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Report on the situation of human rights in the Democratic Republic of the Congo before, during and after the elections of December 2018*

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

In its resolution 39/20, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit a report on the situation of human rights in the Democratic Republic of the Congo before, during and after the elections of December 2018.

The present report describes violations and abuses of human rights and fundamental freedoms committed in the country between 22 November 2018 and 24 January 2019, in the framework of the electoral process, comprising the campaign period, election day, and the immediate post-electoral period until the inauguration of a new president.

* The present report was submitted after the deadline so as to include the most recent information.

Contents

	<i>Page</i>
I. Introduction	3
II. Context	3
III. Methodology	5
IV. Campaign period	5
A. Human rights violations perpetrated by State actors.....	6
B. Human rights abuses perpetrated by armed groups and militias.....	8
V. Election day.....	9
A. Violations of the right to vote	10
B. Other human rights violations.....	11
VI. Post-election period.....	12
A. Violations of the rights to life, physical integrity, and liberty and security of person	12
B. Violations of the rights to freedom of opinion and expression and freedom of peaceful assembly and association.....	13
VII. Conclusions and recommendations	14

I. Introduction

1. The Human Rights Council, in its resolution 39/20,¹ requested that the United Nations High Commissioner for Human Rights submit to the Council at its fortieth session a report on the situation of human rights in the Democratic Republic of the Congo before, during and after the elections of December 2018.

2. On 30 December 2018, the Democratic Republic of the Congo held presidential elections and national and provincial legislative elections. They were preceded by an official campaign period that ran from 22 November to 21 December 2018. The Independent National Electoral Commission announced partial and provisional results on 10 January 2019, which the Constitutional Court confirmed on 20 January 2019.

3. Noting the challenges posed by the electoral process to peace and stability in the country and the region, the Security Council requested the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to “monitor, report immediately to the Security Council, and follow up on human rights violations and abuses and violations of international humanitarian law to report on restrictions on political space and violence, including in the context of the elections”.²

II. Context

4. According to the Constitution of the Democratic Republic of the Congo,³ the President of the Republic is elected by direct universal suffrage for a five-year term, renewable once.⁴ The President of the Democratic Republic of the Congo, Joseph Kabila Kabange, began his second term on 20 December 2011. According to constitutional provisions, the legislative and presidential elections were to be held before 19 December 2016 to elect a new President of the Republic and new Members of Parliament.⁵ Elections were also to be held for senators, and for local and provincial elected officials, and have been repeatedly postponed.

5. On 17 January 2015, the National Assembly adopted a draft law that included a provision conditioning the holding of the next presidential and legislative elections on the organization of a national census. Dissatisfaction with that draft law led to demonstrations across the country between 19 and 22 January 2015. The violent suppression of most of these demonstrations by defence forces and security services marked a deterioration in the situation of human rights across the country, particularly with regard to respect for civil and political rights.⁶ The provision on holding the census was subsequently removed from the draft electoral law. In May 2016, the Constitutional Court ruled that the incumbent President could remain in office in a caretaker capacity until the election of the next president, which led to further protests and their violent repression by State defence forces and security services. In September and December 2016, demonstrations calling for the timely holding of elections and respect for the Constitution were again violently repressed by the State defence forces and security services, with excessive use of force and loss of life.⁷

¹ See para. 30.

² Security Council resolution 2409 (2018).

³ Of 18 February 2006.

⁴ See arts. 70 and 220 of the Constitution.

⁵ See art. 103 of the Constitution.

⁶ See the United Nations Joint Human Rights Office report on human rights and fundamental freedoms during the pre-election period in the Democratic Republic of the Congo between 1 January and 30 September 2015, available at www.ohchr.org/Documents/Countries/CD/UNJHRODecember2015_en.pdf.

⁷ See the Joint Human Rights Office report on human rights violations in the Democratic Republic of the Congo in the context of the events of 19 December 2016, published in February 2017 and available at, and the Joint Human Rights Office preliminary investigation report on human rights

6. Following several rounds of dialogue, an agreement facilitated by the Episcopal Conference of the Democratic Republic of the Congo was signed on 31 December 2016 by representatives of the Government, political parties and civil society. The so-called Saint Sylvester Agreement established a framework for the delayed holding of elections by the end of 2017, the establishment of interim power-sharing mechanisms, the prioritization of confidence-building measures – including the release of political prisoners, the return of political figures in exile and the reopening of some media outlets – and the establishment of an oversight mechanism, the Conseil national de suivi de l'Accord, for the implementation of the agreement.

7. On 5 November 2017, following completion of the update of the electoral register, and citing technical and logistical constraints on the holding of elections by the end of 2017, the Commission électorale nationale indépendante published an electoral calendar which scheduled the holding of presidential, national and provincial assembly elections for 23 December 2018, sparking fresh protests that were again violently repressed. The pre-election period, before the campaign started, was marked by numerous protests led by civil society organizations, mostly against the use of voting machines and against irregularities in the electoral register. Members of the opposition were concerned that the use of voting machines could lead to fraud, and called for a review of the electoral register alleging that it included millions of voters with incomplete registration, notably without fingerprints. This period was also marred by a lack of inclusive dialogue and a climate of mistrust vis-à-vis the Commission électorale nationale indépendante, with civil society leaders and the general population questioning its independence. Moreover, throughout the electoral process, the United Nations Joint Human Rights Office observed politically motivated restrictions on freedom of the press and violations of the right to freedom of expression and opinion.

8. Twenty-one candidates ran in the presidential election. An agreement between opposition parties, signed in Geneva on 11 November 2018, which designated Martin Fayulu as the common opposition candidate, did not survive political divisions. As a result, the official campaign period was launched on 22 November 2018 with three political blocs rallying behind three main candidates: Martin Fayulu from the Lamuka coalition; Félix Tshisekedi from the Cap pour le Changement coalition; and Emmanuel Ramazani Shadary from the Front commun pour le Congo coalition, of the presidential majority.⁸

9. Armed groups interfered in the electoral process throughout the campaign period, notably in Ituri, the Kasai region, Maniema, North Kivu and South Kivu. Incidents of prevention of electoral campaign activities by blocking access to some candidates were recorded, as were abductions, looting, and death threats and intimidation against candidates and the local population. More than half of the election-related human rights abuses committed by armed groups in 2018 occurred in November and December, during the electoral campaign.

10. On 20 December 2018, one day before the end of the official campaign period, the Commission électorale nationale indépendante announced the postponement of the elections to 30 December 2018, citing logistical challenges, mainly as a consequence of a fire at its warehouse in Kinshasa on 13 December 2018 that destroyed voting machines intended for the capital, and voter rolls.

11. On 26 December 2018, the Commission électorale nationale indépendante announced the postponement to March 2019 of elections in the city and territory of Beni, as well as in the city of Butembo – all in North Kivu Province – citing risks associated with the outbreak of Ebola virus disease and with the security situation. The same delay would be observed in Yumbi (Mai-Ndombe), due to ethnic violence in which several hundred persons were killed and thousands displaced in December 2018.

violations and violence perpetrated during the demonstrations in Kinshasa between 19 and 21 September 2016, available at www.ohchr.org/Documents/Countries/CD/UNJHROSeptember2016_en.pdf.

⁸ The official list of candidates included one woman.

III. Methodology

12. The present report is based on information compiled by the United Nations Joint Human Rights Office through its 18 field offices and its headquarters in Kinshasa. Throughout the campaign period, the Joint Human Rights Office engaged with national and local authorities and stakeholders to defuse tensions and enable peaceful demonstrations to take place. On election day, the Joint Human Rights Office led monitoring teams that were deployed to at least 27 locations; special monitoring teams were deployed to locations identified as potential hotspots, such as Lodja (Sankuru) and Kikwit (Kwilu). The teams conducted interviews with voters, candidates, staff of the Commission électorale nationale indépendante, electoral observers, members of civil society, and the authorities. The deployment of these teams in key locations played a preventive role, deterring violence.

13. The present report examines cases that were documented and verified by the Joint Human Rights Office, rather than providing an exhaustive overview of human rights violations perpetrated during the period under review. Certain allegations communicated to the Joint Human Rights Office could not be verified and were therefore not included in the present report. It should be noted that one incident can include the violation of several human rights; the Joint Human Rights Office records each violation. For the purposes of the present report, the Joint Human Rights Office included only human rights violations which were related to the electoral process, mostly resulting from violent dispersion of demonstrations or political gatherings by State actors, violations against candidates or voters, and actions committed with the aim of affecting the outcomes of the elections.

14. The Joint Human Rights Office documents each case in accordance with Office of the United Nations High Commissioner for Human Rights (OHCHR) methodology, and in support of the Government's efforts towards respect for human rights and the fight against impunity.

15. Investigations, and access by the Joint Human Rights Office to information, were hindered by various challenges. Due to the vastness of the territory, as well as logistical, financial, security and human resources constraints, the human rights monitoring teams were deployed primarily to key cities and towns. OHCHR methodology for verification and documentation of human rights violations requires triangulation of sources, and some allegations of election-related violations are therefore not included in the present report as they were still being investigated when the report was finalized. Moreover, as protests were continuing in some areas while the report was being prepared, some events have not been captured.

IV. Campaign period

16. During the official electoral campaign period, from 22 November to 21 December 2018, the Joint Human Rights Office documented 147 election-related human rights violations, notably the use of excessive force by defence forces and security services during demonstrations, leading to killings and injuries; threats against and intimidation of political parties' representatives and candidates; and undue restrictions on the rights to liberty and security of person, to freedom of opinion and expression, and to freedom of peaceful assembly and of association.

17. Election-related human rights violations during the campaign period were recorded in 21 provinces,⁹ with significant variations. Approximately 75 per cent of human rights violations were documented in seven provinces, namely Haut-Katanga, Kasai, Maniema, North Kivu, South Kivu, Tanganyika and Tshopo. In some of these provinces, inter-ethnic dynamics exacerbated tensions and were in some cases fuelled by inflammatory speech by some authorities and some candidates and their supporters.

18. The Joint Human Rights Office documented eight incidents of arbitrary killing, affecting 15 persons, including two women and one child; 42 violations of the right to

⁹ No violations were documented in Bas-Uélé, Équateur, Lomami, Nord-Ubangi or Sankuru.

liberty and security of person, affecting 316 victims, including at least 12 women and six children; and 27 violations of the right to physical integrity, affecting 137 victims, including at least three women and seven children.

19. Such infringements of fundamental rights and freedoms did not contribute to an environment conducive to electoral campaign activities.

A. Human rights violations perpetrated by State actors

20. Most of the human rights violations documented during the campaign period were related to the excessive use of force by State defence forces and security services to disperse political gatherings and peaceful protests, predominantly those organized by opposition parties.¹⁰

21. During the electoral campaign, the Congolese National Police and the Forces armées de la République démocratique du Congo (FARDC), including the Republican Guard, resorted to lethal weapons for crowd control purposes and, in many instances, opened fire to disperse demonstrations, in contravention of international norms and standards.¹¹ The behaviour of State defence forces and security services varied significantly between different regions, with most cases of excessive use of force documented in Haut-Katanga, Kinshasa, Kivu, Maniema, North Kivu, Tanganyika and Tshopo Provinces and in the three provinces of the Kasai region. For example, on 11 December 2018, in Lubumbashi (Haut-Katanga), agents of the Congolese National Police violently dispersed supporters of opposition presidential candidate Mr. Fayulu who had gathered at the airport to welcome him. They used live ammunition, killing three people by gunshots, and wounding seven others. In other locations where the Congolese National Police was policing campaign activities, such as in Mbuji-Mayi (Kasai Oriental), no violations of the rights to life or physical integrity by the Congolese National Police were documented. This was partly the result of consistent Joint Human Rights Office and MONUSCO advocacy and capacity-building and sensitization sessions organized throughout the country since July 2017.

22. During the electoral campaign, the Joint Human Rights Office documented 18 violations of the right to life committed by State defence forces and security services, which included the arbitrary killing¹² of nine victims, including two women and one child. In addition, at least 119 people, including three women and seven children, were wounded.

23. Moreover, FARDC soldiers, agents of the Congolese National Police or the Agence nationale de renseignements arbitrarily arrested 271 people, including 12 women and six children, during the repression of protests (some of which were partially violent) against the use of voting machines and against irregularities on the electoral register, or against the postponement of elections in Beni, Butembo and Yumbi. Most of these violations were linked to attempts to intimidate members of the political opposition, civil society or demonstrators in order to restrain or discourage their activities.

24. North Kivu was the province where the Joint Human Rights Office documented the highest number of human rights violations. One man was executed extrajudicially by FARDC soldiers who used live ammunition to disperse a crowd of protesters, and 172 people, including 11 women and four children, were arrested arbitrarily by State defence forces and security services. Most of the violations occurred in Beni and Butembo, in the context of demonstrations against the deferral of elections in part of the province. Civil society and youth groups protested intensely in Beni, Isale, Bulambo, Bunyuka, Bulongo and Kasindi (Beni territory) and in the city of Butembo. In Beni, agents of the Congolese

¹⁰ See the Joint Human Rights Office report on the unlawful, unjustified and disproportionate use of force against protestors in the Democratic Republic of the Congo in March 2018, available at www.ohchr.org/Documents/Countries/CD/BCNUDH-UnlawfulUnustifiedUseofForce_Jan2017-Jan2018.pdf. To date, the recommendations of the report have not been implemented, despite advocacy by the Joint Human Rights Office and its offer to provide support.

¹¹ The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are applicable.

¹² The other violations of the right to life mainly consisted of death threats.

National Police shot live bullets into the air to disperse protesters. These demonstrations led to the arbitrary arrests of 151 people (including four women and eight children) between 26 and 29 December 2018. At least 133 of them had been released at the time the present report being finalized, following advocacy by the Joint Human Rights Office. The fact that the Commission électorale nationale indépendante had cited the Ebola outbreak as one of the reasons for postponing the elections led to the destruction by protesters of at least eight health-care facilities in different parts of the territory of Beni – notably in Mutwanga, Bulongo, Kisima and Lume – which significantly slowed down the response to the outbreak.

25. The other provinces where the highest number of violations were documented were Haut-Katanga, Kasai, Maniema and Tanganyika. Restrictions to the democratic space were felt particularly in the province of Maniema, home to ruling party candidate Mr. Shadary, where authorities prevented opposition candidates and supporters from accessing public spaces for political meetings. The Joint Human Rights Office documented a high number of violent confrontations between ruling party and opposition supporters, with no intervention by the police to protect the rights of the individuals concerned.

26. In many locations, campaign activities were restricted by local administrative authorities, as well as by the Congolese National Police and FARDC, in clear violation of the rights to freedom of expression and freedom of peaceful assembly. For example, on 19 December 2018, the Governor of Kinshasa issued an official statement forbidding political campaign activities that involved public demonstrations in the capital, alleging a threat to public order and security. The announcement was made shortly before the arrival of Mr. Fayulu, as thousands of his supporters were waiting for a public meeting with him. Consequently, police officers interrupted the construction of podiums and stopped the convoy of Mr. Fayulu, who was subsequently escorted by the police to his residence and not to the place of the meeting. In Boma (Kongo Central), the mayor prohibited political meetings and processions, allegedly to prevent potential noise and traffic disruptions. In Tshuapa, while candidates of the Front commun pour le Congo conducted campaign activities without restrictions, agents of the Congolese National Police and local authorities prevented opposition candidates from doing the same.

27. The Joint Human Rights Office documented violations of the right to freedom of expression, including freedom of the press, throughout the electoral campaign period. It documented the closure by State authorities of a radio and television station in Haut-Lomami, and two radio stations in Mongala and one in South Kivu, all owned by members of the opposition. In Haut-Lomami, the radio station was closed because it was accused of mobilizing the audience for the campaign visit of a certain candidate. The Joint Human Rights Office also documented intimidation of a journalist working for a local radio and television station who was questioned by agents of the Agence nationale de renseignements on 5 December 2018, in Nioki (Mai-Ndombe). The previous day, during a broadcast, he had denounced police officers who had reportedly paid money in exchange for other people's voting cards. Following advocacy by the Joint Human Rights Office, the journalist was released.

28. Political divisions and intolerance led to numerous cases of threats and intimidation against voters, human rights defenders and other civil society activists, journalists and opposition candidates, by State authorities as well as by State defence forces and security services, impeding the exercise of public freedoms. On 5 December 2018, in Likasi (Haut-Katanga), an opposition candidate in the national legislative elections was threatened with death by a commander of the Congolese National Police, who also tore up a campaign poster of the candidate. On 26 December 2018, in Fungurume (Lualaba), during a meeting with local authorities and civil society, two Front commun pour le Congo provincial assembly members and two Front commun pour le Congo candidates for the provincial legislature threatened to kill or harm anyone campaigning for opposition candidates in the presidential election. No action was taken by the party or by the authorities to condemn this behaviour.

29. The Joint Human Rights Office documented over 50 violent clashes between supporters of different candidates, in 18 different provinces, notably in Haut-Katanga, Ituri, the greater Kasai region, Kwilu, Maniema, South Kivu and Tshopo. In some cases, the

police did not intervene to manage the situation and protect the rights of those concerned, including those who were physically attacked. In several cases, the clashes were marked by human rights violations by State agents, such as arbitrary arrests. For example, on 9 December 2018, in Kindu (Maniema), the police used tear gas and live ammunition to disperse a confrontation between supporters of Lamuka and supporters of the Parti du peuple pour le renouveau et la démocratie. Five persons who were not involved in the violence were arbitrarily arrested and released the following day, following advocacy by the Joint Human Rights Office. On 25 December 2018, in Ibambi (Wamba territory, Haut-Uélé Province), agents of the Congolese National Police injured a man when they were shooting live bullets to disperse two groups of supporters of different National Assembly candidates of the Front commun pour le Congo coalition who were fighting.

30. While under article 33 of the electoral law as well as under international instruments and jurisprudence¹³ candidates in elections are provided with equal, non-discriminatory access to the media, the State media, particularly Radio-télévision nationale congolaise, focused its coverage on the activities of the ruling majority candidates and their allies during the electoral campaign, and provided limited coverage of opposition events, often appearing biased. Most media outlets were partisan, favouring one political party, and failed to broadcast objective, fact-based news of electoral developments. Pro-opposition journalists faced threats, harassment and intimidation by some authorities, candidates and their supporters, while journalists working for pro-ruling majority media who covered events criticizing the Government were increasingly subjected to harassment. Meanwhile, close collaborators of the President, such as the Government Spokesperson, Lambert Mende, shunned the United Nations radio station Radio Okapi over claims that it was not impartial. Women were generally given little access to the media, which consequently did not address specific concerns of women.

B. Human rights abuses perpetrated by armed groups and militias

31. Armed groups were responsible for 17 election-related violations, such as abductions of candidates, death threats, attacks against civilians, looting and destruction of property. The interference of armed groups in electoral campaign activities mostly occurred in Ituri, Kasai Central, Maniema and North Kivu Provinces, and included abuses of the rights to freedom of expression and freedom of peaceful assembly, and of the right to vote and stand for elections. In some regions dominated by armed groups, candidates were prevented from carrying out campaign activities due to the security situation, such as in the northern part of Beni territory, which is controlled by the Allied Democratic Forces (ADF). In some instances, restrictions of access were politically motivated, such as in the Kibombo, Kasongo and Kabambare territories in the south-east region of Maniema Province, where Mayi-Mayi Malaika combatants prevented certain candidates from engaging in campaign activities. In other areas controlled by armed groups, such as in southern Lubero,¹⁴ candidates were allowed to campaign freely, and in several locations, some were reportedly supported by armed groups.

32. The Joint Human Rights Office documented at least three cases of candidates being asked, by armed groups, for money to allow the candidates access to communities – notably in the Masisi and Rutshuru territories (North Kivu), by Mayi-Mayi Nyatura combatants, and in Maniema Province, in areas controlled by Mayi-Mayi Malaika.

33. The insecurity generated by armed groups' activities posed challenges for campaign activities, notably in North Kivu, the Kasai region and the south of Irumu territory (Ituri).

¹³ A/HRC/39/28, para. 34; A/HRC/26/30, para. 23; and CCPR/CO/76/TGO, para. 17.

¹⁴ See the Joint Human Rights Office report on the deterioration of the human rights situation in Masisi and Lubero territories (North Kivu Province) and the related challenges to protection of civilians, released in December 2018, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24030&LangID=E. The report lists lack of State institutions, security threats, and possible connections between some FARDC soldiers and some armed groups as possible factors that could influence full access to political rights during the election period in these territories.

For instance, on 9 December 2018, in Logobi (Irumu territory), 42 persons, including nine women and three children (some belonging to the campaigning team of a provincial assembly candidate of the Parti du peuple pour le renouveau et la démocratie), were victims of an ambush carried out by 33 combatants of the Force de résistance patriotique de l'Ituri. All their belongings were stolen, including clothes. On 6 December 2018, in Bunande (Masisi territory), 17 supporters of the Union des Congolais pour le progrès, a party of the presidential majority, sustained gunshot wounds as their convoy was ambushed by Mayi-Mayi Nyatura combatants.

34. Similarly, in some locations of Dibaya territory (Kasai Central), security challenges posed by the activity of the Kamwina Nsapu militia prevented campaign activities. According to several sources, the militia imposed the political prevalence of the Front commun pour le Congo in Dibaya territory by intimidating voters. This was illustrated by threats uttered on 26 November 2018 by Trésor Mputu, the leader of a faction of the Kamwina Nsapu militia, during an electoral meeting in Tshikungulu in support of a candidate of the Convention des progressistes pour la République (a member of the Front commun pour le Congo platform) for the National Assembly. The militia leader declared in front of approximately 200 people that anyone not voting for the candidate he was campaigning for would be killed or expelled from the area by the militiamen who, he stated, would be present at the polling stations on election day to carry out his threats.

35. In the conflict-affected regions, the security situation also led to operational challenges, such as obstacles to the deployment and securing of electoral material ahead of the polls. For example, on 16 December 2018, in Beni, the Commission électorale nationale indépendante warehouse was reportedly attacked by presumed Mayi-Mayi Mazembe combatants.¹⁵ The attack was countered by MONUSCO contingents and FARDC soldiers.

36. In some cases, electoral campaign activities exacerbated inter-ethnic tensions, notably between the Luba and Pende groups, particularly in Kasai Province, and between the Tetelas of the forest and those of the savannah, in Sankuru Province. Several instances of threats, intimidation or incitement to violence based on ethnic considerations were observed during the electoral campaign, notably in Kinshasa, Tshikapa, Bandundu, Mbandaka and Kisangani, as well as in Kasai Oriental and Maniema Provinces. In Kisangani (Tshopo), the Joint Human Rights Office documented threats against and intimidation of the Nande community by agents of the Agence nationale de renseignements, as well as by the local minister of education – a candidate of the Parti du peuple pour le renouveau et la démocratie in the elections for the National Assembly, who incited the local community to violence against the Nande community, claiming that their political aspirations were illegitimate as they were not originally from the province. No action was taken by the authorities to condemn this behaviour.

V. Election day

37. The presidential and legislative elections were held on 30 December 2018, in a predominantly peaceful atmosphere. Polling operations were monitored by party observers, present in most polling stations, and by other national and international observers at many locations.¹⁶

38. Most of the polling stations were secured by unarmed or lightly armed police agents, except in North Kivu, South Kivu, Tanganyika and Kongo Central, where FARDC soldiers and Congolese National Police agents securing polling stations were armed with rifles. It was noted though that, in general, the behaviour and intervention of defence forces and security services on polling day was restrained, particularly as compared to their behaviour during the electoral campaign. This appears to be partly due to intense advocacy by the

¹⁵ This happened before the election was postponed in Beni.

¹⁶ The main organizations that deployed observers were the Episcopal Conference of the Democratic Republic of the Congo, the Synergie des missions d'observation citoyenne des élections, the African Union and the Southern African Development Community. MONUSCO did not have an observer mandate.

Joint Human Rights Office and MONUSCO with defence forces and security services at various levels. Before election day, the national police commissioner publicly emphasized the neutral and apolitical character of the police. In at least six different locations in Lubero territory, armed group combatants took over polling stations and, in some cases, impeded the vote, notably in Masisi territory.

39. Most of the incidents reported during election day included violations of the right to vote, including failure to put in place measures to guarantee an inclusive, non-discriminatory election. Moreover, the Joint Human Rights Office documented 16 election-related human rights violations on that day. State agents were responsible for 14 of these violations and combatants of Nyatura Delta and of Nduma défense du Congo-Rénové for two. Most of the violations were documented in the provinces that saw the most human rights violations during the pre-election period (Haut-Katanga, Kasai, Maniema, North Kivu, South Kivu and Tanganyika).

A. Violations of the right to vote

40. The Joint Human Rights Office observed numerous violations of the right to vote on polling day. It received numerous reports of people who had been prevented from voting because they had not been able to locate their polling station or find their name on the electoral lists, due to technical or logistical issues, including delays in setting up polling stations as electoral material had not been deployed on time. In some cases, the issue had been addressed by extending the closing time, while in other cases people had been unable to vote. For example, in Nyalongo (Luebo territory, Kasai), the inhabitants of an entire village were denied the right to vote as the electoral material did not arrive until 5.30 p.m.

41. Names were missing from the voters' lists in Haut-Lomami, Haut-Katanga, Haut-Uélé, Ituri, Kasai Oriental, Kinshasa, Lualaba, Mai-Ndombe, Maniema, North Kivu, Sankuru, Tanganyika and Tshopo, among others. While the absence of names on the lists did not appear to be discriminatory, the individuals concerned were unable to exercise their right to vote.

42. The use of voting machines posed particular challenges to elderly voters and the illiterate, who required additional time and assistance that was not systematically available. In many rural areas, a large percentage of the population was unable to use the machine without assistance. In many instances, it was reported that persons available to assist, such as electoral observers deployed by political parties, attempted to influence voters. Moreover, in some locations, there were insufficient measures to accommodate those who could not stand in line for an extended period, such as the elderly, persons with disabilities, pregnant women, and mothers carrying small children, who in some locations ended up leaving without voting. However, at many locations it was observed that these categories of voters were given priority in queues. Finally, some voting centres were considered too far away for the population to access, resulting in discrimination against some rural populations, particularly in Équateur, Mongala, Nord-Ubangi, Sud-Ubangi and Tshuapa Provinces.

43. There was no provision for allowing internally displaced persons to vote, as they were generally far away from the locations where they were registered. In a country that has 6.8 million internally displaced persons,¹⁷ this represented disenfranchisement for a large sector of the population. The diaspora was also unable to vote, on the basis of a decision by the National Assembly in June 2018, and was therefore also disenfranchised.

44. Very few prisoners were given the chance to exercise their right to vote, even though some pretrial and convicted prisoners were included on the voters' lists. Notably, no provision was made to allow prisoners to vote in Bunia, Goma, Kalemie, Lubumbashi, Mbuji-Mayi and Tshikapa, among others. Kananga was an exception as, following advocacy by the Joint Human Rights Office and MONUSCO, 17 prisoners from the central

¹⁷ See the 2018 update of the 2017–2019 Humanitarian Response Plan.

prison were able to vote. Registered prisoners from the Makala central prison in Kinshasa were also allowed to vote.

45. In most cases, armed groups did not interfere in the vote, but their attitudes varied. At some locations, notably Kashuga, Bukombo and Nyabiondo, in Masisi territory, members of armed groups prevented the opening of polling stations, while at others, they took over the polling stations. At some voting centres, armed groups forced the population to vote for certain candidates. For example, significant interference by armed groups was noted in Masisi territory, where combatants of some armed groups, notably the Alliance des patriotes pour un Congo libre et souverain of Mapenzi, Nduma défense du Congo-Rénové, Nyatura Delta, and Mayi-Mayi Mazembe of the Union des patriotes pour la défense des innocents, coerced the population to vote for Front commun pour le Congo candidates. Nyatura Delta and the Union des patriotes pour la défense des innocents expelled opposition parties' observers from voting centres. In Bukombo and Nyabiondo, as combatants of Nduma défense du Congo-Rénové were not successful in coercing voters into choosing Front commun pour le Congo candidates, they closed the voting centres, despite the presence of FARDC soldiers and Congolese National Police agents, who did not intervene.

46. The Joint Human Rights Office received allegations of interference, including by Commission électorale nationale indépendante agents, with the right to vote freely, in Haut-Lomami, Haut-Katanga, Kasai, Kasai Central, Lualaba, Maniema, North Kivu and Tshopo Provinces. For example, in Mutongo (Walikale territory, North Kivu), a man was forced by FARDC soldiers, under threat of arrest, to vote for the Front commun pour le Congo presidential candidate.

47. In Haut-Katanga, Haut-Lomami, Kasai, Kongo Central, Mai-Ndombe, North Kivu, Sankuru and Tshopo Provinces, political party observers, mostly those linked to the opposition, were partially restricted or, in some cases, fully prevented from accessing assigned polling stations. In Tshikapa (Kasai), when the voting centres closed, electoral observers who had questioned the counting methodology were expelled from the polling station by Commission électorale nationale indépendante agents.

B. Other human rights violations

48. On polling day, in Lurhale (South Kivu), the Joint Human Rights Office documented the arbitrary killing of a civilian, shot by an agent of the Congolese National Police who used live bullets to disperse a crowd.¹⁸ The Joint Human Rights Office also documented four incidents of threats and intimidation against eight persons, including three women. In three of the cases, State agents were the perpetrators, while in one case, Nduma défense du Congo-Rénové combatants were involved. In Bodumbili (Sud-Ubangi), an electoral observer working for the Parti du peuple pour le renouveau et la démocratie was threatened with death by a Congolese National Police commander and expelled from the voting centre.

49. The Joint Human Rights Office documented violations of the right to physical integrity of four persons, including two women. Two of the violations were committed by agents of the Congolese National Police, one by FARDC soldiers and one by Nyatura Delta. For instance, in Bulungu (Kwilu), a man was shot by an FARDC soldier guarding a national minister when the population protested against the latter, accusing him of corruption. Additionally, the Joint Human Rights Office documented the arbitrary arrest of six men, two by FARDC soldiers and four by Congolese National Police agents, as well as one violation of the right to freedom of opinion and expression by FARDC soldiers who threatened a man in order to influence his vote. Most of those arrested were involved in the elections, including Commission électorale nationale indépendante officials, electoral observers and political party workers. For instance, in Lubumbashi and Kindu, two

¹⁸ In the same incident, protesters killed an official of the Commission électorale nationale indépendante whom they had accused of fraud.

electoral observers were arbitrarily arrested at the request of the manager of the voting centres, as they were gathering information on the elections.

VI. Post-election period

50. According to the electoral calendar, the provisional results of the presidential election were expected on 6 January 2019. Due to technical challenges and delays in vote counting, the Commission électorale nationale indépendante postponed the announcement until the early hours of 10 January 2019, when Mr. Tshisekedi was proclaimed the winner. In the immediate aftermath of the announcement, peaceful celebratory demonstrations were violently repressed by defence forces and security services, notably in Kasai and Tshopo Provinces. After Mr. Fayulu publicly contested the results, protests were organized by civil society groups, notably in Équateur, Haut-Katanga, Kinshasa, Kwilu and Tanganyika Provinces. The inauguration ceremony of Mr. Tshisekedi as President, on 24 January 2019, closed the presidential election period.

51. The Joint Human Rights Office documented 141 human rights violations between 31 December 2018 and 24 January 2019, mostly as a result of actions by State defence forces and security services to disperse demonstrations, particularly in Kasai, North Kivu and Tshopo Provinces. These incidents involved 19 violations of the right to life, including the arbitrary killing of 20 persons (among whom there were three women and three children); 32 violations of the right to liberty and security of person, affecting 371 persons, including at least 19 women and 50 children; and 23 violations of the right to physical integrity, affecting 62 persons, including 14 women and two children. The high number of victims is explained by the numerous incidents of mass arrest. For example, on 11 January 2019, in Lubumbashi, at least 32 persons, including 27 children, were arrested arbitrarily by agents of the Congolese National Police during a peaceful celebration following a radio announcement of the results of the election. At least six incidents of mass arrest were documented, with the numbers of victims ranging from 30 to 79.

52. For the presidential election, the time available for submitting complaints related to electoral disputes to the pertinent jurisdictions was two days following the announcement of provisional results, whereas it was eight days for the provincial elections. Taking into consideration the location of polling stations, the vast distances and the transport infrastructure, such time limits created challenges for the gathering of evidence and of supporting information. This could impact on the effectiveness and thoroughness of the legal dispute and settlement system, and therefore on access to justice and the right to an effective remedy.

A. Violations of the rights to life, physical integrity, and liberty and security of person

53. The delay in publishing provisional results led to significant tensions. In many instances, rumours that a particular candidate had won led to spontaneous peaceful celebrations that were suppressed by State defence forces and security services. For example, on 5 January 2019, in Goma (North Kivu), 79 persons, including seven women and 15 children, were arrested arbitrarily by agents of the Congolese National Police during a peaceful celebration following rumours that Mr. Fayulu had won the presidential election. After being accused of disturbing public order, destruction and rebellion, all were released on 14 January 2019 following advocacy by the Joint Human Rights Office.

54. Following the highly anticipated announcement by the Commission électorale nationale indépendante of the provisional election results on 10 January 2019, the situation remained mostly calm. However, several incidents of violence and human rights violations were reported. For instance, on 10 January 2019, in Mutshima (Kamonia territory, Kasai), during peaceful celebrations of the election results, a man was reportedly killed by FARDC soldiers, who shot to disperse the crowd. On the same day, in Tshikapa, three persons, including a woman, were reportedly killed by agents of the Congolese National Police, who fired live bullets to disperse a celebration.

55. Out of the 74 documented violations of the rights to life, physical integrity, and liberty and security of person, 68 were committed by State defence forces and security services (92 per cent); these included nine incidents of arbitrary killing, affecting 11 persons, including one woman and two children. They were also responsible for 30 violations of the right to liberty and security of person, affecting 361 persons, including at least 17 women and 50 children; as well as for 21 violations of the right to physical integrity, affecting 60 persons, including 13 women and one child.

56. Following the announcement of the election results, inter-ethnic tensions targeting particularly members of the Luba community were documented in several locations, notably in the Kasai region, Haut-Katanga and Kinshasa. These dynamics were particularly notable in Tshikapa, where members of the Luba community attacked people of the Pende community, accusing them of not voting for Mr. Tshisekedi. In Kamonia territory, a man was injured in an election-related attack against members of the Luba community by members of the Chokwe community.

57. In Kikwit (Kwilu), violent demonstrations erupted immediately after the announcement of the provisional election results and led to the destruction and looting of several public buildings. FARDC soldiers intervened, killing four persons when they opened fire on a protest by a youth group.¹⁹

58. Election-related attacks by members of armed groups, namely the Alliance des patriotes pour un Congo libre et souverain and Nduma défense du Congo-Rénové, were documented in at least two villages of the Masisi territory in North Kivu, on 12 and 14 January 2019. The attackers shot indiscriminately at the population, accusing them of having voted for the wrong candidates. At least 10 persons were consequently killed, including four children and four women, two of whom were raped until they died. A third woman was raped, and a 17-year-old boy was wounded. These incidents led to the forced displacement of an unconfirmed number of persons.

B. Violations of the rights to freedom of opinion and expression and freedom of peaceful assembly and association

59. The Joint Human Rights Office documented 32 violations of the rights to freedom of opinion and expression, including freedom of the press, and freedom of peaceful assembly, related to the violent suppression of protests by State defence forces and security services. For example, in Kinshasa, on 12 January 2019, as Lamuka activists accompanied Mr. Fayulu to file his complaint at the Constitutional Court, at least three persons participating in a demonstration were beaten by agents of the Congolese National Police, who violently dispersed the crowd.

60. In different parts of the country, notably in Bunia (Ituri), Kisangani (Tshopo), and Uvira and Fizi (South Kivu), the rights to freedom of opinion and expression and freedom of peaceful assembly were violated by a general prohibition by provincial authorities on demonstrations related to the provisional election results. In Bunia, the provincial police commissioner announced on 4 January 2019 that the opposition party leaders were being watched, and threatened to arrest them in case of trouble.

61. Starting on 31 December 2018, various restrictions were imposed on freedom of opinion and expression. From 31 December 2018 to 19 January 2019, the Government shut down Internet, mobile data and SMS services, stating that this was necessary in order to preserve public order and prevent the dissemination of inaccurate results through social media. Moreover, the signals of Radio France Internationale and of Canal Congo Télévision were blocked until 21 January 2019.²⁰ During this time, intimidation and harassment of journalists, opposition candidates and human rights defenders continued.

¹⁹ The death toll does not take into account the fatalities resulting from the prison break that occurred on the same day as a consequence of the disorder generated by the violent protests.

²⁰ Canal Congo Télévision belongs to Jean-Pierre Bemba, the leader of the Mouvement de libération du Congo and a supporter of the Lamuka coalition.

62. The blocking of Internet services hindered the capacity of electoral observers and witnesses to send information from rural polling stations for the compilation of results. It also hampered the ability of MONUSCO to communicate with community alert networks and other protection mechanisms in the field. Access to information is an essential tool for increasing accountability and transparency and reinforces the credibility of electoral processes. A general network shutdown hinders people's access to information and basic services and is a violation of international law.²¹ On 7 January 2018, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a press release condemning the general network shutdown as unjustified and being in clear violation of international law, and called upon the Government to restore telecommunications services in the country.²²

VII. Conclusions and recommendations

63. The electoral process took place in an environment of restricted democratic space, which has been limited increasingly since 2015, and has contributed to the high number of human rights violations documented by the Joint Human Rights Office in the present report. As has happened repeatedly in the past, many violations were the result of excessive use of force to disperse protesters, including lethal force and mass arrests, by the country's defence forces and security services, mainly Congolese National Police agents and FARDC soldiers.

64. The persistent use of force to disperse demonstrations over the years, not least in the electoral context, calls into question the professionalism of State defence forces and security services. Between 22 November 2018 and 24 January 2019, the Joint Human Rights Office documented the killing of at least 36 civilians in election-related violence, 21 as a result of disproportionate use of force and the use of live ammunition for crowd control purposes by the Congolese National Police and FARDC.

65. During the same period, at least 656 individuals, including at least 29 women and 56 children, were arrested arbitrarily by State agents across the country, mostly during demonstrations. The prohibition of demonstrations in some locations and the violent repression by security forces of those exercising their right to peaceful assembly in many other instances demonstrate the continued trend of shrinking democratic space.

66. The politically motivated restrictions to freedom of the press and violations of the right to freedom of opinion and expression recorded throughout the electoral process also constitute a worrying illustration of persistent restrictions to democratic space.

67. The elections of December 2018 showed the eagerness of Congolese to express themselves democratically and participate in public life. Considering that local and provincial elections are expected throughout 2019, all stakeholders should bear in mind the importance of fully respecting human rights, not least the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association and the right to vote, as essential conditions for the holding of peaceful, safe, free and inclusive elections.

68. In light of the above, OHCHR makes the following recommendations:

²¹ See A/HRC/17/27. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression considers the cutting off of users from Internet access, regardless of the justification provided, to be disproportionate and thus a violation of article 19 (3) of the International Covenant on Civil and Political Rights.

²² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24057&LangID=E.

A. To the authorities of the Democratic Republic of the Congo

69. Carry out prompt, independent, credible and impartial investigations into all human rights violations committed in the context of the electoral process, bring to justice all suspected perpetrators, regardless of their rank or position, and guarantee victims' right to an effective remedy.
70. Ensure that electoral authorities and independent oversight bodies are given sufficient financial and human resources and enforcement powers to fulfil their duties effectively – including by making all political entities accountable for irregularities, including all forms of abuse of political and economic powers.
71. Take disciplinary action against government officials and State agents who have abused or exceeded their powers.
72. Promulgate the draft law on peaceful demonstrations in order to promote and ensure the right to peaceful assembly, in line with the Constitution and international law.
73. Promptly release all political figures and human rights defenders arbitrarily arrested and detained.
74. Refrain from using military forces, including the Republican Guard and the Military Police, to conduct crowd control operations, as they are not trained or equipped for such law enforcement tasks.
75. Authorize the use of force strictly as a last resort in crowd control measures and in compliance with the principles of necessity, proportionality and legality, in accordance with international standards. Equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment and appropriate less lethal weapons. Equipment that cannot achieve a legitimate law enforcement objective or that presents unwarranted risks should not be authorized for use.
76. Ensure that law enforcement officials are regularly trained in and tested on the lawful use of force and on the use of the weapons with which they are equipped.
77. Ensure the protection of the human rights and fundamental freedoms of all individuals in relation to the exercise of their civil and political rights, including of political opponents, journalists and other civil society actors, and ensure that any restrictions to those freedoms respect the principles of legality, necessity and proportionality.
78. Guarantee the safety of journalists and media workers; and adopt legislative and policy measures to prevent attacks against journalists and eradicate impunity for violence and intimidation targeting them.
79. Remove any restrictions or regulations that might place the media under political influence or compromise their essential role as public watchdog, and take appropriate action, consistent with relevant human rights standards, to promote media diversity and women's access to the media.
80. Put in place measures to ensure that all political candidates and parties have direct access to State-owned broadcast media services for specific times on an equal basis, and that they are treated fairly and equitably by those services.
81. Ensure the provision of training for journalists and other media workers in order to challenge gender stereotyping and misrepresentation of women in the media, and to sensitize the media and the electorate on the need for and benefits of women in leadership positions.
82. Expedite the approval and adoption of the draft laws on the freedom of the press and access to information, allow unhindered access to the Internet and other telecommunications networks, and investigate the allegations of attacks and intimidation against journalists and media professionals.

83. Take measures to ensure full accessibility for persons with disabilities in all aspects of the electoral process.

84. Ensure that the legal framework provides for the right of candidates to effectively challenge elections results and for remedies that are prompt, adequate and effective, and enforceable within the context of the electoral calendar.

85. Ratify the African Charter on Democracy, Elections and Governance.

B. To political parties, the media and civil society

86. Refrain from and strongly condemn incitement to violence and ethnic hatred, promote human rights, and actively contribute to defusing tensions.

87. For journalists and media outlets: seek the highest standards of professionalism and ethics through the promotion of self-regulation.

C. To the international community

88. Request that stakeholders from the political opposition pursue their goals through peaceful means, and ensure that their actions strictly comply with national and international norms.

89. Publicly denounce violations and abuses committed against those exercising or seeking to exercise their public freedoms in the context of elections, and provide support to the victims.

90. Raise these violations in international and regional forums, including human rights mechanisms.

91. Provide the necessary support to the Government of the Democratic Republic of the Congo to ensure the investigation and prosecution of alleged perpetrators of human rights violations committed during the electoral process.

92. Engage with the Government to take preventive measures so that violations are not repeated, particularly in view of the upcoming elections, and monitor measures taken by the authorities in response to these violations.
