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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Technical assistance and capacity-building

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

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

#### *Summary*

The present report contains an overview of the human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo from June 2018 to May 2019. The report assesses the progress made by the Government in implementing recommendations previously made by the Office of the United Nations High Commissioner for Human Rights and other United Nations human rights mechanisms.

Many violations and abuses of human rights and fundamental freedoms were committed during the electoral process. The opening up of democratic space observed following the elections, including the release of several political prisoners and prisoners of conscience, is encouraging, but further efforts are needed to ensure the full exercise of fundamental freedoms. The High Commissioner finds it regrettable that, even though the two joint commissions set up to investigate the violations committed during protests that took place between 2016 and 2018 published reports in June 2018, no judicial action has been taken with regard to the violations documented.

The High Commissioner remains concerned about the situation in conflict-affected areas, where the defence and security forces and armed groups have continued to commit a large number of human rights violations and abuses, including sexual violence. The upsurge in intercommunal conflict and violence against certain ethnic groups is also worrying.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



The High Commissioner commends the authorities' efforts to combat impunity and notes the convictions served against senior military officials for war crimes and crimes against humanity.

The High Commissioner encourages the Government to implement all the recommendations made in the present report and reaffirms her Office's commitment to supporting the authorities in their efforts to promote and protect human rights.

## I. Introduction

1. In accordance with Human Rights Council resolution 39/20 on technical assistance and capacity-building in the field of human rights in the Democratic Republic of the Congo, the present report provides an overview of the human rights situation and the activities conducted in the country by the Office of the United Nations High Commissioner for Human Rights through the United Nations Joint Human Rights Office between June 2018 and May 2019.

2. The present report highlights the key human rights developments, including in the context of the elections, assesses the progress made in implementing the recommendations of the Office of the United Nations High Commissioner for Human Rights and United Nations mechanisms for the protection of human rights, and submits recommendations for the attention of the Government.

## II. Principal human rights developments

3. The overall number of human rights violations and abuses documented by the Joint Office decreased by 6 per cent compared to the previous reporting period, which ran from June 2017 to May 2018, but their number, gravity and consequences for the population remain worrying. Nearly 60 per cent of these violations were committed by State officials, primarily members of the armed forces of the Democratic Republic of the Congo and the Congolese national police. While violations of civil and political rights have decreased significantly since February 2019, those related to the activism of armed groups and militias in conflict-affected provinces remain high in number.

4. The electoral process unfolded in a context of restrictions on democratic space marked by numerous violations of human rights and fundamental freedoms. In particular, the Congolese defence forces and security services used excessive force to disperse political rallies and peaceful demonstrations during the election campaign and following the announcement of the results, causing deaths and injuries.

5. After the change in State leadership, a degree of opening up of democratic space has been observed, evidenced in particular by the release of a significant number of political prisoners, the holding of peaceful demonstrations without incident and the return to the country of opposition figures. In addition, the Joint Office has documented a decrease in the number of human rights violations since February 2019. However, it has also noted a continuation of attacks and threats against human rights defenders and other civil society actors, the violent suppression of certain peaceful demonstrations and restrictions on fundamental freedoms.

6. The human rights situation in provinces where the conflict persists has not improved. In North Kivu, the province most affected by the conflict, the outbreak of Ebola virus disease has exacerbated the situation against a backdrop of insecurity and attacks on the response mechanism. The spontaneous demobilization movement observed in several provinces since early 2019 could lead to a reduction in the activism of armed groups, but risks remain in the absence of a national disarmament, demobilization and reintegration programme that is operational and in line with international standards. In addition, intercommunal conflict and violence against certain ethnic groups remain a concern.

7. Little legislative progress has been made in the protection of human rights and fundamental freedoms. However, efforts have been noted in the area of combating impunity, evidenced in particular by the prosecution of commanders of armed groups and the conviction of senior military officials for war crimes and crimes against humanity, including sexual violence. Nonetheless, officers accused of serious human rights violations have been promoted to or retained in high command positions within the defence and security forces without being investigated.

## A. Human rights and fundamental freedoms in the context of elections

8. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee called on the Government to respect the right of every citizen to participate in public affairs and to take all necessary measures to increase women's participation in public life (CCPR/C/COD/CO/4, paras. 16 and 48). It also recommended measures to ensure that any restrictions on the exercise of freedom of expression comply with the strict conditions set out in the International Covenant on Civil and Political Rights, to guarantee the right to freedom of peaceful assembly, and to prevent and eliminate all forms of excessive use of force by police and security officers (paras. 42 and 44).

9. In its concluding observations on the second periodic report of the Democratic Republic of the Congo, the Committee against Torture urged the Government to close all unofficial places of detention and to revise its legislative framework and practise to ensure that all arrests and detentions, including those for which officers of the National Intelligence Agency are responsible, are subject to oversight by the judicial authorities (CAT/C/COD/CO/2, para. 15). It also called for the release of all persons detained for having defended their opinions or demonstrated peacefully (para. 29).

### 1. Current situation and action taken by the Government

10. The period under review was marked by the holding of presidential and national and provincial legislative elections on 30 December 2018, preceded by an official campaign period which ran from 22 November to 21 December 2018. The Independent National Electoral Commission announced partial and provisional results on 10 January 2019, which were confirmed by the Constitutional Court on 20 January 2019. Only one woman ran for president. The percentage of women candidates was 11 per cent for the national legislative elections and less than 10 per cent for the provincial legislative elections.<sup>1</sup>

11. Elections were postponed until 31 March 2019 in the city and territory of Beni, in the city of Butembo (North Kivu) and in Yumbi (Mai-Ndombe). Indirect elections for national senators were held on 15 March 2019 in 24 of the 26 provinces, and on 18 May 2019 in North Kivu and Mai-Ndombe. Lastly, indirect provincial governor elections were held in most provinces on 10 April 2019, in South Ubangi on 13 April 2019 and in North Kivu and Mai-Ndombe on 30 May 2019.

12. Many human rights violations committed in the context of restrictions on democratic space were documented before, during and after the elections, including those of December 2018. During the election campaign period, the Joint Office recorded 147 human rights violations related to the electoral process and 202 additional violations in January 2019, after the election. These included: (a) violations of the right to life and physical integrity during the violent suppression of demonstrations; (b) threats and intimidation against representatives and candidates of political parties; and (c) disproportionate restrictions on the rights to freedom of opinion and expression, peaceful assembly and association and the press.<sup>2</sup>

13. During the reporting period, the Joint Office documented 1,020 violations related to restrictions on democratic space throughout the country, which is 30 per cent fewer than in the previous period (1,466 violations). Of this total, 50 per cent were committed by Congolese national police officers and nearly 20 per cent by members of the armed forces of the Democratic Republic of the Congo. The reduction in violations is explained by the

<sup>1</sup> See Observatoire de la parité en République démocratique du Congo (Observatory for Parity in the Democratic Republic of the Congo), *Rapport préliminaire de l'Observatoire de la parité sur le processus électoral* (Preliminary report of the Observatory for Parity on the electoral process). Available at: <https://deboutcongolaises.org/rapport-preliminaire-de-lobservatoire-de-la-parite-sur-le-processus-electoral/>.

<sup>2</sup> The report of the Office of the High Commissioner for Human Rights on the human rights situation in the Democratic Republic of the Congo before, during and after the December 2018 elections will be available soon.

decrease in the number of cases documented from February 2019 onwards. The number of victims is 2,328, the majority of whom are people with no known affiliation and members of civil society organizations, followed by members and supporters of political parties, especially up to December 2018. The high figure is due to the numerous mass arrests made during the dispersal of election-related demonstrations, especially between December 2018 and January 2019.

14. After the transfer of power, the Joint Office observed a degree of opening up of democratic space. In his inaugural address, President Tshisekedi made a strong commitment to improve the human rights situation. In particular, he announced that the Ministry of Justice would be responsible for identifying all political prisoners with a view to their release, and cited the promotion of the media and the fight against impunity as priorities. In March 2019, the President and the Ministry of Justice adopted individual and collective pardon measures. The authorities indicated that 700 prisoners would benefit from the measures. A significant number of political prisoners were subsequently released, including Jean-Claude Mambo, Gérard Mulumba (also known as Giacomo), Franck Diongo and Firmin Yangambi. The High Commissioner welcomes these releases and encourages the judiciary to release all remaining political prisoners.

15. Since February 2019, several public demonstrations and rallies at which political and/or social demands have been made have taken place throughout the country without the intervention of the security forces. However, some demonstrations were suppressed by the police authorities, notably following the promulgation of blanket bans on demonstrations by local authorities such as the ban imposed by the Governor of Haut-Uélé on 4 April 2019. These policies are intrinsically disproportionate, as they are adopted without any consideration of the specific circumstances of each proposed meeting.

16. Overall, the Joint Office noted an improvement in press freedom, including the reopening of radio stations that had been closed. However, it has documented cases of intimidation and harassment of journalists by members of the armed forces of the Democratic Republic of the Congo, members of the Congolese national police, political and administrative authorities and armed groups, with 79 victims of violations between January and May 2019.

17. The new authorities have undertaken to put an end to incommunicado detention. On 26 March 2019, the President of the National Council for Oversight of the Agreement and the Electoral Process stated that all isolation cells of the National Intelligence Agency had been closed. However, the Joint Office is not in a position to confirm this information.

18. In June 2018, the joint investigation commission on human rights violations and abuses related to the demonstrations of 31 December 2017 and 21 January 2018 (CEM-3121) and the joint investigation commission on the events of 19 September and 19 December 2016 (CEM-1919) submitted their respective reports to the Minister of Justice and the Military Prosecutor's Office. Since then, medical assistance has been provided to the victims, but the High Commissioner finds it regrettable that no legal action has been taken on the documented violations.

19. The High Commissioner finds regrettable the lack of progress on the various bills under consideration relating to the exercise of fundamental freedoms and aimed at ensuring the protection of human rights defenders and other civil society actors in the exercise of their legitimate activities. These include the bill on the protection and accountability of human rights defenders, the bill on non-profit associations and public service institutions, the bill on measures to uphold the right to demonstrate and the bill on access to information.

## **2. Action taken by the Joint Human Rights Office**

20. The Joint Office has continued its documentation work and has followed up on alleged violations of human rights committed during the electoral process.

21. The Joint Office has continued to monitor the situation of political prisoners and to carry out its regular advocacy work, calling on the authorities to release persons arbitrarily arrested or illegally detained. It has also conducted an intensive advocacy campaign at

several levels of the defence forces and security services, calling for restraint and respect for human rights in law enforcement operations.

22. The Joint Office has continued to provide technical and financial support to the National Human Rights Commission, parliament and civil society in order to promote conformity with international instruments in various bills under consideration that are related to the exercise of fundamental freedoms.

23. Between June 2018 and May 2019, throughout the country the Joint Office organized or supported 54 training events on human rights issues relating to the electoral process that were attended by 4,426 people (2,887 men and 1,539 women), including representatives of civil society, the political and administrative authorities, police officers, journalists and political stakeholders.

24. The Joint Office also provided legal support and multifaceted assistance in the area of protection, and dealt with 262 cases of threats and human rights violations against 537 individuals (of whom 46 were women), including 409 human rights defenders, 54 journalists, 66 other victims and 8 witnesses of violations – an increase of 44 per cent relative to the previous reporting period.

## **B. Protection of civilians in conflict areas**

25. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee urged the Government to take measures to protect civilians in areas of armed conflict and internally displaced persons (CCPR/C/COD/CO/4, para. 26). It also called on the Government to cooperate fully with all United Nations entities in dealing with allegations of violations of human rights and international humanitarian law in the Kasai region (para. 28).

26. During the universal periodic review of the Democratic Republic of the Congo on 29 April 2014, it was recommended that the Government should take concrete steps to eliminate all negative forces operating in the eastern part of the country (A/HRC/27/5, para. 134.39).

27. In its concluding observations on the combined third to fifth periodic reports of the Democratic Republic of the Congo, the Committee on the Rights of the Child urged the Government to take measures to protect children from falling victim to armed conflict and/or participating in armed hostilities and to punish those involved in killing, maiming and recruiting children (CRC/C/COD/CO/3-5, para. 18).

### **1. Current situation and action taken by the Government**

28. Most of the violations documented in the country (80 per cent) during the reporting period were committed in conflict areas. State agents and armed group fighters are equally responsible for the violations and abuses documented. Overall, the number of violations and abuses is similar to that recorded during the previous reporting period, during which there was a geographical spread of the conflict and an increase in the activities of armed groups and their repression by the Congolese authorities.

29. Since early 2019, in the provinces of North Kivu, South Kivu, Maniema and Tanganyika, and in the Kasai region, many members of armed groups and militias have surrendered or expressed a desire to lay down their arms. This spontaneous demobilization movement could lead to a reduction in the activity of armed groups, but it has not led to a decrease in human rights violations.

30. North Kivu remains the province most affected by the conflict, accounting for nearly half of the violations and abuses documented in provinces where the conflict persists. Armed groups including the Democratic Forces for the Liberation of Rwanda and the Nyatura and Nduma défense du Congo-Rénové groups were responsible for 66 per cent of the violations documented in this province, although members of the Armed Forces of the Democratic Republic of Congo were the main perpetrators among all parties to the conflict, responsible for more than 20 per cent of cases. The most affected territory is Beni, where

fighters from the Allied Democratic Forces continued to carry out particularly deadly attacks, killing 244 people (159 men, 76 women and 9 children), which was more than double the toll in the previous reporting period and the highest number among all parties to the conflict in this province. In Masisi territory, the intensification of clashes between armed groups since the beginning of 2019 has led to a significant deterioration in human rights.

31. The outbreak of Ebola virus disease in North Kivu since August 2018 has worsened the human rights situation in this province. Since early 2019, attacks on treatment centres and response teams have increased in the territories of Beni, Butembo and Lubero, led by combatants presumed to be Mai-Mai fighters. In some cases, the defence and security forces have responded to these attacks, and have suppressed demonstrations against their response by certain segments of the population using disproportionate force and causing death and injury.

32. In the Kasai region, despite the decrease in armed clashes, the number of documented violations and abuses remains very high, with State agents being the main perpetrators (85 per cent of the total). The Kamuina Nsapu and Bana Mura militias remained active in Tshikapa and the territories of Kamonia, Luebo and Mweka, in Kasai province, and in the territory of Dibaya, in Kasai-Central province. The situation remains particularly worrying in Kasai province, where the vast majority of violations documented by the Joint Office were concentrated. However, a very significant decrease in the number of victims of extrajudicial and summary executions has been noted in Kasai and Kasai-Central provinces.

33. A resurgence of intercommunal conflict and violence against certain ethnic groups has been observed in the provinces of Mai-Ndombe, Ituri, Tanganyika and Haut-Katanga. In Mai-Ndombe, between 16 and 18 December 2018, after several weeks of tension linked to a land conflict between the Batende and Banunu communities, attacks on Banunu populations in the localities of Yumbi, Bongende and Nkolo killed at least 535 people and injured 111. Despite signs of growing tension, no preventive measures have been taken to strengthen the State's presence in the territory and prevent violence.<sup>3</sup>

34. In Ituri province, the period from January to May 2019 was marked by numerous attacks against civilians and positions of the armed forces of the Democratic Republic of the Congo by groups of armed assailants, presumed to be members of the Lendu community, particularly in the territories of Djugu and Mahagi. In addition, inter-ethnic tensions between the Twa and Luba communities have led to human rights abuses by Twa militiamen in Tanganyika province and Pweto territory in Haut-Katanga, including the arbitrary execution of 37 people (25 men, 9 women and 3 children) and sexual violence against 67 women and 4 children.

35. The situation in Maniema province has deteriorated, with increased activity by Mai-Mai Malaika fighters and a rise in the number of violations committed by members of the Armed Forces of the Democratic Republic of the Congo. State agents remain responsible for the vast majority (77 per cent) of documented violations. In Haut-Uélé and Bas-Uélé, the activities of Lord's Resistance Army (LRA) fighters have increased exponentially, rising by 236 per cent. This LRA activity consists mainly of civilian kidnappings coupled with extortion. Victims have often been forced to transport looted property.

36. The situation in conflict-affected areas has resulted in massive population displacement and exacerbated humanitarian needs. According to the Office of the United Nations High Commissioner for Refugees, there are 4.5 million internally displaced persons in the Democratic Republic of the Congo, and at least 856,000 others have fled to other

<sup>3</sup> See Office of the United Nations High Commissioner for Human Rights and United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, *Rapport de mission d'enquête spéciale sur les violences intercommunautaires des 16 et 17 décembre 2018 dans le territoire de Yumbi* (Report of the special fact-finding mission on the intercommunal violence of 16 and 17 December 2018 in Yumbi territory), March 2019. Available at: [www.ohchr.org/Documents/Countries/CD/Report\\_on\\_Yumbi\\_March2019.pdf](http://www.ohchr.org/Documents/Countries/CD/Report_on_Yumbi_March2019.pdf).

African countries.<sup>4</sup> However, there is no national strategy or law for the protection and assistance of internally displaced persons.

## 2. Action taken by the Joint Human Rights Office

37. The protection of civilians remains a central priority for the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo and the Joint Office, including in the context of violence between communities or ethnic or religious groups.<sup>5</sup>

38. The Joint Office has continued its monitoring and investigation work in conflict-affected areas. In December 2018, it published a report on the deteriorating human rights situation in the territories of Masisi and Lubero (North Kivu) and the challenges to ensuring protection for civilians between January 2017 and October 2018.<sup>6</sup> The report highlights the increase in the activities of armed groups in these territories since 2017 and contains recommendations for the protection of civilians.

39. In addition, the Joint Office participated in 42 joint assessment missions, 39 joint protection missions and 24 civilian protection missions in conflict areas, in some cases working with other components of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.

40. In response to the violence in the territory of Djugu, in Ituri province, the Joint Office has been cooperating with the military justice system in joint judicial investigations since June 2018. On 14 and 15 July 2018, the Joint Office organized a protection mission to Chomia and Kasenyi to inform and raise awareness among victims and witnesses before the trial. A mobile court hearing was held in August 2018 with 72 alleged perpetrators and 422 victims and witnesses.

41. In the context of the outbreak of Ebola virus disease in North Kivu, the Joint Office contributed to a training session organized by United Nations police, in collaboration with the World Health Organization, for police officers involved in protecting response teams in Butembo. One hundred Congolese national police officers (including nine women) participated in this training, which covered concepts of human rights and international humanitarian law, civil liberties and basic principles on the use of force.

42. The Joint Office organized 41 capacity-building, awareness-raising and information exchange sessions for members of local protection committees and civil society organizations. A total of 1,661 men and 644 women benefited from this training in Beni, Bukavu, Butembo, Dungu, Goma, Kisangani, Kananga, Kalemie and Lubumbashi, with two sessions organized specifically for 40 women.

## 3. Human rights due diligence policy

43. During the reporting period, the secretariat responsible for human rights due diligence policy on United Nations support to non-United Nations security forces,<sup>7</sup> placed under the authority of the Director of the Joint Human Rights Office, conducted 272 risk assessments that led to the authorization of United Nations support, often with conditions,

<sup>4</sup> Office of the United Nations High Commissioner for Refugees, DR Congo emergency, updated July 2019. Available at: <https://www.unhcr.org/dr-congo-emergency.html>.

<sup>5</sup> Security Council resolution 2463 (2019), para. 29 (i).

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights and United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, *Détérioration de la situation des droits de l'homme dans le Masisi et le Lubero (Nord-Kivu) et défis relatifs à la protection des civils entre janvier 2017 et octobre 2018* (Deterioration in the human rights situation in Masisi and Lubero (North Kivu), and challenges related to the protection of civilians between January 2017 and October 2018), December 2018. Available at: [www.ohchr.org/Documents/Countries/CD/Rapport\\_Masisi\\_Lubero\\_19Dec2018.pdf](http://www.ohchr.org/Documents/Countries/CD/Rapport_Masisi_Lubero_19Dec2018.pdf).

<sup>7</sup> The human rights due diligence policy seeks to prevent the risk of units of the Congolese security forces to which the United Nations provides support (logistical, operational or training) committing violations of international humanitarian law, human rights or refugee law. See A/67/775-S/2013/110.



for 550 State officials and members of the defence and security forces, in particular the army, the police and the prison authorities.

44. Through the adoption of risk mitigation measures, the implementation of the policy has led to significant progress in the fight against impunity, including the establishment of joint committees to monitor cases of human rights violations.

### C. Sexual violence

45. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee urged the Government to take all necessary measures to ensure that all cases of sexual violence are investigated and that the perpetrators are prosecuted and, if found guilty, punished. It also recommended that physical and psychological support should be provided to victims and that their access to legal services should be facilitated (CCPR/C/COD/CO/4, para. 20).

46. In its concluding observations on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo, the Committee on the Elimination of Discrimination against Women called on the State to prosecute all acts of violence against women, to punish the perpetrators and to set up a comprehensive care system for victims (CEDAW/C/COD/CO/6-7, para. 22).

47. In its concluding observations on the second periodic report of the Democratic Republic of the Congo, the Committee against Torture recommended strengthening the capacity of judges to combat sexual violence and implementing measures to facilitate access to justice for victims (CAT/C/COD/CO/2, para. 33).

48. During the universal periodic review of the Democratic Republic of the Congo on 29 April 2014, it was recommended, *inter alia*, that the Government should try perpetrators of sexual violence, regardless of rank; that it should take adequate measures to reduce and eradicate sexual and gender-based violence, including by improving the training of the security forces; and that it should create appropriate avenues of redress for victims (A/HRC/27/5, paras. 134.60, 134.68, 134.85 and 134.116).

#### 1. Current situation and action taken by the Government

49. Sexual violence continues to be perpetrated on a large scale by State agents and armed group fighters. During the reporting period, at least 726 women, 234 children and 3 men were victims of conflict-related sexual violence, a significant increase over the previous reporting period.

50. Fighters from different armed groups and militias are responsible for 68 per cent of the documented cases, primarily Mai-Mai Raia Mutomboki combatants, members of the Nduma défense du Congo-Rénové group and Twa militiamen. The other cases are attributable to State agents, mainly members of the armed forces of the Democratic Republic of the Congo (22 per cent of the total victims). The armed forces and the Congolese national police continue to be listed in the annex to the report of the United Nations Secretary-General on conflict-related sexual violence (S/2019/280).

51. North and South Kivu are the provinces most affected by this violence, which mostly takes the form of rape, gang rape and forced marriage, mainly of women and girls, though men and boys are also victims. Several mass rapes were reported during the period under review, including by Mai-Mai Raia Mutomboki combatants in Shabunda territory, South Kivu. In North Kivu, the number of rapes committed by fighters of the Nduma défense du Congo-Rénové, Nyatura and APCLS-Rénové groups has increased steadily since the beginning of 2019, in a context of growing insecurity and population displacement. In addition, in highly militarized conflict areas such as Beni, in North Kivu, and Uvira, in South Kivu, the Joint Office has continued to document numerous cases of sexual violence committed by soldiers.

52. In Tanganyika province, the number of cases of rape, gang rape and sexual slavery mainly targeting women and girls and committed by Twa militiamen (47 women and 4

child victims), Mai-Mai combatants (27 women and 5 child victims) and members of the armed forces of the Democratic Republic of the Congo (14 women and 6 child victims) has increased. Cases of sexual slavery typically involve the abduction of a person, who is then placed at the disposal of one or more members of an armed group. This situation can last for days, months or years. The Joint Office has also documented an increase in cases of sexual violence in Maniema province. In Ituri province, the violence has significantly decreased following the demobilization of combatants from the Force de résistance patriotique de l'Ituri. The trend has remained unchanged in the Kasai region, where rapes are committed mainly by members of the armed forces of the Democratic Republic of the Congo and police officers.

53. Progress has been made in the fight against impunity for sexual violence thanks to certain judicial developments. On 26 July 2018, in Bukavu, in South Kivu, the Military High Court upheld, on appeal, the life sentences imposed on former provincial deputy Frédéric Batumike and his co-accused,<sup>8</sup> including for crimes against humanity involving rape, in a case in which dozens of children had been abducted and raped in Kavumu between 2013 and 2016. On 27 November 2018, in Goma, in North Kivu, the Operational Military Court opened, after several postponements, the trial of Ntabo Ntaberi Sheka, former commander of the armed group Nduma défense du Congo, who had been indicted, among other offences, for war crimes involving rape and sexual slavery committed in Walikale territory in 2010.

54. Nonetheless, victims of sexual violence continue to face many obstacles to access to justice. Even when ordered by courts, reparations are limited to the payment of damages and are enforced only very rarely. Having been considered by the Senate, the bill on assistance for victims of sexual violence had been transmitted to the National Assembly at the time of this report's preparation, but it could not be examined until the parliamentary session of September 2019, at the earliest. As it stands, the bill does not specify how its provisions will be implemented or how the fund for victims envisaged therein will be financed.

## **2. Action taken by the Joint Human Rights Office**

55. The Joint Office supported three legal clinics in Kasai-Central, North Kivu and South Kivu, which provided free legal assistance to 134 women, 22 men, 276 girls and 19 boys who had suffered sexual violence so as to ensure that they could receive free medical care. Of the cases handled, 206 were brought to court, resulting in 49 judgments including 40 convictions.

56. Based on the findings of investigations conducted by the Joint Office, and in response to an upsurge in conflict-related sexual violence in Shabunda territory, South Kivu, since 2018, the Joint Office has contributed to the development and implementation of an integrated plan of action for the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo with a view to preventing and responding to such violence. Launched in March 2019, the plan envisages a series of activities aimed at protecting civilians, building State capacity and bringing to justice those responsible for serious human rights violations. One of the results of the plan's implementation was the arrest, on 25 March 2019, of the leader of the Raia Mutomboki group, Masudi Alimasi Kokodiko, and one of his deputies, accused, among other offences, of crimes against humanity involving rape.

57. The Joint Office has also supported the military justice authorities in the investigation of sexual violence cases in Kasai-Central, North Kivu and South Kivu. For example, in April 2019, a joint investigation mission was undertaken in support of Bukavu military prosecutor's office that facilitated access to justice for 230 victims and witnesses, including at least 27 men and 193 women, of whom 113 were victims of sexual violence.

<sup>8</sup> With the exception of two defendants who had been sentenced to 12 months' imprisonment for participation in an insurrectionary movement and who were acquitted.

58. The Joint Office has continued to support the implementation of the action plan for combating sexual violence adopted by the armed forces of the Democratic Republic of the Congo, including by providing training for commanders and military officers. During the reporting period, 39 commanders, including 4 brigadier generals, signed acts of engagement against sexual violence. For the first time, and in collaboration with the Child Protection Section, the Joint Office organized a training course in South Kivu for armed non-State actors on preventing and responding to sexual violence.

## **D. Efforts to combat impunity**

59. In its concluding observations on the fourth periodic report of the Democratic Republic of the Congo, the Human Rights Committee requested the Government to take all necessary measures to end impunity for perpetrators of human rights violations, in particular the most serious violations, and to ensure that the families of the victims have access to effective remedies and to full reparation (CCPR/C/COD/CO/4, para. 12).

60. In its concluding observations on the second periodic report of the Democratic Republic of the Congo, the Committee against Torture recommended that the Government should commute all death sentences already handed down to prison sentences, initiate a process to formally abolish the death penalty, and improve physical conditions in all places of deprivation of liberty (CAT/C/COD/CO/2, paras. 21 and 37).

### **1. Current situation and action taken by the Government**

61. During the reporting period, the Congolese courts sentenced at least 100 members of the armed forces of the Democratic Republic of the Congo, 145 Congolese national police officers and 60 members of armed groups or militias for acts constituting human rights violations. Overall, this represents a slight increase over the previous reporting period. In addition, the Congolese courts have tried several cases categorized as war crimes and crimes against humanity.<sup>9</sup>

62. On 2 February 2019, the Operational Military Court of North Kivu rendered its judgment, which is not subject to appeal, in the trial of Lieutenant Colonel Marcel Habarugira, prosecuted for war crimes involving rape, child conscription and sexual slavery committed between 2011 and 2014 in Masisi territory. The accused was convicted of war crimes involving rape and the conscription and use of children, among other offences, and was sentenced to 15 years' imprisonment.

63. In addition, on 26 July 2018, in Bukavu, South Kivu, the Military High Court rendered judgments in cases involving four senior officers of the armed forces of the Democratic Republic of the Congo who had appealed to the Court after being convicted at first instance by the Military Court of South Kivu. In the case involving Colonel Becker, the Court sentenced the accused to 2 years' imprisonment for crimes against humanity involving looting and rape. In the case against Lieutenant Colonel Maro Ntumwa, the accused was sentenced to 20 years' imprisonment for crimes against humanity involving rape, sexual slavery and looting. In the case against Colonel Bedi Mobuli, the accused was sentenced to life imprisonment for crimes against humanity involving murder, rape, sexual slavery, looting and cruel, inhuman and degrading treatment. In all these cases, the Court ordered the payment of damages to the civil parties. However, in the Mutarule case, all the defendants were acquitted on the grounds of insufficient evidence. The High Commissioner is concerned about the outcome of this case, which leaves unpunished the massacre of at least 30 civilians, including 11 minors, during an attack in a church in June 2014.

<sup>9</sup> Judgments made possible since March 2017, thanks to the harmonization of legislation with the Rome Statute of the International Criminal Court following the promulgation, on 31 December 2015, of Acts Nos. 15/022 amending and supplementing the Decree of 30 January 1940 on the Criminal Code, 15/023 amending Act No. 024-2002 of 18 November 2002 on the Military Criminal Code, and 15/024 amending and supplementing the Decree of 6 August 1959 on the Code of Criminal Procedure, and, on 10 March 2017, Organic Act No. 17/003 amending and supplementing Act No. 023-2002 of 18 November 2002 on the Military Judicial Code.

64. The High Commissioner finds it regrettable that Lieutenant Colonel Mabilia Ngoma Alma is on the run, despite having been sentenced in November 2018 by the South Kivu Military Court to life imprisonment for crimes against humanity, including murder and rape, committed in Kalehe territory in 2013. His flight is all the more worrying in that it was allegedly facilitated by the military high command of the operational sector in Uvira.

65. There are significant challenges to the fight against impunity and the administration of justice, including structural difficulties, such as an insufficient number of judges and insufficient material and financial resources, and the judiciary's lack of independence. The establishment of 15 new courts of appeal during the reporting period is a first step towards resolving the problem of the courts' remoteness.

66. On 6 March 2019, an interministerial commission known as the Yumbi Commission was created to take on the task of collecting information on the massacres committed in Yumbi in December 2018, ensuring accountability and bringing the alleged perpetrators to justice. The Commission's report, which was made public on 23 May 2019, has been transmitted to the Minister of Justice. At the time of writing, criminal investigations were being conducted by the Military Prosecutor's Office and had led to the arrest and pretrial detention of 25 alleged perpetrators.

67. During the period under review, the implementation of the national policy on judicial reform and its accompanying priority action plan for the period 2018–2022 ran into difficulties related, in particular, to the political backdrop, which was dominated by the electoral process, and to the limited financial resources available.

68. The shortcomings of the prison system remain a major obstacle to the fight against impunity. The Joint Office documented the escape of 1,610 people from detention centres across the country. The most frequent causes of these escapes, in addition to negligence and corruption, are the dilapidated state of the infrastructure, the insufficient number of guards and their lack of training. Moreover, conditions of detention are alarming in most of the country's institutions, owing, in particular, to inadequate hygiene and a lack of access to health care and adequate food. These conditions and, in some cases, ill-treatment were at the root of 222 deaths in custody during the reporting period.

## **2. Action taken by the Joint Human Rights Office**

69. The Joint Office has continued to support the civilian and military justice systems in their endeavours to end impunity by providing technical, logistical and financial assistance for the investigation and prosecution of violations and serious abuses of human rights. Between June 2018 and May 2019, the Office supported 16 joint investigation missions and 20 mobile court sessions, working alongside the judicial authorities across the country to bring to justice those responsible for serious human rights violations. In Kasai, the technical support team deployed by the Office of the High Commissioner, in accordance with resolution 35/33 of the Human Rights Council, together with the Joint Office, continued to provide technical assistance to the judicial authorities in the conduct of investigations into violations and serious abuses of human rights committed in the region since 2016. During the reporting period, six joint missions were conducted by the Joint Office and the Military Prosecutor's Office in Kasai and Kasai-Central provinces.

70. In March 2019, in Kasai Central, the Joint Office, in collaboration with other partners, launched a drive to strengthen social cohesion between conflict-affected communities, including through transitional justice initiatives.

71. In cooperation with the Ministry of Justice and Ministry of Human Rights, the Joint Office has launched a project to alleviate prison overcrowding that began in July 2018 and led to the identification of cases of irregular and/or illegal detention in Makala prison, Kinshasa, and in the four main prisons in Kongo Central. The project has made it possible to rectify the situation in these cases and to release persons detained illegally.

72. On various occasions, the Joint Office has called on the judicial and political authorities to take urgent action to implement the judicial decision sentencing Lieutenant Colonel Mabilia Ngoma Alma, currently on the run, for crimes against humanity including murder and rape.

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

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

73. With a view to strengthening cooperation between the Democratic Republic of the Congo and the United Nations human rights mechanisms, the Joint Office provided technical and financial support to the Ministry of Human Rights and the interministerial committee responsible for drafting reports and following up on the implementation of recommendations of the treaty bodies and the universal periodic review. The Joint Office conducted at least 29 working sessions with members of the Ministry and the committee and 3 training workshops on techniques for drafting reports for the treaty bodies and the national report for the universal periodic review and on regional and international human rights protection mechanisms.

74. As a result of this cooperation, the Democratic Republic of the Congo submitted its combined second, third, fourth and fifth periodic reports on the implementation of the International Covenant on Economic, Social and Cultural Rights. In February 2019, it submitted its national report for the third cycle of the universal periodic review. However, the High Commissioner finds it regrettable that, in the absence of a national strategy for the promotion and protection of human rights incorporating all the recommendations of the various mechanisms, the implementation of recommendations remains limited.

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

##### **1. National Human Rights Commission**

75. Following its “A” status accreditation by the Global Alliance of National Human Rights Institutions in May 2018, the Commission is now in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

76. With the technical and financial support of the Joint Office, the Commission has made significant efforts to execute its mandate. It has issued opinions and recommendations for the adoption, by parliament, of bills on the protection and accountability of human rights defenders and non-profit associations, in terms consistent with international human rights instruments. The Commission has also carried out visits to places of detention, monitored demonstrations organized during the electoral process, and dealt with numerous complaints, more than half of which were followed up as human rights violations. The Commission has published, inter alia, a report on the social responsibility of extractive companies, an investigation report on the violence committed in December 2018 in Yumbi and an annual activity report. It has also submitted a number of other reports in the context of the universal periodic review, as well as reports to the Committee against Torture and the Committee on the Elimination of Discrimination against Women. The Commission, which has 211 staff members (of whom 68 are women), is now present in all 26 provinces of the country.

77. Nonetheless, the Commission still faces certain challenges, including a lack of financial and material resources, structure and specialized units to facilitate the organization of its work and constraints that limit its independence.

78. The High Commissioner encourages the Government to take steps to ensure that the Commission can, with complete independence and impartiality, fully assume its role as the institution of reference for the promotion and protection of human rights in the Democratic Republic of the Congo.

## **2. Other national mechanisms**

79. On 23 March 2019, a standing committee on human rights was established within the National Assembly following sustained advocacy conducted at various levels by the Joint Office in collaboration with the National Human Rights Commission. The High Commissioner hopes that this committee will contribute to the monitoring of government policy and to the allocation of the resources necessary for the protection and promotion of human rights.

# **IV. Conclusions and recommendations**

## **A. Conclusions**

80. During the reporting period, the human rights situation in the Democratic Republic of the Congo was marked by increased encroachment on civil liberties during the electoral and post-electoral periods, followed by a partial opening up of democratic space. However, the violent suppression of peaceful demonstrations and the use of threats and intimidation against human rights defenders and journalists continued.

81. The activities of armed groups and the State's response also continued to engender serious human rights violations in conflict areas, including a worrying number of incidents of sexual violence.

82. It is essential to support the efforts to combat impunity observed during the reporting period, to encourage a greater opening up of democratic space and to strengthen the capacity of public officials and national mechanisms for the protection and promotion of human rights.

## **B. Recommendations**

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

(a) Release immediately all political prisoners and prisoners of conscience who remain in detention, and guarantee the protection of the rights and freedoms of all persons, including political opponents, journalists, human rights defenders and other civil society actors;

(b) Enact without delay the law establishing modalities for ensuring the freedom to demonstrate in accordance with the Constitution and the international obligations of the Democratic Republic of the Congo;

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

(d) Ensure that the use of force by State agents, including in the context of law enforcement operations and military operations against armed groups and militias, strictly complies with the rules of international human rights law and international humanitarian law;

(e) Ensure that all detainees enjoy all fundamental legal safeguards, and take the necessary measures to ensure that conditions of detention in all places of deprivation of liberty for men, women and juveniles are in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(f) Close all remaining unofficial detention facilities and ensure that all arrests and detentions are subject to judicial review, including those carried out by the National Intelligence Agency and military intelligence officers;

(g) Adopt a programmatic law to ensure effective implementation of the goals of the national policy for judicial reform and its accompanying priority action plan for the period 2018–2022, including by guaranteeing the independence of the judiciary, the abolition of the death penalty and recognition of the right of appeal to the Operational Military Court;

(h) Institute a process of disarmament, demobilization and reintegration in accordance with human rights principles and standards, and ensure that any persons who may reasonably be thought to have committed serious violations of international humanitarian law and international human rights law are not incorporated into the defence and security forces until allegations against them have been independently and impartially investigated;

(i) Conduct investigations aimed at removing from the defence and security forces high-ranking officers who may reasonably be thought to have committed serious violations of international humanitarian law and international human rights law, and take the necessary measures to enforce sentences for such acts when they are imposed;

(j) Continue efforts to conduct independent, thorough, credible and impartial investigations into allegations of violations and serious abuses of human rights, including those committed in the Kasai region, as soon as possible, and ensure that these efforts lead to the prosecution and conviction of the perpetrators of such violations;

(k) Ensure that those responsible for attacks on the Ebola response mechanism are prosecuted and sentenced, regardless of their affiliation, and that such attacks do not compromise access to health care for any persons in need;

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

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

(n) Strengthen national institutions and mechanisms responsible for coordinating human rights and monitoring the implementation of the recommendations of United Nations mechanisms.

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