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the High Commissioner and the Secretary-General****Technical assistance and capacity-building**

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

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 45/34, provides an overview of the human rights situation in the Democratic Republic of the Congo between 1 June 2020 and 31 May 2021. The overview is based on information gathered and cases of violations and abuses documented by the United Nations Joint Human Rights Office in the Democratic Republic of the Congo and the activities conducted by the Office of the United Nations High Commissioner for Human Rights through the Joint Office. The report highlights key human rights developments, assesses the progress made in implementing the recommendations put forward by the High Commissioner in previous reports and by various United Nations human rights mechanisms and sets out recommendations for the Government.



I. Introduction

1. The human rights situation in the Democratic Republic of the Congo between 1 June 2020 and 31 May 2021 remains a cause for concern even though the number of violations and abuses documented by the United Nations Joint Human Rights Office has decreased. Further efforts are called for in order to provide better protection for civilians in conflict-affected areas and safeguard the fundamental rights associated with the democratic space. The Office of the United Nations High Commissioner for Human Rights continues to support the efforts of the Government of the Democratic Republic of the Congo to fulfil its international human rights commitments, particularly in the areas of legislative reform and capacity-building for State personnel and members of civil society.

II. Principal human rights developments

2. The overall number of human rights violations and abuses documented by the Joint Office decreased by 3 per cent compared to the preceding reporting period, but their gravity and consequences for the population remain worrisome. Nearly 46 per cent of these violations were committed by State officials, primarily members of the Armed Forces of the Democratic Republic of the Congo and officers of the Congolese National Police. Violations involving the restriction of democratic space continued to decline, and there was a reversal in the upward trend in violations committed in connection with the activities of armed groups, which also decreased.

3. The opening of democratic space observed since early 2019 continued during the reporting period, leading to a reduction in violations of civil and political rights. However, attacks and threats against journalists, human rights defenders and other civil society actors continued, as did the violent repression of some peaceful demonstrations and the placement of restrictions on fundamental freedoms, including in the context of the implementation of measures designed to curb the spread of the coronavirus disease (COVID-19). Some legislative progress has been made, including the adoption by the National Assembly of two bills on the protection and promotion of the rights of persons with disabilities and of indigenous peoples.

4. In the conflict-affected provinces, civilians continue to be attacked by armed groups, and even though the overall number of documented violations has decreased, the number of victims of summary and extrajudicial executions has risen. The provinces of North Kivu, Ituri, South Kivu and Tanganyika continue to be particularly affected. In several cases, conflicts have spread to new areas and have been fuelled by hate speech and incitement to violence. The declaration of a state of siege in order to take firm action to address the lack of security in the provinces of Ituri and North Kivu, which became effective on 6 May 2021 and was initially to last for a period of 30 days, is likely to have a negative impact in terms of the human rights situation. The efforts made to combat impunity, what are attested to, in particular, by the conviction of senior military officials and commanders of armed groups for war crimes and crimes against humanity, including crimes of sexual violence, are encouraging.

A. Fundamental freedoms and democratic space

5. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee recommended the adoption of measures to ensure that any restrictions on the exercise of freedom of expression comply with the strict requirements set out in the International Covenant on Civil and Political Rights, to avoid taking any measures to deprive individuals of their right to freedom of peaceful assembly when such measures are not justified under the provisions of the Covenant and to prevent and eliminate all forms of excessive use of force by police and security officers.¹

¹ CCPR/C/COD/CO/4, paras. 40, 42 and 44.

6. In its concluding observations on the second periodic report of the Democratic Republic of the Congo, the Committee against Torture urged the Government to close all unofficial places of detention and to revise its legislative framework and practices to ensure that all arrests and detentions are subject to oversight by the judicial authorities.² It also recommended the release of all persons detained for having defended their opinions or demonstrated peacefully and the payment of compensation to victims of arbitrary detention.³

1. Current situation and action taken by the Government

7. During the reporting period, the Joint Office recorded a decrease on the order of 23 per cent in human rights violations and abuses related to the democratic space (664 compared to 857 in the preceding period). This was thus a continuation of the downward trend observed since February 2019. The violations and abuses documented during the period occurred mainly in the provinces of North Kivu, Tanganyika, Kasai, Haut-Katanga and South Kivu against the backdrop of tensions within the ruling coalition, the use of hate speech by members of political parties, members of civil society and community leaders, and the imposition of restrictions on fundamental freedoms by provincial authorities. Some of these violations were committed in the course of the implementation of measures to prevent the spread of COVID-19, including those put in place under the state of emergency declared between 24 March and 21 July 2020, which in some cases was used as a pretext to restrict the exercise of fundamental freedoms unjustifiably.

8. State actors were responsible for 84 per cent of the human rights violations related to the democratic space, while the other 16 per cent were committed by armed groups. The most frequently documented violations concerned the right to liberty and security of the person, the right to freedom of opinion and expression and the right to physical integrity and life. The largest share of the 584 victims of these violations and abuses were members of civil society organizations (255), while the remainder were persons with no known political affiliation or association (169), political party supporters (88) and media professionals (72).

9. Several demonstrations and public gatherings, including some which abided by the restrictions imposed under the state of emergency, were banned or suppressed by the defence and security forces, in some cases by means of a disproportionate use of force. For example, on 9 July 2020 in Lubumbashi, two men were killed and three others wounded by shots fired by the military police and commandos of the rapid reaction unit of the 21st brigade of the Armed Forces of the Democratic Republic of the Congo during the suppression of a demonstration organized by various political parties against the validation of candidacies for the directorship of the National Independent Electoral Commission. On 12 and 13 July 2020, the bodies of three activists of the Union pour la démocratie et le progrès social, which showed signs of torture, were found in the Lubumbashi River. One of them had last been seen in detention in the 22nd Military Region.

10. The Joint Office continued to document arrests and convictions in connection with the exercise of fundamental freedoms. At least 433 persons, including 26 women and 1 child, were subjected to arbitrary arrest or unlawful and arbitrary detention following their exercise of their right to freedom of opinion and expression, peaceful assembly or association. This did, however, represent a decrease from the 687 victims (including at least 28 women and 31 children) recorded in the preceding reporting period. Numerous cases of threats, intimidation and attacks targeting human rights defenders, members of civil society and journalists in the course of their legitimate activities have also been documented. For example, two journalists were threatened with arrest by members of the Armed Forces of the Democratic Republic of the Congo and the National Intelligence Agency in North Kivu for broadcasting a statement by a human rights defender calling for an investigation by the Military Prosecutor's Office into the alleged existence of a clandestine isolation cell on the grounds of a military camp of the Armed Forces.

11. On 9 November 2020 and 7 April 2021, the National Assembly voted in favour of two bills, one on the protection and promotion of persons living with disabilities and the other on

² CAT/C/COD/CO/2, para. 15.

³ Ibid., para. 29.

the promotion and protection of the rights of indigenous Pygmy peoples in the Democratic Republic of the Congo. These bills put in place mechanisms to protect these groups and promote their participation in decisions that affect them. The Joint Office provided technical and financial support for those processes. However, the consideration of bills on the protection and responsibilities of human rights defenders, which would establish measures relating to the exercise of the right to protest and access to information, has not made any significant headway.

2. Action taken by the Joint Human Rights Office

12. The Joint Office continued to monitor the human rights situation in relation to the democratic space, to bring cases of human rights violations to the attention of the authorities and to recommend measures for preventing and addressing such violations.

13. Following the withdrawal of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) from provinces not affected by armed conflict, the Joint Office set up a mobile monitoring team in the western provinces (North Ubangi, South Ubangi, Mongala, Tshuapa, Equateur, Kwango, Kwilu, Kongo-Central, and Mai-Ndombe) and maintained a presence in the provinces of Tshopo and Haut-Katanga in order to monitor the human rights situation more effectively and to build local capacity for defending and promoting human rights and fundamental freedoms. During the reporting period, these teams continued to provide human rights training to members of civil society, the National Human Rights Commission and the security services.

14. The Joint Office and the Audiovisual and Communications Council jointly organized activities relating to freedom of expression, including: a round table on the role of journalists in the consolidation of democracy, which was held on 30 September 2020; a workshop on networking for journalists working in the field of human rights, held in Kinshasa on 15 and 16 December 2020; and a radio programme on the importance of the adoption of the Access to Information and Freedom of the Press Act, which was broadcast on 18 May 2021.

15. In terms of individual protection, the Joint Office provided legal and various other forms of assistance to at least 368 human rights defenders, 106 journalists and 47 other victims and witnesses of violations (a total of 451 men and 70 women). It also supported the call issued by civil society organizations for the adoption of provincial edicts on the protection of human rights defenders in Kinshasa, South Ubangi, Haut-Katanga and Kasai Central.

B. Protection of civilians in conflict areas

16. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee urged the Government to take measures to protect civilians in areas of armed conflict and internally displaced persons.⁴ It also called on the Government to cooperate fully with all United Nations entities in dealing with allegations of violations and abuses of human rights and violations of international humanitarian law in the Kasai region.⁵

17. In its concluding observations on the combined third to fifth periodic reports of the Democratic Republic of the Congo, the Committee on the Rights of the Child urged the Government to take measures to protect children from falling victim to armed conflict or participating in armed hostilities and to punish those involved in killing, maiming and recruiting children.⁶

1. Current situation and action taken by the Government

18. Approximately 93 per cent of the human rights violations and abuses documented during the reporting period were committed in conflict areas. Compared to the preceding

⁴ CCPR/C/COD/CO/4, para. 26.

⁵ Ibid., para. 28.

⁶ CRC/C/COD/CO/3-5, para. 18.

reporting period, the number of violations and abuses decreased, falling from 7,359 to 6,584, with armed groups accounting for the majority of those incidents (59 per cent). As of 31 May 2021, at least 5.2 million people were internally displaced, mainly as a consequence of conflicts.⁷

19. The majority of the human rights violations and abuses were committed in North Kivu Province (3,505 violations); 68 per cent of those violations were committed by combatants of armed groups, including factions of the Nyatura, Forces démocratiques alliées, Forces démocratiques de libération du Rwanda and Nduma défense du Congo rénové. During the reporting period, the Allied Democratic Forces continued to carry out particularly deadly attacks, leaving a toll of 937 casualties (702 men, 210 women and 25 children); 738 of those victims were in North Kivu. Members of the defence and security forces were also responsible for serious human rights violations in North Kivu, including extrajudicial executions of 160 civilians (116 men, 26 women and 18 children), sexual violence against 76 women and children, other violations of the right to physical integrity of 507 civilians and the arbitrary arrest and illegal detention of at least 808 other civilians.

20. In Ituri Province, the armed group Coopérative pour le développement du Congo continued to attack the civilian population and committed the largest share of human rights abuses (437 out of 845 committed by armed groups). At least 391 persons were summarily executed (239 men, 79 women and 73 children). Agents of the State committed 20 per cent of the documented violations in Ituri Province in the course of military operations and in other situations. These violations included extrajudicial executions of 76 civilians (58 men, 10 women and 8 children), sexual violence against 65 women and children, other violations of the right to physical integrity of 75 civilians and the arbitrary arrest and illegal detention of another 96 civilians.

21. In view of the persistent lack of security, the President of the Republic declared a state of siege in the provinces of North Kivu and Ituri on 30 April 2021. For an initial period of 30 days starting on 6 May 2021, civilian authorities were replaced by military personnel in those two provinces, and military courts took over criminal proceedings from civilian courts. While at the time of writing the Government had not yet formally notified the Secretary-General of the United Nations of the scope of the state of siege in accordance with article 4 (3) of the International Covenant on Civil and Political Rights, it is known that the declaration of the state of siege places limitations on fundamental freedoms and provides for extensive changes in the administration of justice.

22. New commanders were appointed to head operational sectors, and military operations continued in some areas. While these provisions have generated new momentum in the fight against armed groups, the lack of a contingency plan for the protection of civilians and delays in setting up transitional justice mechanisms and in launching a disarmament, demobilization and community reintegration programme may lessen the positive effects of the measure in terms of the protection of civilians in the long term.

23. In addition, some of the new provincial commanders' and governors' records of human rights violations, coupled with the expanded powers of the defence and security forces under the state of siege, have major implications for MONUSCO support for the defence and security forces. The Joint Office continues to ensure that any support for the new provincial authorities and security forces is provided in strict accordance with the human rights due diligence policy on United Nations support to non-United Nations security forces. In view of the high risk of human rights violations, the Joint Office is making provision for the implementation of more robust mitigation measures and strict monitoring of those measures.

24. In South Kivu Province, 631 human rights violations and abuses have been documented, including 176 people killed (120 men, 38 women and 18 children) and 395 victims of violations of the right to physical integrity (200 men, 157 women and 38 children), including 135 victims of sexual violence. The conflict between communities in the territories of Mwenga, Fizi and Uvira has resulted in at least 78 deaths. Numerous attacks on camps of

⁷ Office for the Coordination of Humanitarian Affairs, situation report on the Democratic Republic of the Congo, updated 12 February 2021. Available at <https://reports.unocha.org/en/country/democratic-republic-congo>.

internally displaced persons and villages and the looting of livestock and harvests by armed groups have displaced various population groups, some of whom do not have access to humanitarian assistance owing to the insecure situation and poor road conditions. At least 38 villages have been burned down, 37 of them between January and April 2021. This situation is exacerbated by the presence of foreign armed groups that also commit human rights abuses. In addition, Mai-Mai Raia Mutomboki armed groups have been active in Shabunda Territory.

25. Tanganyika Province continued to be the site of inter-ethnic violence between Twas and Bantus. The number of documented violations and abuses increased slightly (to 536 from 431 in the preceding reporting period). State agents were responsible for nearly 68 per cent of these violations, the various Mai-Mai groups for 18 per cent and the Twa militia for 12 per cent. Most of this upsurge in inter-ethnic violence has occurred in the Kalemie, Nyunzu and Manono territories.

26. In the Kasai region, despite the decrease in armed clashes, violations and abuses persist. State agents continue to be the main perpetrators of these violations (99 per cent of the total). The Kamuina Nsapu and Bana Mura militias have remained active in the Tshikapa, Kamonia and Mwaka territories in Kasai Province. The situation continues to be of concern in the Kasai region and in Kasai Central Province, where most of the violations occurred (313 and 285, respectively). While MONUSCO is withdrawing from these two provinces in 2021, given the sharp decline in the level of armed violence there, latent ethnic conflicts continue to be a concern. For example, between 27 and 29 March 2021, at least eight women, three men and three children were killed in clashes between members of the Kuba and Lulua communities in the Bakuakenge sector of Kasai Province.

2. Action taken by the Joint Human Rights Office

27. The Joint Office continues to monitor the human rights situation in the provinces affected by the armed conflict, to provide analyses and to contribute, together with the civilian and military components of MONUSCO, to the protection of civilians. During the reporting period, the secretariat for the human rights due diligence policy on United Nations support to non-United Nations security forces, which has been placed under the authority of the Joint Office, carried out at least 127 risk assessments. These assessments have led to the authorization of United Nations support – often in combination with human rights violation mitigation measures – for 462 members of the Armed Forces of the Democratic Republic of the Congo, including support in the context of military operations and logistical support for 180 officers of the Congolese National Police. The secretariat conducted seven risk assessments as part of the United Nations country team's support for the defence and security forces. It also continues to ensure that any support provided to the security forces by United Nations agencies to enable them to take over security matters after the withdrawal of MONUSCO is strictly in accord with this policy.

28. The Joint Office has advocated with the authorities for the establishment or reactivation of committees to track human rights violations committed by members of the Armed Forces of the Democratic Republic of the Congo and the Congolese National Police. The secretariat participated in 53 meetings of these committees, which led to the imposition of 426 disciplinary measures on police and military personnel. The Joint Office also conducted 53 training sessions for members of the Congolese National Police and the Armed Forces of the Democratic Republic of the Congo, including units deployed in theatres of operation.

29. During the reporting period, the Joint Office conducted 25 fact-finding and monitoring missions and participated in 25 joint assessment missions concerning provinces affected by the armed conflict. Three reports on human rights violations and abuses in Ituri and North Kivu provinces and one report on hate speech and messages in the Democratic Republic of the Congo were issued during the reporting period.

30. In the context of the transition in Tanganyika Province and the Kasai region, the Joint Office contributed to assessment activities and to the work involved in the handover of responsibilities by MONUSCO to members of the country team, civil society organizations and State institutions. The Joint Office continues to implement projects in the areas of transitional justice and community reintegration and recovery in conjunction with the United

Nations Development Programme, the International Organization for Migration and the non-governmental organization Search for Common Ground. Similar projects are under way in Tanganyika Province.

C. Sexual violence

31. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee urged the Government to take all necessary measures to ensure that all cases of sexual violence are investigated and that the perpetrators are prosecuted and, if found guilty, punished. The Committee also recommended that physical and psychological support should be provided to victims and that their access to legal services should be facilitated.⁸

32. In its concluding observations on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo, the Committee on the Elimination of Discrimination against Women called on the State to prosecute all acts of violence against women upon complaint by the victim or ex officio, to punish the perpetrators, to ensure that judicial decisions are executed and that compensation is paid, and to set up a comprehensive care system for victims.⁹

33. In its concluding observations on the second periodic report of the Democratic Republic of the Congo, the Committee against Torture recommended strengthening the capacity of judges to combat sexual violence and implementing measures to facilitate access to justice for victims.¹⁰ At the universal periodic review of the Democratic Republic of the Congo on 5 July 2019, it was recommended that the Government strengthen its efforts in the fight against sexual violence, improve the provision of support and services to survivors, ensure the protection of survivors and witnesses, and ensure that those responsible are brought to justice and that reparation is granted.¹¹

1. Current situation and action taken by the Government

34. During the reporting period, at least 492 women, 218 children and 8 men were victims of conflict-related sexual violence in the Democratic Republic of the Congo. This represented a significant decrease from the preceding reporting period (1,376 victims). Members of the Armed Forces of the Democratic Republic of the Congo and the Congolese National Police continue to be among the main perpetrators of sexual violence, accounting for 222 and 75 victims, respectively.

35. North Kivu Province continues to be the area where the largest share of such incidents occur, accounting for 34 per cent of the documented cases during the reporting period. This is largely attributable to the strong presence of armed groups in that province and particularly in the Masisi, Nyiragongo and Rutshuru territories.

36. Approximately 19 per cent of the documented cases occurred in South Kivu Province. Inter-community conflicts in the highlands have been the main trigger for sexual violence committed by the Twigwaneho, Ngumino and Mai-Mai Bishambuke armed groups. Mai-Mai Raia Mutomboki factions continue to commit sexual violence primarily in the Shabunda, Kalehe, Walungu and Kabare territories.

37. Ituri Province accounts for 14 per cent of the documented cases of conflict-related sexual violence. The Armed Forces of the Democratic Republic of the Congo were responsible for acts of sexual violence committed against 60 persons (52 women and 8 children), some of which were committed during military operations against armed groups. The latter account for 35 per cent of the documented cases (27 women, 7 children and 1 man).

38. Conditions of detention continue to be a concern with regard to women's rights. For example, during a riot in Kasapa Prison in Lubumbashi that occurred from 25 to 28

⁸ CCPR/C/COD/CO/4, para. 20.

⁹ CEDAW/C/COD/CO/6-7, para. 22.

¹⁰ CAT/C/COD/CO/2, para. 33.

¹¹ A/HRC/42/5, para. 119.195.

September 2020, at least 21 female prisoners were raped by male prisoners. During the reporting period, Haut-Katanga Province accounted for 11 per cent of the cases of conflict-related sexual violence. State actors were responsible for 97 per cent of those cases.

39. Significant progress was seen during the reporting period in the fight against impunity for crimes of conflict-related sexual violence. For example, on 23 November 2020, the Operational Military Court in Goma sentenced Ntabo Ntaberi Sheka, former leader of the armed group Nduma défense du Congo, to life imprisonment for war crimes, including murder, rape, sexual slavery and child recruitment, committed in North Kivu in 2010 and between 2012 and 2014. Two co-defendants were also sentenced, one to life imprisonment and the other to 15 years' imprisonment. Support was provided in connection with the trial, which began on 27 November 2018, by the Joint Office and other partners.

40. Following the renewal in December 2019 of the Joint Communiqué between the Government of the Democratic Republic of the Congo and the United Nations on the Fight against Sexual Violence in Conflict, the Government, with the support of the Joint Office, developed a three-year plan (2020–2023) for the implementation of the Joint Communiqué and its addendum. This plan represents a step forward in the fight against sexual violence, particularly in the area of comprehensive care for victims. In addition to a victim referral helpline, the Ministry of Gender, Family and Children's Affairs is setting up integrated multi-sectoral service centres to provide comprehensive assistance to victims of gender-based violence.

2. Action taken by the Joint Human Rights Office

41. The Joint Office provided support for training programmes for members of the Armed Forces of the Democratic Republic of the Congo and the Congolese National Police on their respective action plans and the fight against sexual violence. Since June 2020, 135 unit commanders of the Congolese National Police and 11 unit commanders of the Armed Forces of the Democratic Republic of the Congo have signed statements of commitment to combat sexual violence.

42. The Joint Office continues to mobilize resources and undertake projects to assist victims of sexual violence. In addition to training and sensitization activities, the Joint Office supports the creation of opportunities for members of the beneficiary communities to exchange views and share their experiences. As part of the fight against impunity, 497 victims of sexual violence received assistance at legal clinics supported by the Joint Office between June 2020 and May 2021.

D. Efforts to combat impunity

43. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee called on the Government to take all necessary measures to end impunity for perpetrators of human rights violations, in particular the most serious violations, by establishing a transitional justice system for the prosecution of past violations and by systematically conducting prompt, impartial, effective and thorough investigations in order to identify and prosecute those responsible and to impose appropriate penalties on those who were convicted of such violations, while ensuring that the families of the victims have access to effective remedies and to full reparation.¹²

44. In its concluding observations on the second periodic report of the Democratic Republic of the Congo, the Committee against Torture recommended that the Government improve physical conditions in all places of deprivation of liberty, commute all death sentences to prison sentences and initiate a process leading to the formal abolition of the death penalty.¹³

45. During the universal periodic review of the Democratic Republic of the Congo on 5 July 2019, it was recommended that the Government ensure that human rights violations,

¹² CCPR/C/COD/CO/4, para. 12.

¹³ CAT/C/COD/CO/2, paras. 21 and 37.

including those committed by the security forces, are investigated and punished, and initiate an inclusive transitional justice process to establish the truth, offer reparation to victims and promote reconciliation.¹⁴ Furthermore, the Human Rights Council, in its resolution 45/34, adopted on 7 October 2020, encouraged the Government to continue its efforts to promote justice and reconciliation in Kasai, especially in the areas of investigation and prosecution, violence against women, reconciliation between communities, and the disarmament and demobilization of militias.

1. Current situation and action taken by the Government

46. During the reporting period, at least 107 members of the Armed Forces of the Democratic Republic of the Congo, 55 Congolese National Police officers, 10 conservation officers of the Congolese Institute for Nature Conservation and 134 members of armed groups have been convicted of committing acts constituting human rights violations, including acts classified as crimes against humanity and war crimes.

47. In Ituri Province, the Judicial Commission of Inquiry established by the provincial authorities in July 2019 is continuing its investigations into the violence committed since June 2019 in Djugu and Mahagi territories. On 1 April 2021, following hearings held by mobile courts in Iga-Barrière and Bunia with the support of the Joint Office, the Ituri garrison military court sentenced 21 combatants of the *Coopérative pour le développement du Congo* to life imprisonment for crimes against humanity committed in Djugu territory between December 2017 and March 2020. The civil parties were granted compensation and rehabilitation measures. In another significant case, on 10 November 2020 in Mambasa, the garrison military court sentenced nine Mai-Mai fighters to death for war crimes and serious violations of the right to physical integrity and for attacks on Ebola response teams in Mambasa Territory between September and November 2019.

48. In the Kasai region, the investigation of cases involving human rights violations and abuses committed since 2016 continues. Since the launch of joint investigation missions by the Joint Office and judicial authorities in May 2018, only one case has led to a conviction: that of a former Kamuina Nsapu militia leader who was found guilty of war crimes on 16 March 2021. The Military High Court in Kinshasa opened hearings on 25 May 2020 in a case concerning massacres that took place in Yumbi Territory, Mai-Ndombe Province, in December 2018. Seventy people were brought before the judge on charges relating to various crimes, including crimes against humanity.

49. The Congolese courts continue to experience difficulties, including shortages of human and financial resources, which hinder them from functioning properly. In addition, the excessive use of pretrial detention exacerbates prison overcrowding and puts more pressure on the under-resourced prison system. For example, as of 27 March 2020, the overcrowding rate at the Kinshasa Penitentiary and Re-education Centre was 461 per cent and the rate at Munzenze Prison in Goma was 653 per cent. This situation increases the many difficulties associated with the care of prisoners, including a lack of medical care and a lack of adequate nutrition, which caused at least 246 deaths during the period under review.

50. During the reporting period, at least 1,406 persons escaped from detention centres. This situation undermines the fight against impunity and the protection of victims and witnesses. On 20 October 2021, 1,345 detainees escaped following an attack by the Allied Democratic Forces on a prison in Beni; 300 of these prisoners were alleged members of the Allied Democratic Forces and Mai-Mai who were being held in pretrial detention. In a continuing effort to reduce the prison population, two nationwide collective presidential pardons were issued on 30 June and 30 December 2020 for 3,759 individuals who were then released.

51. Death sentences continue to be handed down, although a moratorium on their implementation is in place. The Democratic Republic of the Congo has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and has not voted in favour of General Assembly

¹⁴ A/HRC/42/5, paras. 119.141, 119.142 and 119.144.

resolution 75/183 of 16 December 2020 on a universal moratorium on the use of the death penalty.

52. On 7 May 2021, the Council of Ministers adopted a draft ordinance submitted by the Minister of Justice revoking Ordinance No. 08/003 of 9 January 2008 on the establishment of an operational military court in North Kivu. This measure upholds the right of appeal, an essential element of the right to a fair trial which is enshrined in the Constitution and guaranteed by the International Covenant on Civil and Political Rights.

53. The Government is committed to combating impunity and, to that end, the President of the Republic has requested the support of the High Commissioner in the establishment of a transitional justice process. The Joint Office has undertaken to assist with the implementation of this process by providing technical, logistical and financial support to the Congolese authorities. This support is intended to contribute to the realization of victims' rights, the fight against impunity and a sustainable reconciliation and peace process. This effort will be based on a victim-centred, inclusive approach focusing on national consultations and civil society capacity-building. As part of this effort, in March 2021 the Joint Office supported the creation of a working group on transitional justice within the framework of Congolese civil society. A training workshop for the members of this group was held on 6 and 7 May 2021 with the participation of the Minister of Human Rights.

2. Action taken by the Joint Human Rights Office

54. In collaboration with other partners, including MONUSCO, the Joint Office provided support for work aimed at building national capacity to investigate and prosecute serious human rights violations that may constitute crimes against humanity and war crimes. The following steps were taken in this connection: (a) direct support to national judicial authorities in the areas of investigation and prosecution; (b) support for the safe participation of victims and witnesses in relevant trials; and (c) implementation of a transitional justice programme in Kasai that could be replicated in other provinces.

55. During the reporting period, the Joint Office supported 11 joint fact-finding missions and 14 mobile court hearings in connection with the prosecution of war crimes, crimes against humanity and other serious violations of human rights and international humanitarian law, including sexual violence. As part of its work in the area of judicial protection, between June 2020 and May 2021 the Joint Office supported 11 pre-investigation protection missions involving at least 27 victims, all of whom were women; 7 joint investigation missions involving 131 victims, including 27 women, 58 minors and 18 victims of sexual violence; and 12 mobile court hearings involving 449 victims, including 261 women and 97 victims of sexual violence. In total, the Office supported the deployment of 41 missions to provide protection and legal assistance to at least 710 victims and witnesses.

56. The Joint Office continues to support the Government's efforts in the area of prison reform. Since January 2020, it has been involved in developing projects regarding prison mapping, prison infrastructure rehabilitation and construction, and the updating of legislation on the reform of the prison system. Since the start of the coronavirus disease (COVID-19) pandemic, the Joint Office has been providing technical assistance to the monitoring committee which was set up by the Minister of Justice in April 2020 and tasked with preventing the spread of COVID-19 in prisons. The Joint Office has also called on the judicial authorities to take steps to relieve the congestion in the country's prisons in order to reduce the risk of the spread of the virus. During the reporting period, at least 3,286 detainees, including 123 children, were released.

57. In an effort to reduce prison overcrowding, the Joint Office is providing support to the Ministry of Human Rights and the General Inspectorate of Judicial and Penitentiary Services for prison inspections and the checking of prison records to verify the legality of detentions and to release persons who have been arbitrarily detained. As a result, 224 detainees, including 27 women, have been released since January 2021, thanks to the advocacy of the Joint Office.

58. The Kasai technical assistance team, whose mandate has been renewed by the Human Rights Council, continued to support the judicial authorities in their investigations into human rights violations and abuses in Kasai Central Province. During the reporting period,

150 unmarked burial sites were identified and mapped. Arrangements are being made with the communities concerned and the authorities to bury these victims' remains in accordance with local customs. Standard protocols for forensic examinations in cases of conflict-related sexual violence have been reviewed and adapted to the Kasai context. This has resulted in the registration of 350 victims of conflict-related sexual violence committed during the Kamuina Nsapu militia insurgency

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

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

59. The Joint Office continued to provide technical and financial support to the Interministerial Committee on Human Rights as part of the cooperative efforts being pursued by the Democratic Republic of the Congo with United Nations human rights mechanisms. The Joint Office organized four thematic workshops for members of the Interministerial Committee, the National Human Rights Commission and civil society organizations to follow up on the action taken pursuant to the recommendations made concerning civil and political rights, economic, social and cultural rights, women's rights, children's rights and other types of rights. These workshops familiarized the participants with these recommendations so that they could then develop an integrated plan for their implementation. Since January 2021, monthly meetings have been held to track progress towards this goal and advances in the preparation of the periodic reports that have fallen due.

60. The Joint Office is also supporting the Ministry of Human Rights in the development of a national human rights policy by assisting with capacity-building activities at the national and provincial levels. In collaboration with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Joint Office supported the organization of a meeting on 10 December 2020 with representatives of the Ministry of Human Rights and the National Human Rights Commission with a view to establishing a national preventive mechanism in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). A seminar was also organized jointly with the Centre for Civil and Political Rights from 20 to 22 April 2021 on the establishment of a national preventive mechanism against torture within the National Human Rights Commission.

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

1. National Human Rights Commission

61. The Joint Office continued to provide technical, logistical and financial support to the National Human Rights Commission with a view to the more effective promotion and protection of human rights in the Democratic Republic of the Congo. The Joint Office and the Commission meet every month to discuss joint initiatives and the progress of capacity-building activities. During the period under review, cooperation with the Commission also focused on capacity-building to follow up on treaty body recommendations, on litigation before regional human rights bodies and the publication of an annual report, and on the status of the action taken by the Democratic Republic of the Congo pursuant to the findings or decisions of international and regional human rights treaty bodies emanating from the individual communications procedure.

2. Other national mechanisms

62. From June 2020 to March 2021, the Joint Office worked closely with the Human Rights Commission of the National Assembly to track developments in the legislature's

review and votes on the bills concerning the rights of indigenous peoples and the rights of persons with disabilities. The Joint Office has continued to engage with the Commission during the past three parliamentary sessions to support the definition of positions, parliamentary monitoring and advocacy in connection with the need for government action on human rights issues and the proposal of amendments as part of the government programme adopted by the National Assembly on 26 April 2021.

63. Support provided to the National Assembly also included the founding of a human rights library funded by the Joint Office and technical and financial assistance for an awareness-raising mission organized by the Human Rights Commission of the National Assembly on the rights of indigenous peoples and the rights of persons with disabilities to four universities in the provinces of Kongo-Central and Kwilu from 29 March to 10 April 2021.

64. Finally, the Joint Office continued to work with the Audiovisual and Communications Council to implement capacity-building activities for journalists and awareness-raising initiatives focusing on freedom of expression and the prevention and suppression of hate speech and messages in the context of the celebration of the International Day of Democracy on 30 September 2020.

IV. Conclusions and recommendations

A. Conclusions

65. During the reporting period, the human rights situation in the Democratic Republic of the Congo was severely compromised by the persistence of attacks by armed groups targeting the civilian population. These attacks resulted in a large number of human rights violations and abuses, including sexual violence. The State continued its efforts to end the cycle of conflict, declared a state of siege in North Kivu and Ituri provinces, and made changes in the leadership of fighting units. More attention should be paid to the profiles of officers appointed to leadership positions in provinces and operational sectors, and military operations should be planned in such a way as to minimize their negative effects in terms of the protection of civilians. The Government should also expedite the establishment of a credible disarmament, demobilization and community reintegration mechanism for former combatants who wish to lay down their arms.

66. The opening of democratic space has led to a decrease in violations of civil and political rights, but challenges remain to be met in addressing the unjustified and disproportionate use of force to suppress demonstrations, arbitrary arrests and detentions, and threats and attacks directed against journalists and members of civil society.

67. In order to put an end to the cycles of violence, do justice to the victims of violations and ensure greater protection of human rights, it is crucial to support efforts to combat impunity, strengthen national mechanisms for the protection and promotion of human rights, and develop transitional justice initiatives and actions aimed at improving the situation with respect to economic, social and cultural rights, which the COVID-19 pandemic has eroded further.

B. Recommendations

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

(a) Continue to open up democratic space and to guarantee the protection of the rights and freedoms of all, including political opponents, journalists, human rights defenders and other civil society actors;

(b) Enact the law establishing measures to uphold freedom of demonstration in accordance with the Constitution and the international obligations of the Democratic Republic of the Congo;

(c) Ensure that the bill on the protection and accountability of human rights defenders and the bill containing general provisions applicable to non-profit associations and to public service institutions fully guarantee the rights of all persons to protect and promote human rights, do not infringe the rights to freedom of expression, peaceful assembly and association, and are adopted during the upcoming sessions of the legislature;

(d) Ensure that the use of force by State agents, including in the course of law enforcement operations, is in strict conformity with international human rights law and that law enforcement operations and the management of demonstrations, which are the responsibility of the police, are not carried out by units of the Armed Forces of the Democratic Republic of the Congo except at the request of the Congolese National Police;

(e) Ensure that the military operations of the Armed Forces of the Democratic Republic of the Congo against armed groups are conducted in strict compliance with human rights and international humanitarian law and that any offenders are prosecuted in the competent courts;

(f) Ensure that all detainees enjoy fundamental legal safeguards, take the necessary steps to ensure that conditions of detention in all places of deprivation of liberty for men, women and juveniles are in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, and put an end to the practice of detaining insolvent patients in hospitals and health centres;

(g) Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and vote in favour of the next General Assembly resolution on a universal moratorium on the use of the death penalty;

(h) Ensure the adoption of a programmatic law for the effective achievement of the goals of the national policy for judicial reform and its accompanying priority action plan for the period 2018–2022, particularly the independence of the judiciary, the abolition of the death penalty and recognition of the right to bring an appeal before the operational military court;

(i) Implement a disarmament, demobilization and community reintegration process in accordance with human rights principles and standards and ensure that investigations are undertaken into cases of serious violations of human rights and international humanitarian law;

(j) Conduct investigations aimed at removing high-ranking officers from the defence and security forces who are implicated in the commission of serious violations of human rights and international humanitarian law and take the necessary steps to enforce the penalties for such acts when they are imposed;

(k) Continue efforts to conduct prompt investigations into allegations of human rights violations and abuses, including those committed in the Kasai region, and ensure that these efforts lead to the prosecution of the perpetrators of such violations;

(l) Take all necessary steps to prevent sexual violence and, when it occurs, to bring the perpetrators to justice, provide victims with comprehensive care and facilitate their access to remedies for obtaining justice, truth and redress;

(m) Take the necessary steps to mitigate the socioeconomic effects of the COVID-19 pandemic and ensure that treatment and vaccination programmes take into account the rights of the most vulnerable persons, including people in detention;

(n) Ensure that the National Human Rights Commission becomes fully operational, including by allocating to it the appropriate financial and material resources, while guaranteeing its independence;

(o) Strengthen national institutions and mechanisms for promoting human rights and for following up on the implementation of the recommendations of United Nations mechanisms.

(p) Undertake, in consultation with civil society, communities affected by violence and other stakeholders, the establishment of transitional justice mechanisms that effectively address impunity, guarantee access to justice and redress for victims, and implement measures to ensure non-repetition.
