



**REPORT BY THE UNITED NATIONS JOINT HUMAN RIGHTS OFFICE ON THE
VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
COMMITTED DURING THE ELECTORAL PERIOD
IN THE DEMOCRATIC REPUBLIC OF THE CONGO, AS WELL AS ON THE
ACTIONS TAKEN BY CONGOLESE AUTHORITIES IN RESPONSE TO THESE
VIOLATIONS**

OCTOBER 2011 - NOVEMBER 2013

DECEMBER 2013

TABLE OF CONTENTS

SUMMARY.....	4
I. INTRODUCTION.....	5
II. METHODOLOGY AND CONSTRAINTS	5
III. CONTEXT.....	6
IV. LEGAL FRAMEWORK.....	9
A. <i>The right to life and the right to physical integrity</i>	9
B. <i>The right to liberty and security of the person</i>	10
C. <i>Freedom of peaceful assembly</i>	10
D. <i>Freedom of expression and freedom of the press</i>	10
V. VIOLATIONS OF HUMAN RIGHTS	11
A. <i>Analysis of the main trends</i>	11
B. <i>The right to life</i>	12
C. <i>The right to physical integrity</i>	14
D. <i>The right to liberty and security of the person</i>	15
E. <i>Freedom of peaceful assembly</i>	16
F. <i>Freedom of expression and the freedom of the press</i>	17
VI. ACTIONS TAKEN BY MONUSCO AND THE INTERNATIONAL COMMUNITY.....	18
A. <i>MONUSCO</i>	18
B. <i>The international community</i>	19
VII. ACTIONS TAKEN BY THE CONGOLESE AUTHORITIES IN RESPONSE TO HUMAN RIGHTS VIOLATIONS	20
A. <i>Administrative measures</i>	20
B. <i>Judicial measures</i>	21
VIII. CONCLUSIONS AND RECOMMENDATIONS.....	22
A. <i>The Congolese authorities</i>	24
B. <i>The international community</i>	24
IX. ANNEX : REACTION OF THE GOVERNMENT.....	25

LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ANR	<i>Agence nationale de renseignements</i>
CDC	<i>Convention des démocrates chrétiens</i>
CENCO	<i>Conférence épiscopale nationale du Congo</i>
CENI	<i>Commission électorale nationale indépendante</i>
CLCR	<i>Centres locaux de compilation des résultats</i>
ICC	International Criminal Court
CSAC	<i>Conseil Supérieur de l'Audiovisuel et de la Communication</i>
DRC	Democratic Republic of the Congo
FARDC	<i>Forces Armées de la République Démocratique du Congo</i>
FRPI	<i>Front de Résistance Patriotique de l'Ituri</i>
GR	<i>Garde républicaine</i>
ICCPR	International Covenant on Civil and Political Rights
MLC	<i>Mouvement de libération du Congo</i>
MONUSCO	United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo
PNC	<i>Police nationale congolaise</i>
PPRD	<i>Parti du peuple pour la reconstruction et la démocratie</i>
RCTK	<i>Radio communautaire Tujenge Kabambre</i>
RENADHOC	<i>Réseau national des organisations non gouvernementales des droits de l'homme de la République démocratique du Congo</i>
RLTV	<i>Radio Lisanga Télévision</i>
UDPS	<i>Union pour la démocratie et le progrès social</i>
UNC	<i>Union pour la nation congolaise</i>
UNJHRO	United Nations Joint Human Rights Office

Summary

This report by the United Nations Joint Human Rights Office (UNJHRO) examines human rights violations committed between 1 October 2011 and 31 January 2012 in the context of the presidential and legislative elections in the territory of the Democratic Republic of the Congo (DRC). It presents both human rights violations committed during this period in relation to the electoral process, and analyses the actions taken by Congolese authorities in response to these violations up to November 2013, two years after the elections were held.

The electoral campaign was marked by many acts of violence between members of political parties in almost every province of the country. These acts of violence intensified when the results were declared, in particular due to the climate of suspicion of fraud by the Independent National Electoral Commission (CENI) or members of political parties. In this context, in addition to these acts of violence committed by civilians against other civilians, serious violations of human rights, mainly by defence and security forces, were committed throughout the country.

Between 1 October 2011 and 31 January 2012, the UNJHRO recorded 345 human rights violations relating to the electoral process in the territory of the DRC, with at least 769 victims. In particular, the UNJHRO can confirm that at least 41 people were killed and 168 victims of violations of their right to physical integrity, while almost 400 were victims of violations of their right to liberty and security of the person. In addition, the UNJHRO has documented a further 26 violations of the right of peaceful assembly, 42 violations of the right to freedom of expression, and 18 violations of the freedom of the press. The defence and security forces were responsible for more than half of the documented violations, and the most serious violations were recorded in Kinshasa, as well as in the province of Kasai Oriental.

The main victims were people identified as political party members or sympathisers, mainly targeted by the defence and security forces with the aim of restricting their activities. Threats, acts of violence, and arbitrary arrests during political events were the most documented, as well as abuses of power by political and administrative authorities to prevent any political demonstrations contradictory to the authority in place.

In this report, the UNJHRO also analyses the actions taken by the authorities in response to the human rights violations described above. Some actions were taken by Congolese authorities during the electoral period in order to end these violations, especially in the city of Kinshasa, but they were largely insufficient given the scale of the documented violations. In most cases, the perpetrators of the human rights violations have remained unpunished to this day. The report makes a series of recommendations to ensure that the next electoral cycle can take place in a peaceful climate with respect for human rights. The implementation of these recommendations by Congolese authorities is particularly important in the light of the provisions of the Peace, Security and Cooperation Framework Agreement for the DRC and the region signed in Addis Ababa, Ethiopia, on 24 February 2013, in which the Congolese State committed in particular to promote the objectives of national reconciliation, tolerance and democratisation.

I. Introduction

1. Pursuant to Security Council Resolution 1991 of 28 June 2011,¹ the United Nations Joint Human Rights Office (UNJHRO)² monitored the human rights situation in the Democratic Republic of the Congo (DRC) and investigated the human rights violations linked with the electoral process. The UNJHRO already published two reports on the human rights violations committed in the context of the November 2011 elections. On 9 November 2011, the UNJHRO published a report on human rights and fundamental freedoms during the pre-electoral period throughout the territory of the DRC.³ This report analyses the main human rights violations linked with the elections for the period from 1 November 2010 to 30 September 2011. It makes several recommendations to those involved in the election process for the holding of free and fair elections in a peaceful and secure climate.⁴ On 20 March 2012, the UNJHRO published another report⁵ on serious human rights violations committed by members of the Congolese defence and security forces in the city of Kinshasa in the DRC between 26 November and 25 December 2011.
2. This report by the UNJHRO follows on from these two reports and this time covers all human rights violations committed between 1 October 2011 and 31 January 2012 throughout the territory of the DRC. During this period, the UNJHRO documented a series of serious violations of human rights committed in the context of the presidential and legislative elections, some of which have already been presented in the report published by the UNJHRO on 20 March 2012. This report also aims to analyse and assess the actions taken by Congolese authorities in response to these violations up to November 2013, i.e. two years after the elections were held, so that the next elections can be held in a peaceful climate and human rights violations not be repeated.

II. Methodology and constraints

3. Through its 18 field offices and its headquarters in Kinshasa, UNJHRO staff documented human rights violations linked with the elections across the whole country. This report is based on information which the UNJHRO has gathered from various sources, such as the victims and witnesses of the human rights violations committed, members of civil society and health professionals, as well as Congolese authorities. Given the large number of human rights violations documented by the UNJHRO, this report, however, only details a representative sample of these violations in order to illustrate the general analysis of the situation.⁶

¹ Resolution S/RES/1991 (2011) adopted by the United Nations Security Council at its 6568th session on 28 June 2011.

² On 1 February 2008, the Human Rights Division (HRD) of the United Nations Organisation Mission to the Democratic Republic of Congo (MONUC) and the Office of the High Commissioner for Human Rights (OHCHR) in the DRC merged to create the United Nations Joint Human Rights Office (UNJHRO), which is working according to their respective mandate.

³ See *Report by the United Nations Joint Human Rights Office on human rights and fundamental freedoms in the pre-election period in the Democratic Republic of Congo*, published on 9 November 2011.

⁴ *Ibid.*, para. 68.

⁵ See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*, published on 20 March 2012.

⁶ This report mentions certain offences of Congolese law committed by supporters and sympathisers of political parties. Nevertheless, as these are offences or crimes and not human rights violations in terms of international law, they are not analysed in this report.

4. Furthermore, this report does not give an exhaustive overview of the violations of human rights throughout the territory of the DRC between 1 October 2011 and 31 January 2012, as the UNJHRO has not been able to verify all the allegations brought to its attention. The investigative work was, in fact, made difficult due to various restrictions which UNJHRO staff came up against. In particular, their movements were restricted due to the security situation prevailing in some provinces and the presence of armed groups in some zones. In some cases, Congolese authorities imposed constraints restricting the possibility not only of carrying out investigations, but also of verifying certain violations. As an example, the office did not have access to all detention centres where individuals arrested during the election period were held, especially in the city of Kinshasa.⁷ Similarly, a circular from the Public Health Minister prevented the UNJHRO investigators from having access to all victims in Kinshasa health centres.⁸ Finally, cooperation with certain Congolese authorities was not always easy, and the advocacy work carried out with certain authorities was questioned by others in certain cases.⁹

5. On 8 July 2013, the UNJHRO shared for comments the present report with the Minister of Justice and Human Rights. In response, on 9 August 2013, the Minister of Justice and Human Rights transmitted to the UNJHRO comments from the Government of the DRC on the report, which are attached to the present report. There had also been several exchanges concerning the report between Congolese authorities and representatives of MONUSCO and of the High Commissioner for Human Rights (OHCHR).

III. Context

6. The election campaign officially started at midnight on 28 October 2011 and ended at midnight on 26 November 2011.¹⁰ The ballot for the presidential and legislative elections was held on 28 November 2011. Congolese voters had a choice between 11 candidates¹¹ for the presidential election and 18,865 for the legislative elections. Due to technical difficulties which had meant that not all polling stations received the election materials in time, just over 400 polling stations, concentrated in the provinces of Kasai Occidental, Kasai Oriental, and Katanga, remained open¹² with authorisation from the *Commission électorale nationale indépendante* (CENI), the institution in charge of organizing the elections, until 2 December 2011. Technical difficulties, such as the failure to display the electoral roles and difficulties for voters to find their polling stations, as well as allegations of fraud which circulated through the whole country a few hours after the opening of the polling stations, led to violence in several provinces, including Kasai Occidental and Kinshasa. According to the Provincial Executive

⁷, See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*, para. 8.

⁸ Circular No. 1250/CAB/MIN/SP/9745/DC/OMK/2011 of 12th December 2011 by the Minister for Public Health, instructing hospital directors not to provide information on deaths or injuries without first obtaining his permission.

⁹ For example, following UNJHRO lobbying between 17 and 23 December 2011, the magistrates from the prosecutor's office in Mbuji-Mayi, province of Kasai Oriental, released 56 people who had been arrested during the election period, as the offences of which they were accused had not been proven. Nevertheless, in the following days, the provincial authority which originally ordered these arrests called for these 56 people to be re-arrested.

¹⁰ The legal period of the official election campaign is laid down by Article 28 of Law No. 06/006 of 9th March 2006 on the organisation of the presidential, legislative, provincial, urban, municipal and local elections, as amended by Law No. 11/003 of 25th June 2011.

¹¹ The CENI recorded the applications of Jean Andeka Djamba (ANCC), Adam Bombole (independant), Joseph Kabila (independant), Nicéphore Kakese (URDC), Vital Kamerhe (UNC), Oscar Kashala (UREC), Léon Kengo (UFC), Antipas Mbusa (RCD/KML), Nzanga Mobutu (Udemo), Josué Alex Mukendi (independant), and Étienne Tshisekedi (UDPS).

¹² Nevertheless, the CENI did not reopen certain polling stations which had been closed due to violence.

Secretary of Kasai Occidental, 216 polling stations were burned, looted or destroyed in the province of Kasai Occidental, and CENI agents were beaten up or received death threats, in particular in the provinces of Equateur and Bandundu as well as in both Kasai.

7. The start of the election campaign was marked by many acts of violence between members of political parties in almost every province of the country.¹³ These acts of violence intensified at the end of the campaign, due to the climate of suspicion of fraud by the CENI or militants of the political parties. Some declarations by members of political parties were tainted by calls for violence or racial hatred.¹⁴ On several occasions, candidate Etienne Tshisekedi called for the liberation by force of members of the *Union pour la démocratie et le progrès social* (UDPS) arrested following demonstrations by his party. These calls were made during an interview on the *Radio Lisanga Télévision* (RLTV) on 6 November 2011 and repeated at a political meeting in Kisangani on 10 November 2011. An anti-Rwandan song is said to have been sung at a political meeting in Butembo.
8. Militants and sympathisers of the *Parti du peuple pour la reconstruction et la démocratie* (PPRD) and of the UDPS had recourse to reciprocal violence in several provinces of the country, intimidating and threatening militants and sympathisers of opposing parties. Following violence between militants of political parties and Congolese police, political meetings of the candidates were banned in the city of Kinshasa by provincial authorities on 26 November 2011 to prevent them from degenerating into confrontations between members of opposing political parties.¹⁵
9. A few days after the polling day, members of certain political parties started to contest the election results and made allegations of massive fraud. Two candidates went to court to have the voting annulled. Violence broke out between militants of political parties in several provinces of the country. Members of the *Centres locaux de compilation des résultats* (CLCR), for example in the provinces of Bandundu and Equateur, were threatened by losing candidates, political authorities and party militants, making the counting of the results more difficult.
10. On 9 December 2011, the CENI declared the provisional results of the presidential election. The candidate in the lead was President Joseph Kabilé. The UDPS candidate, Etienne Tshisekedi, rejected the results and proclaimed himself President of the Republic. Certain missions for the observation of the elections in the DRC criticised irregularities and lack of transparency of the election operations, deplored the violence linked with the elections, and asked the CENI and legal authorities to take all necessary steps to remedy the situation.¹⁶ The count carried out by the CENI was strongly

¹³ The UNJHRO documented the highest number of incidents between members of political parties in the provinces of Katanga and Kasai Oriental.

¹⁴ See the press release of Human Rights Watch dated 28 October 2011, “*The candidates should not incite violence*”. See also the MONUSCO press release of 8 November 2011, “*MONUSCO urges Congolese political leaders to refrain from incitement to violence*”, CP/OSRM/081111.

¹⁵ On the eve of polling day, MONUSCO published a press release calling for “*the Congolese political leaders [to] demonstrate their real abilities to promote non-violence, democracy, and respect for human rights*”, see Press Release of 27 November 2011, “*MONUSCO urges authorities and political leaders to refrain from any action which could engender or incite violence*”, CP/OSRM/271111.

¹⁶ See, for example, the declarations of the Carter Center of 30 November 2011, 10 December 2011, and 23 February 2012, the press releases from the European Union Electoral Mission of 1 and 13 December 2012, and from the Congolese National Episcopal Conference (CENCO) of 3 December 2011. In a press release dated 12 December 2011, MONUSCO

criticised by opposition parties, as well as by certain election observers. It was in this context that, on 16 December 2011, the Supreme Court of Justice, after rejecting the appeal by the *Union pour la nation congolaise* (UNC) calling for the election process to be declared null and void, validated the CENI results and declared Joseph Kabila winner of the presidential election with 48.95% of the vote. Candidate Etienne Tshisekedi came in second, with 32.33% of the votes. President Joseph Kabila was sworn in on 20 December 2011. On 26 January and 1 February 2012, after recounting a certain number of votes, the CENI announced the additional provisional results of the legislative elections. After receiving 542 appeals, the Supreme Court declared the final results of the legislative elections for 499 seats.¹⁷

11. After the Supreme Court of Justice had declared the final results of the presidential election, protests by militants and sympathisers of the opposition parties intensified. On 23 December 2011, Etienne Tshisekedi wanted to hold a “self-investiture ceremony” at the *Stade des Martyrs* in Kinshasa. On that date, when all gatherings had been banned in several of the country’s provinces, the defence and security forces, seeking to prevent demonstrations from being held, committed serious human rights violations against the militants and sympathisers of opposition parties who wanted to support the UDPS president in several provinces of the country.¹⁸ In January 2012, the UDPS president, who was unable to leave his home, which had been surrounded by defence and security forces, continued to call for the overturning of the institutions in place in the DRC. Sporadic violence broke out, for example, on 2 January 2012, in Kingantoko in the province of Bas-Congo, where UDPS militants sacked the local PPRD headquarters and burned a party flag.
12. Finally, the UNJHRO noted a further strong upsurge in interethnic tensions during the electoral period, which led to serious acts of violence between ethnic groups, although Congolese authorities did not provide an adequate response by either preventing or condemning these actions or assisting the victims of these ethnic acts of violence. For example, on 17 October 2011, at a political meeting in Kolwezi, the president of the Provincial Assembly of Katanga made speeches which could be interpreted as inciting ethnic or tribal violence against individuals who were “*not natives of Katanga*”.¹⁹ This behaviour has had an effect on the general security situation of certain provinces, like Katanga and Kasai Oriental.

called for the CENI to consider the concerns expressed by the election observation missions (CP/OSRM/121211). At a press conference on 12 December 2011, President Joseph Kabila acknowledged that mistakes had been made during the count, but that they were not such as to affect the result.

¹⁷ The Supreme Court of Justice ordered the CENI to carry out a partial repeat of the legislative elections in the district of Befale in Equateur Province.

¹⁸ See the *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*. See also the Human Rights Watch press release of 22 December 2012 – “*DR Congo: 24 killed since election results announced*”, and the Amnesty International press release of 19 December 2011, “*Democratic Republic of Congo: Post-election intimidation through arrests must end*.”

¹⁹ For example, on 17 October 2011, at a political meeting in Kolwezi, the President of the Provincial Assembly of Katanga made speeches appearing to incite racial violence against individuals who were “*not natives of Katanga*”. No action was taken against him, in spite of this being an offence under Congolese Law. Similarly, during their election campaign political meetings, several candidates made declarations amounting to calls for violence or racial hatred, without Congolese authorities taking any steps. Several incidents of ethnic violence took place in the country after the voting. For example, on 6 and 10 December 2011, in the towns of Kamina and Kolwezi in Katanga Province, following ethnic violence targeting persons who were “*not natives of Katanga*”, in particular Kasaians, several civilians were victims of sexual abuses and attacks on their physical integrity, many homes were destroyed, and thousands of people fled Katanga for Kasai Oriental.

IV. Legal framework

13. The rights referred to in this report are guaranteed and protected by the International Covenant on Civil and Political Rights (ICCPR)²⁰ and the African Charter on Human and Peoples' Rights (ACHPR),²¹ two international instruments to which the DRC is a party.²² The Congolese State is therefore bound to guarantee the exercise of human rights and fundamental freedoms laid down in these texts, and also to prevent and punish violations of these rights committed by State agents.
14. The right to life and the right to physical integrity are guaranteed by Articles 6, 7, and 9 of the ICCPR and Articles 4, 5, and 6 of the ACHPR. For the Human Rights Committee, the right to life is "*a supreme right from which no derogation is permitted*".²³ These rights are also protected by Article 16 of the Congolese Constitution.
15. Under these articles, the Congolese Government has a very specific obligation with regard to the action of their defence and security forces. According to the Committee, "*the member States must [...] prevent arbitrary killing by their own security forces*".²⁴ Thus, any attack on the right to life, which necessarily includes death threats, must give rise to an action by States, whether preventive or repressive, and regardless of the perpetrator of the violation.
16. Organic Laws No. 11/013 on the organisation and functioning of the PNC²⁵ and No. 11/012 on the organisation and functioning of the armed forces²⁶ require defence and security forces only to use force when strictly necessary and solely to achieve a legitimate end. As provided for by international standards,²⁷ recourse to force, and in particular to firearms, must be proportionate and in accordance with the principle of "a graduated response". If recourse to force is found to be necessary to uphold public order, it must meet these criteria.
17. In election periods, Congolese law penalises anyone who "*recruits or gives orders to an individual or brings together a group of individuals, whether armed or not, with the aim of intimidating the electorate or disturbing the public order*".²⁸ In this context, death threats or threats of physical violence against voters or CENI members contravene this law. Under Congolese law, any person, even a State agent, would then be responsible for an offence punishable by imprisonment and a fine under Congolese law.

²⁰ Adopted by the General Assembly in its Resolution 2200 A (XXI) of 16th December 1966.

²¹ Adopted on 27 June 1981 in Nairobi, Kenya, at the 18th Conference of the Organisation for African Unity.

²² The ICCPR was ratified by the DRC (then Zaire) in 1976, and the ACHPR in 1987. Under Article 215 of the 2006 Constitution of the DRC, these instruments constitute an integral part of the Congolese legal system.

²³ Human Rights Committee, General Observation No. 6: Article 6 (Right to life), para. 1.

²⁴ *Ibid.*, para. 3

²⁵ In particular, see Articles 8 and 9 of Organic Law No 11/013 governing the organisation and operation of the PNC, promulgated on 11 August 2011.

²⁶ Organic Law No. 11/012 governing the organisation and operation of the Armed Forces, promulgated on 11 August 2011.

²⁷ See the United Nations Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17th December 1979 (Resolution 34/169), as well as the United Nations Basic Principles on the use of force and firearms by law enforcement officials, adopted by the 8th United Nations Congress on Crime Prevention and Criminal Justice, Havana, 27 August to 7 September 1990.

²⁸ See Article 88 of Law No. 06/006 of 9th March 2006 on the organisation of the presidential, legislative, provincial, urban, municipal and local elections, as amended by Law No. 11/003 of 25th June 2011.

B. The right to liberty and security of the person

18. The right to liberty and security of the person is enshrined in Article 9 of the ICCPR and Article 6 of the ACHPR. In addition, Articles 17 and 18 of the Congolese Constitution lay down a specific regime for the arrest and detention of individuals on Congolese territory, in particular the fact that arrests must comply with the procedures established by the law²⁹ and that the persons arrested must be informed of the reasons for their arrest and taken before the courts as quickly as possible.
19. Any person who is deprived of liberty in the conditions laid down by Congolese law must be treated with humanity and respect for their personal dignity.³⁰ Persons deprived of their liberty must therefore not be subjected to ill-treatment whether under arrest or during detention, and must not be subjected to threats or intimidation. They must be released in accordance with the conditions laid down by the law.³¹

C. Freedom of peaceful assembly

20. Freedom of peaceful assembly is enshrined in Article 21 of the ICCPR and Article 11 of the ACHPR. The right to hold and take part in peaceful meetings or demonstrations is also protected by Articles 25 and 26 of the Congolese Constitution.
21. Article 26 of the Constitution requires prior notice of all meetings and demonstrations. Circular No 002/2006 of 29 June 2006 issued by the Ministry of the Interior and Security requires this notice to be given three days in advance except during the election campaign, when notice must be given 24 hours in advance. The electoral law³² provides that, throughout the election campaign, “*election meetings shall be held freely throughout the national territory. Written notice shall be given to the competent local authority at least twenty four hours in advance.*” According to the same article, any legitimately formed political party and any candidate recognized by the CENI has the right to hold an election meeting.
22. Nevertheless, the authorities in charge of upholding public order may restrict the right to hold peaceful meetings³³ by postponing the date of a meeting or cancelling it. This restriction, however, should be neither abusive nor repeated, and should make it possible to find a balance between respect for public order and the possibility for citizens to participate in election meetings or express their opinions on the progress of the elections.

D. Freedom of expression and freedom of the press

23. Freedom of expression is protected by Article 19 of the ICCPR and Article 9 of the ACHPR. In the context of any electoral process, freedom of expression is of vital importance, as it underpins the right to vote. In fact, the right to vote can only be exercised effectively if people are able to take informed decisions. It is therefore vital for everyone to have the freedom to receive and request information and opinions.

²⁹ See the Decree of 6th August 1959 on the Code of Criminal Procedure.

³⁰ The Human Rights Committee considers that “*persons deprived of their liberty may not be subjected to [cruel, inhuman or degrading] treatment, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty*”. See General Observation No. 21: Article 10 (right of persons deprived of liberty to be treated humanely), para. 3.

³¹ See Articles 32 to 47 of the Decree of 6th August 1959 on the Code of Criminal Procedure.

³² See Article 29 of Law No. 06/006 of 9th March 2006.

³³ Article 21 of the ICCPR permits restrictions to the right to peaceful assembly in certain circumstances.

24. Freedom of expression is enshrined in Article 23 of the Congolese Constitution, and also in Article 24, which requires the Government to promote a pluralist media environment. In order to implement this obligation, the *Conseil Supérieur de l'Audiovisuel et de la Communication* (CSAC) was created by a law in January 2011,³⁴ which was effectively promulgated in August 2011. The law of January 2011 authorises the CSAC, the competent authority for all decisions regarding the press, to study any violation of the law on the press.³⁵ The CSAC may decide, but only by resolution of a formal meeting, to suspend a radio or television signal for a maximum of three months.³⁶ As part of their general policing powers, provincial and local authorities can only take precautionary measures in the event of violation of the Law of 22 June 1996 setting the conditions for the exercise of freedom of the press, and only if this is essential for reasons of public order.³⁷ These precautionary measures can only consist of a ban on transmitting and broadcasting transmissions or programmes and informing the competent authorities within 48 hours. In no circumstances does Congolese law allow an administrative authority other than the CSAC to take the decision to cut a transmission signal from a radio or television station.

25. Under Article 81 of the election law, any attack on freedom of expression or the right to demonstrate during the election campaign is prohibited.³⁸

V. Violations of human rights

A. Analysis of the main trends

26. Between 1 October 2011 and 31 January 2012, the UNJHRO recorded 345 human rights violations³⁹ relating to the electoral process in the territory of the DRC, with at least 769 victims.⁴⁰ The UNJHRO observed a significant difference in the nature and geographical distribution of the violations between the pre-election and post-election periods. The UNJHRO recorded 143 human rights violations during the pre-election period between 1 October and 27 November 2011, mostly in the western part of the country, and particularly in the provinces of Kasai Oriental and Kasai Occidental. Approximately half of these violations were recorded in the last two weeks of the official campaign. On the polling date and the day after, the UNJHRO recorded 31 human rights violations,⁴¹ mostly in the provinces of Kasai Oriental and Katanga. The UNJHRO recorded the

³⁴ Law No. 11/001 of 11 January 2011 on the composition, attribution and functioning of the *Conseil Supérieur de l'Audiovisuel et de la Communication*; Presidential Order No. 11/054 of 12 August 2011.

³⁵ Article 9 of Law No. 11/001 of 11 January 2011. Here, the most frequently applied legislation included Law No. 96/002 of 22nd June 1996, setting the conditions for freedom of the press, and Ministerial Decree No. 04/MCP/011/2002 of 20th August 2002, amending and supplementing Ministerial Decree 04/MIP/020/96 of 26th November 1996 governing the application of Law 96-002 of 22nd June 1996 setting the conditions for freedom of the press in audiovisual communication.

³⁶ Article 59 of Law No. 11/001 of 11th January 2011.

³⁷ Article 85 of Law No. 96/002 of 22nd June 1996.

³⁸ Article 81 of Law No. 06/006 of 9th March 2006.

³⁹ This total number of violations also included 19 violations of the right to property, 10 violations of freedom of opinion, six violations of freedom of movement, two violations of the right of freedom of association, and 13 other human rights violations, which are not detailed in this report.

⁴⁰ It is particularly difficult to give any accurate evaluation of the number of victims in view of the nature of certain violations and the fact that not all the victims of a single violation make themselves known. It is impossible to give a figure for the number of victims of an abusive or illegal closure of radio or television transmissions. Similarly, when a demonstration is banned, there is no means of counting the exact number of victims. The figures given in this report, therefore, relate to the number of victims confirmed by the UNJHRO for the period in question. The real number of victims could be higher.

⁴¹ As the movements of UNJHRO staff were relatively restricted during this period for security reasons, the number of documented cases does not reflect all allegations of violations.

highest number of violations between 30 November 2011 and 31 January 2012, with 171 human rights violations, mainly in the provinces of Kasai Oriental and Kinshasa, fiefdoms of the UDPS and the main centres of electoral dispute.

27. According to information gathered by the UNJHRO, from a quantitative point of view, agents of the *Police nationale congolaise* (PNC) were responsible for almost half the documented human rights violations, but it should be noted, as mentioned in the previous report, that credible sources reported that certain elements of the *Garde républicaine* (GR) had infiltrated the PNC and, in order to carry out specific missions, wore police uniforms during operations intended to uphold and re-establish public order, which made accurate identification of the perpetrators of the violations committed in this difficult context.⁴²
28. There are, however, some individual aspects to be taken into account in the different provinces.⁴³ In Kinshasa, the UNJHRO identified members of the GR as suspects in at least 17 violations of human rights. In the provinces of North Kivu and South Kivu, soldiers from the *Forces Armées de la République Démocratique du Congo* (FARDC), which are deployed in military operations taking place there, are also said to have committed 18 violations, in particular violations of the right to life or to physical security. Provincial and local authorities also committed abuses of authority during the election period, usually for partisan ends to support their own campaigns or those of their candidates. Finally, the UNJHRO noted that representatives of the *Agence nationale de renseignements* (ANR) were also responsible for at least 63 violations of human rights across the whole country. Most were violations of the right to liberty and security of the person against members of political parties, especially those of the UDPS.
29. The human rights violations documented by the UNJHRO are often interconnected, as the victims are people identified as militants or sympathisers of political parties, mainly targeted by defence and security forces to restrict their political activities. The most documented were threats, violence, and arbitrary arrests during political events, as well as abuses of power by political and administrative authorities to prevent any political demonstrations other than those of the ruling party. For example, the UNJHRO documented a large number of violations of the right to physical integrity during arrests and detentions by defence and security forces or when breaking up peaceful demonstrations. It should be noted that the violations did not target one particular party at national level, but were connected with local power politics.⁴⁴

B. The right to life

30. Between 1 October 2011 and 31 January 2012, the UNJHRO documented 42 violations of the right to life with at least 53 victims, including 41 killed. The Office documented 12 death threats, mainly committed by members of the provincial or local authorities.

⁴² See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*, para. 35.

⁴³ The UNJHRO also documented certain human rights abuses, particularly violations of the right to physical integrity and freedom of opinion committed by members of armed groups, and especially in the provinces of North Kivu and South Kivu.

⁴⁴ In Kasai Oriental and Katanga, UDPS members and supporters were mainly targeted, whereas in Uvira, for example, UNC members and supporters were the most targeted.

The main suspects in relation to the other violations of the right to life, which mainly took place during demonstrations, are PNC officers.

31. The violations of the right to life documented by the UNJHRO were all directly connected to the election process. They usually involved attempts to intimidate political opponents or demonstrators in order to restrict their political activities. Some violations had the effect of directly influencing polling. For example, in the night of 28 to 29 November 2011, two polling stations in the town of Bamanya, in Equateur province, were attacked by around ten PNC agents assigned to guard the provincial governor. They threatened to kill all the polling station workers and certain witnesses who were attending the counting of the votes. Two people were injured, and the suspects allegedly attempted to rape three women. On the same day, in the town of Mbandaka, the provincial governor threatened to kill the executive secretary of the CENI and his assistant when they refused to carry out election fraud. The purpose of these violations was evidently to alter the polling results to benefit candidate Joseph Kabila and the governor, a candidate for national assembly membership.⁴⁵
32. The UNJHRO documented excessive use of force during peaceful meetings at different times during the electoral process, which led to the deaths of several people. The effect of these violations was to reduce considerably the right to peaceful assembly, as well as to establish a climate of terror to raise objections. On the day when the presidential campaign opened, in the town of Mbuji-Mayi in the province of Kasai Oriental, a demonstration organised by the *Parti Travailiste* was dispersed by PNC agents who fired real bullets into the crowd. A 13-year-old girl who was not taking part in the demonstration was killed, and a man and two other girls were injured by bullets.⁴⁶ The policeman was taken to court and sentenced.⁴⁷
33. Human rights activists were also victims of several serious violations of the right to life, due solely to their stances regarding respect for human rights during the election period. For example, in the night from 9 to 10 December 2011, in the town of Rutshuru in the province of North Kivu, soldiers from the 805th FARDC Regiment arbitrarily executed a human rights defender close to the *Union pour la Nation Congolaise* (UNC), who had reported several human rights violations in the town during the election period. An investigation has been opened, but no suspects had been arrested at the time of the drafting of this report. Human rights activists, journalists and legislative election candidates also received death threats, especially when they had taken a stance on the organisation of the elections or cases of alleged fraud. For example, on 26 November 2011, a national assembly candidate in the town of Kananga in the province of Kasai Occidental reported cases of attempted fraud she had witnessed. Her life was subsequently threatened by persons close to the governor, and she was arrested by judicial authorities of Kasai Occidental on 1 December 2011. She was transferred to the prosecutor's office in Kananga and brought to trial according an accelerated procedure by the *Tribunal de grande instance* of Kananga on 3 December 2011.⁴⁸ On 16 December

⁴⁵ The Governor of the Province of Equateur was accused of these acts by the CENI.

⁴⁶ Following this incident, there were strong tensions between PPRD and UDPS members, leading to the destruction of several properties by the supporters or sympathisers of both parties. See also the MONUSCO press release of 28 October 2011 – *MONUSCO concerned by incidents marking the beginning of the election campaign in Mbuji-Mayi*, CP/OSRM/281011.

⁴⁷ See para. 60 of the present report.

⁴⁸ The charges against them were public insults, contempt for authority, violation of State security, wilful destruction and assault and battery.

2011, she was acquitted, as the accusations against her had not been proven. On the other hand, no investigations were opened into the fraud said to have been committed by the governor and his entourage.

C. The right to physical integrity

34. The UNJHRO documented 76 violations of the right to physical integrity, with at least 168 victims, committed throughout the DRC during the period covered by this report.⁴⁹ Most of the human rights violations documented, taking place both before and after polling day, were connected with the victims' real or alleged political affiliations, and were committed during political demonstrations, when people were displaying campaign material, or after the victims had been questioned under threat about their political preferences. These violations often had a direct connection with violations of freedom of opinion.
35. During the pre-electoral period, the UNJHRO documented several cases where members of political parties were victims of violence because of their active participation in the election campaign, usually during or following authorised gatherings. The direct effect of these violations was to intimidate people to influence their votes. For example, on 30 October 2011, in the village of Kakenge, in the province of Kasai Occidental, a man was beaten by civilians on the orders of the *groupement* chief after he had hosted a candidate for the national assembly. The alleged perpetrator declared that the *groupement* belonged to the PPRD and that the presence of candidates from other parties would not be tolerated.
36. The UNJHRO also documented several cases of violations of the right to physical integrity against polling station workers and CENI members on polling day and during the following week, in order to intimidate them in relation to the work of counting the votes. In addition to the example mentioned above in the province of Equateur,⁵⁰ on 28 November 2011, in the town of Mutingwa in the province of Maniema, two election witnesses were beaten by members of the governor's guard and by the population upon the orders of the group leader and the provincial governor's representative, who accused them of election fraud. The victims are then said to have been detained at the town's police station for 24 hours in spite of their injuries.
37. People were also beaten following polling because they had expressed their joy at the presidential election results, or just because of their political affiliations. For example, on 6 December 2011, in the village of Kitchanga in the province of North Kivu, soldiers from the 811th FARDC Regiment beat a man on the grounds that he had voted for an opposition candidate on polling day. On 7 December 2011, in Kashatu in the province of South-Kivu, FARDC soldiers beat a woman because she voted for Joseph Kabilé.
38. The UNJHRO documented several cases where people were beaten either when being arrested or when in detention. For example, on 10 December 2011, in Kinshasa, a UNC member was arrested by five ANR agents when discussing the results of the presidential election. He was beaten during his arrest and then transferred to the holding cell in the

⁴⁹ In particular, the UNJHRO documented 83 victims of violations of the right to physical integrity by defence and security forces in the city of Kinshasa, particularly on 26 November 2011. See the *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defence and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*, paras. 23 to 27.

⁵⁰ See para. 31 of the present report.

Palais de Marbre, where the commander in charge refused to hold him in view of his health status. He was finally held in the cells of the *Groupe mobile d'intervention (GMI) de Kinshasa ouest* and then released on 12 December 2011 following the intervention of the UNJHRO. According to information gathered by the UNJHRO, no action was taken against the suspects.

39. The UNJHRO notes the indiscriminate use of force by the PNC agents assigned to guard the Governor of the Province of Kasai Oriental.⁵¹ During the election campaign, on polling day and on the following days, these agents voluntarily used force during the movements of the governor, who was also a candidate for the national assembly. These alleged perpetrators used firearms several times against the population to help the governor's convoy pass through, particularly between 28 and 30 November 2011. On these dates, one man was killed and three others received gunshot wounds in the town of Mbuji-Mayi when the governor's convoy passed through. According to information gathered by the UNJHRO, no action was taken against the alleged perpetrators in these cases.

D. The right to liberty and security of the person

40. Between 1 October 2011 and 31 January 2012, the UNJHRO documented 91 violations of the right to liberty and security of the person, with at least 391 victims.⁵² The great majority of the violations of the right to liberty and security of the person during the pre-electoral period were connected with the political affiliations of the victims, and were mainly aimed at intimidating people. Members of opposition parties or candidates for the legislative elections were arrested solely because of their political affiliations. On 31 October 2011, two UNC militants were arrested by PNC agents when campaigning for their party's presidential election candidate in the town of Kasese in the province of Maniema. Similarly, the mere fact of declaring a political affiliation in the street would lead to arbitrary and/or illegal arrests and detentions by members of the defence and security forces, and this happened across the whole territory of the DRC. For example, on 3 November 2011 in Boma, Bas-Congo, a man wearing a badge portraying the president of the Congo Pax party was arrested by a PNC officer and released following the intervention of the UNJHRO.
41. After polling day, the nature of the violations of the right to liberty and security of the person changed. The mere fact of disputing the election process could lead to an arrest. The alleged perpetrators of these violations sought specifically to silence any objection to the electoral process. For example, on 14 December 2011, in the town of Matadi, in Bas-Congo province, two men who were discussing fraud allegations in a bar on polling day and were arrested by an FARDC soldier, who took them to the holding cells of the town's military camp used for punishments. They were released the next day following intervention by the UNJHRO.

⁵¹ The UNJHRO documented 10 cases where the bodyguards of the Governor of the province of Kasai Oriental committed violations to the right of physical integrity, as well as violations of the right to liberty and security of the person and violations to the right of property. The UNJHRO documented at least 12 victims of violations to the right to physical integrity by these alleged perpetrators.

⁵² It is particularly difficult to put a figure on the number of victims of violations of the right to liberty and security of the person, especially following arrests during public demonstrations. The number of victims of these attacks could therefore be much higher.

E. Freedom of peaceful assembly

42. The UNJHRO documented 26 violations of the right of peaceful assembly committed on DRC territory during the period under review. Even though in some cases Congolese authorities may have been justified in restricting public meetings at certain dates in certain towns due to the security situation prevailing in the country, several local authorities abused their policing powers to ban, sometimes with threats, any political meeting other than for the parties of their choice. For example, on 18 November 2011, the head of the Kingala Mbak group in the province of Bandundu banned all candidates for the national assembly from campaigning except for the *Mouvement Social Réformateur* candidate, who happened to be his brother. At a public meeting on the same day, he apparently also declared that anyone putting up posters for other candidates would be fined 50,000 Congolese Francs.⁵³
43. After polling day, as the protests grew, provincial and local authorities, applying their policing powers, took steps to ban public demonstrations. Nevertheless, the UNJHRO found that bans on demonstrations in several provinces, such as South Kivu, and in the city of Kinshasa, were systematic, regardless of the terms of the prior notifications submitted. For example, on 4 December 2011, provincial authorities of Kasai Occidental published a decree banning all public demonstrations in the country with no time limits.⁵⁴ In spite of the guarantees given by UDPS members intending to hold peaceful demonstrations in compliance with legal requirements, the Deputy Mayor of the town of Tshikapa banned a demonstration on 17 December 2011, while the Mayor of Kananga forbade a demonstration on 21 December 2011. On 17 December 2011, in spite of prior notice being submitted, the PNC dispersed a peaceful demonstration in the town of Ndjokipunda. On 6 December 2011, in Lubumbashi in the province of Katanga, after dispersing a peaceful demonstration at the headquarters of the provincial federation of the UDPS the day before, the local authorities gave orders to ring the building with military vehicles, effectively preventing access to the building, without any justification and official decision having been taken on the matter. On 14 December 2011, UDPS militants organised an undeclared peaceful march in protest against this state of affairs. The FARDC soldiers encircling the building then attempted to terminate the demonstration by forcing the demonstrators to lie on the ground for 45 minutes at gunpoint.
44. Finally, defence and security forces sometimes used arbitrary and/or illegal arrests and detentions to prevent demonstrations from being held, targeting the organisers directly. This occurred in particular in the city of Kinshasa and in the provinces of Kasai Oriental, Katanga, North Kivu and South Kivu. In the town of Bukavu, in the province of South Kivu, two demonstrations were banned in December 2011, and the organisers were arbitrarily arrested. On 13 December 2011, local authorities banned a demonstration planned by some opposition parties including the *Convention des démocrates chrétiens* (CDC), the *Mouvement de libération du Congo* (MLC), the UDPS, and the UNC. After the demonstrators had been dispersed by defence and security forces, the provincial president of the CDC was arrested in his home by PNC agents and brought before the Public Prosecutor, who refused to pursue the matter as he had committed no crime. On

⁵³ It is in direct breach of Article 30 of Law No. 06/006 of 9th March 2006.

⁵⁴ Any restriction on the freedom of peaceful assembly must be limited in time and space if it is a public order measure. Otherwise, this measure falls within a state of emergency as provided for in Article 4 of the ICCPR and the Congolese Constitution. However, no state of emergency was declared in the territory during the period under examination.

20 December 2011, 14 members⁵⁵ of the same coalition which had submitted notice of a demonstration on 16 December 2011, once again banned by the local authorities, were arrested in their homes on orders from the provincial police station. Eleven of these were referred to the *Tribunal de grande instance* of Bukavu to be judged in an accelerated procedure for “*criminal participation in rebellion*”. They were all acquitted on 22 December 2011.

F. Freedom of expression and the freedom of the press

45. The UNJHRO documented 42 violations of freedom of expression and 18 violations of freedom of the press between 1 October 2011 and 31 January 2012. During the election campaign, violations of freedom of expression and freedom of the press targeted militants or sympathisers of political parties with the aim of intimidating them and restricting their campaigning options. These violations mainly took place alongside other human rights abuses.
46. After polling day, violations of freedom of expression became more numerous, aimed at preventing any demonstrations of discontent regarding the election process, and any disputing of the results. In some cases, people were even arrested after expressing their political opinions in private conversations. For example, in the town of Kalemie in the province of Katanga during the night of 24 to 25 December 2011, nine men and three women who were talking amongst themselves about Etienne Tshisekedi’s victory were arrested by an FARDC soldier and detained in the town’s military intelligence office. They were released the next morning.
47. Freedom of expression is very closely linked with freedom of the press, and the restriction of the latter often leads to violation of the former. During the election period, the signals from several radio and television channels were cut by Congolese authorities.⁵⁶ Most of the violations of freedom of the press documented by the UNJHRO relate to abuse of power by provincial or local authorities. Although they were not empowered to do so, several authorities, without referring to the CSAC, ordered the closure of radio and television stations for periods from several hours to several days. Sometimes the CSAC would take a decision confirming the order already taken so as to regularise the situation, but sometimes this institution was not even consulted in breach of Congolese law.
48. Between November and December 2011, several human rights violations were committed by local and provincial authorities in the province of Maniema to restrict freedom of the press⁵⁷ and freedom of expression throughout the province. In the town of Lubutu, on 26 November 2011, the administrator of the Lubutu territory ordered the closure of Sautiya Lubutu radio, the director of which was close to the opposition.⁵⁸ Two days later, the administrator of Punia territory ordered the arrest of the director of the Sautiya Punia radio station following the broadcast of an interview with a national

⁵⁵ The provincial UDPS leader and nine party members, one CDC member, one MLC member, and one UNC member.

⁵⁶ For an exhaustive account of the radio and television disconnections between 1 October and 31 December 2011 in the DRC territory, both legal and illegal, see 2011 Report by the Congolese organisation *Journalistes en Danger*, “*Press freedom during the elections, the media campaign*”, pages 55 and onwards.

⁵⁷ On 5 November 2011, in the town of Kindu in Maniema Province, a Radio Télévision Kindu-Maniema (RTKM) journalist was threatened with death by the town’s mayor following a radio broadcast in which listeners allegedly criticised a candidate close to the alleged perpetrator.

⁵⁸ That same day, one of the radio journalists was beaten up by PPRD militants.

assembly candidate which the alleged perpetrator considered to be offensive to the Head of State. On 12 December 2011, the *Radio Communautaire Tujenge Kabambare* (RCTK), which had been forbidden to broadcast on 18 November 2011 by the administrator of Kabambare territory,⁵⁹ started broadcasting again, having heard nothing about the appeals submitted to the authorities against this administrative measure. The director of the RCTK and three journalists were then arrested the following day and released several days later. In spite of requests by the governor of the province, the administrator of the territory of Kabambare did not authorise the radio station to start transmitting again until February 2012. None of these decisions were taken by, or in consultation with the CSAC.

49. In addition, the suspension of broadcasts by *Radio France Internationale* between 31 December 2011 and 9 January 2012 throughout the territory of the DRC by the CSAC can be qualified, due to its length and justification,⁶⁰ as an abusive measure, as in fact the station had not issued any calls which could be seen as inciting hatred or violence. Finally, the suspension by the Ministry of the Interior and Security of SMS telephone messaging services between 3 and 29 December 2011 throughout the DRC, justified by the need to uphold public order, does not comply with the requirement of proportionality laid down in Article 19 of the ICCPR.

VI. Actions taken by MONUSCO and the international community

A. MONUSCO

50. In October and November 2011, the UNJHRO continued its work to raise awareness⁶¹ on the respect for human rights during the election period to the benefit of various parties involved in the election process, such as the administrative authorities, members of the defence and security forces,⁶² members of civil society, human rights defenders, lawyers, and journalists. Between January and November 2011, UNPOL, MONUSCO Electoral Division and the UNJHRO jointly trained more than 10,000 people on the respect for human rights during the election period, and more particularly on the use of force in public order operations. The UNJHRO also developed a practical guide on public liberties during elections, which was distributed to civil society partners, as well as a guide on offences to the laws on polling and the organisation of elections, which was used during the training sessions organized by the Office.

51. In order to reinforce its capacity for monitoring human rights violations, the UNJHRO, through its 18 field offices, set up working groups with human rights organisations. The participants benefited from workshops aimed at reinforcing their ability to report and analyse human rights violations. In order to reinforce its ability to respond to human rights violations, the UNJHRO supported the human rights organisation *Réseau national des organisations non gouvernementales des droits de l'homme de la République démocratique du Congo* (RENADHOC) by increasing its capacity to receive calls on its

⁵⁹ This closure took place following the broadcasting of a message from the head of the armed group Raïa Mutomboki.

⁶⁰ In a press briefing on 5 January 2012, the Minister for Communication and the Media, commenting on the CSAC decision, said that RFI was “passing messages of incitement to hatred which called the Congolese people to oppose each other by violence”.

⁶¹ See *Report by the United Nations Joint Human Rights Office on human rights and fundamental freedoms in the pre-election period in the Democratic Republic of Congo*, paras. 58 to 60.

⁶² In particular UNPOL gave full training to battalions of the *Légion Nationale d'Intervention* (previously the *Police d'Intervention Rapide*).

toll-free hotline, which had been set up to report any human rights violations. To supplement this hotline, the UNJHRO set up a second free line, open 24 hours a day from 27 November 2011 to 17 January 2012. More than 200 calls were made to this line, making it possible to catalogue more than 130 alleged incidents across the country.⁶³

52. In addition, the UNJHRO continued its work of protecting and defending human rights. From the beginning of the campaign, teams of UNJHRO human rights officers organised missions to investigate the human rights violations which were reported to them. During the election campaign, following several cycles of violence, the UNJHRO participated in MONUSCO special missions to meet the authorities and political actors in the provinces of Bandundu, Bas-Congo and Kasai Occidental as well as high level missions in the provinces of Kasai Oriental and Katanga. The UNJHRO also set up a special team to investigate the serious human rights violations committed in Kinshasa⁶⁴ and assisted in the work of the Congolese criminal investigation officers and inspectors in charge of investigating these violations, in particular by providing them with certain information within the limits of their mandate, as well as advice, in particular on possible excavations of mass graves.⁶⁵

B. The international community

53. In its Resolution 1991 of 28 June 2011⁶⁶, the Security Council decided that “*MONUSCO shall support the organisation and conduct of (...) elections [inter alia], supporting the CENI (...) by monitoring, reporting and following-up on human rights violations in the context of the elections (...)*”. In its Resolution 2053 of 27 June 2012,⁶⁷ the Security Council also urged Congolese Authorities to ensure “*respect for human rights and fundamental freedoms*” during the election process for the coming provincial and municipal elections. While welcoming the positive steps taken “*to investigate the violations of human rights alleged to have been committed in Kinshasa in the context of the 28 November 2011 elections*”, the Council urged the government to prosecute those responsible, in particular those identified in the MONUSCO report⁶⁸, and to “*protect and promote all human rights throughout the country and ensure full respect for fundamental rights and liberties, [...], in light of the upcoming provincial and local elections*”.

54. In order to ensure respect for democratic rules and the smooth running of the elections in a peaceful climate, several international organisations, including the European Union, the African Union, and the Economic Community of Central African States (ECCAS),

⁶³ Information obtained over the green lines has not been included in the statistics in this report insofar as these were unverified allegations.

⁶⁴ See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*, paras 4 and 5.

⁶⁵ See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*, paras 19 and 20.

⁶⁶ United Nations Security Council, Resolution S/RES/1991 (2011) adopted at its 6568th meeting, on 28 June 2011.

⁶⁷ United Nations Security Council Resolution S/2012/485 on the situation regarding the Democratic Republic of Congo, adopted at its 6792th session.

⁶⁸ See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*.

sent missions for the observation of the elections into the country. The NGO Carter Centre and the *Conférence épiscopale nationale du Congo* (CNEC) also deployed observers throughout the country. These missions published reports on the electoral process. While the missions differed on certain points in their evaluation of the electoral process, all denounced the violence that had marred proceedings.⁶⁹

55. Following the tensions which arose when the presidential election results were announced, several international organisations, including the United Nations Organisation, attempted to mediate between members of the majority and the opposition in December 2011 and January 2012.
56. In a press release issued on 1 December 2011, the United Nations High Commissioner for Human Rights, Navy Pillay, deplored “*the killings and other acts of violence committed by Congolese security forces and supporters of political parties in the context of the presidential and parliamentary elections in the country [...]*”.⁷⁰ Finally, at the end of 2011, the United States and the United Kingdom sent a mission of international experts to assist the CENI with counting the votes in the legislative elections. However, as the CENI refused to cooperate with these experts, they left again on 13 January without even publishing findings of their mission.
57. On 11 November 2011, the Prosecutor of the International Criminal Court (ICC) announced that he was monitoring the election process and would not hesitate to initiate proceedings against anyone responsible for acts of serious electoral violence.⁷¹ After this initial statement, the Prosecutor reiterated his declarations regarding the human rights violations relating to the elections, stating that he continued to “*receive multiple reports of violent attacks against civilians, of fighting between rival factions, as well as attacks by armed groups and the national security forces*”, and that he was prepared to prosecute anyone committing serious violations of human rights.⁷²

VII. Actions taken by the Congolese authorities in response to human rights violations

A. Administrative measures

58. On 9 November 2011, President Kabila issued a decree appointing 18 new judges to the Supreme Court of Justice, so that the Court, with 26 judges rather than 8, could rule on the election problems within the legal timeframe. In addition, in order to facilitate political agreement between the parties involved in the Congolese elections and promote peaceful settlement of election disputes, on 18 November 2011, the CENI set up a National Mediation Committee.

⁶⁹ All the missions highlighted the importance for the democratic process of the elections being held in the DRC. The missions from the African Union and the Economic Community of Central African States welcomed the good organisation of the elections, in spite of the technical problems with a declaration on the presidential and legislative elections in the DRC of 30 November 2012. The European Union and Carter Center missions and the observation by CENCO, however, underlined certain irregularities and lack of transparency, particularly in the process of gathering and counting the results.

⁷⁰ Press release from the office of the United Nations Human Rights High Commissioner, “*DRC: Pillay warns of post-electoral violence and calls for accountability and restraint*”, 1 December 2011. See also the MONUSCO press release, “*Presidential and National Legislative Elections: Roger Meece calls for calm*”, 1 December 2011, CP/OSRM/011211.

⁷¹ Press release of 11 November 2011 from the ICC Prosecutor: “*Electoral violence can result in the commission of crimes falling within our jurisdiction. No one should doubt our resolve to prevent crimes or, if need be, prosecute individuals. [The Prosecutor’s Office] in coordination with domestic courts, will take all necessary action to investigate such crimes.*”

⁷² Press release of 6 December 2011 from the ICC Prosecutor: “*Those responsible for violence in the Democratic Republic of the Congo must face justice*”.

59. The Congolese Government set up several mechanisms to protect human rights well before the elections. On 18 November 2011, a meeting of the *Entité de liaison des droits de l'homme* set up by decree of the Prime Minister on 12th August 2009⁷³ brought together all the stakeholders in the Congolese election process in order to propose short term solutions to improve the human rights situation during the elections. Nevertheless, this meeting produced no concrete results. Similarly, the *Cellule de protection des défenseurs des droits de l'homme*⁷⁴, which was not yet officially in place during the period covered by this report, organised limited activities to meet the needs of the election process. It referred the violation of the right to life committed against a human rights defender in Rutshuru, in the province of North Kivu,⁷⁵ and the destruction of the property of another defender at Kisangani, in Orientale Province, to the competent authorities. Nevertheless, the powers of this unit remained very limited during this period, and no concrete results were achieved with regard to these two cases.

B. Judicial measures

60. Congolese legal authorities committed to prosecute those suspected of human rights violations on Congolese territory during the election process.⁷⁶ On 2 December 2011, the Minister for Justice and Human Rights urged the General Prosecutor of the Republic to open a judicial investigation into the violations of human rights committed by administrative authorities and members of the security forces.⁷⁷ The Minister issued a similar injunction for the General Prosecutor of the FARDC for violations committed by the defence forces.⁷⁸ Following these injunction letters, information requisitions were addressed to the General Inspector of the Judicial Police of the prosecutor's offices prescribing actions to be taken in the scope of the investigations. The PNC Chief of Police also called for proceedings to be brought against certain PNC officers,⁷⁹ and indicated that FARDC soldiers had also been arrested in the same circumstances. Some trials took place following human rights violations committed by defence and security forces. For example, the PNC agent responsible for firing on four people during a demonstration in the town of Mbuji-Mayi in the province of Kasai Oriental on 28 October 2011 was arrested the same day, and on 18 November 2011 the town's military tribunal sentenced him to 20 years of imprisonment for murder and attempted murder.

61. However, two years after the presidential and parliamentary elections, it must be noted that of the 345 violations documented by the UNJHRO, very few have led to the opening of investigations or prosecutions of the alleged perpetrators. Fewer than ten of the documented human rights violations resulted in a trial. No ANR agents have been prosecuted for the violations documented against them by the UNJHRO throughout the DRC. The same applies to the Republican Guard soldiers. With regard to the violations of the right to life,⁸⁰ only one trial was held, which is insufficient in view of the number of violations documented by the UNJHRO during the period and, with regard to the

⁷³ Decree No. 095/35.

⁷⁴ This unit was created by the Ministry of Justice and Human Rights (Decree No. 219/CAB/J&DH/2011 of 13 June 2011) as a mechanism for alerting the authorities for the protection of human rights defenders.

⁷⁵ See para. 33 of the present report.

⁷⁶ The Congolese courts also judged and sentenced individuals responsible for offenses to Congolese law in relation to actions linked with the elections, including persons accused of murder or wilful destruction, and CENI members accused of election fraud.

⁷⁷ Injunction on opening official enquiry No. 4583/LK1053B/RILU/CAB/MIN/J&DH/2011.

⁷⁸ Injunction on opening official enquiry No. 4584/LK1052B/RILU/CAB/MIN/J&DH/2011.

⁷⁹ Letter No. 2308/PNC/CG/COMDT/2011 of 13th December 2011.

⁸⁰ See paragraphs 30 and onwards.

violations of freedom of expression or peaceful demonstration, the UNJHRO has not recorded any prosecution or even administrative measures taken against alleged perpetrators, even though those responsible for these attacks have been identified in most cases. It should also be noted that, when the provisional parliamentary election results were declared, the CENI had called for investigations against several persons for violence and attempted fraud, including the Governor of the province of Equateur.⁸¹ Nevertheless, no legal proceedings were brought against the governor.

62. However, a judicial investigation was opened in order to throw light on the serious violations of human rights committed by agents of the Congolese defence and security forces in the city of Kinshasa as described in the UNJHRO report published on 20 March 2012.⁸² An investigation team made up of both military and civilian judicial officers and inspectors was set up by judicial authorities in March 2012, but none of those suspected of carrying out these human rights violations has been arrested to date.⁸³

63. There are several possible reasons for this situation. First of all, in most of the cases of violations of the right to physical integrity or the right to liberty and security of the person documented by the UNJHRO, victims of human rights violations did not dare bring complaints out of fear of reprisals by the suspects. Secondly, certain human rights violations did not give rise to prosecution due to the impunity from which certain offenders persistently benefit, in particular political figures and their close connections, as well as soldiers of the Republican Guard and ANR agents. For example, in spite of the CENI's accusations against the Governor of the province of Equateur, no action was taken against him for the threats he made against CENI workers. Similarly, no members of the Kasai Oriental Governor's guard were prosecuted for the documented human rights violations presented in this report. In the case of the summary execution of a human rights defender in Rutshuru in the province of North Kivu on 7 December 2011, the investigations were never completed, in spite of the fact that the *Cellule de protection des défenseurs des droits de l'homme* was seized of the case.

VIII. Conclusions and recommendations

64. During the period from 1 October 2011 to 31 January 2012, the UNJHRO recorded a large number of human rights violations in the DRC, in particular committed by defence and security forces, who acted in a climate of impunity. Although Congolese authorities promised to implement the “zero tolerance” policy⁸⁴ with regard to violations of civil and political rights, the number of human rights violations increased during the campaign and the post-election period. Several elements of the defence and security forces were manipulated to restrict the exercise of human rights and fundamental freedoms of certain groups, in particular political opponents. Finally, in certain events in

⁸¹ *Word from the President of the CENI on the occasion of publication of the provisional results of 26 January 2012*. The Governor was accused of “violence provoked by himself and his supporters in the polling offices, in the districts of Mbandaka, Makanza, and Bikoro”.

⁸² See *Report of the United Nations Joint Human Rights Office on serious human rights violations committed by members of the Congolese defence and security forces in Kinshasa in the Democratic Republic of Congo between 26 November and 25 December 2011*.

⁸³ In its report published on 20 March 2012, the UNJHRO identified certain individuals with command responsibilities, such as the commander of the Republican Guard and the commander of the PNC in the Lukunga district (Camp Lufungula) in Kinshasa, but at the time of drafting of this report, these individuals had not been charged with the human rights violations documented by the Office.

⁸⁴ On 5 July 2009, President Kabila announced that he would impose a policy of “zero tolerance” in cases of indiscipline and human rights violations, especially sexual and sexist violence.

several provinces, the defence and security forces, mainly those who had not undergone training on the techniques of maintaining and restoring public order or on human rights, lacked professionalism.

65. With regard to the freedom of peaceful demonstration, while Congolese authorities may have been justified in restricting public meetings on certain dates in certain towns in view of the security situation in the country, the UNJHRO has recorded that, in the months of December 2011 and January 2012 in most of the country's provinces, demonstrations held by the political opposition to express their discontent with the election process were almost systematically banned, which is the equivalent of a *de facto* ban on the right of peaceful meeting for opposition members.
66. In its previous reports on the human rights situation linked with the elections, the UNJHRO detailed the legal system applicable during this period and was able to highlight some imprecisions. In this context, the UNJHRO notes that little progress has been made. For example, while it is clear that human rights defenders were targeted during these elections, the law on the protection of human rights defenders, although on the parliamentary agenda during the electoral period, has still not been adopted, leaving these individuals more vulnerable to human rights violations in the next elections. Similarly, certain legislative amendments, such as to avoid abusive application of the law on offences towards the Head of State, as recorded by the UNJHRO,⁸⁵ have not been applied. In spite of strong legislative provisions, the CSAC was unable to complete its mission entirely because of the interference of local and provincial authorities. The CSAC lacked not only resources, but also the support from Congolese authorities that it needed in order to carry out its mandate properly.
67. It is important for the Congolese government to take steps to strengthen the powers of the existing institutions, and for legislative reforms to be adopted to strengthen the security of defenders of human rights and freedom of expression. The Congolese government, in accordance with its commitments, should also take steps to counter the impunity which has prevailed until now regarding the human rights violations committed during the election period. These measures are essential to ensure that the next election cycle can take place in a peaceful climate, and are of particular importance in the light of the provisions of the Peace, Security and Cooperation Framework Agreement for the DRC and the region signed in Addis Ababa, Ethiopia, on 24 February 2013, in which the Congolese State committed, in particular, to promote the objectives of national reconciliation, tolerance and democratisation.
68. This is why, in addition to the recommendations made in its previous reports,⁸⁶ the UNJHRO urges:

⁸⁵ See *Report by the United Nations Joint Human Rights Office on human rights and fundamental freedoms in the pre-election period in the Democratic Republic of Congo*, paragraphs 15 and 25.

⁸⁶ See *Report by the United Nations Joint Human Rights Office on human rights and fundamental freedoms in the pre-election period in the Democratic Republic of Congo*, para. 68, and the *Report on the enquiry by the United Nations Joint Human Rights Office into the serious human rights violations committed by the members of the Congolese defence and security forces in the city of Kinshasa in the Democratic Republic of Congo between 26th November and 25th December 2011*, para. 54.

A. The Congolese authorities

- to carry out independent, credible and impartial investigations into the human rights violations linked to the elections committed throughout the country and to bring the alleged perpetrators to justice regardless of their rank or position and, if necessary, to insist on lifting the immunity from which these perpetrators may benefit;
- to adopt disciplinary measures against State officials and agents who abused their privileges for partisan reasons;
- to condemn firmly incitement to violence and racial hatred, particularly during election periods, to take steps to prevent ethnic violence and to prosecute those who have carried out such incitement or violence;
- to support the *Conseil Supérieur de l'Audiovisuel et de la Communication* in its work and reinforce its capacity so that it can exercise its prerogatives independently, to remind the local and provincial authorities of the limits of their mandates in matters of press offences, and to prosecute when these authorities commit breaches of Congolese law, in particular electoral law;
- to prevent the commission of human rights violations by training defence and security forces on the respect for human rights, in particular when resorting to force;
- to set up actions to reform the legal framework and take steps for the promulgation of the laws;
- to make administrative, political and traditional authorities aware of respect for human rights in particular in the conduct of the elections.

B. The international community

- to urge Congolese authorities to combat impunity and prosecute those suspected of human rights violations committed during the election process;
- to continue to support the authorities, in particular civil, military and police authorities, at several levels in their efforts to improve the human rights situation in the DRC, in particular by reinforcing their capacity for the prevention and protection of human rights, in order to establish the functioning of fully democratic, responsible and transparent country's institutions.

IX. ANNEX: Reaction of the Government

République Démocratique du Congo

MINISTERE DE LA JUSTICE ET DROITS HUMAINS



REACTION DU GOUVERNEMENT AUX ALLEGATIONS DE VIOLATIONS DES DROITS DE L'HOMME CONTENUES DANS LE RAPPORT DU 24 JUIN 2013 DU BUREAU CONJOINT DES NATIONS UNIES AUX DROITS DE L'HOMME, IMPUTEES AUX SERVICES DE DEFENSE ET DE SECURITE DE LA RDC, PENDANT LA PERIODE ELECTORALE

Du 01 octobre 2011 au 31 janvier 2012

Kinshasa, Août 2013



- I. INTRODUCTION**
- II. OBSERVATIONS**
- III. COMMENTAIRE SUR LES STATISTIQUES PRESENTEES PAR LE BCNUDH**
- IV. RECOMMANDATIONS**
- V. CONCLUSION**



1. INTRODUCTION

Le Bureau Conjoint des Nations Unies aux Droits de l'Homme (BCNUDH) tenait à publier, le lundi 05 août 2013, un rapport sur les allégations de violations des Droits de l'Homme et des libertés fondamentales imputées aux Services de Défense et de Sécurité de la RDC pendant la période électorale, du 01 octobre 2011 au 31 janvier 2012.

Dans ce rapport, le BCNUDH affirme avoir enregistré :

- 1) 345 cas de violations des droits de l'homme ;
- 2) 769 victimes dont 41 personnes tuées, 168 victimes d'atteintes à l'intégrité physique, 400 victimes d'atteintes à la liberté et à la sécurité, 26 atteintes à la liberté de réunion pacifique, 48 atteintes à la liberté d'expression et 18 atteintes à la liberté de la presse.

Selon le BCNUDH, lesdites atteintes n'affectent que les personnes identifiées comme membres ou sympathisants des partis politiques de l'Opposition et sont imputées aux Services de Défense et de Sécurité de la RDC, notamment : les Forces Armées de la République Démocratique du Congo (FARDC), la Police Nationale Congolaise (PNC), l'Agence Nationale de Renseignements (ANR) et la Garde Républicaine (GR).

Pourtant, les mêmes allégations avaient déjà fait l'objet du rapport du BCNUDH, daté du 02 mars 2012, auxquelles le Gouvernement avait réagi en formulant des observations en date du 14 mars 2012, observations qui n'ont malheureusement été ni prises en compte dans le rapport du 20 mars 2012 ni publiées.

En dépit desdites observations, le BCNUDH, sous prétexte d'inaction des Autorités compétentes pendant plus d'une année et demi, compte de nouveau publier un autre rapport daté du 24 juin 2013, également entaché de partialité manifeste et reprenant les mêmes allégations pleines d'imprécisions, d'incohérences et d'accusations gratuites.

II. OBSERVATIONS

1. Imprécisions et accusations gratuites

a) La Police Nationale Congolaise (PNC)

La Police Nationale Congolaise est tenue pour responsable de la moitié des cas de violations dénoncées (345), y compris des personnes tuées (41 personnes), sans que des indications précises aient été données sur l'identité et les adresses des auteurs et des victimes, à l'exemple des allégations contenues dans les paragraphes 26, 29, 30, 31, 37, 38, 39, 43 et 59.

De surcroit, la mise en accusation du Commissaire Divisionnaire Adjoint KANYAMA est réclamée par le BCNUDH dans le rapport, sans aucun fait précis à sa charge.



3

a) Les FARDC

Les FARDC sont accusées d'être auteurs de 18 violations, particulièrement d'atteintes au droit à la vie ou à l'intégrité physique, sans qu'aucune mention ne soit faite de l'identité précise, des adresses des auteurs et des victimes (Cfr. paragraphes 27, 32, 36, 40, 42, 45 et 59).

b) La Garde Républicaine (G.R)

La Garde Républicaine est accusée, sans aucun détail ni précision, dans un cas, d'avoir infiltré des éléments dans des Unités de la PNC pour mener des missions spécifiques, dans un autre, d'avoir agi à découvert, en commettant au moins 17 violations, et enfin de bénéficier d'une manière persistante d'un régime d'impunité. (Cfr. paragraphes 26, 27, 60 et 62).

Bien que n'ayant jamais été cité dans aucun de trois rapports précités du BCNUDH, la tête du Général-Major BANZE, Commandant de la G.R., est subitement réclamée dans le rapport du 24 juin 2013.

c) L'Agence Nationale de Renseignements (ANR)

L'ANR est tenue, par le BCNUDH, pour responsable d'au moins 63 violations des droits de l'homme sur l'ensemble du Territoire National, dont la plupart seraient des atteintes au droit à la liberté et à la sécurité de la personne à l'encontre des membres des partis politiques et plus particulièrement ceux de l'UDPS, sans qu'aucun fait plausible et précis ne lui soit opposé ni dans les deux rapports de 2012, ni dans celui du 24 juin 2013. (Cfr. paragraphes 27 et 37).

En outre, les Agents de l'ANR (sans distinction aucune et sans préciser lesquels) sont gratuitement accusés de bénéficier également, d'une manière persistante, d'un régime d'impunité. (Cfr. paragraphes 60 et 62).

2. Incohérences et mauvaise foi du BCNUDH

La volonté de charger les Institutions de la RDC a occulté l'attention du BCNUDH de constater des contradictions flagrantes de chiffres et de dates dans son propre rapport ; et ce, à l'instar des faits ci-après :

- a) Les mêmes atteintes à la liberté d'expression passent, sans aucune explication, de 48 dans le Résumé (Cfr. page 4) à 42 dans le développement du rapport (Cfr. paragraphe 44) ;
- b) De même, le BCNUDH attribue-t-il aux Forces Gouvernementales l'exécution sommaire d'un défenseur de l'Homme à Rutshuru (Province du Nord-Kivu), le 07 décembre 2012 (Cfr. paragraphe 62), alors qu'il est de notoriété, sauf, semble-t-il, pour le BCNUDH, qu'à cette date et aujourd'hui encore, Rutshuru est sous contrôle de la Force Négative M23.



La pomme de discorde entre le Gouvernement et le BCNUDH se situe dans le fait que ce dernier, en même temps qu'il réclame au Gouvernement des sanctions à l'encontre des auteurs présumés des allégations de violations des Droits de l'Homme et des libertés fondamentales, prétendument documentées et dénoncées par lui, refuse paradoxalement, depuis le 14 mars 2012, de mettre à la disposition des Autorités compétentes les moindres précisions susceptibles de permettre à la fois les vérifications et, éventuellement, les poursuites judiciaires ; ce qui permet ainsi de continuer à perpétuer l'idée selon laquelle la RDC serait un Etat de non droit où régnerait l'impunité.

Par ailleurs, le refus du BCNUDH, d'une part, de prendre en compte et de publier les observations formulées par le Gouvernement à son rapport du 02 mars 2012 et, d'autre part, de souscrire aux recommandations du Gouvernement, notamment celle de mener une enquête conjointe et contradictoire, laisse également penser à une mauvaise foi de la part du Bureau Conjoint.

La RDC étant un pays post-conflit, il aurait été compréhensible et positif que le BCNUDH adopte à son égard des attitudes constructives au regard des efforts inlassablement consentis par le Gouvernement sous l'impulsion du Président de la République, Chef de l'Etat, dans divers domaines dont celui du respect des Droits de l'Homme.

3. Caractère sélectif, partisan et politicien du rapport

Les violences ayant caractérisé la période pré-électorale, électorale et post-électorale ont eu lieu dans toutes les Provinces et ont été le fait de différentes forces politiques en présence, aussi bien de l'Opposition que de quelques partis de la Majorité au pouvoir, et même le fait de plusieurs individus. D'où, la partialité du BCNUDH trouve encrage dans son rapport lorsque celui-ci se focalise uniquement sur les violences survenues à l'Ouest de la RDC (identifié aux Provinces du Kasaï Oriental et du Kasaï Occidental par le BCNUDH) et imputées aux Services de Défense et de Sécurité. (Cfr. paragraphe 25).

En effet, les crimes graves de sang perpétrés au vu et au su de tous, par certains militants de l'Opposition, commis tant sur les membres du Parti Lumumbiste Unifié (PALU), sur les adeptes de l'Eglise Kimbanguiste à travers le Pays que sur des ressortissants Chinois (à Mbuji-Mayi, à Kinshasa et à Matadi) ainsi que sur des Agents de la PNC, actes ayant pourtant déjà abouti à des condamnations judiciaires pour atteintes physiques aux personnes, ne semblent pas avoir retenu l'attention des rédacteurs du rapport du BCNUDH.

D'autres crimes odieux connus des instances judiciaires, des ONG des Droits de l'Homme et du BCNUDH et commis dans certaines Provinces, suite aux appels à la haine et à la violence par certains acteurs politiques bien identifiés, ne sont nullement cités. C'est notamment le cas de Monsieur Serge MUSANGU, chauffeur du Gouverneur de la Province du Kasaï Oriental, grièvement blessé et devenu infirme suite à sa lapidation en plein exercice de ses fonctions ; de l'Ingénieur Nestor MUTEBA KALOMBO de la MIBA brûlé vif avec de l'essence à Mbuji-Mayi ; et de Madame MASENGU ILUNGA, enceinte de 8 mois, passée à tabac et dénudée

A handwritten signature in blue ink, appearing to read 'Mainje', with a small '5' written above the 'e'. The signature is fluid and cursive.

publiquement, le 28 novembre 2011, par des activistes de l'Opposition. Ce qui a provoqué un avortement instantané.

Le BCNUDH semble être la seule instance fonctionnant en RDC à n'avoir ni entendu ni appris l'appel lancé à Kinshasa, par voie des médias, aux éléments des FARDC et de la PNC, le 18 décembre 2011, par Monsieur Etienne TSHISEKEDI d'arrêter, de ligoter et d'amener vers lui, vivant ou mort, le Président de la République, Chef de l'Etat.

Ces enquêtes pèchent cependant par une orientation délibérée vers une catégorie sélective des victimes, particulièrement celles de l'Opposition et mieux, comme spécifié dans le rapport, celles appartenant à l'UDPS, parti de Monsieur Etienne TSHISEKEDI. C'est donner une image erronée de la cartographie des incidents électoraux, notamment à Kinshasa, du reste, Ville multipartiste, et à travers le pays.

Ces oubli et omissions délibérés confirment le caractère sélectif, partisan et politicien dudit rapport.

Le parti pris du BCNUDH en faveur des formations politiques de l'Opposition s'observe notamment dans les paragraphes ci-après de son rapport :

En faveur de l'UDPS :

- Cfr. paragraphes 25, 27, 42, 43.

En faveur de l'UNC :

- Cfr. paragraphes 28 (Réf. 45), 37, 39, 43.

En faveur du MLC :

- Cfr. paragraphe 43.

En faveur du CDC :

- Cfr. paragraphe 43.

En faveur de Congo Pax :

- Cfr. paragraphe 39.

La même attitude de partialité du BCNUDH apparaît dans les paragraphes 11 et 30 de son rapport, à travers lesquels, respectivement, Monsieur Gabriel KYUNGU WA KUMWANZA, Président national de l'UNAFEC et Président de l'Assemblée Provinciale du Katanga, et Monsieur Jean-Claude BAENDE ETAFÉ ELIKO, Président national de l'ADH, alors Gouverneur de la Province de l'Equateur, sont reprochés de violations des Droits de l'Homme, tout simplement en raison de leur appartenance politique à la Majorité Présidentielle.

De même, le BCNUDH fait montre d'un acharnement systématique contre l'ANR et la G.R., qui sont tendancieusement alignées côté à côté dans ses rapports, avec une ignorance totale des attributions de ces deux Services républicains, qui concourent, en collaboration étroite avec d'autres Services de Défense et de



Sécurité, en l'occurrence les FARDC et la PNC, à la préservation de la paix et de la sécurité, en toutes circonstances, sur toute l'étendue du Territoire National.

La partialité du BCNUDH n'est pas, non plus, absente dans son rapport, ainsi que l'atteste le paragraphe 48. En effet, le BCNUDH y désapprouve la mesure de suspension, d'une part, du signal de Radio France Internationale et celle, d'autre part, du Service de messagerie téléphonique SMS, alors même qu'à travers le monde, l'Etat est en droit de prendre légalement ses responsabilités afin d'éviter le climat de subversion qui s'installait à travers le pays et menaçait de dégénérer. En effet, la mesure portant la suspension du Service SMS était conforme aux dispositions des articles 54 et 60 de la Loi-Cadre n°013/2002 du 16 octobre 2002 sur les télécommunications en République Démocratique du Congo. (Voir annexe 1).

Pareillement, la mesure suspendant provisoirement la diffusion des émissions de Radio France Internationale était conforme à la Loi n°96-002 du 21 juin 1996 fixant les modalités de l'exercice de la liberté de la presse en ses articles 82, ainsi que celles du point 1.1.4. premier tiret du Cahier des Charges des Médias audiovisuels exploitant en République Démocratique du Congo, contenu dans l'Arrêt Ministériel N°035/2011 du 14 juin 2011 modifiant et complétant l'Arrêt 04/MIP/020/96 portant mesures d'application de la N°96-002 juin 1996. (Voir annexe 2).

Devions-nous laisser libre cours aux incitations de trouble à l'ordre public, à la rébellion ainsi qu'à la haine raciale et interethnique qui menaçaient l'unité et la cohésion nationales et perturbaient l'ordre et la tranquillité publics ?

Si ce rapport n'a comme visée que de ternir l'image des pouvoirs publics congolais et de les livrer ainsi à la risée de la communauté internationale, avec en prime des poursuites devant la Justice Pénale Internationale (CPI), l'objectif est atteint ! Tant il est vrai que le BCNUDH n'a formulé aucune recommandation en direction de l'Opposition, moins encore à l'égard de différents groupes armés qui écument la partie Est de la RDC.

Enfin, il importe de relever que le moment choisi par le BCNUDH, caractérisé par des tractations relatives aux concertations nationales, à vouloir à tout prix, publier un nouveau rapport redondant, constitué essentiellement d'allégations partisanes et non fondées, en cette période particulière de l'histoire politique et sécuritaire de la RDC, pourrait être interprété comme une volonté délibérée de déstabiliser les Institutions Nationales.

L'affirmation contenue au paragraphe 30, page 15, de son rapport, selon laquelle, à l'Equateur, « le but de ces violations aurait été de modifier les résultats du scrutin au bénéfice du candidat Joseph KABILA KABANGE... » concourt grandement à cette interprétation.

Cependant, si le BCNUDH tient coûte que coûte à publier son rapport, le Gouvernement lui transmet, cette fois encore, les Observations de fond et lui demande d'en tenir compte.

III. COMMENTAIRE SUR LES STATISTIQUES PRESENTEES PAR LE BCNUDH

Les statistiques présentées dans le rapport sous examen ne présentent aucun détail précis sur les identités ainsi que les adresses des victimes et des auteurs, rendant ainsi difficile, voire impossible, leur exploitation aux fins de vérification et d'ouverture éventuelle de poursuites judiciaires.

Ainsi, le Gouvernement exige-t-il que le BCNUDH lui communique les informations utiles pour permettre l'ouverture des enquêtes sur les violations de Droits de l'Homme constaté par lui.

IV. RECOMMANDATIONS

En vue de clarifier les allégations de violations des Droits de l'Homme et des libertés fondamentales imputées aux Services de Défense et de Sécurité de la RDC par le BCNUDH, le Gouvernement réitère et formule les Recommandations ci-après :

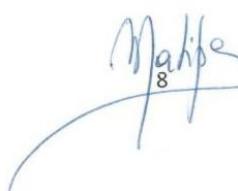
- 1) Ouverture d'une enquête conjointe et contradictoire MONUSCO-Gouvernement pour confirmer ou infirmer tous les cas de violations allégués afin de dégager les responsabilités des uns et des autres. Cette Recommandation est conforme à l'esprit et à la lettre de la Résolution 1991 ;
- 2) Mise à la disposition du Gouvernement des détails précis sur les violations des droits humains et des libertés fondamentales imputées aux Services de Défense et de Sécurité, en vue de permettre aux Autorités compétentes de procéder à des vérifications, et le cas échéant, d'ouvrir des dossiers judiciaires à charge des présumés auteurs ;
- 3) Invitation au BCNUDH de prendre en compte les Observations du Gouvernement du 15 mars 2012 ainsi que sa présente réaction avant la publication du rapport définitif, à défaut, de les publier en même temps que son rapport, conformément aux usages en la matière.

V. CONCLUSION

Ce rapport semble, à notre humble avis, relayer des allégations non fondées et non vérifiables et pour lesquelles le Procureur Général de la République et l'Auditeur Général des FARDC continuent à attendre vainement des preuves.

Les Observations relevées à l'examen du rapport du 24 juin 2013, que le BCNUDH se proposait de publier, portent atteintes à la crédibilité de ce rapport en raison des faiblesses ainsi épinglees ci-haut, à savoir :

- imprécisions et accusations gratuites contre les Services de Défense et de Sécurité de la RDC ;
- incohérence et mauvaise foi manifeste du BCNUDH ;
- caractère sélectif, partisan et politique du rapport ;



- acharnement systématique et aveugle contre l'ANR et la G.R.

Il convient de relever que, dans le paragraphe 4 de son rapport, le BCNUDH fait l'aveu de n'avoir pu vérifier toutes les allégations portées à sa connaissance ; ce qui, sous d'autres cieux, aurait dû le pousser, soit à prendre le temps et le recul nécessaires afin d'élaborer un rapport plus documenté et précis, soit à surseoir à la publication d'un rapport aussi incomplet, tendancieux qu'inopportun.

Fait à Kinshasa, le


Vivine MUMBA Matipa