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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo

Summary

In its resolution 19/27, the Human Rights Council invited the United Nations High Commissioner for Human Rights to submit a report to the Council at its twenty-fourth session on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo. In the present report, which covers the period from November 2011 to May 2013, the High Commissioner assesses the progress made by the authorities in the implementation of recommendations made by the High Commissioner and United Nations human rights mechanisms in recent years.

The High Commissioner commends the efforts made by Congolese authorities to address such recommendations, which resulted in important developments in the field of human rights, including the promulgation of a law on the establishment of a national human rights commission. The High Commissioner also notes with satisfaction the improvements in holding State agents accountable for human rights violations, including sexual violence, such as elements of the Armed Forces of the Democratic Republic of the Congo (FARDC) and of the Congolese National Police, many of whom were convicted during the period under review. There were several other significant developments during the reporting period, including, in March 2013, the surrender to the International Criminal Court of General Bosco Ntaganda, accused of war crimes and crimes against humanity.

Despite the above-mentioned efforts, the High Commissioner notes that the situation of human rights had significantly deteriorated since her previous report to the Council (A/HRC/19/48), especially in the eastern part of the country, where the United Nations Joint Human Rights Office documented an important increase in the number of human rights violations and serious violations of international humanitarian law that could amount to war crimes, committed by national security and defence forces, as well as by foreign and national armed groups.

The increase in gross human rights violations during the period under review can be attributed to various armed groups, including Mouvement du 23 mars (M23), and to the security and defence forces, in relation to M23 activities. M23 combatants were indeed responsible for gross human rights violations and serious violations of international humanitarian law, including summary executions, rape and child recruitment. Other armed groups, which took advantage of the security vacuum that followed the redeployment of FARDC units to combat M23, since May 2012, were also responsible for gross human rights violations and serious violations of international humanitarian law. Such groups have sought to extend their influence and control over areas rich in natural resources in the eastern part of the country, committing attacks against civilians, often on ethnic grounds. In addition, in the context of operations against M23, members of the Congolese defence and security forces allegedly committed gross human rights violations and serious violations of international humanitarian law, including mass rape.

The presidential and legislative elections held in November 2011 were characterized by acts of violence and serious human rights violations, apparently committed mostly by members of the Congolese defence and security forces against opposition party members and supporters. While judicial authorities initiated investigations into some election-related human rights violations, little progress was observed with regard to the prosecution of the alleged perpetrators. In addition, human rights defenders and journalists were threatened, arbitrarily arrested and subjected to other human rights violations during the election period. The judiciary's lack of independence continued to be observed, in particular when dealing with cases of human rights violations against political opponents and civil society members.

The High Commissioner encourages the Government of the Democratic Republic of the Congo to implement all the recommendations made in the present report and reiterates the engagement of her Office in the State to support its efforts to protect and promote human rights.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 19/27. Like the three previous reports of the United Nations High Commissioner for Human Rights submitted to the Human Rights Council on the Democratic Republic of the Congo,¹ the report presents an overview of the situation of human rights in the country, as well as of the activities undertaken by the Office of the High Commissioner (OHCHR)² in the country from November 2011 to May 2013. In the report, the High Commissioner also assesses progress with regard to the implementation of the recommendations made by OHCHR and other United Nations human rights mechanisms.

II. Main human rights developments

2. Since the previous report of the High Commissioner (A/HRC/19/48), the Congolese authorities have made significant efforts to advance human rights including through the introduction of new policies and legislative changes. Appointed in April 2012, the Minister for Justice and Human Rights and her Deputy Minister have focused efforts on several pivotal issues, such as the launching of the *entités de liaison*³ at the provincial level, the implementation of the 2011 law criminalizing torture, and assessing prison conditions throughout the country. The promulgation, on 21 March 2013, by the President of the Democratic Republic of the Congo of a law establishing a national human rights commission is also expected to greatly enhance the national capacity to promote and protect human rights. The designation of its members and the completion of its establishment are now pending. The relaunching of the parliamentary network on human rights was also a significant development.

3. At the same time, the situation of human rights has deteriorated, with a significant increase in human rights violations, particularly in the conflict-stricken eastern provinces, namely North Kivu, South Kivu, Orientale and northern Katanga. Since April 2012, the majority of the human rights violations documented by the Joint Human Rights Office have been related to the activities of Mouvement du 23 mars (M23). M23 committed gross human rights violations and serious violations of international humanitarian law, as did other armed groups, taking advantage of the security vacuum left since May 2012 following the redeployment of units of the Armed Forces of the Democratic Republic of the Congo (FARDC) to combat M23. These various Congolese and foreign armed groups have been seeking to extend their influence and control over areas rich in natural resources. In that context, killings, enforced disappearances and, cruel inhuman and degrading treatment and rape were often committed in the scope of systematic attacks on villages and on their civilian population, which may amount to crimes against humanity. In addition, in the context of military operations against M23 and other armed groups, FARDC were the main perpetrators of human rights violations.

¹ A/HRC/13/64, A/HRC/16/27 and A/HRC/19/48.

² On 1 February 2008, the Division of Human Rights of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and OHCHR in the Democratic Republic of the Congo were merged to create the United Nations Joint Human Rights Office in the Democratic Republic of the Congo.

³ In August 2009, the Entité de liaison pour les droits de l'homme, a forum for discussion on human rights issues, was created by ministerial decree 095/35.

4. Sexual violence remained a major human rights concern, in both its scope and its systematic nature, particularly in the provinces of North Kivu, South Kivu and Orientale. A large number of cases of rape were committed by members of the Congolese defence and security forces, as well as by armed groups. Incidents of sexual violence mainly occurred during attacks on villages alongside other human rights violations, such as killings, torture and abduction. Many armed groups continued to struggle for control of resource-rich territories, resulting in serious human rights violations on civilians, including mass rape.

5. Insecurity in many parts of eastern part of the Democratic Republic of the Congo led to significant displacement, with a large number of Congolese fleeing to neighbouring countries for refuge. At least one million people have been displaced as a result of gross human rights violations and serious violations of international humanitarian law since May 2012.

6. Impunity remains widespread throughout the Democratic Republic of the Congo, especially for individuals in positions of power or influence. Nevertheless, in 2012, the Joint Human Rights Office documented the conviction of more than 200 individuals for human rights violations committed by State agents and armed groups. Despite this progress, the criminal justice system remains structurally weak and generally lacks independence, particularly when dealing with cases against political opponents and members of civil society.

7. The presidential and legislative elections, held in November 2011, were marked by widespread human rights violations, including violations of the rights to life, to liberty and security of person and to physical integrity, and violations of the rights to freedom of expression, the press and peaceful assembly.

8. In March 2013, in response to the above-mentioned developments, the Security Council adopted resolution 2098 (2013), in which it provided the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) with a stronger mandate and more robust tools for the protection of civilians. Provisions for an intervention brigade with an offensive mandate and the designation of a special envoy for the Great Lakes region were among the main measures adopted by the Council in resolution 2098 (2013) to address the persistence of violations of human rights and of international humanitarian law by a multitude of armed groups, mostly in the conflict-stricken provinces of the eastern part of the Democratic Republic of the Congo, and to address the stalemate in establishing regional security.

9. Throughout the period under review, the Joint Human Rights Office continued to contribute to the implementation of several MONUSCO tools and coordination mechanisms for the protection of civilians, including the Joint Protection Teams, the Community Alert Networks and the Community Liaison Assistants. Such tools are intended to enable the mission to anticipate protection needs, develop community protection plans and mitigate serious threats to the local population.

A. Extrajudicial killings and summary executions

1. Recommendations

10. Recommendations were made to the Government in the past regarding the responsibility to investigate, prosecute and punish all acts of extrajudicial killing and summary execution and to grant appropriate reparations to the families of the victims.⁴ It

⁴ See CCPR/C/COD/CO/3, para. 10.

was also recommended that the Government should implement fully its “zero tolerance” policy and investigate, arrest and prosecute FARDC members responsible for such killings.⁵

2. Action taken by the Government and current situation

11. Violations to the right to life continued to be widely reported since the previous report of the High Commissioner. The extensive killings targeting civilians⁶, which were committed between April and September 2012 by various armed groups in Southern Masisi, North Kivu, for instance, were among the most serious witnessed in the past two years in the country. In other parts of Masisi territory, the Joint Human Rights Office documented more than 130 killings and other human rights violations by armed groups, mainly Raïa Mutomboki and Nyatura combatants, during the period from 15 August 2012 to 10 January 2013. The killings were linked to the security vacuum created in the area following the redeployment of FARDC troops to Rutshuru to fight M23.

12. The disproportionate use of force by FARDC soldiers, members of the Republican Guard and agents of the Congolese National Police (PNC) during an operation against some 300 Mai-Mai Kata Katanga in March 2013 in Lubumbashi resulted in the killing of at least three civilians and more than 18 Mai-Mai, some shot at close range, as well as many others injured. Appropriate and laudable action was taken by Congolese authorities in some of these cases documented by OHCHR, such as in the Mitwaba case, where the perpetrators were arrested and referred to the military justice. In other cases, such as in the Ilema case, no serious action was taken.

3. Action taken by the Joint Human Rights Office

13. The Joint Human Rights Office continued to conduct monitoring and investigation missions to the most volatile areas and reported on the most urgent concerns. Four reports were subsequently published, with a particular focus on issues relating to serious human rights violations committed in Southern Masisi;⁷ death in detention;⁸ elections-related human rights violations in Kinshasa;⁹ and human rights violations perpetrated by FARDC and M23 in North and South Kivu from 15 November to 2 December 2012. On these cases and previous ones, OHCHR in the Democratic Republic of the Congo met with provincial and, where necessary, national authorities to encourage them to take appropriate measures.

⁵ A/HRC/14/24/Add.3, para. 109.

⁶ See the report of the United Nations Joint Human Rights Office on human rights violations perpetrated by armed groups during attacks on villages in Ufamandu I and II, Nyamaboko I and II, and Kibabi groupements, Masisi territory, North Kivu province, between April and September 2012, 14 November 2012. In the report, the Office confirmed the arbitrary execution of at least 264 people, of whom 246 were killed by combatants from Raïa Mutomboki and Mai-Mai Kifuafua, and 18 were killed by combatants of the Democratic Forces for the Liberation of Rwanda (FDLR) and Nyatura, between April and September 2012 in Ufamandu I and II, Nyamaboko I and II and Kibabi groupements, in Masisi territory, North Kivu province.

⁷ See *ibid.*

⁸ Report of the United Nations Joint Human Rights Office (MONUSCO-OHCHR) on deaths in detention centers in the Democratic Republic of Congo, March 2013 (available from <http://monusco.unmissions.org/LinkClick.aspx?fileticket=yCX3VNesgPg%3D&tabid=10662&language=en-US>).

⁹ Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011, March 2012 (available from www.ohchr.org/Documents/Countries/ZR/ReportDRC_26Nov_25Dec2011_en.pdf).

B. Torture and other cruel, inhumane and degrading treatment

1. Recommendations

14. Recommendations previously made included that the Government should eliminate impunity for alleged acts of torture and other cruel, inhuman and degrading treatment (ill-treatment) by carrying out prompt, impartial and exhaustive investigations into all reported cases of torture and ill-treatment.¹⁰ Those convicted of such acts should receive sentences in accordance with the provisions of the law, and effective reparations should also be granted to victims, including adequate compensation.¹¹ It was also recommended that the Government should also ensure that all persons reporting cases of torture and ill-treatment are protected from intimidation or reprisals for reporting such cases.¹²

2. Action taken by the Government and current situation

15. The widespread use of torture and ill-treatment by defence and security forces in the country remains a major human rights concern. Most cases of torture and ill-treatment registered by the Joint Human Rights Office are perpetrated by members of the PNC, the National Intelligence Agency and FARDC. Certain FARDC members torture civilians considered to be deserters of the army or perceived to be cooperating with armed groups. In such cases, torture is often used to obtain confessions from suspects. Some victims reported having had their hands and feet tied while being beaten with different objects. In one emblematic case, in July 2012, five Rwandan nationals, including three minors, arbitrarily arrested and detained by FARDC soldiers in Goma for their alleged affiliation with M23 were subjected to torture. One boy was beaten so severely that he had to be transported to the military hospital by the soldiers, where he was reported dead on arrival.

16. In a positive development witnessed during the period under review, the Government made progress in the application of the law criminalizing torture. Since the promulgation of the law on 9 July 2011, at least six FARDC soldiers, five PNC agents and one intelligence officer have been convicted for acts of torture to sentences ranging from six months to life imprisonment. In addition, the Ministry of Justice and Human Rights conducted workshops and training sessions in different provinces to sensitize various actors, including defence and security forces, judicial authorities and civil society representatives, on the content and application of the anti-torture law.

3. Action taken by the Joint Human Rights Office

17. The Joint Human Rights Office continued to monitor and report on incidents of torture and ill-treatment throughout the country. It also continued to provide support to judicial authorities in the investigation and prosecution of alleged perpetrators of torture, and conducted high-level advocacy with Congolese authorities to encourage them to hold elements of the security forces accountable for acts of torture. In collaboration with the Ministry of Justice and Human Rights and civil society partners, the Office also organized awareness-raising activities for various groups on the anti-torture law. In addition, as part of the International Day in Support of Victims of Torture, on 26 June 2012, the Office organized several outreach activities in collaboration with the Ministry of Justice and Human Rights in Kinshasa and in various provinces.

¹⁰ CAT/C/DRC/CO/1, para. 6 (b).

¹¹ CCPR/C/COD/CO/3, para. 16.

¹² CAT/C/DRC/CO/1, para. 13.

C. Arbitrary and illegal arrests and detention

1. Recommendations

18. It was recommended that the Government should restrict the number of security forces with the power of arrest and ensure that the police force remains the primary law enforcement agency.¹³ The Government should also ensure that procedures followed in the arrest and detention of persons comply with all provisions of article 9 of the International Covenant on Civil and Political Rights.¹⁴ It was also recommended that the Government set up a task force within the Ministry of Justice to combat arbitrary detentions and seek urgent ways of improving the situation of persons in detention.¹⁵ It was further recommended that the Government grant the Joint Human Rights Office and other independent mechanisms free access to all places of detention.¹⁶

2. Action taken by the Government and current situation

19. Arbitrary and/or illegal arrests and detention remain a common practice throughout the country. PNC agents and FARDC members frequently arrest civilians without a warrant, and detain them without ever charging them or referring them to the competent judicial authorities. Civilians are often detained for political reasons, their ethnicity or their perceived collaboration with armed groups, or simply to extort money from them. In order to secure their release, civilians are regularly forced to pay bribes to police agents or other officials. The systematic use of violence during arrests by State agents across the country is also of particular concern. Moreover, the frequent absence of judicial review of such arrests and detentions further exacerbates a pattern of corruption within the security forces, who often believe their power can go unchecked. Victims of illegal arrests and detention rarely file complaints.

20. Despite provisions included in Security Council resolution 1756 (2007) and in subsequent relevant resolutions, and in recommendations made by human rights mechanisms to grant the United Nations access to all detention centres in the country, the Joint Human Rights Office still does not have full access to all detention facilities, particularly those run by the National Intelligence Agency and the Republican Guard. During the period under review, the Office was particularly concerned about the existence of two secret detention facilities allegedly set up by Colonel Jean-Marie Izumbu Lugeni (alias Igwe) of the 61st FARDC Infantry Brigade based in Kalemie, Tanganyika district, in Katanga province. The detention facilities were reportedly closed following the Colonel's arrest on 26 November 2012. He was subsequently released on 17 December 2012, and his trial began before the Military Court of Lubumbashi on 19 February 2013, for various charges, including torture and arbitrary arrests. The accused is, however, currently at large.

3. Action taken by the Joint Human Rights Office

21. The Joint Human Rights Office continued to monitor and report on cases of arbitrary and/or illegal arrests and detentions. Daily human rights monitoring revealed that these are among the most common violations committed by the defence and security forces. Moreover, during the period under review, the Office documented an upsurge in arbitrary arrests and cases of torture and ill-treatment in detention by FARDC soldiers trying to

¹³ CAT/C/DRC/CO/1, para. 10.

¹⁴ CCPR/C/COD/CO/3, para. 19.

¹⁵ A/HRC/13/8, para. 96 (6).

¹⁶ Ibid., paras. 97 (1) and (3).

obtain military information from civilians about armed groups, especially in North Kivu province.

22. The Joint Human Rights Office continued to conduct advocacy with Congolese authorities on measures to reduce illegal detentions, efforts that led to the release of numerous detainees. It also conducted awareness-raising workshops for police officers and other authorities about the rules on arrest and detention. For example, in March 2013, the Office trained more than 500 PNC agents in Mvula Matadi, Bas Congo province, on basic human rights principles, including the rights of detainees.

D. Sexual violence

1. Recommendations

23. A recommendation was made that the Government of the Democratic Republic of the Congo should abolish all provisions of national law that discriminate against women.¹⁷ The Government was also called on to establish and promote an effective mechanism to receive complaints of sexual violence, including at custodial facilities.¹⁸ The Committee on Economic, Social and Cultural Rights called on the Government to provide victims with psychological and medical care.¹⁹ It has been consistently recommended that the Government arrest and bring to justice members of the armed forces who perpetrate acts of sexual violence.²⁰ Lastly, the State has been called on to pay damages to victims of sexual violence committed by State agents, and to create an adequate budgetary line for this purpose in the national budget.²¹

2. Action taken by the Government and current situation

24. Sexual violence continues at appalling levels throughout the country. During the period under review, the Joint Human Rights Office observed an alarming increase in mass rape committed by armed groups and members of the Congolese army. In November 2012, after M23 took over Goma, FARDC soldiers retreated to Minova in South Kivu Province, where they committed mass rape and other human rights violations over a period of 10 days.²² The Joint Human Rights Office also documented at least 59 cases of sexual violence committed between 20 November and 2 December 2012 by M23 members following their takeover of Goma. In addition, Mai-Mai Simba/Lumumba combatants also committed mass rape, including in Mambasa territory in Orientale Province, in June and November 2012, when they raped at least 110 women.²³ These incidents demonstrate how the Congolese army and armed groups operating in the east have continued to use rape as a weapon of war to intimidate the population and to force it into subjugation, as well as to punish civilians for their perceived collaboration with the enemy.

¹⁷ CEDAW/C/COD/CO/5, para. 34.

¹⁸ CAT/C/DRC/CO/1, para. 12.

¹⁹ E/C.12/COD/CO/4, para. 25.

²⁰ See A/HRC/13/8, para. 94 (79).

²¹ See E/C.12/COD/CO/4, para. 25.

²² See the report of the United Nations Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese Armed Forces and combatants of the M23 in Goma and Sake, North Kivu province, and in and around Minova, South Kivu province, from 15 November to 2 December 2012, May 2013 (available from www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013_en.pdf).

²³ See A/67/792-S/2013/149, para. 39.

25. As mentioned by the High Commissioner in her previous reports, most reported rape cases are not investigated and do not reach a court of law. In cases where the perpetrators are ordered to pay damages, the victim rarely, if ever, receives them. Perpetrators are often insolvent, and the State has still not allocated funds for reparations, while the execution of awards requires the payment of additional legal fees that often prohibit follow-up by victims.

26. In other developments regarding women's rights, the submission by the Democratic Republic of the Congo of its combined sixth and seventh reports to the Committee on the Elimination of All Forms of Discrimination against Women²⁴ was a positive development in 2012. OHCHR is confident that the dialogue between the Committee and the State party will lead to further progress for the advancement of women's rights.

3. Action taken by the Joint Human Rights Office

27. The Joint Human Rights Office continued to monitor, and follow up and report on cases of sexual violence, including through the publication of reports, such as the report on human rights violations by FARDC soldiers and M23 combatants in Goma and Sake, North Kivu province, and in and around Minova, South Kivu province, from 15 November to 2 December 2012.²² The Office also continued to provide support to judicial authorities to help them to investigate and prosecute perpetrators of sexual violence, including through the deployment of mobile court hearings in remote areas. In partnership with the Canadian International Development Agency (CIDA) and the Swedish International Development Agency (SIDA), the Office is implementing projects to improve access to justice for victims through legal assistance provided by national and international non-governmental organizations. During the period under review, a total of 1,449 victims of sexual violence were provided with legal assistance through the CIDA and SIDA projects, which resulted in 235 court decisions. In partnership with the Government of Brazil, the Office also provided economic reintegration kits (usually comprising tools and supplies for the small business activity that beneficiaries have chosen and been trained in) and counselling and business training to victims of sexual violence.

28. Since the previous report of the High Commissioner, the Joint Human Rights Office has taken a number of steps to raise awareness among State agents and civil society on national laws against sexual violence. For example, in January 2013, the Office organized a training session on sexual violence monitoring for 40 PNC agents and 41 members of civil society, in Ango territory, Orientale province. In addition, during the period under review, the Office trained 350 magistrates on sexual violence laws and procedures.

29. The Joint Human Rights Office remains engaged with the Government in strategies to combat sexual violence; for instance, it continues to support the Government's efforts to implement the national strategy to combat sexual and gender-based violence, and is part of a technical team, led by the Ministry of Gender, Family and Child Affairs, to discuss ways to improve mechanisms to address sexual violence. In a very positive development, on 30 March 2012, the Prime Minister and the Special Representative of the Secretary-General on Sexual Violence in Conflict signed a joint communiqué, which contained a list of the commitments made by the Government to tackle sexual violence, including the need to establish effective mechanisms to protect against sexual violence in conflict situations.

²⁴ CEDAW/C/COD/Q/6-7/Add.1.

E. Situation of journalists, human rights defenders, victims and witnesses

1. Recommendations

30. At the universal periodic review, it was recommended that the Government develop a legal framework to protect and ensure the security of journalists, human rights defenders, and members of civil society and the political opposition.²⁵ It was also recommended that Government should ensure that members of political parties, media and civil society are permitted to exercise freely their rights to freedoms of expression, association and peaceful assembly according to international standards.²⁶

2. Action taken by the Government and current situation

31. The situation of human rights defenders and journalists remains precarious, as they have been regularly intimidated and subjected to death threats, arbitrary arrest and other human rights violations by State agents and armed groups. For example, after the fall of Goma in November 2012, at least 19 human rights defenders and three journalists received death threats from M23 combatants after they had denounced the human rights violations committed by the group.

32. The Joint Human Rights Office is also particularly concerned by the delays in the appeal process, which started in July 2012, before the High Military Court in Kinshasa, in the case of assassination of the human rights defender Floribert Chebeya and his driver, Fidèle Bazana. In June 2011, a military court in Kinshasa had found five senior police officers guilty of murdering Chebeya and Bazana in June 2010. The Office is following the proceedings closely to ensure that the trial complies with relevant international standards.

33. The Government's efforts to protect victims and witnesses who testify in court remain insufficient. During the period under review, in several cases, the protection needs of victims and witnesses were neglected, and judicial authorities failed to properly protect such individuals against the threats they faced for testifying in court. As an example, the names of victims were read out loud during public hearings before the High Military Court in the case of General Kakwavu, who is accused for war crimes and crimes against humanity.

34. Despite several recommendations made by civil society and other actors, the draft law on the protection of human rights defenders has been pending before Parliament since 27 May 2011, apparently because it was not part of its priorities. Furthermore, the protection cell established by the Ministry of Justice and Human Rights for human rights defenders in 2011²⁷ lacks the powers and resources to function effectively.

3. Action taken by the Joint Human Rights Office

35. Throughout the period under review, the Joint Human Rights Office followed closely the cases of human rights violations against journalists, human rights defenders and victims and witnesses of human rights violations. It continued to provide targeted protection assistance to victims and witnesses of serious human rights violations who faced the risk of reprisals for testifying and participating in sensitive trials for serious crimes, as well as to human rights defenders at risk owing to their work. The Office also provided judicial authorities with advice on appropriate measures to protect victims during investigations and trials. It also participated in training sessions and awareness-raising

²⁵ A/HRC/13/8, para. 96 (22)-(26).

²⁶ *Ibid.*, para. 94 (102).

²⁷ A/HRC/19/48, para. 33.

activities for officials, such as administrative personnel, military police and judicial authorities, on the rights of victims, witnesses and human rights defenders.

F. Public liberties and elections

1. Recommendations

36. Recalling with concern the cases of threats and violence reported during the presidential and legislative elections, including against members of civil society and human rights defenders, the Human Rights Council, in its resolution 19/27, recommended that the Government of the Democratic Republic of the Congo should hold free and fair elections with all due respect for the rights of all parties to freedom of expression, assembly and opinion. A number of recommendations were also made thereon in the report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defence and security forces in Kinshasa during the electoral period (November 2011), published jointly with MONUSCO.²⁸

2. Action taken by the Government and current situation

37. The elections in 2011 were held in a context of violence, involving clashes between various political actors and during which serious human rights violations were committed by State agents across the country. Between 1 October 2011 and 31 January 2012, the Joint Human Rights Office documented 345 human rights violations linked to the electoral process, involving 769 victims: at least 41 civilians were killed, 168 injured and/or mistreated and 400 people subjected to arbitrary arrest or detention. The Office also documented 26 violations of the right to freedom of peaceful assembly, 48 violations of the right to freedom of expression and 18 violations of the right to freedom of the press. The Congolese defence and security forces were found to be responsible for more than half of the human rights violations documented by the Office. The most serious violations were reported in Kinshasa and Kasai Oriental.

38. Despite high-level advocacy by different national and international actors, including the Joint Human Rights Office, the Government of the Democratic Republic of the Congo has largely failed to address the human rights violations committed in the context of the 2011 elections. More than a year and a half after the elections, very few of the human rights violations documented by the Office have resulted in an investigation or prosecution. None of the agents of the National Intelligence Agency or of the Republican Guard reportedly involved in human rights violations committed in the context of the elections has been arrested or prosecuted.²⁹

3. Action taken by the Joint Human Rights Office

39. During the pre-election and election periods, the Joint Human Rights Office strengthened monitoring at its headquarters in Kinshasa and through its 18 field offices. In the months leading up to the elections, it carried out awareness-raising activities, in collaboration with partners, for more than 10,000 people throughout the country. In November 2011, the Office established a free hotline, active around the clock, every day of the week, for civilians wishing to report election-related human rights violations, and

²⁸ Available from www.ohchr.org/Documents/Countries/ZR/ReportDRC_26Nov_25Dec2011_en.pdf.

²⁹ See the report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces (see footnote 9).

provided financial support to the hotline run by the national network of non-governmental human rights organizations, RENADHOC.

40. The Joint Human Rights Office provided support to judicial authorities in charge of investigating election-related human rights violations, and published two reports on them.³⁰ Since the elections, the Office has conducted high-level advocacy with local, provincial and national authorities to follow up on the status of investigations and recommendations made in the reports. Impunity for election-related human rights abuses has, however, prevailed owing to the limited action taken by the authorities.

G. Violations of economic, social and cultural rights and the illegal exploitation of natural resources

1. Recommendations

41. The Committee on Economic, Social and Cultural Rights has made various recommendations that the Government should take comprehensive measures to address the issue of illegal exploitation of natural resources and to increase transparency in its revenue collection.³¹ It recommended that the Government should review, without delay, all mining contracts and repeal any that are detrimental to the Congolese people; that the Government should adopt measures to control the export of minerals and impose drastic sanctions on those involved in the illicit trade of natural resources; and that it ensure that revenues derived from natural resources are used to improve basic services and infrastructure so that living conditions may be improved.³²

2. Action taken by the Government and current situation

42. Throughout the period under review, many resource-rich areas, mostly in Orientale province, the Kivus and northern Katanga, bore witness to human rights violations, including forced labour linked to the illegal exploitation of such resources, allegedly committed by both armed groups and State agents. A series of attacks by armed groups were launched in March 2012, spreading terror and clearing the above-mentioned areas of their populations. As an example, human rights violations were committed against civilians, including the rape of more than 110 women and the abduction of at least 100 civilians, in the scope of attacks by Mai-Mai Simba/Lumumba³³ in Mambasa territory, Orientale province. Other serious human rights violations were also committed by armed groups to facilitate the exploitation of natural resources. The Joint Human Rights Office documented a large number of cases of abduction of civilians and of forced labour by armed groups. A significant number of abductions, particularly by combatants of the Allied Democratic Forces, were reported in Beni territory, North Kivu province. Many abductees were forced to take part in such activities as timber cutting, gold mining and agricultural production for the benefit of the armed group.

43. State agents were also implicated in mineral trafficking and often used their position of power to shield themselves from accountability; for example, in September 2012,

³⁰ Report of the United Nations Joint Human Rights Office on human rights and fundamental freedoms during the pre-electoral period in the Democratic Republic of Congo, November 2011 (available from www.ohchr.org/Documents/Countries/ZR/Joint_Human_Rights_Office_HRElectionsReport_en.pdf).

³¹ E/C.12/COD/CO/4, para. 13.

³² Ibid.

³³ The Mai-Mai Simba/Lumumba militia, led by a former poacher known as Captain Morgan, moved in March 2012 to the resource-rich Mambasa, where it has sought to spread terror among the civilian population and illegally exploit natural resources.

Dieudonné Kasongo Kabila (alias General Kasongo), half-brother to Laurent Desire Kabila, ordered in Lubumbashi the arbitrary arrest, illegal detention and ill-treatment of three anti-fraud agents, a magistrate and a police agent who had intercepted a truck transporting minerals as part of traffic in which he was allegedly involved. Although a judicial inquiry has been opened against him, he has yet to be arrested.

44. Mining trading centres, established by the Government to ensure the traceability of minerals, were suspended on 18 December 2012 owing to insecurity and the rivalry between holders of mining titles and artisanal miners. Thousands of artisanal miners are engaged in illegal mining. The Government has yet to put in place an effective system that would allow for the certification of origin and ensure the traceability of minerals, as well as regularize the working conditions of artisanal miners.

45. The continued failure of the State to curb illegal mining and the complicity of FARDC and, in many cases, other State agents is a key factor in the State's lack of the funds required for it to comply with its minimum core obligations under the International Covenant on Economic, Social and Cultural Rights to ensure the satisfaction of, at the very least, essential foodstuffs, essential primary health care, basic shelter and housing and the most basic forms of education.

3. Action taken by the Joint Human Rights Office

46. The Joint Human Rights Office continued to monitor and investigate human rights violations linked to the illegal exploitation of natural resources, and to share the findings with Congolese authorities. Moreover, MONUSCO continued to encourage the authorities to deploy sufficient and professional security forces to the conflict areas to track down those responsible for illegal exploitation and to hold them to account. During the period under review, MONUSCO and the Ministry of Mines pursued efforts to mediate between mining title holders and artisanal miners in North Kivu. MONUSCO continued to support the process of tagging minerals and validating mining sites in the eastern part of the State to determine whether mines were controlled by armed groups and whether human rights were respected.

H. Administration of justice and the fight against impunity

1. Recommendations

47. Numerous recommendations have been made to encourage the Government to reform the judicial system, to improve access to justice and to fight impunity. At the universal periodic review, it was recommended that the Government should establish a vetting process for its security forces with the aim of preventing the recruitment of individuals who have committed gross human rights violations.³⁴ The Committee against Torture recommended that the Government should ensure that military courts only try members of the military for military offences, in accordance with the applicable international norms.³⁵ At the universal periodic review, it was recommended that legislation should be enacted to give effect to the Rome Statute,³⁶ and that sufficient funds be allocated for the administration of justice and a comprehensive plan be developed for training judges.³⁷ The Human Rights Council, in its resolution 19/27, recommended that the

³⁴ A/HRC/13/8, para. 97 (7).

³⁵ CAT/C/DRC/CO/1, para. 9.

³⁶ A/HRC/13/8, para. 96 (14).

³⁷ Ibid.

Government should also establish a national human rights commission in accordance with the relevant international principles.

2. Action taken by the Government and current situation

48. Some positive developments were registered in the fight against impunity, some of which resulted from activities conducted with the support of the Joint Human Rights Office. The developments included the conviction by the South Kivu military court, in May 2012, of 15 FARDC officers who had deserted the Congolese army in April 2012 in an attempt to join M23, many of whom had extensive records of human rights violations.³⁸ Another development was the surrender to the International Criminal Court, in March 2013, of General Bosco Ntaganda. Judicial investigations are also ongoing against Mai-Mai Simba/Lumumba combatants for serious human rights violations committed between March 2012 and March 2013 in several localities of Mambasa territory. Approximately 20 Mai-Mai combatants are currently detained and awaiting trial at the central prison of Bunia.

49. A lack of progress was, however, noted with regard to several cases of mass rape and other serious human rights violations documented by the Joint Human Rights Office. For instance, no development was observed in investigations into the mass rape and other human rights violations committed, at the end of December 2010 and in early January 2011, in Bushani and Kalambahiro, in Masisi territory, North Kivu.³⁹ Despite advocacy by MONUSCO and the Joint Human Rights Office with regard to the mass rape and other human rights violations committed in Minova,⁴⁰ to date only two low-ranking soldiers have been charged with rape and, while 12 FARDC officers have been suspended, none of them has yet been arrested. Furthermore, numerous escapes from prisons and holding cells are undermining efforts of the judiciary to fight impunity. The deplorable living conditions of detainees and the lack of sufficient prison personnel prompt riots and prison escapes. During the occupation of Goma by M23 in November 2012, all detainees of the prison escaped, including an FARDC major, the only defendant in the Walikale mass rape trial of July-August 2010.⁴¹ The destruction of judicial files at the North Kivu military court in Goma, in November 2012, was another major setback for the judiciary in its efforts to combat impunity.

50. After a period of stagnation, some progress was made in the prosecution of two of the five army officers whose names were on a list given to the Government of the Democratic Republic of the Congo by members of the Security Council during their visit in May 2009. The trial of General Kakwavu for war crimes and crimes against humanity resumed before the High Military Court in Kinshasa on 19 April 2013. Lieutenant Colonel Bedi Mobuli Engangela (alias Colonel 106), who has been accused of war crimes and

³⁸ Thirteen of the accused who were present at the trial were sentenced to prison terms ranging from two years to life imprisonment, while two were sentenced in absentia to the death penalty. Three officers were acquitted.

³⁹ See the report of the investigation missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed in the villages of Bushani and Kalambahiro, in Masisi territory, North Kivu, on 31 December 2010 and 1 January 2011, July 2011 (available from www.ohchr.org/Documents/Countries/ZR/UNJHROReportMassRapesBushani_en.pdf).

⁴⁰ See the report of the United Nations Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese Armed Forces and combatants of the M23 in Goma and Sake, North Kivu province, and in and around Minova (see footnote 22).

⁴¹ See the final report of the fact-finding missions of the United Nations Joint Human Rights Office into the mass rapes and other human rights violations committed by a coalition of armed groups along the Kibua-Mpofi axis in Walikale territory, North Kivu, from 30 July to 2 August 2010, July 2011 (available from www.ohchr.org/Documents/Countries/ZR/BCNUDHRapportViolsMassifsKibuaMpofi_en.pdf).

crimes against humanity, was transferred on 2 April 2013 from Kinshasa to Bukavu prison with the support of MONUSCO. The Military Court of South Kivu is in the process of completing the investigation phase, and Colonel Engangela will stand trial in 2013.

51. In spite of pledges made by the Government to adopt legislation to implement the Rome Statute of the International Criminal Court, the relevant bill has been pending before Parliament since 2008. In a positive development, on 4 May 2013, the President promulgated the new organic law on the organization, functioning and competence of courts of the Judicial Order. The new law extends to the Appeals Courts⁴² and jurisdiction over the crime of genocide, war crimes and crimes against humanity.

52. In addition, although the OHCHR mapping report⁴³ recommended a holistic approach to transitional justice in the Democratic Republic of the Congo, including tools for vetting the security services for their human rights records, and judicial and non-judicial transitional justice mechanisms, the current Government has not yet identified the steps that it needs to take to that end. The rise of M23, composed of former rebels who joined the national army in 2009 and deserted in April 2012, reflect the dramatic consequences of the lack of action taken in this regard.

53. In a positive development, however the Government recently reiterated its intention not to grant amnesties to perpetrators of violations of human rights law and international humanitarian law in the context of ongoing negotiations with various armed groups.

3. Action taken by the Joint Human Rights Office

54. Judicial authorities continued to benefit from the support of MONUSCO and of the Joint Human Rights Office in the conduct of investigations and the organization of mobile hearings, especially in the eastern part of the country. In this regard, the Office undertook several joint missions with judicial authorities during the period under review, including for the Minova case,⁴⁴ for which MONUSCO provided support for the deployment of judicial investigators to the affected villages.

55. The Joint Human Rights Office also continued to advocate at the highest level for the prosecution of FARDC and PNC members accused of human rights violations and, in that respect, held several meetings with the relevant authorities.

56. In compliance with the human rights due diligence policy on United Nations support to non-United Nations security forces,⁴⁵ the Joint Human Rights Office continued to screen FARDC battalion commanders and PNC agents for past human rights violations as a condition for any support provided by MONUSCO or by the United Nations country team in the Democratic Republic of the Congo.

⁴² To date, only military courts with jurisdiction over such serious crimes were empowered to prosecute civilians and members of the military charged with these crimes.

⁴³ See the report of the mapping exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, August 2010 (available from <http://www.ohchr.org/en/countries/africaregion/Pages/rdcProjetmapping.aspx>).

⁴⁴ See the report of the United Nations Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese Armed Forces and combatants of the M23 in Goma and Sake, North Kivu province, and in and around Minova (see footnote 22).

⁴⁵ A/67/775-S/2013/110, annex.

III. Conclusions and recommendations

A. Conclusions

57. The period under review was marked by an escalation in armed conflict in the east and a resulting dramatic increase in the number of human rights violations. The Democratic Republic of the Congo still faces major challenges in implementing the recommendations made by United Nations human rights mechanisms and OHCHR, for two main reasons: lack of capacity, and the limited engagement of the Government to hold perpetrators of human rights abuses to account. It is essential that the Government establish reliable vetting mechanisms to ensure that human rights abusers are not maintained within or integrated into the security forces. Without background checks on individuals wishing to join FARDC or measures to enforce discipline and to hold human rights abusers to account, all initiatives by the Government and its partners to reform the security sector are significantly undermined if not doomed to failure.

58. As stated by the High Commissioner in her previous reports, despite some progress in prosecuting some high-profile perpetrators, the criminal justice system remains structurally weak. The lack of independence of the judiciary continued to be observed, in particular when dealing with cases of political opponents and members of civil society. In addition, current initiatives in the field of transitional justice should be coordinated to ensure their complementarity and to avoid creating contradictions and legal loopholes.

59. The High Commissioner welcomes the steps taken by the Government to implement some of the recommendations made by United Nations human rights mechanisms and her Office, including progress towards establishing the national human rights commission, and commends the Government's collaboration with the Joint Human Rights Office and United Nations human rights machinery.

B. Recommendations

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

(a) Speed up reform of the justice sector, including by increasing budget allocations, and establish the judicial and non-judicial mechanisms necessary to redress the massive human rights abuses committed throughout the country;

(b) Establish, as a matter of utmost urgency, adequate vetting mechanisms as part of security sector reform;

(c) Ensure that the future national human rights commission is provided with appropriate financial and logistical capacity support needed for its effective functioning, in accordance with the Paris Principles;

(d) Increase budget allocations to health, education and social services in order to improve the living conditions of the Congolese people in view of the realization of their economic, social and cultural rights;

(e) Create, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and with the assistance of the Subcommittee on the Prevention of Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment, a national preventive mechanism independent of the Government;

(f) Adopt legislation on international crimes, including legislation to implement the Rome Statute of the International Criminal Court;

(g) Extend a standing invitation to all thematic special procedures mandate holders, and provide detailed responses to the communications sent by them.

61. In view of the above recommendations, the Human Rights Council should continue to be seized of the situation of human rights in the Democratic Republic of the Congo.
