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Technical assistance and capacity-building

Report of the team of international experts on the Democratic Republic of the Congo*

Summary

The present report is submitted pursuant to Human Rights Council resolution 48/20 of 11 October 2021, which renewed the mandate of the team of international experts on the situation in Kasai and extended it to cover the entire territory of the Democratic Republic of the Congo. The Council requested the team of international experts to submit its final report to the Council, in the framework of an interactive dialogue, at its fifty-first session and to present it with an oral update at its forty-ninth session. The implementation of this expanded mandate comes as the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo is gradually withdrawing from Tanganyika Province after having withdrawn from the provinces of Kasai and Kasai Central.

Under its expanded mandate, the team of international experts conducted four field visits and organized a workshop on the status and prospects of transitional justice in the Democratic Republic of the Congo, in collaboration with the Ministry of Human Rights and the United Nations Joint Human Rights Office in the Democratic Republic of the Congo. The visits and the workshop allowed the team of international experts to develop a clearer understanding of the challenges and opportunities arising from the introduction of a system of transitional justice that will facilitate a break with past cycles of conflict, reconciliation among different population groups and observance of the rule of law, as a means of protecting the gains to be made under the planned reforms.

These challenges include the cross-border nature of conflicts, insecurity and illegal resource exploitation. Moreover, long-standing intercommunal conflicts have been reignited, often as a smokescreen to draw attention away from the unlawful exploitation of the country's agricultural, mining and land resources by armed groups. The country is experiencing conflicts of an exceptionally violent nature, involving instances of rape and sexual violence, while the State is struggling to provide all citizens with the protection to which they are entitled. These conflicts are fuelled by hate speech and calls for violence and discrimination. Combined with widespread poverty, a high level of youth unemployment and a lack of jobs and economic opportunities, the conflicts have led to an increase in crime and exposed young people to exploitation by armed groups and militias, including groups affiliated with political parties. These circumstances are a ticking time bomb, especially during election periods.

* The annex to the present report is circulated as received, in the language of submission only.



Although sincere, the Government's efforts and initiatives to promote disarmament, community reintegration, reparation for victims, the fight against impunity and security and justice sector reforms require enhanced coordination with adequate communication and greater national funding, with support from foreign partners, if they are to achieve their stated objectives.

Impunity for the violations of human rights and international humanitarian law documented in the report on the mapping exercise and in subsequent reports of the United Nations Joint Human Rights Office and of Human Rights Council experts, the resumption of attacks by the Mouvement du 23 mars (M23) and the beginning of the Nairobi process facilitated by the States members of the East African Community have demonstrated that it is essential to take account of the cross-border aspects of the conflicts and of transitional justice.

To promote dialogue and reflection on how the Democratic Republic of the Congo can meet this set of challenges, the team of international experts organized, together with the Ministry of Human Rights and the United Nations Joint Human Rights Office, a workshop on transitional justice, the outcomes of which will be taken into account by an expanded scientific committee that will be set up to propose a paper on the national transitional justice policy.

Lastly, the team of international experts offers its conclusions and makes recommendations with a view to strengthening current and future activities.

I. Introduction

1. In its resolution 48/20 of 11 October 2021, the Human Rights Council renewed the mandate of the team of international experts on the situation in Kasai and extended it to cover the entire territory of the Democratic Republic of the Congo in order to assist the country in its efforts to implement its transitional justice policy and to assess the follow-up given to judicial cases, particularly cases deemed a priority in the fight against impunity. The Human Rights Council requested the team of international experts to submit its final report to the Council, in the framework of an interactive dialogue, at its fifty-first session and to present it with an oral update at its forty-ninth session.
2. In resolution 48/20, the Human Rights Council reiterated its request to the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide technical assistance, including forensic expertise, to the Government of the Democratic Republic of the Congo in order to support the judicial authorities in their investigations into allegations of human rights violations and abuses, with a view to bringing those responsible to justice, and technical assistance to support the development of a transitional justice mechanism in the Democratic Republic of the Congo.
3. The international experts Bacre Waly Ndiaye (Senegal), Chair of the team, and Marie Thérèse Keita-Bocoum (Côte d'Ivoire), a team member, were appointed by the United Nations High Commissioner for Human Rights on 11 November 2021 at the request of the Human Rights Council. In the performance of its mandate, the team of international experts is supported by a coordinator and a human rights officer specializing in transitional justice. The team of international experts drew up a plan of activities and conducted four field visits to the Democratic Republic of the Congo, from 1 to 12 December 2021, 1 to 15 March 2022, 13 to 27 May 2022 and 13 to 26 July 2022.
4. During its first two visits, the team of international experts visited Kinshasa, Kalemie in Tanganyika Province, Goma in North Kivu and Bukavu in South Kivu to meet with members of the Government of the Democratic Republic of the Congo, provincial authorities, civilian and military judicial authorities, the Special Representative of the Secretary-General in the Democratic Republic of the Congo and Head of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), representatives of all United Nations agencies, the diplomatic corps, provincial authorities, representatives of the different communities and religious denominations and the President of the Panzi Foundation, as well as civil society and the press. In Kalemie, the team of international experts participated in the opening ceremony of the public consultations organized by the Government with the support of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo and the financial support of Belgium and the United Nations Peacebuilding Fund.
5. On 7 December 2021, in Goma, the team of international experts participated in a training seminar on transitional justice for civilian and military judges from the provinces of North Kivu and South Kivu; on this occasion, the Chair of the team of international experts delivered a statement on the transitional justice process in Grand Kasai. On 2 March 2022, the team of international experts met with representatives of the Twa and Bantu communities.
6. During its third and fourth visits, the team of international experts met with the Coordinator of the Disarmament, Demobilization, Community Recovery and Stabilization Programme, the Chair of the Standing Committee on Human Rights of the National Assembly, the President of the National Assembly and the members of the Joint Steering Commission on Transitional Justice, as well as the Chief Military Prosecutor at the Military High Court and the President of the Military High Court. During the second leg of its third mission, the team of international experts conducted a field visit to Lubumbashi, in Haut-Katanga Province, through which it learned about the factors at play in the conflict between the Katangese and Kasai communities, including the Katangese community's fear that the influx of persons arriving from Kasai would alter the electoral majority; the activities of militias associated with political parties and of the Bakata Katanga armed group; and the impact of hate speech in the Province.

7. From 19 to 21 July 2022, in Kinshasa, the team of international experts organized, in collaboration with the Ministry of Human Rights and the United Nations Joint Human Rights Office, a workshop on the status and prospects of transitional justice in the Democratic Republic of the Congo.

8. In March 2022, in Geneva, the team of international experts presented its oral report on the situation in the Democratic Republic of the Congo during an interactive dialogue at the forty-ninth session of the Human Rights Council.

9. The present report is submitted in accordance with Human Rights Council resolution 48/20. It highlights the various activities undertaken by the team of international experts in the performance of its mandate.

II. Mandate

10. The team of international experts adopted a two-pronged methodology: following up on judicial cases, particularly cases deemed a priority in the fight against impunity, and monitoring and supporting the authorities of the Democratic Republic of the Congo in the development and implementation of the transitional justice policy.

11. The implementation of the team's expanded mandate comes at a time when MONUSCO is gradually withdrawing from Tanganyika Province, after its withdrawal from the provinces of Kasai and Kasai-Central, a state of siege has been declared in the provinces of North Kivu and Ituri, conflicts between the Mouvement du 23 mars (M23) and the Armed Forces of the Democratic Republic of the Congo have resumed in the eastern part of the country, violence has erupted between the Twa and Bantu communities in Tanganyika Province, and the Katangese community has expressed hostility towards the Kasai community in Haut-Katanga.

12. At the same time, the efforts of OHCHR and United Nations agencies to maintain a presence in those areas from which MONUSCO has withdrawn are worthy of note.

13. Despite the situation described above, the team of international experts made every effort to carry out its four field visits as planned and to take steps to support the Government.

III. Cooperation between the team of international experts and the authorities of the Democratic Republic of the Congo

14. The team's performance of its mandate requires genuine collaboration and effective cooperation with the Congolese authorities. The team was able to carry out its work without hindrance and enjoyed the continuous cooperation and openness of its Congolese interlocutors.

15. That open-mindedness was made apparent by the renewal and extension of the team's mandate to the entire country at the request of the Government. The team welcomes the constructive cooperation of the authorities of the Democratic Republic of the Congo in facilitating its visits to the country.

IV. Current situation in the Democratic Republic of the Congo

16. The four field visits allowed the team of international experts to assess the security, political, judicial, social and humanitarian situation.

17. The team of international experts is concerned about the alarming security situation in the eastern provinces of the Democratic Republic of the Congo, particularly North Kivu and Ituri. It notes that since November 2021, M23 has resumed its attacks on the Armed Forces of the Democratic Republic of the Congo and MONUSCO peacekeepers in North Kivu. In February 2022, M23 destroyed a MONUSCO helicopter, killing eight

peacekeepers.¹ In addition, according to the United Nations Joint Human Rights Office, at least 34 people, including 2 children, were killed when a rocket struck a school.²

18. The team of international experts also notes that the border town of Bunagana³ has passed into the hands of M23 and regrets the many human rights abuses that this occupation entails. The situation in the eastern part of the country has resulted in the mass displacement of more than 170,000 people⁴ to Uganda and neighbouring territories, leading to the further deterioration of the humanitarian situation, particularly for women, children and other vulnerable people.

19. The team of international experts further notes that the level of trust between different population groups has deteriorated considerably. Moreover, the authorities of the Democratic Republic of the Congo and a large part of the national population accuse Rwanda of supporting M23. This widespread suspicion has led to hate speech and to calls for violence and discrimination against population groups who speak Kinyarwanda. Despite the Government's condemnation of this hate speech and the measures it has taken to stop it, it has resulted in victims.

20. On the diplomatic and military fronts, the Heads of State of the East African Community have taken measures to restore peace and end the conflict. Talks between the Government of the Democratic Republic of the Congo and several armed groups were held in Nairobi in April 2022, with the aim of bringing peace to the eastern part of the country.

21. On the judicial front, the team of international experts remains concerned about the severe lack of adequate human and material resources devoted to the administration of justice in the Democratic Republic of the Congo. The team of international experts notes the efforts deployed by the Ministry of Justice to restore the civilian justice system in provinces where a state of siege has been declared. In this context, an ordinance has been issued removing from the jurisdiction of the military courts all cases falling under the ordinary jurisdiction of the civilian courts.

22. On the social and humanitarian front, the team of international experts is concerned about the persistence and occasional exacerbation of inter-community tensions and conflicts in the provinces of Ituri, North Kivu and South Kivu, which have resulted in the emergence of new armed groups and a resurgence in the forced recruitment of children into their ranks.⁵ These groups claim to be engaged in the self-defence of their communities but their real motive is to control resources and territory. Multiple attacks on defence and security forces, as well as incursions into villages involving abuses against civilians, have led to mass displacement towards the country's interior and to neighbouring countries. Camps for displaced persons have also been the target of deadly attacks. The delivery of humanitarian aid, the assessment of needs and the evaluation of strategies for the protection of civilians are severely hampered by the difficulty of gaining access to affected areas.

23. On 25 and 26 July 2022, at the end of its fourth visit, the team of international experts was informed of violent demonstrations in the provinces of North Kivu and Ituri intended to force the withdrawal of MONUSCO.

¹ Statement delivered by the spokesperson for the Military Governor of North Kivu on 29 March 2022.

² United Nations Joint Human Rights Office in the Democratic Republic of the Congo, biannual report, January–June 2022.

³ A town in North Kivu on the border with Uganda that is a geostrategically important cross-border trade centre.

⁴ United Nations Joint Human Rights Office in the Democratic Republic of the Congo, biannual report, January–June 2022.

⁵ Protection Cluster, Democratic Republic of the Congo, "Analyse de protection – provinces de l'Ituri & du Nord Kivu : focus sur 3 facteurs de dégradation de la situation humanitaire et de protection" (November and December 2021).

V. Implementation of the expanded mandate of the team of international experts on the Democratic Republic of the Congo

24. Under its expanded mandate covering the entire territory of the Democratic Republic of the Congo, the team of international experts organized four visits to the country during which it met with Congolese authorities, civil society and international partners. Combating impunity and promoting reconciliation and transitional justice were the main objectives of these visits.

A. Combating impunity

25. The fight against impunity was examined from three angles: its context, the follow-up given to judicial cases and the situation of victims.

1. Context

(a) *General situation of the administration of justice*

26. With respect to the administration of justice in the Democratic Republic of the Congo, the general context remains unchanged, despite the efforts deployed in that regard, which nonetheless deserve to be highlighted. The glaring lack of human, financial and material resources continues to be the main challenge in this respect.

27. The lack of judges significantly undermines the fight against impunity. According to the Chief Military Prosecutor, in Ituri Province, for example, the cases of more than 2,000 detainees are being handled by a mere 10 judges.⁶

28. Many judges assigned to certain parts of the country are unable to report to their place of assignment because of a lack of infrastructure, housing or means of travel, or even, in some places, the absence of a courthouse. The team of international experts notes that this situation exacerbates the difficulties faced by the general public in gaining access to justice. The Ministry of Justice is considering granting so-called “bush bonuses” to judges who are forced to leave their families behind upon relocation from their usual place of residence. A judicial infrastructure development programme is being implemented with the support of the European Union to mitigate this problem.

29. Measures such as those described above, as well as measures to protect judges and their workplaces in the current extremely volatile security context, must be supported and significantly strengthened.

30. The team of international experts notes a correlation between the absence of the judicial system and the State, on the one hand, and the proliferation of armed groups and increased violence, on the other.

31. Civilian judges interviewed by the team of international experts in Bukavu, in South Kivu Province, explained that, owing to the difficulties of working in the current security context, no cases of crimes against humanity had been referred to the Court of Appeal.⁷ Such crimes were brought before the military courts because military judges enjoyed army protection when travelling and were considered to be more efficient, to the extent that even simple cases related to the payment of rent were referred to them. The judges also complained of the absence of the State outside of urban centres. According to them, most cases of human rights violations were documented only by non-governmental organizations (NGOs) and the United Nations Joint Human Rights Office.

⁶ Interview with the Chief Military Prosecutor on 3 December 2021, during the first visit of the team of international experts to the Democratic Republic of the Congo.

⁷ Interview with the civilian and military judicial authorities on 8 December 2021, during the first visit of the team of international experts.

32. Representatives of civil society in Bukavu echoed these judges' concerns, pointing out that insecurity is an obstacle to legal proceedings.

33. The team of international experts notes that not a single new judge has been recruited for over 11 years. According to the Chief Military Prosecutor at the Military High Court, there are currently 214 military prosecutors and 114 military court judges.⁸ The recruitment of 500 new military judges envisaged within the framework of the ongoing recruitment of 2,000 judges by the Ministry of Justice will double the capacity of the military justice system.

34. Moreover, the reinstatement of judges who had been unfairly removed from office will reinforce the impact of the planned recruitment drive. The implementation of these two measures should help to alleviate problems associated with the lack of human resources.

35. The team of international experts welcomed these measures and encouraged the Government to take due account of the need to increase the number of female judges through the planned recruitment process; this would facilitate, inter alia, the processing of the many cases of sexual violence regularly recorded in the country's provinces.

36. Moreover, this mass recruitment drive must be accompanied by adequate and sustained initial training in order to ensure the required level of professional competence, without which it would be ineffective.

37. However, it is important to emphasize that the operation of the judicial system depends primarily on support from the international partners of the Democratic Republic of the Congo. The team of international experts is of the view that a significant increase in the portion of the national budget set aside for the administration of justice is essential to ensure the sustainability of efforts to rehabilitate the judicial system.

(b) *Administration of justice in provinces where a state of siege has been declared*

38. The team of international experts notes that the security situation is clearly a major obstacle to combating impunity, particularly in the east of the country, where human rights violations are frequent.

39. Article 6 of Order No. 21/016 of 3 May 2021 provides that, for the duration of the state of siege, the criminal law jurisdiction normally vested in the civilian courts is transferred to the military courts. However, given the influx of civilian cases referred to the already overburdened military courts, Order No. 22/024 of 18 March 2022 restricted the jurisdiction of the military courts to a limited number of criminal offences, while at the same time re-establishing the regular jurisdiction of the civilian courts.

40. The team of international experts is of the view that the presence of the military justice system needs to be strengthened significantly in the provinces that are under a state of siege, where the military courts are struggling to cope with the increasingly heavy burden of eradicating armed groups, protecting the civilian population and strengthening discipline in the army.

2. Follow-up to judicial cases

(a) *General comments on the implementation of the recommendations made in the previous report⁹*

41. The team of international experts used each of its four visits to follow up on the judicial cases opened in the wake of the Kamuina Nsapu militia crisis. It remains concerned, however, about the slow pace of the implementation of the recommendations made in its previous reports¹⁰ regarding the fight against impunity.

42. The team of international experts notes that of the 16 priority cases identified since 2019, only one, the Mulombodi case, has reached the stage of completion of preliminary

⁸ Interview with the Chief Military Prosecutor on 3 December 2021, during the first visit of the team of international experts.

⁹ [A/HRC/48/82](#).

¹⁰ [A/HRC/41/31](#), [A/HRC/45/50](#) and [A/HRC/48/82](#).

proceedings and referral to the Military High Court for trial. The team notes that, in this case, as well as in the Nganza and Tshisuku cases, the accused generals are protected by immunity. The team of international experts supports the requests for waiver of immunity made by the Office of the Chief Military Prosecutor and hopes that these requests will be looked upon favourably, so that the process of military justice can overcome the obstacle of impunity.

43. The team of international experts is disappointed that the case of the women enslaved by the Bana Mura militia, which was raised many years ago, remains unresolved.

44. The team of international experts welcomes the fact that the case of the murder of Zaida Catalán and Michael Sharp, members of the Group of Experts on the Democratic Republic of the Congo, which was attached to a committee of the Security Council, has finally come to trial. Death sentences were handed down to the perpetrators and their accomplices, which triggered an automatic appeal by the military prosecution service. The team of international experts hopes that the Military High Court will sit within a reasonable time to rule on the appeal filed by the Office of the Chief Military Prosecutor and the defendants against the ruling of the Kananga Military Court. It notes with concern that the case of the victims' four Congolese colleagues is still pending.

45. The team of international experts welcomes the ruling handed down on the appeal filed by the Military High Court in the case of the murder of Floribert Chebeya Bahizire and Fidèle Bazana Edadi. It notes that the defendants have been ordered to pay damages to the widows and orphans of the two victims *in solidum* with the Democratic Republic of the Congo. The team urges the Democratic Republic of the Congo to ensure the prompt execution of this ruling.

46. The team of international experts welcomes the continued forensic support provided to the Congolese justice system by the technical assistance team deployed by OHCHR.

(b) *National prosecution strategy*

47. The team of international experts welcomes the development by the Democratic Republic of the Congo of a national strategy for targeted prosecutions that will optimize the use of available resources on a province-by-province basis and pave the way for transitional justice.

3. Situation of victims

(a) *Victims' impatience with the slowness of the judicial process*

48. The team of international experts notes that the lack of justice leads to a feeling of abandonment and a loss of trust in the judicial system among victims. As a result, some victims' associations and NGOs, such as Dr. Denis Mukwege's Panzi Foundation, have called for the establishment of an international court with jurisdiction over the Democratic Republic of the Congo or of hybrid courts. In addition, the Grand Kasai victims' association has filed a complaint with the International Criminal Court against former President Joseph Kabila and certain political and military officials, including generals.

49. The team of international experts maintains that justice for the Congolese people can be achieved in the Democratic Republic of the Congo by Congolese judges, provided that adequate resources are made available to them. The military courts and tribunals, which hear most cases involving serious crimes, crimes against humanity and war crimes, have the professional tools they need to carry out their mandates effectively.

50. The need to urgently provide the justice system with sufficient means to accomplish its mission is imperative in the current context of war in the east of the country, with human rights violations on the rise and victims still awaiting the implementation of the conclusions of the report on the mapping exercise. The absence of the State is detrimental to this situation and is particularly noticeable in the context of the gradual disengagement of MONUSCO.

(b) Victims' concerns

51. The team of international experts notes that the Grand Kasai victims' association occasionally organizes public demonstrations to demand justice for victims and the prosecution of alleged perpetrators of serious human rights violations.

B. Reconciliation and implementation of the transitional justice process**1. Monitoring the implementation of the transitional justice process in the region of Kasai Central**

52. In its previous report, the team of international experts commended the considerable progress made in the field of transitional justice in Kasai Central Province thanks to the implementation of the peace, justice, reconciliation and reconstruction project and the spontaneous surrender project in Kasai and Tanganyika. It urged the Government of the Democratic Republic of the Congo and its development partners to support the effective implementation of the Commission on Truth, Justice and Reconciliation of Kasai Central Province in accordance with international standards and called for the mobilization of the resources necessary for it to operate.¹¹

53. Despite support from Belgium and the United Nations Peacebuilding Fund in funding the transitional justice process throughout the country, as well as technical support from the United Nations Joint Human Rights Office, the funding gap at the provincial level remains a concern. The team of international experts is concerned about the lack of donor interest in funding the transitional justice process in Kasai and the lack of interest that the provincial authorities have shown in the operation of the provincial Commission on Truth, Justice and Reconciliation, which has been allocated a paltry budget of only \$500. This situation is exacerbated by the closure of the peace, justice, reconciliation and reconstruction project in April 2022.

54. Regarding efforts to facilitate the work of the provincial Commission on Truth, Justice and Reconciliation, the team of international experts welcomes the steps taken by the newly elected provincial authorities with the support of the United Nations Joint Human Rights Office. These steps include the designation of the Commission's headquarters, the development of a road map for its effective establishment in Kasai Central, the development of a code on the organization and functioning of the joint committee in charge of selecting commissioners,¹² and the order of the provincial minister of 17 December 2021 appointing the members of the joint committee in charge of selecting candidate commissioners. In addition, the team of international experts welcomes the confirmation, by order of the new provincial executive, of the appointment of the elected commissioners to lead the Commission in Kasai Central Province and the authorities' willingness to ensure that adequate funding is provided.

55. The team of international experts emphasizes the need to train the elected commissioners and their staff in the areas of transitional justice, human rights and international humanitarian law, and suggests that they also receive initial training on their mandate.

2. Implementation of the transitional justice process at the national level

56. The team of international experts notes that two structures have been established at the national level, namely the Joint Steering Commission on Transitional Justice and the Disarmament, Demobilization, Community Recovery and Stabilization Programme.

Structures for implementing the transitional justice process

57. With regard to the Joint Steering Commission on Transitional Justice, the team of international experts commends the Congolese Government's initiative to establish, with the

¹¹ A/HRC/48/82, paras. 50, 51 and 55.

¹² The code was developed in November 2021 with the support of the United Nations Joint Human Rights Office, OHCHR and the team of international experts.

support of the United Nations Joint Human Rights Office, a framework for reflection that involves all key institutions and actors in order to consider different forms of transitional justice and develop a national policy in that regard. The team of international experts is also pleased that this discussion platform, which was launched by the Office of the President and is coordinated by the Ministry of Human Rights and the Ministry of Justice, has been able to bring together other important bodies, such as the National Human Rights Commission, the National Assembly's Standing Committee on Human Rights, civil society and the United Nations Joint Human Rights Office.

58. The team of international experts also welcomes the development by the Joint Steering Commission on Transitional Justice of a specific road map identifying activities to be carried out, specific objectives and results to be achieved and an implementation strategy. It notes that the activities planned with a view to initiating the transitional justice process at the national level have been entrusted to specialized subcommissions, namely the Subcommission on Truth and the Subcommission on Reparations, which are led by the Ministry of Human Rights, and the Subcommission on Justice and the Subcommission on Guarantees of Non-Recurrence, which are led by the Ministry of Justice.

59. The team of international experts was invited by the Ministry of Human Rights to participate in the opening ceremony of the public consultations held in March 2022 in Kalemie, Tanganyika Province. Four provinces are concerned in the initial phase of these consultations, namely North Kivu (Goma), Kasai (Tshikapa), Kongo Central (Matadi) and Tanganyika.

60. The team of international experts invites the Congolese authorities to carry out more national and subregional initiatives to promote a return to peace in conflict zones and to allow communities that have expressed a desire to resort to transitional justice mechanisms to express their needs in terms of truth, reparations, justice and reform through public consultations.

61. The team of international experts also notes the Government's efforts to promote peace and restore the authority of the State through the implementation of the Disarmament, Demobilization, Community Recovery and Stabilization Programme. The development and adoption of the national implementation strategy for the Programme places emphasis on an inclusive community-based approach and on transitional justice as mechanisms for conflict resolution, reconciliation and reparation.

62. The team of international experts notes with concern that the Programme's operationalization has been delayed and that it is limited to low-impact outreach activities despite the current security context, which is marked by renewed clashes between M23 and the Armed Forces of the Democratic Republic of the Congo in the country's eastern provinces. The team of international experts therefore urges the authorities of the Democratic Republic of the Congo to expedite the effective implementation of the Disarmament, Demobilization, Community Recovery and Stabilization Programme and encourages the country's partners, in particular MONUSCO, to develop transitional initiatives to hasten the Programme's implementation.

3. Challenges in the implementation of the transitional justice process in the Democratic Republic of the Congo

63. The various trips made by the team of international experts to the provinces of North Kivu, South Kivu, Tanganyika, Ituri and Haut-Katanga have allowed it to identify challenges in the implementation of the transitional justice process in the Democratic Republic of the Congo. These challenges include: coordination of and adequate communication between the different processes under way within the general transitional justice framework, and their harmonious implementation; funding of the transitional justice process; consideration of the cross-border dimension of conflicts; the question of reparations; and the difficulty of applying transitional justice in a context of insecurity and inter-community conflicts.

(a) *Coordination of and adequate communication between the different processes under way within the general transitional justice framework, and their harmonious implementation*

64. The team of international experts welcomes the Government's transitional justice initiatives. However, it remains concerned about the coordination, articulation and funding of these initiatives, as well as the communication between the persons running them. During a workshop with the coordinator of the Disarmament, Demobilization, Community Recovery and Stabilization Programme on 16 March 2022, the team identified a need for more effective coordination between the various institutions responsible for transitional justice.

65. The team of international experts found that the only forum for consultation between the Disarmament, Demobilization, Community Recovery and Stabilization Programme and the Ministry of Human Rights is the steering committee, which is a managerial body attached specifically to the Disarmament, Demobilization, Community Recovery and Stabilization Programme and which the Minister of Human Rights or his representative attends as an observer. As a result, there is a risk of overlapping activities, a lack of coherence between activities and confusion among the general public with regard to the roles and responsibilities of the various actors.

66. During a meeting between the team of international experts and the Joint Steering Commission on Transitional Justice, the members of the Commission complained about the absence of an appropriate legal framework and the lack of independent funding for its activities. Moreover, from a methodological standpoint, the work of the Commission was suspended pending the results of the public consultations, whereas an evaluation of the initiatives that had already taken place in the country, including the work done prior to the consultations, could have been undertaken in parallel.

(b) *Funding of the transitional justice process*

67. The team of international experts is concerned that the transitional justice process is largely dependent on external funding. It strongly emphasizes the need for national funding, which is the only way to ensure credibility, coherence and sustainability.

(c) *Consideration of the cross-border dimension of conflicts*

68. The cross-border aspect of current conflicts and the need to take these aspects into account in the transitional justice process in the Democratic Republic of the Congo were previously illustrated by the report on the mapping exercise and are currently reflected in the Nairobi process. The various field visits that the team of international experts made, particularly to the provinces of North Kivu, South Kivu and Ituri, helped it to come to a better understanding of the dynamics of the conflicts, in which the parties are located on both sides of the borders of the Democratic Republic of the Congo.

69. The team of international experts learned from various interlocutors that the growing threat represented by armed groups is the result of competition for the country's agricultural, pastoral, mining and land resources, its porous borders and a lack of State authority, and that these armed groups are proliferating, often in collusion with foreign armed groups linked to national or international interest groups in neighbouring countries or further afield.

70. In addition, other factors, such as the disintegration of the social fabric, the declining influence of traditional authorities, the greed of professional or opportunistic businessmen, both national and foreign, and the general impoverishment of the population, contribute to the proliferation of all sorts of actors in the Democratic Republic of the Congo.

(d) *The question of reparations*

71. The workshop on transitional justice allowed the team of international experts to better understand the challenges faced by victims in terms of reparation. The right to reparation for victims is primarily addressed at the judicial level, particularly by the military courts. However, for the military courts, the issue of reparation is an accessory one, especially since it cannot be raised by victims in the context of direct summons proceedings. Moreover, a tendency to grant victims uniform reparation for harm caused, without individualization, has been observed. This standardization reduces reparations to the level of compensation. Lastly,

in most cases, in the event of a conviction, payment of compensation is significantly delayed, and is sometimes hampered by the insolvency of the perpetrators.¹³

72. In a judgment of 9 February 2022, the International Court of Justice, to which the Democratic Republic of the Congo had filed a complaint against Rwanda and Uganda after their armies clashed in Kisangani from 5 to 10 June 2000, causing numerous casualties and significant material damage, ordered Uganda to pay \$325 million in reparations to the Democratic Republic of the Congo.¹⁴ The question of the shares of this sum to be distributed to individual victims remains to be clarified.¹⁵

73. With regard to non-judicial reparations, it is important to note that collective reparations are not the most appropriate means of addressing the multiple harms suffered by victims of mass crimes.

74. In contrast, the Panzi Foundation and the Global Survivors Fund have adopted a comprehensive approach to non-judicial reparations for victims by combining clinical measures, psychotherapeutic methods and social reintegration.

75. Lastly, the prospect of a national reparations fund is taking shape in the form of a special bill, including a funding proposal, to develop and implement a national reparations policy.

76. The team of international experts hopes that the discussion concerning this bill will take due account, on the one hand, of the uniqueness of the problems posed by the question of providing reparations for the harm suffered by the millions of victims of the multigenerational and multidimensional conflicts that have ravaged the Democratic Republic of the Congo in the absence of a strong State and, on the other hand, of the meagre results obtained so far through the international courts. The involvement of women, traditional leaders and researchers specializing in the history and social and cultural anthropology of the Democratic Republic of the Congo will enhance the effectiveness of the process and the real impact of transitional justice.

(e) *Difficulty of applying transitional justice in a context of insecurity and inter-community conflicts*

77. The team of international experts notes that the transitional justice process is taking place in a country where part of the territory is in a post-conflict situation, while in the other parts insecurity, violence and conflict not only continue but seem far from abating. Owing to this situation, the transitional justice process in the Democratic Republic of the Congo must depart from existing models and take a pragmatic approach that accommodates the diversity of local circumstances and the needs of the population.

78. The discussions that the team of international experts held with the authorities and representatives of the populations of the provinces of North Kivu, South Kivu, Tanganyika and Ituri revealed the importance of acting without waiting for the conflicts to end. These discussions made clear the urgency of taking immediate steps towards transitional justice to curb the spread of current conflicts, to stifle hate speech and calls for violence and discrimination, to develop a strategy of targeted prosecutions and to seize opportunities for disarming combatants and resolving conflicts before the chance to do so is lost. An analysis of the causes of these conflicts is essential in order to shape the contours of sustainable solutions. Immediate solutions are required, in view of the ever-increasing number of victims living in untenably precarious and vulnerable situations.

¹³ In the case of *Germain Katanga*, the International Criminal Court awarded the derisory sum of \$250 per victim as individual lump-sum reparation. It should be noted, however, that this sum, and targeted collective reparations in the form of housing assistance, income-generating activity support, educational assistance and psychological support, were charged to the Court's reparations fund because of the convicted person's manifest insolvency.

¹⁴ The International Court of Justice did not look into the question of the responsibility of Rwanda because that country has not accepted its jurisdiction.

¹⁵ Dismas Kitenge Senga, President of Groupe Lotus and lecturer at the University of Kisangani.

79. The other essential dimension of transitional justice is the identification of the causes of the conflicts, the study of their impact and the analysis of the prospects for resolution beyond the country's borders, given the presence of the same communities on both sides of the borders and the involvement of many neighbouring countries in the ongoing conflicts.

80. Accordingly, the team of international experts organized a workshop on transitional justice with the Ministry of Human Rights and the United Nations Joint Human Rights Office from 19 to 21 July 2022 to take stock of the situation and study options for developing a national policy.

81. This workshop brought together members of parliament, senators, representatives of the Office of the President and of the various ministries concerned, the diplomatic community, academic figures and civil society.

82. The objective of the workshop was to facilitate the articulation, conceptualization and coordination of different elements of the transitional justice policy and to work on the communication campaign that would accompany it. The following topics were discussed:

- Consultations initiated within the framework of the transitional justice process in the Democratic Republic of the Congo
- Evaluation of Congolese criminal policy in the context of transitional justice
- Lessons learned from the decentralized model in Kasai Central
- Harmonization of the National Disarmament, Demobilization, Community Recovery and Stabilization Programme
- Links and coordination between disarmament, demobilization and reintegration activities and transitional justice
- Strategy for harmonizing current transitional justice initiatives
- Transitional justice in the context of justice reform
- Forms and modalities of the victims' right to reparation
- Adopting a victim-centred approach in the development of a transitional justice strategy
- Transitional justice funding mechanisms
- Reforms with a view to the non-repetition of past crimes
- Use of forensics in the transitional justice process

83. At the end of the workshop, the participants recommended that an expanded scientific committee be set up to draft a discussion paper on the national transitional justice policy in the Democratic Republic of the Congo with a view to facilitating the development of a road map that will ensure the policy's smooth implementation.

VI. Conclusions and recommendations

A. Conclusions

84. **The team of international experts would not have been able to play its role in assessing, supporting and assisting the Democratic Republic of the Congo without the full cooperation, goodwill and availability of the Congolese Government, for which it expresses its thanks.**

85. **In addition, the trust, openness and willingness to engage in dialogue shown by the Congolese people, their traditional and religious leaders, civil society and the international community in Kinshasa, as well as the continuous support of the United Nations Joint Human Rights Office and MONUSCO, allowed the team of international experts to grasp the complexity and nuances of the situation in the Democratic Republic of the Congo and to use this experience to develop its recommendations.**

86. Early in the reporting period, progress in Kasai confirmed the wisdom of the Government's decision to pursue a transitional justice process that is province-based, centrally coordinated and supported by the United Nations and the international community. In this context, public consultations were launched, a structure for coordinating the various aspects of transitional justice was set up under the auspices of the Office of the President and leadership of the Ministry of Human Rights, and a process of disarmament and reintegration was initiated along with a strategy of targeted prosecutions.

87. Recent attacks by M23 have highlighted the challenge posed by the long tradition of impunity in the Democratic Republic of the Congo, particularly for the crimes documented in the report on the mapping exercise, the centrality of the cross-border nature of the ongoing conflicts and insecurity, and, through the Nairobi process, the need to involve the subregion in the search for lasting solutions, including the identification of the root causes of the conflicts and the prevention of their recurrence, as well as in the transitional justice process as a whole.

88. The current challenges are compounded by the structural weaknesses of the Democratic Republic of the Congo. This general weakness extends to its administrative and judicial structures, the lack of a State presence and State authority over an immense territory, which has a direct impact on the rule of law, and the wholly inadequate operation and funding of State institutions, which fail to meet the needs of a population exposed to various forms of vulnerability and exploitation.

89. Protecting the population will require a sustained effort to rebuild the State, which must go hand in hand with the implementation of transitional justice and the fight against impunity.

B. Recommendations

90. While reiterating the need to pursue the implementation of the recommendations made in its previous reports,¹⁶ the team of international experts makes the following additional recommendations.

1. Conceptualization, articulation and communication strategy with regard to the transitional justice policy and the fight against impunity

91. With a view to improving the visibility of the Government's efforts, promoting communication about them and fostering ownership of the transitional justice policy by the population, the team of international experts stresses the importance of promptly adopting an appropriate communication policy on the implementation of transitional justice and recommends that the Government give priority to the development of such a policy.

92. The team of international experts recommends the prompt and efficient establishment of an expanded scientific committee, as recommended by the participants in the workshop on transitional justice held in Kinshasa from 19 to 21 July 2022.

2. Prevention of impunity

93. The team of international experts encourages the Government to continue developing a policy of targeted prosecutions, province by province, as was done in Kasai in the context of the Kamuina Nsapu militia crisis, including in respect of the crimes and human rights violations documented in the report on the mapping exercise.

94. The team of international experts recommends that the Government establish a centralized biometric identification system as part of the process of disarming and demobilizing combatants to allow for systematic background checks, which will be

¹⁶ A/HRC/41/31, A/HRC/45/50 and A/HRC/48/82.

particularly pertinent in the context of security sector reform, the conduct of prosecutions and the establishment of a nationwide civil administrative system.

95. The team of international experts supports the Chief Military Prosecutor's requests for the waiver of army generals' immunity, as well as the Congolese Government's review of current policies on amnesty, immunity and integration of former combatants (*mixage* and *brassage*), which constitute significant obstacles to ending impunity.

96. The team of international experts recommends that the Human Rights Council continue the deployment and strengthen the capacities of the forensic technical assistance team by increasing the size of the team and providing it with additional resources, including effective tools for collecting evidence to facilitate justice and memory work.

3. Consideration of victims at all stages of the process

97. The team of international experts welcomes the Government's decision to prepare a bill on a policy of reparations for victims and recommends that victims' needs for protection, immediate and other assistance, and reparation be taken into consideration at all stages of the transitional justice process.

4. Conflict prevention and guarantees of non-repetition

98. The team of international experts urges the legislature to promptly adopt and give effect to the bill on the nationwide prevention and punishment of hate speech and of calls for violence and discrimination.

99. The team of international experts recommends that the Government prioritize the analysis of the current conflicts and the use of factual history to help dispel the myths that continue to fuel discrimination and conflict in the Democratic Republic of the Congo.

100. The team of international experts encourages the Government to look into the reasons for the failure of previous reconciliation and peace negotiations and strategies, including the Addis Ababa Agreement, the Great Lakes Pact and the Nairobi process, and to take due account of the lessons learned from them when implementing the current transitional justice process.

101. The team of international experts recommends that the Government develop a plan for administrative reform to complement the current security and judicial sector reform programmes. The three reform programmes should be implemented together so as to be mutually reinforcing.

102. The team of international experts encourages the Government to establish an appropriate, high-quality training programme for its senior officials, taking into account the gradual withdrawal of MONUSCO and the need to ensure the sustainability of the planned reforms.

103. The team of international experts welcomes the recognition by the Nairobi process of the cross-border nature of the ongoing conflicts and insecurity and recommends that the subregion become more closely involved in identifying the causes of conflicts and preventing their recurrence, and that it strengthen the transitional justice aspect of its work, rather than limiting itself to the political and military aspects.

5. Public, private and international funding of the transitional justice process

104. The team of international experts notes with regret the inadequacy of the resources made available to the transitional justice process in the Kasai region and stresses the need for sufficient and sustainable funding for all aspects of transitional justice and State reform as a prerequisite for their success.

105. The team of international experts urges the Government to redouble its efforts to ensure that its transitional justice and State reform initiatives are funded from the national budget at both the provincial and central levels. Such financial efforts will

reinforce the political will reiterated by the Government, ensure the immediacy and sustainability of transitional justice projects, and encourage increased bilateral and multilateral cooperation in their funding.

106. **In addition, given the considerable level of funding required for the implementation of transitional justice, the team of international experts recommends that the Government develop a policy that would organize the contributions of national and multinational companies operating in the Democratic Republic of the Congo to the funding of peace, reconciliation, stability and sustainable development initiatives.**

Annex

RÉPUBLIQUE DÉMOCRATIQUE DU CONGO
Les provinces de la RDC
Situation au 31 juillet 2021



Date d'impression: 17 Aug 2022 Sources: UNHCR, RDC Auteur: UNHCR - Kinshasa Feedback: cod@drctg.unhcr.org Nom du fichier: COD_Map_RDC_17082022_A3