer who claimed to know the location of the body of Chebeya's driver.

RMG in conflict zones committed unlawful killings (see section 1.g.).

### **b. Disappearance**

There were reports of disappearances attributable to SSF. Authorities often refused to acknowledge the detention of suspects and in some cases detained suspects in unofficial facilities. For example, Eugene Diomi, a national deputy, disappeared on June 27, and upon his release on October 10, reported that the PNC had detained him and moved him multiple times during his detention. Diomi claimed he was targeted for publicly supporting the opposition and denied that his detention was related to the warrant for his arrest for allegedly raping two minor girls. As a member of parliament, Diomi holds immunities and privileges, which parliament had not waived at year's end.

RMG and some FARDC elements kidnapped numerous persons, generally for forced labor, military service, or sexual services. Many of these victims disappeared (see section 1.g.).

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

A 2011 law criminalizes torture, and in July the government began a campaign to educate SSF and the population on this year-old law. Nevertheless, there were reports from human rights organizations that SSF continued to torture civilians, particularly detainees and prisoners, and employed other types of cruel, inhuman, and degrading punishment. There were some reports of government authorities taking action against persons responsible for these acts.

A number of organizations documented cases of torture. For example, the Center for Research on the Environment, Democracy, and Human Rights reported that on January 15, Bienfait Magambo died after he was kidnapped and tortured for hours near Goma by a FARDC unit reporting to Seraphin Mirindi. Mirindi later deserted and joined the M23 rebel group.

On several occasions during the year, SSF utilized cruel, inhuman, or degrading methods to exact punishment. For example, on May 8 in Kalemie Territory, Katanga, a man was arrested by police officers after not responding to a summons, bound, and left in the sun for several hours. He was then trampled by civilians before being released that same day. The public prosecutor issued an arrest warrant against those believed to be responsible.

In addition there were several reports during the year that SSF harassed and arrested journalists who wrote or broadcast material SSF deemed critical of the government and inappropriate due to the conflict in eastern Congo (see section 2.a.).

Some church leaders and family or community members also beat, starved, and abandoned children accused of witchcraft (see section 6).

There were continuing reports, including many from the UN's Joint Human Rights Office (UNJHRO), of members of the SSF and RMG raping civilians, both in the conflict zone in the East (see section 1.g.) and elsewhere.

### **Prison and Detention Center Conditions**

Conditions in most prisons remained severe and life threatening. The penal system was underfunded, and most prisons were understaffed, undersupplied, overcrowded, and poorly maintained. Serious threats to life and health were widespread and included violence, particularly rape; food shortages; and inadequate food, potable water, space, sanitation, ventilation, temperature control, lighting, and medical care. Death from starvation or disease was not uncommon. Men and women, juveniles and adults, and pretrial detainees and convicted prisoners were often held together. Escapes were common.

Physical Conditions: According to the Joint Prison Coordination (which comprises the Ministry of Justice, the Ministry of Defense, and UN Stabilization Mission in the DRC (MONUSCO)), in 2010 (the latest information available) the number of persons in pretrial detention exceeded 18,000, including an estimated 500 women.

The reported total number of sentenced prisoners did not exceed 4,000, including approximately 100 women. These figures represent several times the number of persons the system was designed to hold. For example, while the prison in Bunia was constructed to house 220 inmates, as of September 24, 1,014 individuals were detained there. Of those, 832 were pretrial detainees and 182 were convicted prisoners. Thirty-one women were among the detained as were six children, living with their parents. This prison had three staff members and eight volunteers.

Even harsher conditions prevailed in small detention centers, which were extremely overcrowded; had no toilets, mattresses, or medical care; and provided detainees with insufficient amounts of light, fresh air, and water. Originally intended to house short-term detainees, they were often used for lengthy incarceration. They generally operated without dedicated funding and with minimal regulation or oversight. Prisons are generally run by their directors and staff as profit-making enterprises, wherein sleeping arrangements are sold to the highest bidder and visits are paid for by family members and prisoners. Informed sources stated that detention center authorities often arbitrarily beat or tortured detainees. For example, prison authorities in Goma beat Mumbere Kisuba, who as a result died on January 29.

Despite President Kabila's 2006 decision to close illegal jails operated by the military or other state security forces, there were no reports of such closures during the year. According to MONUSCO, SSF, particularly the intelligence services and the Republican Guard (RG), continued to operate numerous illegal detention facilities characterized by harsh and life-threatening conditions. Authorities routinely denied family members, friends, and lawyers access to these facilities.

Administration: Authorities denied some inmates access to visitors and often did not permit them to have contact with or submit complaints to judicial authorities (see section 1.d.). After the new government took office in late April, it began to regularly inspect detention centers. For instance, 66 inspections were undertaken in 29 detention centers in August. As a result of these inspections, the justice minister referred a number of cases to the general prosecutor, and seven officials and prison directors were arrested. There were no government ombudsmen serving to protect the rights of prisoners and detainees. There were no reports of authorities preventing prisoners or detainees from practicing their religion. Authorities took no meaningful steps to improve recordkeeping or to use alternatives to incarceration for nonviolent offenders. In general the conditions of women prisoners were no worse than those for men.

Monitoring: On most occasions the government allowed the International Committee of the Red Cross, MONUSCO, and nongovernmental organizations (NGOs) access to official detention facilities. However, it did not allow these organizations access to illegal government-run detention facilities.

RMG detained civilians, often for ransom, but little information was available concerning the conditions of detention (see section 1.g.).

#### **d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest or detention; however, SSF arbitrarily arrested and detained persons on a routine basis.

#### **Role of the Police and Security Apparatus**

The PNC operates under the Ministry of Interior and has primary responsibility for law enforcement and public order. The PNC includes the Rapid Intervention Police and the Integrated Police Unit. The National Intelligence Agency (ANR), overseen by the president's national security advisor, is responsible for internal and external intelligence. Other SSF operating under the control of the Ministry of Defense and primarily responsible for external security, but also fulfilling an internal security role, include the FARDC and the military intelligence service. The presidency oversees the RG, and the minister of interior oversees the Direction Generale de Migration, which is responsible for border control.

Elements of the SSF remained undisciplined and corrupt, and most SSF were undertrained and grossly underfunded, although the situation improved somewhat over the course of the year. The initiative of the European Union Police Mission in the DRC to provide biometric identification cards to the PNC facilitated an unprecedented census of police officers and resulted in some progress toward increased professionalism.

Mechanisms existed to investigate abuses by SSF and address internal discipline problems, although they were weak and ineffective, particularly for addressing misconduct by mid- and high-ranking officials. Some progress was made during the year to reduce impunity within the PNC and FARDC. For example, on July 2, in Mitwaba, Katanga Province, a FARDC officer reportedly ordered the extrajudicial execution of 14 inmates after an attack by the armed group Mai Mai Gedeon. (Six of the victims were allegedly affiliated with Mai Mai Gedeon.). The

alleged perpetrators--a captain and five officers--were arrested and prosecuted; the trial continued at year's end.

In 2011 the government adopted a law that reorganizes judicial police and other organs to improve coordination and justice, but implementation was slow. The FARDC suffers from weak command and control, poor operational planning, low administrative and logistical capacity, lack of training, and questionable loyalty of some of its soldiers, particularly those in the East. Other serious obstacles to the formation of a professional national army included lack of equipment and facilities. Beginning in April the FARDC's capabilities were further weakened by the defection of a large number of soldiers in North Kivu, many of whom were ex-CNDP officers who had previously been integrated into the FARDC (see section 1.g.).

PNC and FARDC units throughout the country regularly engaged in illegal taxation and extortion of civilians. They set up checkpoints to collect "taxes," often arresting individuals who could not pay the demanded bribes and stealing food and money. According to UNJHRO there was a direct correlation between the amount siphoned off from SSF personnel salaries and the level of human rights abuses committed by SSF personnel. Abuses by FARDC soldiers were dramatically reduced in areas where they were properly paid and fed.

Impunity in the SSF remained a widespread problem, exacerbated and abetted by the weaknesses of the justice system (see section 1.e.). However, the government increasingly prosecuted and disciplined security force personnel for abusing civilians. Nevertheless, military justice institutions continued to face challenges, such as a severe shortage of military judges and prosecutors. Magistrates, prosecutors, and investigators were poorly trained, had few or no resources for investigations, and had limited access to legal codes. In addition the military justice system was often subjected to political and command interference, and security arrangements for magistrates in conflict-affected areas were inadequate. In some instances magistrates who attempted to investigate politically connected, high-level FARDC officers were threatened, as were witnesses providing information to judicial officers.

The government continued to maintain human rights committees with MONUSCO in several provinces. Depending on the province, the committees were composed of military and police officers, judicial authorities, military prosecutors, MONUSCO human rights officers, and MONUSCO child protection officers. Committees met regularly, normally on a monthly basis, to monitor, investigate,

and develop strategies to combat human rights abuses. Some observers claimed the committees produced weak results overall.

### **Arrest Procedures and Treatment While in Detention**

By law arrests for offenses punishable by more than six months' imprisonment require warrants. Detainees must appear before a magistrate within 48 hours. Authorities must inform those arrested of their rights and the reason for their arrest, and they may not arrest a family member instead of the individual being sought. Authorities must allow arrested individuals to contact their families and consult with attorneys. In practice security officials routinely violated all of these requirements. Many detainees were not granted court hearings within the required 48 hours. While the law provides for a bail system, it generally did not function, and detainees who were unable to pay were rarely able to access legal counsel. Authorities often held suspects in incommunicado detention, including in illegal facilities run by the ANR and the RG, and refused to acknowledge these detentions.

Arbitrary Arrest: Security personnel sometimes arrested and detained perceived opponents and critics of the government, occasionally under the pretext of state security, and often denied due process, such as access to an attorney (see sections 1.a., 2.a., and 5). For example, the SSF arrested journalist Pierre-Sosthene Kambidi on August 28 after he reported on the defection of FARDC Colonel John Tshibangu in a manner that some considered unfavorable to the government.

Police sometimes arbitrarily arrested and detained persons without filing charges to extort money from family members or because administrative systems were not well established.

The military intelligence agency, DEMIAP, arbitrarily arrested individuals and subjected them to prolonged arbitrary detention.

Pretrial Detention: Prolonged pretrial detention, often ranging from months to years, remained a problem. Trial delays were due to factors such as judicial inefficiency, administrative obstacles, corruption, financial constraints, and staff shortages. Prison officials often held individuals after their sentences had expired due to disorganization, inadequate records, judicial inefficiency, or corruption. Some prisoners were also unable to pay fines as their sentences required and instead remained in prison indefinitely after they had served their sentences.

### **e. Denial of Fair Public Trial**

While the law provides for an independent judiciary, in practice the judiciary was corrupt and subject to influence. Judges were poorly and irregularly compensated and subject to influence and coercion by officials and other influential individuals. A shortage of judges hindered the government's ability to provide expeditious trials. Further, judges sometimes refused to be transferred to remote areas of the country due to lack of housing and difficult living conditions. Authorities routinely did not respect court orders. Disciplinary boards created under the High Council of Magistrates began ruling on numerous cases of corruption and malpractice each month; many of these rulings included the firing or fining of judges and magistrates.

### **Trial Procedures**

The constitution provides for a presumption of innocence. However, in practice most defendants were assumed guilty and had to prove their innocence. Rarely did a presiding judge require the prosecution to prove its case. Authorities are required to inform the defendant of the charges, including in writing and interpreted as needed. Counsel is not required to be provided in most cases, with the exception of murder trials. While the government regularly provided legal counsel in capital cases, lawyers often did not have adequate access to their clients. During trials defendants have the right to be present and to be represented by a defense attorney. These rights were occasionally disregarded in practice. Adequate time was generally provided to the defendant to prepare a defense. The country does not use a jury system. The public could attend trials at the discretion of the presiding judge. Defendants have the right to a trial within 15 days of being charged. This time period can be extended to a maximum of 45 days. Authorities only occasionally abided by this requirement. The law requires that defendants have access to government-held evidence, but this right was irregularly observed. Defendants did not regularly exercise their right to confront witnesses against them and to present evidence and witnesses in their own defense because witnesses were often reluctant to testify for fear of retaliation. Defendants are not compelled to testify or confess guilt. Defendants have the right to appeal, except in cases involving national security, armed robbery, and smuggling, which the Court of State Security usually adjudicates.

### **Political Prisoners and Detainees**

There were reports of political prisoners and detainees. Voix des Sans-Voix, a domestic NGO, reported 213 political detainees, approximately the same number as in 2011. While the government permitted access to some of these prisoners by international human rights organizations and MONUSCO, authorities consistently denied access to detention facilities run by the RG and the ANR (see section 1.c.).

### **Civil Judicial Procedures and Remedies**

Individuals can seek civil remedies for human rights violations within the civil court system. However, individuals preferred to seek redress in the criminal courts and rarely utilized civil courts to address human rights violations.

#### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

Although the law prohibits arbitrary interference with privacy, family, home, or correspondence, SSF routinely ignored these provisions. SSF harassed and robbed civilians, entered and searched homes and vehicles without warrants, and looted homes, businesses, and schools. Many of those responsible for such acts remained unidentified and unpunished. The most common offense by the FARDC, as documented by the UN for the month of July, was the violation of the right to property, particularly looting.

#### **g. Use of Excessive Force and Other Abuses in Internal Conflicts**

Both local and foreign-influenced conflicts continued in mineral-rich parts of the East, particularly in North Kivu and South Kivu, Katanga, Bas Uele and Haut Uele districts of Orientale Province, and to a lesser degree, the Ituri District of Orientale. Conflict, centered around Rutshuru, North Kivu, reignited when former CNDP elements, who had been integrated into the FARDC, began defecting in April and formed the “March 23 Movement,” or M23 (which occasionally used the name Congolese Revolutionary Army). The defection of forces loyal to former CNDP leaders Bosco Ntaganda and Sultani Makenga led the SSF to shift its focus and forces to North and South Kivu, where the M23 operated, creating a security vacuum in areas from which FARDC elements withdrew. The UN Group of Experts on the DRC (UNGOE), HRW, and other observers reported that M23 received a wide range of support from the Rwandan government and, to a lesser extent, from individuals in Uganda.

Foreign RMG, including Forces Democratiques de Liberation du Rwanda (FDLR) and the LRA, indigenous RMG that were supported by foreign governments such

as the M23, and some Mai-Mai (local militia) groups increasingly formed loose coalitions during the year and continued to battle government forces and each other and to attack civilian populations. Alliances frequently changed between local militias in apparent attempts to profit from a dynamic situation. Many Mai Mai groups took advantage of the SSF focus on the M23 and the resulting security vacuum. Consequently, a sharp increase occurred in the number of human rights violations in both North Kivu and South Kivu, committed in particular by the M23 in Rutshuru Territory, Mai Mai Lumumba in Lubero Territory, and Raia Mutomboki and Nyatura in South Kivu and North Kivu. The intensified fighting in the East, which impeded humanitarian aid in some areas, increased the number of displaced persons to more than 2.4 million by year's end, exacerbating an already severe humanitarian crisis.

MONUSCO continued to assist the government in seeking to establish and maintain peace and security, particularly in the East. In June the UN Security Council extended MONUSCO's mandate for 12 months and reiterated its mandate to protect civilians. At year's end MONUSCO was comprised of approximately 19,000 peacekeepers, military observers, and police.

Killings: According to reports by UN agencies and NGOs, SSF summarily executed or otherwise killed civilians. Impunity remained a significant problem, and several senior SSF officers continued to hold their positions despite credible evidence of their direct involvement in serious human rights abuses or failure to hold subordinates accountable for such abuses (see section 1.d.).

Abductions: UN agencies and NGOs reported that RMG and some SSF abducted individuals. Generally, individuals were abducted to serve as porters, guides, or in some other capacity.

For additional information see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

Physical Abuse, Punishment, and Torture: UN agencies and NGOs also reported that SSF arrested, illegally detained, raped, and tortured civilians. The most common offense, by the FARDC in particular, was the looting of villages during military actions against RMG.

There were credible reports from the UNJHRO and other human rights organizations that between November 20 and November 30, 2012 SSF committed multiple killings, rape and plunder in and around the town of Minova, North Kivu.

At least 126 women and girls were reported raped in the incident. Two soldiers were arrested in November in connection with the rapes in Minova. At year's end the government's investigation was ongoing.

RMG committed numerous serious abuses, especially in rural areas of North Kivu, South Kivu, and Orientale, killing, raping, and torturing civilians. Increasingly during the year, RMG forcibly recruited individuals, including children, to serve as porters, guides, and combatants. In certain areas in the East, RMG looted, extorted, and illegally taxed and detained civilians, often for ransom.

For example, on June 24 and 25, nearly 100 fighters suspected of belonging to Mai Mai Lumumba twice attacked the Okapi Wildlife Reserve in Mambasa Territory. At least six civilians and six wardens were killed, and at least 51 women were raped. The attackers also looted the village. More than 100 individuals were abducted to be porters, and 22 women were used as sex slaves. Seventeen of these 22 were presumed to be in the perpetrators' custody at year's end. The military prosecutor opened an investigation and issued an arrest warrant for "Morgan," the reported leader of the Mai Mai Lumumba group.

No progress was made in the trial of the seven surviving individuals accused of organizing the 2010 Walikale mass rapes. In July and August 2010, a coalition of the FDLR, Mai-Mai Cheka, Patriotic Forces for the Liberation of Congo, and combatants led by Colonel Emmanuel Nsengiyumva, a former member of the CNDP and FARDC, allegedly raped 303 women, children, and men in 13 villages in Walikale, North Kivu. The perpetrators also looted more than 1,000 homes and abducted 116 civilians, whom they subjected to forced labor. According to the UN, one of the villages attacked, Luvungi, where more than 100 persons were raped, was a lucrative target because it was a mining hub located only four miles from gold mines. One arrested individual escaped Goma's central prison when the city was overtaken by M23 on November 20. All seven accused in the case remained at large. By year's end no date had been set for the trial to reconvene.

During the year men, women, and minors were raped as part of the violence among RMG and between RMG and the FARDC. Statistics for rape, especially rape of males, were difficult to compile. Heal Africa, an NGO headquartered in Goma, recorded 178 male and 2,339 female survivors of sexual violence, including 745 minors, in 14 clinics in North Kivu in the first six months of the year.

Child Soldiers: The recruitment and use of children in North Kivu, South Kivu, and Orientale provinces by RMG and the FARDC continued (particularly within

the poorly integrated elements, including ex-CNDP). The government took steps to reduce and limit the use of child soldiers, including by signing and initiating the implementation of a UN-backed Action Plan to end the recruitment and use of child soldiers, starting awareness campaigns for FARDC personnel, and working with partner organizations to ensure children were not recruited by the FARDC and to develop training materials. In addition FARDC commanders made an increased effort to remove child soldiers, particularly when FARDC elements retook command of units that had been led by ex-CNDP commanders. In multiple instances incoming FARDC commanders requested assistance from MONUSCO, UNICEF, or other humanitarian organizations and transferred children to their care.

Also see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

Other Conflict-related Abuses: Fighting between the FARDC and RMG continued to displace populations and limit humanitarian access to conflict areas, particularly in the eastern part of the country. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), there were 215 security incidents against humanitarian agency personnel during the year. All but 18 of those were in North and South Kivu. (From January to September 2011, there were 116 security incidents against humanitarian workers.)

In North Kivu and South Kivu, RMG and elements of the FARDC continued to illegally exploit and trade natural resources for revenue and power. Clandestine trade in minerals and other natural resources facilitated the purchase of weapons and reduced government revenues. The natural resources most exploited were the minerals cassiterite (tin ore), coltan (tantalum ore), wolframite (tungsten ore), and gold, followed by timber, charcoal, and fish. According to media and other reports, the LRA began trafficking in ivory from elephants in Garamba National Park to finance its operations.

The illegal trade in minerals continued to be both a symptom and a cause of the conflict in the Kivu provinces. However, due to enhanced government regulation of the mining and trade of cassiterite and coltan, little legal exportation from North Kivu and South Kivu took place during the year. RMG continue to control and threaten remote mining areas in North Kivu and South Kivu. The M23 imposed illegal taxation on vehicular trade in parts of North Kivu, ensuring profits from smugglers.

The law prohibits the FARDC and RMG from engaging in the mineral trade. However, the government did not effectively enforce the law. Criminal involvement by FARDC units and RMG included protection rackets (such as protection fees paid by mining pit managers to avoid pillage or to facilitate smuggling), indirect commercial control (including the use of illegal “tax” revenues to buy and sell minerals near mining sites), and direct coercive control (including pillage). In addition FARDC units and RMG routinely extorted illegal taxes from civilians and at times forced civilians to work for them or relinquish their mineral production.

The UNGOE reported that several RMG and units of SSF profited from illegal trade and exploitation in the mineral sector and that smuggling of minerals through Rwanda and Burundi increased. In July the government authorized all export houses, including TTT/CMM and Huaying Trading Company (which it had ordered closed in 2011), to export their “stock” minerals that originated in Maniema Province, which it deemed conflict-free. The UNGOE reported that exports resumed and that both TTT/CMM and Huaying used this “stock” provision to mix and insert minerals of indeterminate origin into their stock exports.

There were credible reports that the following armed groups perpetrated serious human rights abuses in DRC during the year: Alliance des Patriotes pour un Congo Libre et Souverain (APCLS), ADF/NALU, Coalition of Ituri Armed Groups, FDLR, Forces Nationales de Liberation, Forces de la Defense Congolaise (FDC-Luanda), Forces de Resistance Patriotique d’Ituri, LRA, M23 (aka Congolese Revolutionary Army), Nyatura, Patriotes Resistants Congolaise, Raia Mutomboki, and the following Mai Mai groups: Cheka, Gedeon, Kifuafula, Lumumba, Morgan/Simba/Manu/Luc, Pareco, Shetani, and Yakutumba.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press. In practice the government rarely infringed on individuals’ freedom of speech unless exercised in the media. According to media-focused NGOs, freedom of the press declined during the year. Generally, individuals could privately criticize the government, its officials, and other private citizens without being subject to official reprisals. However, certain regulating bodies intimidated journalists and publishers into practicing self-censorship. Public criticism of government officials and government conduct or decisions regarding issues such as conflict and insurgencies, management of

natural resources, and corruption sometimes resulted in harsh responses, often from the ANR, and, less frequently, from provincial authorities.

Freedom of Speech: While the law provides for freedom of speech, it potentially inhibits this freedom through its prohibition on insulting the head of state. In addition the 2004 penal code criminalizes malicious and public slander. In practice these laws were not enforced, and the government regularly respected its citizens' freedom of speech, provided that it was not exercised in the media.

The Conseil Supérieur de l'Audiovisuel et de la Communication (CSAC) is mandated to guarantee freedom and protection of the press and to ensure equal access for political parties, associations, and citizens to official means of communication and information. In practice, CSAC lacked the capacity to monitor adequately all of the media outlets operating across the country, and media, human rights, and other organizations regularly questioned its power, independence, and neutrality. In addition legal ambiguities created conflict between the CSAC and the Ministry of Media, which according to the 1996 law on the press has the power to suspend media activities. CSAC's founding legislation, and the powers it outlines for the regulatory body, were presumed to supplant this 1996 law, but it has never been amended.

A large and active private press (both pro- and antigovernment) functioned throughout the country, and the government licensed a large number of daily newspapers. According to the Ministry of Communications, 134 television stations, 463 radio stations, and 445 newspapers were registered as of August. The government required newspapers to pay a one-time license fee of 250,000 Congolese francs (approximately \$270) and complete several administrative requirements before publishing. Many journalists lacked professional training, received little or no set salary, and were willing to work for wealthy individuals, government officials, and politicians who paid for specific articles.

Radio remained the most important medium of public information due to limited literacy and the relatively high cost of newspapers and television. The state owned three radio stations and three television stations, and the president's family owned two television stations. The majority of media outlets were owned or operated by government officials and politicians.

In 2010 government authorities added a provision in journalists' letters of accreditation that the military code of justice (concerning criminal penalties, including imprisonment) applied to any foreign journalists who committed press

offenses. In response international journalists expressed concern over their ability to report on sensitive subjects such as the conflict in the East and corruption. At year's end there were no known cases in which this policy was applied.

Violence and Harassment: On June 14, CSAC issued a directive urging journalists to report responsibly on the conflict in the East and to commit to promoting national unity as they carry out their duties. The directive warned that media organizations whose reports might be construed as attempts to demoralize the military or the population could face charges of treason. While the order was primarily directed at deterring hate speech and ethnic attacks (which are illegal under both the 1996 law on the press and the 2011 law that established the CSAC), many in the media community perceived it as an indirect way to undermine the independent media's ability to report freely on conflict-related developments. Its impact was felt by the most popular radio station across the country, Radio Okapi, an independent radio station jointly founded by MONUSCO and the Foundation Hirondelle with support from various international donors. Okapi's journalists and staff received multiple threats from unidentified sources, and CSAC cut its signal on December 1. While CSAC reported the signal was cut because Okapi had not submitted necessary paperwork, others argued that CSAC acted after Okapi broadcast an interview with M23's political leader. Radio Okapi's signal was restored on December 4.

SSF beat, arbitrarily arrested, harassed, and intimidated local journalists because of their reporting. According to Journaliste en danger (JED), six journalists were beaten and 23 were threatened or harassed during the year. For example, JED reported that Franck Zongwe, a cameraman with Vision Shala TV, was beaten by national police officers after photographing an accident involving the police. Zongwe later recovered his camera, which the police chief had confiscated.

In addition JED reported an increase (from 160 in 2011 to 175 in 2012) in attacks on press freedom. These attacks included journalists who were detained, questioned, attacked, mistreated, tortured, threatened or harassed, or subjected to administrative, judicial, or economic pressure, as well as obstacles to the free circulation of information. Notably, no journalists were killed or disappeared during the year. However, there were increases in journalists questioned (46 in 2012 compared with 22 in 2011) and restrictions on free circulation of information (75 in 2012 versus 43 in 2011). Also noteworthy, there were 22 fewer incidents of journalists being attacked, mistreated, or tortured (six cases in 2012 and 28 cases in 2011).

Censorship or Content Restrictions: While CSAC is, by law, the only institution with the authority to restrict broadcasts, the government, including SSF and provincial officials, also exercised this power in practice. For example, on July 12, the minister of media suspended the director of the national media outlet, Radio Television Nationale Congolaise (RTNC), for allowing it to broadcast a meeting of the pro-Kabila People's Party for Reconstruction and Democracy (PPRD) that was purportedly characterized by "xenophobic rhetoric." According to the government, some PPRD members made statements that "undermine national unity and come under the law that condemns incitement to ethnic and tribal hatred." In addition, on December 31, 2011, authorities suspended Radio France Internationale's broadcasts for having broadcast opposition leader Etienne Tshisekedi's New Year's national address alongside that of President Kabila. According to the information minister, giving Tshisekedi's speech a status equivalent to the president's supported Tshisekedi's "anticonstitutional comedy."

The Media Ministry shut down pro-opposition Canal Futur TV and Radio Television Lisanga for reasons not made clear. The ministry variously cited administrative or security reasons as the rationale for these closures, but according to media watchdogs, it failed to present credible evidence to support its claims.

Libel Laws/National Security: The national and provincial governments continued to use criminal defamation and insult laws to intimidate and punish those critical of the government. For example, on April 15, the PNC detained Sebastien Mulumba and Mbuyi Mukadi of *Kisangani News* after they published an unfavorable article about a national deputy. In addition the government did not permit the broadcasting of the documentary film by Thierry Michel, *The Chebeya Affair, a Crime of the State?* (L'affaire Chebeya, un crime d'Etat?) According to the Federation Internationale des Ligues des Droits de l'Homme and the Organisation Mondiale Contre la Torture, former minister of justice and human rights Luzolo recommended that the film be suppressed because he believed it contained false allegations against the president.

Nongovernmental Impact: RMG and their political wings regularly restricted the press and journalists operating in the areas in which they operated. For example, JED reported that on November 20, three Kinshasa-based stations, RTNC, Digital Congo, and Radio Television du Groupe l'Avenir had their Goma-based relay stations cut and transferred to M23 control. In addition M23 elements and leaders threatened various journalists, including Jean-Baptiste Kambale, the director of Community Radio Ushirika, in Rutshuru on September 25 and again on October 15

after he broadcast a report on TV5 Monde on the M23 rebels and their attacks on the civilian population.

### **Internet Freedom**

The government did not restrict access to the Internet or monitor e-mail or Internet chat rooms. The CSAC law stipulates that bloggers must obtain authorization from CSAC. At year's end CSAC had not refused authorization to any bloggers.

Private entrepreneurs made Internet access available at moderate prices through Internet cafes in large cities throughout the country. According to the International Telecommunication Union, 1.2 percent of individuals used the Internet in 2011.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The constitution provides for freedom of peaceful assembly. The government sometimes restricted this right.

The government requires organizers of public events to register with local authorities in advance. To deny authorization, authorities must do so in writing within five days of registration. State security forces occasionally acted against unregistered protests, marches, or meetings.

On occasion authorities denied permission to hold demonstrations, in particular to opposition parties and their civil society allies. For example, according to some observers, on February 16, SSF used force and tear gas to disperse participants in a march organized by the Council of Catholic Laymen in the Congo to commemorate the 20th anniversary of the Limete Catholic massacre by presidential guards. The day before the march, authorities announced that the march was prohibited due to the organizers' failure to notify them of their plans. A limited number of people marched anyway and were met with a significant police presence. Three individuals were arrested, but no injuries were reported.

The government continued to investigate violence around elections, including a November 2011 incident in which HRW reported that 12 opposition supporters and

bystanders were killed and 41 individuals injured when rival supporters gathered to greet both Etienne Tshisekedi and President Kabila at Kinshasa's N'djili Airport.

### **Freedom of Association**

The constitution provides for freedom of association. In practice the government generally respected this right.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation. The government sometimes restricted these rights.

In-country Movement: SSF--and to a greater extent RMG--established barriers and checkpoints on roads and at ports, airports, and markets, ostensibly for security reasons, and routinely harassed and extorted money from civilians for supposed violations, sometimes detaining them until they or a relative paid. The government required travelers to submit to immigration procedures during domestic travel at airports, ports, and when entering and leaving towns.

Local authorities continued to collect illegal taxes and fees from boats traveling on many parts of the Congo River. There were also widespread reports of FARDC soldiers and RMG extorting fees from persons taking goods to market or traveling between towns (see section 1.g.).

SSF sometimes required travelers to present official travel orders from an employer or government official, although the law does not require such documentation. SSF often detained individuals traveling without official orders in order to pressure bribes.

Foreign Travel: As a result of inadequate administrative systems, passport issuance was often irregular. Officials regularly accepted bribes to expedite the application process.

**Internally Displaced Persons (IDPs)**

Due to heightened conflict in the East, the number of IDPs increased to more than 2.4 million throughout the country, according to the Office of the UN High Commissioner for Refugees (UNHCR). On December 11, OCHA reported that more than 900,000 people were displaced in North Kivu. Of those, 500,000 were displaced following the start of the M23 armed conflict in April. Displacement also remained a problem in South Kivu, Orientale, Equateur, Katanga, and Maniema provinces. The conflict in the East and the actions of numerous RMG profiting from the increased insecurity were considered the primary causes of displacement.

The government was not able to adequately protect or assist IDPs, who were forced to rely heavily on humanitarian organizations. The government generally allowed domestic and international humanitarian organizations to provide assistance to IDPs. However, fighting by RMG and a general lack of security impeded their efforts.

As of November 30, approximately 105,000 IDPs lived in 31 sites and camps managed by international NGOs and coordinated by the UNHCR. Those residing outside camps stayed with host families, friends or relatives, found shelter in schools or other buildings, or found refuge in the forest.

Some IDPs in North Kivu were victims of abuses, including sexual exploitation of women and children, abduction, forced conscription, looting, plundering of crops, illegal taxation, and general harassment, by all factions engaged in fighting and by other civilians. For example, the UNHCR reported more than 7,000 protection incidents between April and July 15, noting that most of the victims were villagers and IDPs. Displaced women and children were vulnerable to abuses, including rape and forced recruitment, by the FARDC, RMG, and civilians.

**Protection of Refugees**

As of November there were 137,164 refugees in the country from seven adjacent countries, the majority from Angola and Rwanda. In addition there were 441,598 Congolese refugees recorded as residing in other African countries, the majority of whom were in Uganda, the Republic of the Congo, Tanzania, Rwanda, and Burundi.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a rudimentary system for providing protection to refugees. In practice it granted refugee and asylum status and provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

The government provided temporary protection to an undetermined number of individuals who may not qualify as refugees.

The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers with welfare and safety needs. The government provided assistance in the safe, voluntary return of refugees to their homes by allowing their entry into the country and facilitating their passage through the immigration system. In establishing security mechanisms, government authorities did not treat refugees differently than citizens.

Through the application of the cessation clauses of the 1951 Convention and the 1969 Organization of African Unity Convention, Angolans ceased to be refugees on June 30. Between November 2011 and that date, 17,111 refugees returned voluntarily to Angola. An additional 70,000 former Angolan refugees remained in the country, 22,000 of whom indicated a desire to return to Angola and 48,000 of whom expressed a desire to integrate locally in the DRC. The government agreed to issue temporary residence permits at a significantly reduced cost to former refugees wishing to integrate locally.

As of November 30, 10,379 refugees had returned voluntarily to Rwanda and 480 refugees had returned voluntarily to Burundi.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution provides citizens the right to change their government peacefully, and in 2011 citizens exercised this right through presidential and parliamentary elections based on universal suffrage.

#### **Elections and Political Participation**

Recent Elections: Presidential and parliamentary elections were held in November 2011, and Joseph Kabila was declared president in December. Several

international observer missions judged that the results of the elections “lacked credibility,” due largely to irregularities and a lack of transparency in the vote tabulation process.

On January 27, after multiple delays, the National Independent Electoral Commission (CENI) announced partial results for the parliamentary elections. The CENI released complete provisional results on February 2, announcing 483 provisional winners and referring the remaining 17 seats to the Supreme Court for adjudication and possible annulment due to significant irregularities. By early February the Supreme Court had approximately 5,000 cases to consider, in which approximately 340 seats were contested. Many of these cases reportedly had little merit, were presented without documentation and with no legal counsel, and were dismissed on procedural grounds. On April 27, the Supreme Court finalized its review, certified the results of 482 electoral contests and invalidated 32 of the CENI’s provisional results. The court also ordered that the CENI release the names of 10 winners of remote districts in the center of the country and that new elections be held for seven seats representing North Kivu’s Masisi Territory and one seat representing Equateur’s Befale District. The CENI released the names of the winners of the 10 remote districts on June 19. On September 20, after giving the CENI two extensions to comply with its directive to rerun the elections, the Supreme Court ordered the CENI to publish the names of those who had nominally won the seats on November 28, 2011. At year’s end the Befale elections had not been conducted.

From February 16 to 29, the National Assembly held its extraordinary session in which the secretary general validated the mandates of the elected officials. A number of members of the UDPS party, the main opposition party, chose not to attend to protest the outcome of the election and to support the claim made by Union for Democracy and Social Progress (UDPS) leader Etienne Tshisekedi that he had been legitimately elected president.

On April 18, President Kabila named Augustin Matata Ponyo as prime minister. Matata named his cabinet on April 28.

On April 19, the CENI completed its review of its performance during the national election.

By year’s end a date for provincial and local elections, originally scheduled for early 2012, had not been rescheduled.

Political Parties: The 2007 law on the status and rights of the political opposition recognizes opposition parties represented in parliament as well as those not in parliament. The law also details the various “sacred” rights and obligations of opposition parties. Although political parties were able to operate most of the time without restriction or outside interference, opposition members were sometimes harassed. For example, UDPS secretary general Jacquemain Shabani was arrested at N’djili airport on February 7 when trying to depart the country. He alleged he was mistreated by ANR, while authorities claimed he was carrying “incriminating documents,” including leaflets encouraging SSF to disobey authorities and a false passport. He was released one day later.

Participation of Women and Minorities: At year’s end women held more than 10 percent of the seats in the National Assembly (49 of 482) and approximately 6 percent in the provincial assemblies (43 of 690). The 2011 elections produced no significant change with respect to female representatives. Six of the 108 senators were women. Among the 37 government ministers and vice ministers, six were women, a significant proportional increase in women in the government formed in 2012 (from 9 percent to 16 percent).

Some ethnic groups, including Pygmies, were not represented in the Senate, the National Assembly, or provincial assemblies. Their lack of political participation may have been a result of the vast ethnic diversity as well as societal discrimination. The enslavement of and discrimination against Pygmies continued in some areas and contributed to their lack of political participation (see section 5).

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for official corruption. In 2002 the government established a watchdog agency for the enforcement of the code of professional ethics, which promotes ethical behavior among civil servants in the workplace. The Court of Accounts and the Congolese Anti-Corruption League NGO work closely on corruption matters. In 2007 the government ratified the Southern African Development Community Protocol Against Corruption.

Nevertheless, the authorities did not adequately implement the law, and corruption remained endemic throughout the government and SSF. Bribery was routine in public and private business transactions, especially in the areas of government procurement, dispute settlement, and taxation. The public perceived the government to be widely corrupt at all levels. According to the World Bank’s

most recent Worldwide Governance Indicators, official corruption was a severe problem.

Corruption in the judicial and penal systems continued to be severe (see section 1.c.). In rural areas where there were often no courts within a 300-mile radius, justice was administered on an ad hoc basis, often by local village authorities with little oversight, creating opportunities for corruption and abuse of power.

Weak financial controls and a poorly functioning judicial system encouraged officials to engage in corruption with impunity. The government began paying many civil servants and security forces in major cities by direct deposit, eliminating an important means of graft. Previously the government utilized a cascading cash payment system in which salaries were dispersed to senior officials for payment to the officials as well as their staffs, continuing downward until all employees were paid. Nevertheless, wages for public employees were inadequate, and officials sought bribes to augment their income.

For those security forces not being paid by direct deposit, embezzlement of soldiers' salaries by FARDC commanders was common and appeared to contribute to extortion, looting, and other abuses by soldiers against citizens (see section 1.d.).

The law criminalizes money laundering and terrorist financing and provides for a Financial Intelligence Unit. However, limited resources and a weak judicial system hampered the government's ability to enforce anti-money laundering regulations. Further, local institutions and personnel lacked the training and capacity to enforce the law and its attendant regulations fully.

Reports, including the UNGOE report, indicated that the mining sector continued to lose millions of dollars because of official corruption at all levels. Additional revenue losses were due to illegal exploitation of minerals in the East by the FARDC (although illegal exploitation by RMG was a more significant problem than exploitation by the FARDC) (see section 1.g.).

The International Monetary Fund (IMF) raised concerns about the nontransparency of mining contracts entered into by the state-owned mining company Gecamines. The IMF and the World Bank noted that Gecamines appeared to be concluding the sale of public assets without adherence to transparency principles. The IMF allowed its Extended Credit Facility program to expire without successful conclusion because the government failed to publish the terms of a controversial mining contract and did not adhere to the New York convention of arbitration.

The Ministry of Justice and Human Rights created an internal anticorruption team in 2011. According to one high level internal source, this structure lacked independence and, therefore, the power to fight corruption.

Government authorities and wealthy individuals at times used antidefamation laws that carry criminal punishments to discourage media investigation of government corruption (see section 2.a.).

The law requires the president and ministers to disclose their assets to a government committee. President Kabila and all ministers and vice ministers reportedly did so during the year. However, the data were not made public.

The law does not provide for public access to government-held information. In practice the government did not grant access either to citizens or noncitizens, including foreign media.

In 2008 the country was accepted as a candidate in the Extractive Industries Transparency Initiative (EITI), an international voluntary initiative designed to increase transparency in transactions between governments and companies in the extractive industries. The government received a final 18-month extension to complete validation by March 1, 2013. On July 13, the EITI executive committee announced that fiscal evasion remained rampant in the extractive industries, a condition that was expected to have an adverse impact on the country's ability to achieve EITI compliance.

## **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

While a wide variety of domestic and international human rights organizations investigated and published findings on human rights cases, elements of the SSF continued to harass, beat, intimidate, and arbitrarily arrest and detain domestic human rights advocates and domestic NGO workers. Officials from the Ministry of Justice and Human Rights met with domestic NGOs and sometimes responded to their inquiries.

Domestic human rights NGOs were particularly vulnerable to harassment, arbitrary arrest and detention, and other abuses by SSF when reporting on or supporting victims of abuses by SSF and when spotlighting the illegal exploitation of natural resources in the East. For example, on January 5, the house of a human rights

defender was burned under suspicious circumstances after he publicly questioned election irregularities and the government's political will to combat impunity. By year's end no progress had been made on the investigation, and no charges had been filed.

UN and Other International Bodies: The government allowed international humanitarian agencies access to conflict zones, permitted many UN human rights officers to investigate abuses, and invited UN special rapporteurs and representatives to visit the country to assess the human rights situation and provide technical assistance. However, the government did not take meaningful steps to implement their recommendations. There were instances in which authorities obstructed the work of UN human rights monitors and special rapporteurs.

The government generally cooperated with international NGOs that published reports on human rights and humanitarian issues and permitted their investigators access to conflict areas. These human rights and humanitarian aid workers operated in unstable environments where RMG were actively engaged and were sometimes attacked. OCHA documented 123 incidents (almost 60 percent of all incidents) against humanitarian workers during the year in North Kivu.

The government generally cooperated with multilateral organizations. According to the UN, child protection officers were granted increased access to FARDC units, particularly in the East. However, while authorities continued to permit international humanitarian agencies access to conflict areas, authorities denied the agencies access to prisons run by the ANR and the RG located in these areas (see section 1.g.).

The government cooperated with the International Criminal Court (ICC), which, in its first completed trial, convicted Thomas Lubanga Dyilo on March 14 for conscripting, enlisting, and using child soldiers in 2002 and 2003. The ICC again called upon the government to arrest Bosco Ntaganda, who on July 13 became subject to a second arrest warrant for three counts of crimes against humanity, including murder, rape, and persecution, allegedly committed between September 1, 2002, and September 30, 2003, in Ituri, Orientale Province. President Kabila publicly committed on April 11 to arrest Ntaganda and bring him to trial in the DRC, but Ntaganda and several hundred soldiers deserted and launched a mutiny in North Kivu that continued at year's end.

The government continued to cooperate with the International Criminal Tribunal for Rwanda (ICTR), which operated freely in areas under government control,

seeking several individuals indicted for involvement in the 1994 Rwandan genocide. In May 2011 Congolese authorities arrested Bernard Munyagishira, allegedly responsible for leading the genocide in the border town of Gisenyi, Rwanda, directly across the border from Goma, North Kivu. On June 7, the ICTR transferred Munyagishira's case to Rwandan authorities. In addition on May 3, Ministry of Justice authorities instructed national Interpol officials to proceed with the arrest of Ladislav Ntaganzwa, who is subject to an ICTR warrant for, among other crimes, genocide, crimes against humanity, and violations of the Geneva Conventions. Ntaganzwa's case was also transferred to Rwandan authorities on May 9.

Government Human Rights Bodies: On October 10, the National Assembly adopted a law to create a Human Rights Commission. This follows the 2008 adoption of a similar law by the Senate. On December 5, the Senate transferred the harmonized legislation to the Supreme Court for a constitutionality review. Although the government organized an Interministerial Human Rights Committee, which meets on an ad hoc basis to address high-profile issues, its effectiveness remained limited.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution prohibits discrimination based on ethnicity, gender, or religion. The government did not enforce these prohibitions effectively.

In many cases throughout this section data from prior years are presented because more recent data were not available. In all such cases observers believed that the situation had not materially improved during the year.

### **Women**

Rape and Domestic Violence: The law criminalizes rape, but the government did not effectively enforce this law, and rape was common throughout the country. The law defines rape to include male victims, sexual slavery, sexual harassment, forced pregnancy, and other sexual crimes, but not spousal rape. It also prohibits compromise fines and forced marriage, allows victims of sexual violence to waive appearance in court, and permits closed hearings to protect confidentiality. The minimum penalty prescribed for rape is a prison sentence of five years.

SSF, RMG, and civilians perpetrated widespread and sometimes mass rape of women and girls (see section 1.g.). Between December 2010 and November 2011,

the UN reported a total of 625 cases of sexual violence perpetrated by parties to the conflict in North Kivu, South Kivu, and Orientale provinces. Of these, 602 were against women and girls and 23 were against men and boys. The UN reported that almost half of the incidents were attributed to the FARDC and the PNC, noting that this high proportion could be explained by the greater access human rights monitors had to areas under SSF control. Separately, the Ministry of Gender reported 11,672 cases of sexual- and gender-based violence in 2011 in North Kivu, South Kivu, Ituri district, Bandundu, Bas-Congo, Katanga, and Kinshasa. Of these cases, 10,037 were reported in North Kivu, South Kivu, and Ituri.

Statistical information on rape remained fragmented and incomplete. Statistics often came from international and local NGO service providers and therefore were skewed towards priority implementation areas. For example, the Ministry of Gender was unable to supply information for Equateur, Kasai Occidental, Kasai Oriental, and Maniema provinces.

Prosecutions for rape and other types of sexual violence remained rare, although there were indications that the situation had improved. The UN reported that through its support, military justice prosecuted 355 cases of serious human rights violations from July 2010 to June 2011, an increase from 337 during the previous 12 months. UN sources attributed this increase to the rise in prosecutions for sexual violence crimes and noted that this trend continued throughout the year. Nevertheless, both victims and the UN Human Rights Council's (UNHRC) special rapporteur on violence against women cited widespread impunity as the main reason for sexual violence. Most victims did not have sufficient confidence in the justice system to pursue formal legal action or feared subjecting themselves to further humiliation and possible reprisal.

It was common for family members to pressure a rape victim to remain silent, even with health care professionals, to safeguard the reputations of the victim and her family. Victims of SGBV faced enormous social stigma. After a sexual assault, many young women and girls were labeled as unsuitable for marriage, and married women were frequently abandoned by their husbands. Some families forced rape victims to marry the men who raped them or to forego prosecution in exchange for money or goods from the rapist.

Domestic violence was common throughout the country. For example, according to the 2007 Demographic Health Survey (DHS), 71 percent of women reported some form of sexual, mental, or physical abuse. Other sources found that 86 percent of women in Equateur Province were victims of domestic abuse. While

there were few recent statistics available regarding the extent of domestic abuse, a Kinshasa-based December 2010 survey of 1,000 individuals conducted by Les Experts found that 45 percent of respondents had been abused. Although the law considers assault a crime, it does not specifically address spousal abuse, and police rarely intervened in domestic disputes. There were no reports of judicial authorities taking action in cases of domestic or spousal abuse.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C. Current data on the prevalence of FGM/C did not exist.

Sexual Harassment: Sexual harassment occurred throughout the country. A 2010 study conducted by the World Health Organization found that 64 percent of all workers surveyed had experienced sexual harassment at the workplace. The law prohibits sexual harassment, and the minimum penalty prescribed by law is a prison sentence of one year. There was little or no effective enforcement.

Reproductive Rights: The government respected the right of couples to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so free from discrimination, coercion, and violence. However, while the law does not require spousal permission for family planning usage, it was common practice for providers to require a husband's permission before providing family planning services. Women's access to contraception remained extremely low. Only 5.8 percent of women used modern contraceptive methods and, according to the 2010 Multiple Indicator Cluster Survey, total unmet need for family planning was almost 24 percent. According to UN estimates, the maternal mortality rate for 2010 was 540 deaths per 100,000 live births, and a woman's lifetime risk of maternal death was 1 in 30.

The extent of women's access to treatment for sexually transmitted diseases was not known. Recent studies did not disaggregate by gender, and the data were highly variable across geographic regions, reflecting variations in cultural norms and access to health-care services. The percentage of women seeking skilled medical assistance during childbirth was 74 percent, according to the 2007 DHS.

According to the 2010 Cluster Survey conducted by the government with various UN agencies and a foreign aid agency, 87 percent of pregnant women received prenatal care at least once from a qualified professional. This represented a 2 percent increase from the 2007 DHS. Medical assistance during childbirth was not as prevalent as prenatal care, but access increased between 2001 and 2007. Education, socioeconomic status, place of delivery (hospital, clinic, or home), and

geographic location had a significant impact on who received postpartum care. While societal and cultural norms suggest women (and their husbands) prefer large families and therefore do not use family planning methods, there were no cultural barriers to seeking health care except for a minority who belonged to Bunda dia Mayala (formerly known as Bunda dia Congo), a political and religious movement in which adherents are not vaccinated.

Discrimination: Women did not possess the same rights as men in some respects, both under the law and in practice. The law requires a married woman to obtain her husband's consent before engaging in legal transactions, including selling or renting real estate, opening a bank account, or applying for a passport. According to UNICEF, many widows were dispossessed of their property. Women found guilty of adultery may be sentenced to up to one year in prison, while adultery by men is punishable only if judged to have "an injurious quality."

In their 2009 report to the UNHRC, seven UN special rapporteurs and representatives expressed concern that, while the family code recognizes equality between spouses, it "effectively renders a married woman a minor under the guardianship of her husband" by stating that the wife must obey her husband.

Women experienced economic discrimination. The law forbids a woman from working at night or accepting employment without her husband's consent. According to the International Labor Organization, women often received less pay in the private sector than men doing the same job and rarely occupied positions of authority or high responsibility.

The constitution calls for gender parity. Various laws require political parties to consider gender when presenting candidates at all levels. However, only approximately 12 percent of the candidates in the 2011 legislative elections were women.

## **Children**

Birth Registration: According to UNICEF, 50.6 percent of children whose births were observed in some form of medical facility were registered with the state. Birth registration was lowest among ethnic minorities such as Pygmies. The lack of registration did not affect access to government services.

Education: The constitution and law stipulate that public primary education shall be free and compulsory until 16 years of age. In practice, however, primary school

education was not compulsory, tuition-free, or universal, and few functioning government-funded schools existed. Public and private schools generally expected parents to contribute to teachers' salaries, and parents typically funded 80 to 90 percent of school expenses. These expenses, combined with the potential loss of income or labor while their children attended class, rendered many parents unable or unwilling to enroll their children. In 2009 President Kabila ordered the gradual implementation of a fee-free policy for primary schools in all areas except the cities of Kinshasa and Lubumbashi. However, the executive order was not effectively implemented, and the inadequate education budget severely limited the state's ability to implement its free primary education policy. As a result most schools continued to rely on fees paid by parents.

Primary and secondary school attendance rates for girls were lower than for boys due to financial, cultural, and/or security reasons. The World Bank reported in July that 72 percent of females between the ages of 15 and 24 attended school, while 78 percent of males in the same age range attended.

Many of the schools in conflict zones were dilapidated and had been closed due to insecurity. Others were used as housing for IDPs. The FDLR and Mai Mai groups, as well as some FARDC units, were responsible for several lootings and occupations of schools. According to UNICEF, at least 240,000 children missed schooling as a result of the M23 conflict. On December 10, UNICEF also reported that approximately 600 schools had been looted or damaged in North and South Kivu since April. Parents in some areas prohibited their children from attending schools due to fear that RMG would forcibly recruit them.

Child Abuse: Although the law prohibits all forms of child abuse, it regularly occurred. There was no information about authorities arresting individuals for child abandonment or other abuse.

The constitution prohibits parental abandonment of children who are believed to have committed sorcery. Nevertheless, parents or other care providers sometimes abandoned or abused such children, frequently invoking "witchcraft" as a rationale, regardless of whether or not they believed their child was a "witch." The law provides for a sentence of imprisonment for parents and other adults who accuse children of witchcraft. Authorities did not implement the law effectively.

Many churches conducted exorcisms of children accused of witchcraft involving isolation, beating and whipping, starvation, and forced ingestion of purgatives. According to UNICEF, children with disabilities or speech impediments were

sometimes branded as witches. This practice sometimes resulted in parents abandoning their children. In addition UNICEF stated that as many as 70 percent of the street children it assisted claimed to have been accused of witchcraft.

In 2009 a group of seven UN special rapporteurs and representatives mandated by the UNHRC to assess human rights in the country deemed it “alarming” that a significant percentage of the victims of sexual violence were girls and in some cases boys. The Ministry of Gender reported that of 4,464 survivors of SGBV reporting their age in 2011, 1,214 were between the ages of 10 and 17, and 249 were younger than 10. Of the overall number, 33 percent were children.

Several NGOs, including Save the Children, worked with MONUSCO and UNICEF to promote children’s rights throughout the country.

Child Marriage: While the law prohibits marriage of girls under the age of 14 and boys younger than 18, some marriages of underage girls took place. Dowry payments greatly contributed to underage marriage, as parents married off a daughter against her will to collect a dowry or to finance a dowry for a son.

The law criminalizes forced marriage. It subjects parents to up to 12 years’ hard labor and a fine of 92,500 Congolese francs (\$100) for forcing a child to marry. The penalty doubles when the child is under the age of 15. There were no reports of prosecutions for forced marriage.

Sexual Exploitation of Children: The minimum age of consensual sex is 14 for females and 18 for males, and the law prohibits prostitution by anyone under the age of 18. Nevertheless, child prostitution occurred throughout the country, although there were no statistics available regarding its prevalence. Some of these children engaged in prostitution without third-party involvement, while others were forced to do so.

According to a 2010 World Bank report, 26 percent of children living on the streets were girls, and of these, nine of 10 were involved in prostitution, and seven of 10 had been raped. The NGO Heal Africa reported that sexual abuse of children is more prevalent in rural areas.

Child Soldiers: Many parties to the conflict in the East used child soldiers. The M23 was particularly notorious for recruiting child combatants (see section 1.g.).

Displaced Children: According to the 2007 DHS, there were an estimated 8.2 million orphans and vulnerable children in the country. Ninety-one percent received no external support of any kind, and only 3 percent received medical support. In 2006 UNICEF and the World Bank estimated that 30,000-40,000 children lived on the streets, with the highest concentration in Kinshasa. Many of these children were forced out of their homes when their families accused them of witchcraft and bringing misfortune to their families. Others were child refugees and war orphans. The situation was not believed to have improved materially since these reports.

The government was ill equipped to deal with such large numbers of homeless children. SSF abused and arbitrarily arrested street children (see sections 1.c. and 1.d.).

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

The country has a very small Jewish population, and there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The 2006 constitution prohibits discrimination against persons with disabilities, stipulates that all citizens regardless of their abilities have access to public services, including education, and provides that persons with disabilities are afforded specific protections by the government. In addition the labor code states that private, public, and semipublic companies cannot discriminate against qualified candidates based on their intellectual, sensorial, and physical disabilities. The government did not effectively enforce these provisions, and persons with disabilities often found it difficult to obtain employment, education, or government services.

The law does not mandate access to buildings or government services for persons with disabilities. Some schools for persons with disabilities, including persons with visual disabilities, received private funds and limited public funds to provide education and vocational training. The Ministry of Social Affairs, together with other applicable ministries (Labor, Education, Justice, Health), has the lead in ensuring persons with disabilities are treated equally.

According to UNICEF, children with disabilities or speech impediments were sometimes branded as witches.

### **National/Racial/Ethnic Minorities**

Members of the country's more than 400 ethnic groups practiced ethnic discrimination, and discrimination was evident in hiring patterns in some cities. The government took no reported actions to address this problem.

### **Indigenous People**

The country had a population of between 200,000 and 500,000 Pygmies (Twa, Mbuti, Aka, and others), believed to be the country's original inhabitants. Societal discrimination against them was widespread, and the government did not effectively protect their civil and political rights. Most Pygmies took no part in the political process and lived in remote areas. Fighting in the East between RMG and SSF caused displacement of some Pygmy populations. Since 2003 many Pygmies who had lived in IDP camps in the East were forced out of the camps by other IDPs, removing their access to humanitarian relief provided to camp residents.

In some areas Pygmies were kidnapped and forced into slavery.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

While there are no laws specifically prohibiting homosexuality or homosexual acts, individuals engaging in public displays of homosexuality were subject to prosecution under public decency provisions in the penal code and articles in the law on sexual violence. Homosexuality remained a cultural taboo, and harassment by SSF was believed to have continued. The Ministry of Health actively worked with LGBT groups in a nondiscriminatory fashion to reduce the stigma and prevent new HIV infections among men who have sex with men.

## **Other Societal Violence or Discrimination**

There were no reports of societal violence or discrimination based on HIV/AIDS status.

Discrimination against persons with albinism was widespread and limited their ability to obtain employment, health care, and education and to marry. Persons with albinism were frequently ostracized by their families and communities.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The constitution and the 2002 labor code provide all workers, except government officials and members of SSF, the right to form and join trade unions without prior authorization or excessive requirements, to conduct legal strikes, and to bargain collectively. Additionally, the law provides unions the right to conduct activities without interference. However, the provision does not clearly define specific acts of interference. In the private sector a minimum of 10 employees are required for unionizing a business, and more than one union can be represented within a single business. Collective bargaining requires a minimum of 10 union committee members plus one employer representative. Union committee members report to the rest of the workforce. Foreigners cannot hold union office unless they have lived in the country for at least 20 years. The union committee is required to notify the company's management of a planned strike; it does not need authorization to strike. However, the law stipulates that unions and employers shall adhere to lengthy mandatory arbitration and appeal procedures before unions initiate a strike. In general the committee delivers a notice to strike to the employer and then waits for a reply for 48 hours. The employer is not obligated to reply. If it chooses to reply, negotiations, which may take up to three months, begin with a labor inspector and ultimately, the Peace Court. If the employer does not reply within 48 hours, the union may strike immediately. Sometimes employees provide only minimum labor while negotiating.

The police, army, and domestic workers cannot strike. Directors in public and private enterprises are also excluded from striking. Unless employers are notified of a planned strike, workers are not allowed to occupy the workplace during a strike, and an infraction of the rules on strikes may lead to incarceration of up to six months. However, if unions notify their employer of a strike, the workers can occupy the workplace without violating the labor code.

The law prohibits discrimination against union employees and requires employers to reinstate workers fired for union activities. The government lacked the capacity to enforce the law effectively, and the extent to which the government provided oversight was limited.

International NGO Freedom House reported in 2011 that labor unions existed only in urban areas and were largely inactive. The government recognized 12 unions at the national level. These unions, representing all economic sectors, were recognized after the 2008 elections and have a mandate that began in 2009 and extends until 2013. Employees in the private sector are free to join any of these 12 nationally recognized unions. Unions present in a private sector company form a union committee, which management is obligated to recognize. By law unionized employees contribute a fee of 2 percent of their basic salary on a monthly basis. Informally and not within an official union, artisanal miners organized themselves in small groups for mutual support and shared benefits. Workers organizations were independent of the government and political parties.

In small and medium-sized businesses, workers did not effectively exercise the right to strike. With an enormous unemployed labor pool, companies and shops could immediately replace any workers attempting to unionize, collectively bargain, or strike.

Collective bargaining was at times effective in practice. For example, the Association des Chauffeurs du Congo, which is the largest private transport syndicate in Kinshasa, declared a two-day strike on May 21, which was uniformly enforced across the city. Transporters were protesting the increased presence of police and national insurance company inspectors conducting roadside vehicle inspections since the beginning of May. In response to the strike and after negotiations, the government announced that it would implement measures to improve public transportation, including a temporary import duty exemption for new buses with more than 20 seats. The government also planned to purchase 200 buses to expand the public transportation system services throughout the country.

## **b. Prohibition of Forced or Compulsory Labor**

The constitution prohibits all forms of forced or compulsory labor. Under the labor code, forced labor is punishable by a maximum of six months' imprisonment plus a fine. The law also provides for a penalty of 10 to 20 years' imprisonment

for the enrollment or use of children under 18 years of age in the armed forces or the police.

Although no statistics were available, forced labor regularly occurred throughout the country. Violations included bonded labor, domestic servitude, and slavery. In the mining sector, individuals took on debt from intermediaries and dealers to acquire food, supplies, and mining tools and equipment. Miners who failed to provide sufficient ore to pay off this debt became debt slaves, forced to work to pay off arrears. The government did not attempt to regulate this practice. In the East some FARDC elements and many RMG continued to abduct and forcibly recruit men, women, and children to serve as laborers (including in mines in the Kivus), porters, domestics, combatants, and sex slaves (see section 1.g.).

Some police officers reportedly arrested individuals arbitrarily in order to extort money from them. The police forced those who could not pay to work until they had “earned” their freedom.

SSF forced men, women, and children, including IDPs and prisoners, to serve as porters, miners, and domestic laborers (see sections 1.c., 1.g., 6, and 7.c.). According to a 2011 report by Free the Slaves, an international NGO, elements of SSF and several RMG in conflict-affected areas in the East used children, including child soldiers, for forced labor in mines (see section 1.g.). Separately, the UN reported a decline in the use of children by SSF, noting a decrease in children separated from SSF and increased access to SSF encampments. At the same time, the UN and other international organizations reported a significant increase in 2012 in children being recruited and used by armed groups, most notably by the M23. The most recent reports available indicate that in 2011, 81 children separated from the FARDC (including ex-CNDP), while 141 escaped from various RMGs. The majority of these children were used as escorts, cooks, and/or porters.

The government did not effectively enforce laws prohibiting forced or compulsory labor and took no action against those who used forced labor and abducted civilians for forced labor. No official child labor investigations were reported. Little if any information existed on the removal of victims from forced labor. By year’s end there was no effective government effort underway to limit child labor in mines.

Also see the Department of State’s annual *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The child protection law of 2009 provides that the minimum age for full-time employment without parental consent is 18 years. Employers may legally hire minors between the ages of 15 and 18 with the consent of a parent or guardian. The law also stipulates that children cannot work for more than four hours per day and restricts all minors from transporting heavy items.

While criminal courts continued to hear child labor complaints, neither the courts nor other government agencies were able to effectively enforce these laws. Government ministries and the National Committee to Combat the Worst Forms of Child Labor lacked the resources and capacity to enforce child labor laws.

The Ministry of Labor has responsibility for investigating child labor abuses but had no dedicated child labor inspection service. Although the government approved a national action plan to combat the worst forms of child labor in 2011, it had yet to be implemented by the end of the year. Other government agencies responsible for combating child labor included the Ministry of Gender, Family and Children, the Ministry of Justice and Human Rights, the Ministry of Social Affairs, and the National Committee to Combat the Worst Forms of Child Labor. These agencies had no budgets for inspections and conducted no child labor investigations.

The government did not undertake any measures to reinforce the capacities of the labor inspectors to ensure that children under 18 did not engage in hazardous work in mines.

Child labor, including forced child labor, was a problem throughout the country (see section 7.b.). Child labor was most common in the informal sector, particularly in mining and subsistence agriculture. For economic survival families often encouraged children to work. According to the Ministry of Labor, children worked in mines and stone quarries and as child soldiers, water sellers, domestic servants, and entertainers in bars and restaurants.

According to data collected by a 2010 UNICEF survey, approximately 42 percent of children between the ages of five and 14 were involved in child labor. The same survey indicated that children in rural areas are more likely to be involved in child labor than children in urban areas (46 percent compared with 34 percent). UNICEF considered children to be involved in labor if, during the week preceding

the survey, a child five to 11 years old performed at least one hour of economic activity or at least 28 hours of domestic work, or a child 12 to 14 years old performed at least 14 hours of economic activity or at least 28 hours of domestic work.

Children were also exploited in the worst forms of child labor, many of them in agriculture, street vending, water selling, and domestic service. By some estimates tens of thousands of children worked in the mining sector, most often in extremely dangerous conditions as artisanal miners. Children made up as much as 30 percent of the work force in the artisanal mining sector. Children mined diamonds, gold, cobalt, coltan, wolframite, and cassiterite under hazardous conditions. In mining regions of the provinces of Katanga, Kasai Occidental, Orientale, North Kivu, and South Kivu, children sifted, cleaned, sorted, transported heavy loads, and dug for minerals underground. In many areas of the country, children five to 12 years old broke rocks to make gravel for a small wage.

Parents often used children for dangerous and difficult agricultural labor. Families unable to support their children occasionally sent them to live with relatives who effectively treated the children as domestic slaves, subjecting them to physical and sexual abuse.

Children were also trafficked for sexual exploitation, including for prostitution in brothels or by loosely organized networks. Reports indicated continued child prostitution, including forced prostitution, throughout the country (see section 6).

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The government sets regional minimum wages for all workers in private enterprise, with the highest pay scales applied to the cities of Kinshasa and Lubumbashi. In January 2009 the government established a minimum wage of 1,680 Congolese francs (approximately \$3 at that time) per day. Due to the continued devaluation of the currency, the minimum wage, which had not been adjusted, stood at \$1.83 at year's end. In the public sector, the government sets wages by decree and permits unions to act only in an advisory capacity. By year's end the government had not yet set 2012 wages.

The law defines different standard workweeks, ranging from 45 to 72 hours, for various jobs and prescribes rest periods and premium pay for overtime. However, the law establishes no monitoring or enforcement mechanism, and employers in both the formal and informal sectors often did not respect these provisions. The law does not prohibit compulsory overtime.

The average monthly wage did not provide a decent standard of living for a worker and family. Government salaries remained low, ranging from 45,000 to 75,000 Congolese francs (\$49 to \$82) per month, and salary arrears were common in both the civil service and public enterprises (parastatals). The government began paying some civil servants' salaries in July through the banking system in main cities only.

The law specifies health and safety standards. Health and safety standards were not effectively enforced in the informal sector, and enforcement was uneven in the formal sector. Major international mining companies effectively observed health and safety standards. More than 90 percent of laborers worked in subsistence agriculture, informal commerce or mining, or other informal pursuits, where they were subjected to hazardous and/or exploitive working conditions. According to the World Bank, between 500,000 and two million miners worked in the informal sector nationwide and up to 16 percent of the population indirectly relied on artisanal mining. In August approximately 60 gold miners died in the collapse of an artisanal gold mine in Orientale province. Overall estimates were notoriously challenging to verify, and determining the number of miners working in the conflict areas was difficult. In 2010 the international NGO Pact estimated that between 200,000 and 250,000 miners worked in North Kivu and South Kivu. Assaults by security guards and SSF on artisanal miners for illegally entering mining concessions were common.