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Technical assistance and capacity-building

Study on the impact of technical assistance and capacity- building on the human rights situation in the Democratic Republic of the Congo (2008-2014)

Report of the United Nations

Summary

The present study is submitted pursuant to Human Rights Council resolution A/HRC/RES/27/27 of 26 September 2014, in which the Office of the United Nations High Commissioner for Human Rights was requested to “commission a study on the impact of technical assistance and capacity-building on the human rights situation in the Democratic Republic of the Congo and to submit the report at its thirtieth session within the framework of an interactive dialogue”. It is based on activities conducted throughout the country between 2008 and the end of 2014 by the United Nations and international NGOs, with the support of Member States.

During the period under consideration, the technical assistance provided by the international community made it possible to achieve significant legislative and institutional progress and improved conduct on the part of duty bearers and rights holders.

The country’s legal framework has evolved, notably with the adoption in 2013 of an Institutional Act giving courts of appeal jurisdiction over crimes of genocide, war crimes and crimes against humanity.

Institutional developments in the area of human rights include the establishment of the human rights liaison entity and the Human Rights Defenders Protection Unit. The National Human Rights Commission was set up in 2013 and its members were appointed in 2015.

The fact that victims of sexual violence have gradually become aware of their need for justice and assistance has helped to combat impunity for crimes under international law and sexual and gender-based violence committed by senior officers of the defence and security forces and by armed groups. A growing number of members of those forces and groups have been found guilty of massacres, sexual



violence and looting, and have been given sentences including life imprisonment.

Capacity-building for the defence and security forces and civil society, together with increased monitoring of human rights by civil society and the United Nations, the publication of reports, advocacy and the above-mentioned sentences have all helped to raise the authorities' awareness of their duties and to reduce the number of human rights violations.

The protection mechanisms set up in areas subject to armed attack in the east of the country have helped provide better protection for the civilian population.

Despite the positive impact of the technical assistance provided by the international community in the area of human rights, many problems remain. Impunity is still a major concern. Remaining challenges related to the legal framework include the fact that important legislation aimed at protecting human rights, and specifically concerning human rights defenders, sex equality and gender, has not yet been adopted.

There are conflicts of mandate between institutions, for instance, between the National Human Rights Commission and the human rights liaison entity, and there is still no national mechanism for the prevention of torture, despite the fact that the Democratic Republic of the Congo is a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Most interventions by the international community have concentrated on the east of the country and have generally been short-term, which has not helped to produce sustainable outcomes.

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Abbreviations

FARDC	Armed Forces of the Democratic Republic of the Congo
GPRSP	Growth and Poverty Reduction Strategy Paper
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSISA	Open Society Initiative for Southern Africa
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNJHRO	United Nations Joint Human Rights Office
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	universal periodic review

I. Introduction

1. The Human Rights Council, in resolution A/HRC/RES/27/27 of 26 September 2014, called upon the Office of the United Nations High Commissioner for Human Rights (OHCHR) to commission a study on the impact of technical assistance and capacity-building on the human rights situation in the Democratic Republic of the Congo.
2. Based on a review of the action taken by the United Nations and international non-governmental organizations (NGOs) with respect to the promotion and protection of human rights, the study evaluates the progress achieved as a result of these activities, as well as its limits with regard to the human rights situation in the Democratic Republic of the Congo. It covers the period from 2008 to 2014, with the beginning of the year 2008 marking the start of the first United Nations Development Assistance Framework (UNDAF) with a post-crisis perspective after the presidential election of 2006.
3. The study aims to measure the following elements:
 - The relevance of action taken by the international community with respect to human rights;
 - The effectiveness of such action in terms of results;
 - The impact of technical assistance on the enjoyment of human rights;
 - The inclusion of gender mainstreaming in all areas.

II. Scope of the study

4. The study takes into account the 2008-2012 cycle and half of the 2013-2017 cycle of UNDAF, the country programmes of the different specialized institutions of the United Nations and those of international NGOs.
5. It should be noted that UNDAF is aligned to the Government's priorities with respect to governance and human rights as outlined in the national Growth and Poverty Reduction Strategy Paper (GPRSP).
6. The priorities with respect to human rights, which are set out in the 2006 and the 2011-2015 GPRSPs, are the following: improving the legal framework and access to justice; training magistrates and court officers and creating a national judicial training college; establishing an institution for the coordination of human rights affairs; disseminating human rights conventions; improving conditions of detention; improving the protection of vulnerable groups; and ensuring better management and development of natural resources.
7. Four main themes emerge from the programme documents of some stakeholders and from meetings with them and with the national authorities; they group the main aspects of work related to human rights in the country:
 - Supporting the administration of justice in order to combat impunity;
 - Strengthening the national system for the protection of human rights and collaboration with international human rights mechanisms;
 - Protecting civilians in armed conflict;
 - Promoting economic and social rights.

III. Methodology

8. The study was carried out over three months by an OHCHR staff member deployed in the Democratic Republic of the Congo, with institutional support provided by a reference group composed of OHCHR, the United Nations Joint Human Rights Office (UNJHRO)¹ and the United Nations Integrated Office in the Democratic Republic of the Congo.

9. The study is based on the following methodology:

- Inspection of various documents (in particular studies, reports, legislation and programme documents);
- Discussions with members of local civil society to gain an understanding of how they interpret the action taken by international organizations;
- Submission of questionnaires to the principal actors from the United Nations, government authorities and international NGOs in Kinshasa and the provinces;
- E-mail exchanges with stakeholders that are not resident in the Democratic Republic of the Congo;
- Observer missions to Bas-Congo (Mbanza-Ngungu, Kimbemba and Lamba) on income-generating activities and assistance to returned migrants; to Katanga (Kalemie and Lubumbashi) on governance with respect to the exploitation of natural resources and the protection of indigenous populations; to North Kivu (Goma) on protection of civilians, combating sexual violence and care for children demobilized by armed groups and victims of sexual violence; and to South Kivu (Bukavu) on holistic care for victims of sexual violence. Visits were made to the legal clinic at Mungunga, the War Child UK helpline centre in North Kivu and the Panzi Foundation in South Kivu.

10. The following difficulties were encountered in conducting the study:

- Lack of responses to requests for meetings and to questionnaires from some key focal points;
- Unavailability of documentation and of comprehensive detailed data on the action taken by the international community throughout the period under consideration;
- Lack of institutional memory because of certain international actors having moved elsewhere;
- Inaccessibility of some locations in the west of the country (Equateur, Maniema, Kasai) due to the halt in air traffic following the gradual withdrawal of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO);
- The relatively short length of time allocated to carry out the study.

IV. Main interventions by the international community

11. Since 1996, the Democratic Republic of the Congo has suffered a series of wars that have caused political instability and insecurity, economic failure and a

¹ UNJHRO was established in 2008 following the merger of the OHCHR office in the Democratic Republic of the Congo (created in 1996) and the human rights component of the United Nations Organization Mission in the Democratic Republic of the Congo.

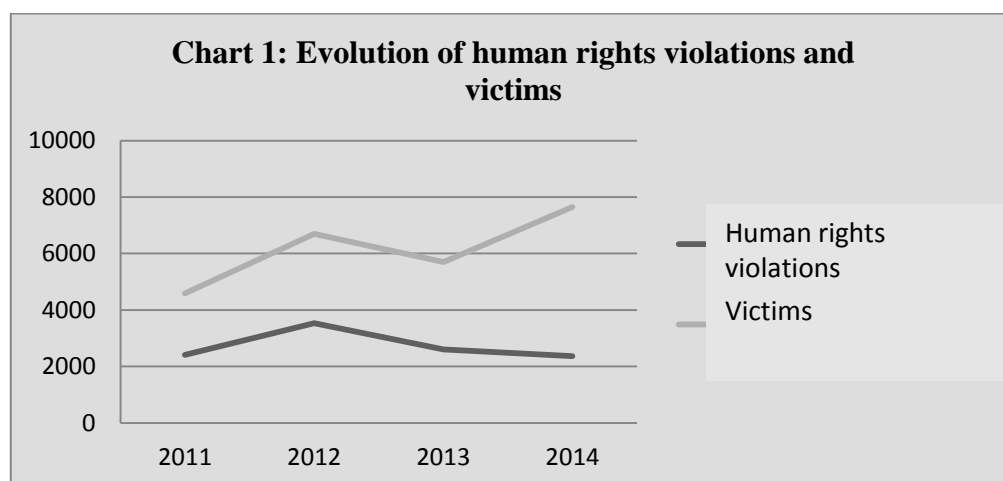
considerable delay in the country's development. This situation has led to chronic humanitarian crises and grave violations of human rights, in particular sexual and gender-based violence.

12. In response, the international community has taken significant measures in the field of human rights. These have involved numerous international NGOs, MONUSCO, whose human rights mandate is implemented by UNJHRO, and the United Nations Programme Management Team (PMT).²

A. Support for the administration of justice in combating impunity

13. The political instability and insecurity in the country led to serious crimes and mass violations of human rights by defence and security forces and by armed groups. They included extrajudicial killings, arbitrary arrests, sexual and gender-based violence, property crime and forced labour.

14. In the absence of comprehensive data on the period under consideration, the chart below shows the evolution of human rights violations and the number of victims of those violations between 2011 and 2014.



Source: Data from UNJHRO.

15. The above chart shows a slight decrease in the number of cases of human rights violations during the period in question but a marked increase in the number of victims. In total, 21,940 victims were recorded by UNJHRO between 2011 and 2014, of whom 14,851 were men, 4,149 were women and 2,940 were children. Victims of sexual violence were among the victims for whom comprehensive care was provided.

1. Holistic care for victims of sexual and gender-based violence

16. In 2008, in her report on the promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development (A/HRC/7/6/Add.4), the Special Rapporteur on violence against women, its causes and consequences, noted that survivors of rape in the Democratic Republic of the Congo lacked appropriate care and were denied the compensation to which they were entitled under international and Congolese law.

² The Programme Management Team is composed of approximately 20 entities — funds, programmes and resident and non-resident agencies.

17. The combined efforts of the American Bar Association, Avocats sans frontières, UNJHRO, Cordaid, the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the International Center for Transitional Justice, UN-Women, the Open Society Initiative for Southern Africa (OSISA), Physicians for Human Rights, the United Nations Development Programme (UNDP) and Track Impunity Always (Trial), supported by a number of Member States, enabled 89 itinerant hearings to be organized by military and civil courts in the provinces of Bas-Congo, Equateur, Kasai-oriental, Katanga, North Kivu, Orientale, South Kivu and Kinshasa between 2008 and 2014. The advocacy efforts of the international community with respect to combating impunity for sexual violence were reinforced by the mandates of the Special Representative of the Secretary-General on Sexual Violence in Conflict and the Team of Experts on the Rule of Law and Sexual Violence in Conflict.

18. In 2013, UNJHRO provided legal assistance free of charge to 1,507 victims of sexual violence in 12 legal clinics and 25 legal aid centres (throughout the country apart from Orientale province), with funding from the Canadian International Development Agency, the Swedish International Development Cooperation Agency, Belgium, Brazil and UK Aid.

19. According to figures from MONUSCO, there was a gradual increase in the number of judgements issued with respect to sexual violence in comparison with the total number of judgements issued by national courts between 2009 and 2014: from 14 per cent (2009/2010), to 17 per cent (2010/2011), 22 per cent (2011/2012), 25 per cent (2012/2013) and 23 per cent (2013/2014).

20. During the period in question, around 33,057 victims³ of sexual violence benefited from holistic care comprising legal, medical, psychosocial and social and economic assistance provided by UNJHRO, UN-Women, OSISA, UNFPA and UNICEF, often through local NGOs. In 2010, following work by the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo, UNJHRO and UNFPA provided joint social and economic assistance to 30 women who were victims of sexual violence in Songo-Mboyo (Equateur province). At their request, they were given a boat for transporting fish so that they could sell their merchandise, together with training in managing it. Thanks to the advocacy of the international community, in 2014 for the first time, the Government of the Democratic Republic of the Congo granted reparations to 30 victims from Songo-Mboyo.⁴

2. Strengthening the administration of justice

21. In 2006, the Growth and Poverty Reduction Strategy Paper diagnosed the judicial system as being ineffective and resulting in individuals resorting to extrajudicial conflict resolution procedures, court decisions not being enforced and people harbouring a deep mistrust in the justice system.

22. In his report of 2008 on the promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development (A/HRC/8/4/Add.2), the Special Rapporteur on the independence of judges and lawyers noted that there was no judicial training college, nor any adequate training for judges, which meant that their judgements were unreliable. He recommended

³ Data gathered from MONUSCO performance reports from 2009 to 2014.

⁴ In December 2003, FARDC soldiers committed mass rapes of women and girls in Songo-Mboyo. The final rulings on appeal were handed down in 2007 by the military tribunal in the garrison of Mbandaka sitting in itinerant hearing at Songo-Mboyo.

strengthening the training of judges and court officers with respect to ethics, professional conduct and international human rights standards.

23. Between 2008 and 2014, international stakeholders trained more than 25,000 court and prison personnel (civilian and military), of whom approximately 10 per cent were women, in all the country's provinces on the legal processes regarding crimes under international law, sexual violence and other human rights violations, forensic examination, combating torture and management of cases concerning children in conflict with the law.

24. The lack of coordination between the various international stakeholders and between them and the Government, the absence of any sectoral policy or strategic plan with respect to human rights as well as the lack of a judicial training college have led to a duplication of capacity-building activities for staff of the justice system. Thus, some of them have followed a number of similar training sessions organized by different partners.

25. Between 2008 and 2014, the international community provided support in trials brought for crimes under international law and grave human rights violations by protecting and caring for victims, witnesses and their lawyers and facilitating the travel of judicial personnel. As a result of those trials, 582 members of the Armed Forces of the Democratic Republic of the Congo (FARDC) and 367 members of the national police force⁵ were sentenced to between 3 and 20 years in prison. In accordance with the Rome Statute of the International Criminal Court, the justice system sentenced commanders and other senior officers of the defence and security forces and members of armed groups, marking an important step in the fight against impunity. Among these emblematic cases were the following:

- On 15 December 2014, the military court of South Kivu sentenced Colonel Engangela, also known as "colonel 106", to rigorous imprisonment for life and 20 years of penal servitude for crimes against humanity, torture, kidnapping and sexual slavery committed against approximately 1,200 victims in South Kivu between 2005 and 2007;
- On 9 August 2010, the military tribunal of the garrison of Bunia sentenced Bernard Kakodo, commander of the Forces de résistance patriotiques en Ituri armed group, to life imprisonment for crimes against humanity following mass killings of civilians, rape, slavery and pillage in Bunia (Orientale province) in 2002;
- On 4 June 2009, the military tribunal of the garrison of Kisangani sentenced Colonel Thom's, commander of the Maï-Maï militia group, to life imprisonment for crimes against humanity against approximately 135 women, of whom 8 were minors, in the village of Lieke Lesole, close to Kisangani (Orientale province), in 2007.

3. Capacity-building for the defence and security forces

26. In 2008, the Special Rapporteur on the independence of judges and lawyers expressed concern that 86 per cent of human rights violations in the Democratic Republic of the Congo were committed by police or military personnel.

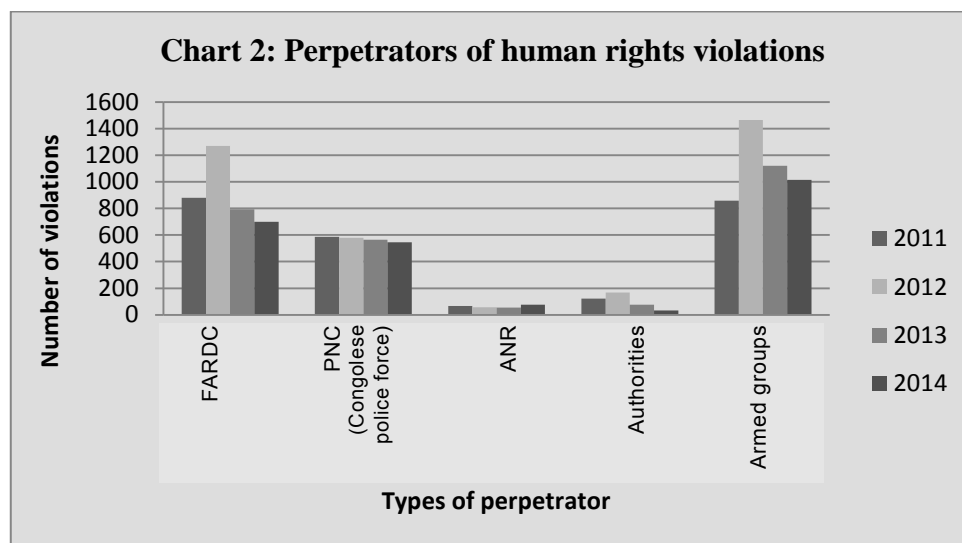
27. In a bid to remedy that situation, UNJHRO assisted the Ministry of Justice and Human Rights, notably in implementing a national judicial framework with respect to detention. Between 2013 and 2014, UNJHRO and the Ministry visited national police detention facilities and prisons throughout the country. The advocacy of UNJHRO following these visits resulted in the release of 1,177 detainees for procedural

⁵ UNJHRO database, 2011-2014.

irregularities and illegal detention. In addition, with the assistance of UNJHRO, 17 senior law enforcement officers were arrested and 5 were removed from the national police force for serious human rights violations. Two illegal detention centres in Kinshasa and Kisangani were also closed in 2014.

28. From 2008 to 2014, in all provinces in the country, UNJHRO, MONUSCO and UNFPA trained around 421,856 members of FARDC, the national police force and the national intelligence agency in combating sexual violence and promoting respect for human rights and international humanitarian law. Together with UNICEF, they designed training modules on combating sexual violence and on international humanitarian law, which were added to the training programme of the national police force and FARDC.

29. The chart below shows a decrease in the number of human rights violations between 2011 and 2014, with 53 per cent of violations committed by members of FARDC or the national police force in 2014. This reduction can be attributed to the training they received and the trials of perpetrators of human rights violations. The peaks observed in 2012 are explained by a resurgence in the activities of armed groups in the east of the country.



Source: UNJHRO data.

30. Under the coordination of UNFPA, several partners such as UNJHRO, Heal Africa, the International Rescue Committee, Magna Enfants en Péril and UNICEF, with the support of Member States, created and subsequently handed to the Government (Ministry for Gender, the Family and Children) a database on acts of sexual violence committed between 2010 and 2014. The aim of this official database is to map and coordinate action by the international community in nine provinces. A major obstacle to updating the database is the reticence of certain partners to share information which they consider belongs to them.

31. Since 2012, UNJHRO has assisted the Ministry of Justice and Human Rights in consolidating the data on sentences handed out by national courts in cases of sexual violence. The assistance has consisted in developing tools for data collection, for data analysis and for the production of statistical reports. UNJHRO has placed material resources at the disposal of the Ministry and has assigned an expert to the Ministry to manage the database. Other actors from the United Nations, international NGOs and UNJHRO are finding it difficult to coordinate their efforts to provide similar

assistance to the Ministry. Improved coordination of the various interventions by the Ministry of Justice and Human Rights should produce a more positive outcome to this situation.

B. Strengthening the national system for protection of human rights and collaboration with the international human rights mechanisms

1. Ratification of international and regional conventions

32. As a result of the advocacy of international actors during the period in question, the Democratic Republic of the Congo has acceded to new international and regional human rights instruments:

- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (in June 2008), the African Charter on Democracy, Elections and Governance (in June 2008) and the African Charter on the Rights and Welfare of the Child (in February 2014);
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in September 2010);
- An act authorizing the ratification of the Convention on the Rights of Persons with Disabilities was voted on in 2013 and the ratification process is currently under way.

33. To date, the Democratic Republic of the Congo has still not become a party to the following instruments:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The International Convention for the Protection of All Persons from Enforced Disappearance;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- The Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

2. Submission of reports to the human rights treaty bodies and the universal periodic review and collaboration with the special procedures of the United Nations

34. In the report on her mission to the Democratic Republic of the Congo (A/HRC/13/22/Add.2) in 2009, the Special Rapporteur on the situation of human rights defenders recommended that the drafting methodology of the Interministerial Technical Committee on the drafting and follow-up to initial and periodic human rights reports should be improved to enable it to meet reporting obligations in a timely manner.

35. Between 2011 and 2012, the combined periodic reports to the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Human Rights Committee were submitted with assistance received by the Interministerial Technical Committee from UNJHRO, UNPD and UNICEF.

36. Reports remain to be submitted to the Committee against Torture (due in 2009), the Committee on the Elimination of Racial Discrimination (due in 2011) and the Committee on Economic, Social and Cultural Rights (due in 2013).

37. In the framework of the country's participation in the universal periodic review (UPR) in 2009 and 2014, UNJHRO provided technical and financial assistance to the Interministerial Technical Committee to facilitate the submission of the State party reports. At the end of the second UPR cycle, the Government accepted 190 recommendations and took note of 39 others.⁶ The support of UNJHRO made it possible to draft a plan for implementation of the recommendations, including with the help of funding from the Voluntary Fund for Financial and Technical Assistance.

38. During the period under consideration, the Democratic Republic of the Congo received 5 visits from special procedures⁷ in addition to 11 visits recorded before 2008. OHCHR provided the necessary support for the organization of these visits.

39. Civil society organizations submitted alternative reports to the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the African Commission on Human and Peoples' Rights and to the UPR in 2014. Technical and financial assistance from UNJHRO, the Carter Center and the Centre for Civil and Political Rights in the Democratic Republic of the Congo contributed to the development of plans for implementation of the recommendations formulated by the above-mentioned bodies.

3. Legal and institutional framework

40. The 2009 report on the mission of the Special Rapporteur on the situation of human rights defenders highlights some shortcomings in the Congolese legal system, in particular the absence of laws protecting human rights defenders, limiting the jurisdiction of military courts to offences committed by members of the armed forces and the national police, in accordance with article 156 of the 2006 Constitution, and protecting victims and witnesses, in application of article 68 of the Rome Statute, which was ratified by the Democratic Republic of the Congo in 2002.

41. With the advocacy and technical assistance of the international community, the Government adopted important legislation and regulations, including Institutional Act No. 13/011B of 11 April 2013, on the organization, functioning and competence of the ordinary courts, which gives courts of appeal jurisdiction over crimes of genocide, war crimes and crimes against humanity, and Institutional Act No. 13/011 concerning the establishment, organization and operation of the National Human Rights Commission, adopted in 2013 in accordance with the Paris Principles.⁸ Other laws were passed on establishing a juvenile justice system and recognizing torture as a crime. However, further efforts are required to achieve the adoption of more legislation, including on the protection of victims, witnesses and human rights defenders.

⁶ The recommendations noted related in particular to the abolition of the death penalty, the passing of laws on protection of human rights defenders and accession to some instruments that had not yet been ratified.

⁷ The Special Rapporteur on extrajudicial, summary or arbitrary executions (2009); the Special Rapporteur on the human rights of internally displaced persons (2008, 2009); the Special Rapporteur on the situation of human rights defenders (2009); the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (2011).

⁸ Principles relating to the status of national institutions for the promotion and protection of human rights approved by the General Assembly (resolution A/RES/48/134) on 20 December 1993. The members of the national human rights commission appointed in April 2015 were sworn in in July 2015.

42. The human rights liaison entity, established in 2009 and composed of national experts, UNJHRO and some international and local NGOs, is tasked with proposing the necessary guidance for the effective protection of human rights, ensuring the monitoring and implementation of the national plan for the promotion and protection of human rights and overseeing the drafting of initial and periodic reports on human rights. The human rights liaison entity has not been in operation since it was established although some members were appointed in 2010 and 2012. There is a conflict of jurisdiction between the human rights liaison entity and some aspects of the National Human Rights Commission, in particular with regard to examination of issues giving rise to human rights violations and proposals for solutions, as well as evaluation of national activities in the human rights sphere. This situation could create competition between the two institutions, in particular with respect to funding. The same is true for the National Commission for Preparation of and Follow-up to the Universal Periodic Review and the Interministerial Technical Committee, both of which are responsible for the submission of reports to the human rights mechanisms and for follow-up to their recommendations. Given that the National Commission has never been fully operational, its functions could be integrated into those of the Interministerial Technical Committee.

43. Technical assistance provided by Avocats sans Frontières, UNJHRO, Human Rights Watch and OSISA resulted in the adoption in 2011 of a ministerial decree establishing a unit for the protection of human rights defenders. This unit has difficulty in operating due to lack of adequate resources. In addition, the absence of legislation on the protection of human rights defenders is a barrier to their legal protection.

C. Protection of civilians in armed conflict

44. The activities of armed groups in the east of the country are a major threat to the protection of civilians and have resulted in numerous human rights violations and large-scale displacements of populations. Armed groups seeking to extend their influence and their control to rich territories do not hesitate to attack civilian populations. In addition, in the context of operations against these armed groups, members of the Congolese defence and security forces sometimes commit violations of human rights and international humanitarian law.

1. Protection of civilians

45. The security of people and their possessions has remained a concern in conflict zones and in zones recovering from conflict. In response to these challenges, the international community has contributed to the implementation of mechanisms for the protection of civilians in the east of the country:

- UNJHRO, in collaboration with MONUSCO, established approximately 312 joint protection teams to prevent attacks on civilians in the east of the country between 2009 and 2014. These teams have drawn up plans for protection in different locations and have conducted 117,019 joint patrols;
- Between 2013 and 2014, MONUSCO's Civil Affairs Section and UNJHRO supported several communities in developing more than 49 community civilian protection plans. During this period, MONUSCO's Civil Affairs Section deployed 40 community liaison assistants throughout the communities concerned;
- During the period in question, MONUSCO, Catholic Relief Services and Caritas provided more than 900 mobile telephones and restored high frequency radio

communications networks in the provinces of Equateur, Katanga, North Kivu, Orientale and South Kivu. As a result of that assistance, FARDC and MONUSCO were able to take action to protect civilians;

- Between 2011 and 2012, UNJHRO established 93 MONUSCO early warning, analysis and rapid response units, which received 1,890 early warnings relating to threats of armed attacks against civilian populations.

46. Despite the results recorded and the adoption, in 2013, by humanitarian actors of a directive on civilian and military coordination concerning information sharing and the wider strategy of the United Nations for the protection of civilians, shortcomings persist in coordination between the humanitarian actors, UNJHRO and MONUSCO forces on information sharing and the prevention of risks of armed attacks on civilians. Some members of working groups on protection are reluctant to share information as a result of their strict interpretation of humanitarian principles (neutrality and impartiality) since the integration with MONUSCO, in 2013, of the Intervention Brigade, when it was given a mandate to fight in response to imminent attacks upon civilians.

2. Protection of children

47. On 4 October 2012, the Government and the special team of the United Nations for the protection of children in armed conflict signed an action plan to combat the recruitment and use of children in armed forces and armed groups, in accordance with Security Council resolutions 1539 (2004), 1612 (2005), 1882 (2009) and 1998 (2011). An interministerial committee and a joint technical working group, comprising the Government and specialized agencies of the United Nations,⁹ were set up to implement the action plan. The MONUSCO Child Protection Section coordinates the joint technical working group and identifies and removes children from armed groups.

48. According to report A/69/926-S/2015/409 (2015) on children and armed conflict of the Secretary-General to the Security Council, at least 1,030 children (973 boys and 57 girls) were removed from armed groups in the provinces of Orientale and North and South Kivu in 2014.

49. UNICEF and its partners provided comprehensive care to 863 child victims of sexual violence in 2014.

50. Between 2012 and 2014, War Child UK supported the creation and transfer to the Ministry of Gender, Family and Children of a helpline covering the provinces of North and South Kivu and Kinshasa. This centre responds to children who have been demobilized from armed groups or who are victims of sexual violence. Between 2013 and 2014, social workers from the provincial division of social affairs in North Kivu received and processed 10,945 calls. In March 2015, the special representative of the Head of State tasked with combating sexual violence and the recruitment of child soldiers launched a similar initiative at the national level. It is important to ensure the complementarity of these two mechanisms in order to better coordinate assistance to the children concerned.

3. Protection of internally displaced persons and returnees

51. According to the Office for the Coordination of Humanitarian Affairs (OCHA), approximately 2.7 million persons were displaced in the territory of the Democratic Republic of the Congo and 1.4 million returnees were registered in 2014.¹⁰

⁹ The International Labour Organization, UNHCR, the Office for the Coordination of Humanitarian Affairs, UNICEF and the MONUSCO Child Protection Section.

¹⁰ OCHA, Republic of Congo, Humanitarian perspective (November 2014).

52. The resolution of land disputes relating to the return of displaced persons to their places of origin led the Office of the United Nations High Commissioner for Refugees (UNHCR) to support local dispute resolution committees, 700 of which have been set up in the east of the country. Between 2013 and 2014, approximately 70 per cent of land disputes were resolved, 20 per cent were referred to the law courts and 10 per cent were not resolved.

53. Between October 2010 and January 2014, in the province of Bas-Congo, the Comitato Internazionale Per Lo Sviluppo Dei Popoli provided food and medical and logistical assistance — through local NGOs — to 10,000 Congolese who had been expelled from Angola. The short duration of these projects and the way in which they are funded negatively impacts the sustainability of the results obtained.

4. Protection of indigenous peoples

54. According to the Growth and Poverty Reduction Strategy Paper 2011-2015, 80 per cent of cases brought before the courts related to land disputes. Since 2012, there have been recurrent inter-community disputes between the Luba and the Twas (indigenous peoples) in the province of Katanga (Kabalo, Kalermie, Kongolo, Manono, Moba and Nyunzu), causing the displacement of approximately 4,000 Twas. These conflicts originated in discrimination against the Twas, including in relation to access to land ownership. UNHCR, through its partnership with Search for Common Ground, has run awareness-raising campaigns among internally displaced persons and returnees on peaceful cohabitation. The dialogue established between communities and local government, with technical support from UNJHRO and UNHCR, has led to a calmer situation in Kalermie.

D. Economic and social rights

55. The Democratic Republic of the Congo has significant natural resources which are often exploited illegally. This situation remains a significant source of conflict and violations of human rights, including economic and social rights.¹¹ The interventions of international actors focus in particular on access to health and capacity-building in local communities to allow their participation in drawing up plans for local development with a view to improving their enjoyment of economic and social rights.

1. Access to basic health care

56. According to demographic and health surveys, the number of women benefiting from a skilled birth attendant in a medical facility rose from 74 per cent in 2007 to 80 per cent in 2014.¹² UNFPA and the United States Agency for International Development carried out advocacy and technical assistance activities which resulted in the drafting of a bill on reproductive health and a national strategic plan on family planning in 2013. With the assistance of UNFPA, training for midwives was integrated into the National Reproductive Health Programme and the work of the Ministry for Higher and University Education. In addition, the combined efforts of Cordaid, the World Health Organization, UNFPA and UNICEF resulted in the equipping of medical facilities and the regular supply of medicines and health products, which led to an improvement in the provision of reproductive health services. These improvements were achieved through good strategic planning and coordinated efforts by the international community working with national and provincial authorities.

¹¹ Statement made in 2008 by the Special Rapporteur on the independence of judges and lawyers.

¹² Second demographic and health survey (2014), p. 130.

2. Combating discrimination with respect to persons living with HIV

57. The overall level of tolerance towards persons living with HIV was estimated to be 6.4 per cent in 2007.¹³ The Joint United Nations Programme on HIV/AIDS and UNFPA provided technical assistance towards the adoption of Act No. 08/011 of 14 July 2008 relating to the protection of the rights of persons living with HIV/AIDS and affected persons. They supported the national multisector programme to combat AIDS and the updating of the national strategic plan to combat HIV. The Government created units to combat HIV, centralizing the efforts of all its departments. Despite those legal and institutional developments, the overall level of tolerance towards persons living with HIV is 4.2 per cent (demographic and health survey 2014). This slight decline in tolerance can be explained by the absence of measures accompanying the law to protect persons living with HIV, the impunity of persons committing acts of stigmatization and discrimination and the frequency of such acts.¹⁴

3. Human rights with respect to natural resources

58. One of the principal objectives of the Growth and Poverty Reduction Strategy Paper 2011-2015 is to strengthen the legal and regulatory framework in the mining sector. Communities bordering extractive resource operations areas do not enjoy some economic and social rights (the rights to health and education, access to safe drinking water and fair and equitable compensation) as a result of their limited capacities to form committees to defend their rights in the face of insufficient Government action to protect them.

59. Between 2012 and 2014, UNJHRO, the Carter Center, Cordaid and OSISA provided technical assistance to more than 3,000 members of civil society and local communities to ensure that they were able to contribute to the revision of the Mining Code. Thus, civil society formulated recommendations which were sent to the Government to ensure that the needs of local communities were taken into account in areas in which natural resources are extracted. The recommendations highlighted the lack of consultation with local communities regarding their development and the enjoyment of their economic and social rights. The new code has yet to be adopted.

60. The Growth and Poverty Reduction Strategy Paper 2011-2015 also targets improved management of the mining sector towards sustainable development of the social environment. From 2012 to 2014, Cordaid supported the local communities of Kolwezi and Fungurume (Katanga Province) in drawing up their local development plans for 2016-2020 and 2015-2019, respectively. The plans aim to establish a constructive dialogue between the communities, the companies Kamoia Copper SA and Temke Fungurume Mining and the local authorities to ensure that development priorities are taken into account and to protect the economic and social rights of the communities.

61. Raising the awareness of national stakeholders, local communities and business enterprises concerning the principles and norms of human rights in the context of the exploitation of natural resources, in particular the John Ruggie principles,¹⁵ should be emphasized. The international community should make economic and social rights a priority for intervention, including by providing the necessary assistance in this area to all parties concerned. In addition, it should continue to support the Government in order to combat the armed groups that are responsible for the illegal exploitation of resources and the extreme insecurity that has engulfed the population.

¹³ Demographic and health survey (2007), p. 130.

¹⁴ National strategic plan to fight AIDS: 2014-2017, Democratic Republic of the Congo, 2014.

¹⁵ The principles of John Ruggie, Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, were approved by the Human Rights Council in resolution A/HRC/RES/17/4 of 16 June 2011.

V. Gender mainstreaming

62. The Growth and Poverty Reduction Strategy Papers of 2006 and 2011-2015 highlighted the negative impact of the socioeconomic situation on gender issues. With the support of the international community, the Government has worked to reduce the vulnerability of women from a legal and institutional standpoint.

63. Implementation of the 2006 Sexual Violence Act has been strengthened by officers in the justice system and the defence and security forces. The National Gender Policy and its plan of action were adopted in 2009 and integrated into the National Strategy to Combat Gender-based Violence. In 2010, the Government adopted a plan to implement Security Council resolution 1325 (2000) on women, peace and security.

64. In accordance with the recommendation of the Special Representative of the Secretary-General on Sexual Violence in Conflict, advocacy by the international community resulted in 2014 in the appointment of a personal representative of the Head of State with responsibility for combating sexual violence and the recruitment of child soldiers.

VI. Conclusion

65. The volatile political, security and economic context in the Democratic Republic of the Congo raises numerous challenges in terms of human rights.

66. The interventions of the international community have been relevant and effective in dealing with these challenges. They have also helped to improve the legal and institutional framework. They have furthermore contributed to capacity-building for many national stakeholders, contributed to greater awareness of obligations on the part of the authorities and greater knowledge of human rights on the part of population groups and civil society. As a result, considerable progress has been achieved in fighting impunity and numerous interventions have led to greater protection of the civilian population in the east of the country.

67. Nevertheless, the majority of technical assistance interventions were carried out in emergency situations and were short-term. Sustainability and ownership of the interventions proved to be a major challenge, both to those exercising their rights and to those whose role it was to protect them. In addition, some interventions by the international community were characterized by duplication and competition and occasionally by a lack of coordination with other actors due to the importance accorded by certain donors to specific issues or places or to the desire for visibility and fund-seeking.

68. There are still significant challenges in promoting and protecting human rights that require sustained and strategic technical assistance from the international community, as well as stronger coordination between international partners and between stakeholders and the Government in identifying, implementing and monitoring interventions — without forgetting to involve the beneficiaries.

VII. Recommendations

A. To the Government

(a) Define the priorities for the justice and human rights sectors and coordinate the interventions of the international community aimed at promoting and protecting human rights at the central, provincial and local levels;

(b) Take appropriate measures to ensure the harmonious operation of all institutions responsible for implementing human rights (the human rights liaison entity, the National Human Rights Commission, the Interministerial Technical Committee on the drafting and follow-up to human rights reports and the National Commission for Preparation of and Follow-up to the UPR) and the effectiveness of the National Human Rights Commission and the unit for the protection of human rights defenders; establish an independent national mechanism for the prevention of torture;

(c) Improve the legal framework for human rights by acceding to those conventions that have not yet been ratified and by adopting the relevant laws, notably those that are pending;

(d) Adopt an inclusive approach to technical assistance by strengthening the capacities of individuals, institutions and relations with civil society.

B. To the United Nations Joint Human Rights Office and the United Nations country team

(a) Provide the Government with technical assistance with a view to:

- Finalizing the process for the adoption of legislation relating to the protection of human rights;
- Submitting the reports due to the international human rights mechanisms;
- Achieving the effective and harmonious operation of the human rights institutions, including the unit for the protection of human rights defenders, the National Human Rights Commission, the Interministerial Technical Committee on the drafting and follow-up to initial and periodic human rights reports and the human rights liaison entity.

(b) Make economic and social rights a priority for intervention, in particular through the dissemination of the norms and principles of human rights, including concerning the exploitation of natural resources;

(c) Establish a knowledge management system in order to improve the preservation of institutional memory and to ensure that interventions are documented and the results obtained are disseminated to political decision makers, the private sector, local communities and other relevant actors.

C. To the international community

(a) Improve the involvement of national authorities and beneficiaries in the design, implementation, monitoring and evaluation of projects concerning the

promotion and protection of human rights, taking their priorities into account to achieve greater impact;

(b) Prioritize structural and long-term interventions, including in the west of the country, in order to maximize their long-term impact;

(c) Coordinate the implementation and monitoring of interventions relating to technical assistance in order to improve their effectiveness and their impact.
