



General Assembly

Distr.: General
7 May 2019
English
Original: French

Human Rights Council

Forty-first session

24 June–12 July 2019

Agenda items 2 and 10

Annual report of the United Nations High Commissioner

for Human Rights and reports of the Office of the High Commissioner
and the Secretary-General

Technical assistance and capacity-building

Report of the team of international experts on the situation in Kasai

Summary

This report is submitted pursuant to Human Rights Council resolution 38/20 of 6 July 2018, in which the Council requested the United Nations High Commissioner for Human Rights to appoint a new team of international experts to support the implementation of the recommendations made by the previous team. Many changes have taken place since then, including the election of Félix Tshisekedi as President of the Democratic Republic of the Congo on 30 December 2018, which marked the start of a transition that is still under way. In addition, Kasai has faced an influx of several hundred thousand people who have been forced to leave neighbouring Angola.

In order to resolve the crisis, the team of international experts recommends stepping up efforts to combat impunity in Kasai by introducing a more focused prosecution policy that targets specific types of offence and a particular range of groups in such a way as to encompass all the international crimes that have been committed in Kasai, the scale and gravity of which are undeniable. It is urgently necessary to strengthen national prosecution and trial capacities so as to be able to reduce the international presence. A prosecution policy of this kind would be a chance to take advantage of the window of opportunity for peace and reconciliation that remains open in Kasai. It must be combined with the urgent introduction of a policy aimed at reconciling communities, disarming and integrating members of all militia groups and reducing the military presence in Kasai, and the establishment of a transitional justice mechanism that is culturally and legally appropriate. This transitional justice mechanism must involve searching for the root causes of the conflict, establishing the truth and providing redress, identifying the reforms that are needed and creating a culture of peace, dialogue and tolerance.

Lastly, the economic and social causes of the current crisis, which has particularly affected young persons and women, require the rapid implementation of a policy for the reconstruction and development of Kasai, accompanied by the injection of specially dedicated funds.



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I. Introduction

1. Starting in August 2016, the Kasai region of the Democratic Republic of the Congo suffered a wave of bloody violence perpetrated by armed groups (the Kamuina Nsapu, Bana Mura and Écurie Mbembe militias) and members of the defence and security forces of the Democratic Republic of the Congo (the Armed Forces of the Democratic Republic of the Congo, the national police, the National Intelligence Agency and the Directorate General of Migration). Several thousand people were killed, countless acts of violence were committed against civilians and entire villages were set on fire and plundered. The violence also resulted in the displacement of more than one million people, giving rise to an acute humanitarian crisis.

2. At the request of the Human Rights Council, the United Nations High Commissioner for Human Rights dispatched a team of three international experts in 2017 to determine the facts and circumstances of the alleged human rights violations and violations of international humanitarian law in the Kasai region.¹

3. In the report that it submitted to the Council in July 2018, the team of international experts concluded that the parties involved had: (a) deliberately killed civilians, including many children; (b) committed numerous atrocities, including mutilation, rape and other forms of sexual violence; and (c) destroyed entire villages. It also concluded that some of these abuses constituted crimes against humanity and war crimes, as well as serious violations of human rights.² Recognizing the urgent need to begin combating impunity for the crimes and violations committed in Kasai since 2016, while stressing the need for non-judicial measures to promote reconciliation, the team of international experts made a number of recommendations to the authorities of the Democratic Republic of the Congo.³

4. On 6 July 2018, noting with concern the conclusions of the team of international experts, the Human Rights Council requested the High Commissioner to dispatch a new team of international experts to monitor, evaluate and support the implementation by the Democratic Republic of the Congo of the recommendations made by the previous team in its report, in particular with regard to the fight against impunity and measures to promote reconciliation and transitional justice.⁴

5. The international experts, Bacre Waly Ndiaye of Senegal (Chair) and Sheila B. Keetharuth of Mauritius (member), were appointed by the High Commissioner on 20 August 2018 and performed this monitoring and evaluation work once their secretariat had been set up, over the course of three missions to the Democratic Republic of the Congo in November 2018, February and March 2019 and April 2019. They supported the competent authorities by holding thematic workshops, one on 28 February 2019 in Tshikapa, on investigation and prosecution strategies in the fight against impunity, and another on 17 and 18 April 2019 in Kananga, bringing together the stakeholders involved in the reconciliation and transitional justice process in the Kasai region. The new team of international experts was supported in the fulfilment of its mandate by a secretariat that was based in Kananga and composed of nine members, including five international members, some of whom were experts in the areas of gender and transitional justice.

6. On 19 March 2019, the two international experts participated in an enhanced interactive dialogue at the fortieth session of the Council, during which they reported on the progress of their work and shared some preliminary findings. The present report, submitted to the Council at its forty-first session, contains the conclusions and recommendations of the team of international experts.

¹ Human Rights Council resolution 35/33 of 23 June 2017, para. 10.

² Report of the team of international experts on the situation in Kasai (A/HRC/38/31), paras. 105–109.

³ *Ibid.*, paras. 110–113.

⁴ Human Rights Council resolution 38/20.

II. Mandate

7. Human Rights Council resolution 38/20, which was adopted by consensus on 6 July 2018, charges the team of international experts with the task of monitoring, evaluating, supporting and reporting on the implementation by the Democratic Republic of the Congo of the recommendations made by the previous team and making recommendations in this regard, as appropriate.

8. The mandate of the team of international experts under resolution 38/20 differs from that of a fact-finding mission in that the primary goal of the new team is not to draw factual conclusions but rather to report on and support the efforts made by a State in the light of a report concluding that international crimes and human rights violations have been committed on its territory. This mechanism is a groundbreaking initiative of the Council and builds on the international community's recent efforts to ensure the accountability of States when it comes to the investigation and prosecution of international crimes and other human rights violations and the process of reconciliation. The team adopted a methodology that not only takes into account the specific national context but also reflects international principles, for it is aware that its work may serve as inspiration for other similar mechanisms.

9. The team of international experts notes that its mandate converges with that of other United Nations mechanisms already in place in the Democratic Republic of the Congo. The High Commissioner has deployed a technical assistance team to Kananga, under the authority of the United Nations Joint Human Rights Office, to support the competent national authorities in their investigation of human rights violations, including by providing forensic expertise.⁵ The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) is also working to support the national authorities in the area of justice and reconciliation in Kasai through its observation and reporting activities and technical support.

10. In addition, the Secretary-General of the United Nations has deployed a team of experts specifically to assist with the trial for the killing of Security Council experts Michael Sharp and Zaida Catalán and the Congolese nationals who were accompanying them.⁶ Other United Nations mechanisms,⁷ international cooperation partners such as the European Union, and international and Congolese non-governmental organizations (NGOs) are also involved in efforts to combat impunity and to promote reconciliation in Kasai. For example, the project entitled Peace, Justice, Reconciliation and Reconstruction in Kasai Central, which is financed by the Peacebuilding Fund and implemented by the United Nations Development Programme, the United Nations Joint Human Rights Office and the NGO called Search for Common Ground, is focused on supporting the administration of criminal justice, reconciliation and economic recovery in Kasai Central.

11. In this context, the team of international experts sought to identify the added value of its mandate and to determine how the team could help to strengthen the impact of existing projects and programmes. The platform provided by the Human Rights Council allows it to draw attention to efforts and gaps that might otherwise go unnoticed and to ensure that the situation in Kasai is not forgotten. Equally, this attention from the international community is likely to encourage the authorities of the Democratic Republic of the Congo to redouble their efforts to create the conditions for lasting peace in Kasai and to obtain appropriate assistance. As regards support for the implementation of the recommendations, the team considered that, in addition to assisting the State, it could catalyse the efforts of community leaders by bringing all stakeholders together around the same table, as it did at the workshops held in Tshikapa and Kananga.

⁵ Human Rights Council resolution 35/33. These activities have continued under resolution 38/20.

⁶ S/2017/917.

⁷ For example, the United Nations Development Programme, the United Nations Population Fund and the Office of the United Nations High Commissioner for Refugees.

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

12. A mandate such as the one given to the team of international experts cannot be fulfilled without genuine collaboration between the international experts and the authorities of the State concerned. The team appreciated the spirit of cooperation and openness that marked its exchanges with the national and provincial authorities of the Democratic Republic of the Congo over the course of its missions. The secretariat based in Kananga was able to carry out its work unhindered by the political and military authorities.

13. This spirit of openness was demonstrated by the new President of the Republic, Félix Tshisekedi, who met with the international experts on 8 March 2019. During this meeting, which was also attended by the Minister for Human Rights, President Tshisekedi and the international experts discussed the challenges relating to the fight against impunity and the process of reconciliation and transitional justice in Kasai. President Tshisekedi, who has made respect for human rights a priority of his term in office, expressed his appreciation for the work of the international experts.

14. The missions undertaken by the team of international experts coincided with a period of political transition, between the presidential and legislative elections of 30 December 2018 and the instatement of the new national and provincial government authorities, which had not yet occurred at the time of writing. Generally, however, the outgoing authorities dealt with day-to-day matters during this period, which enabled the team to continue the existing dialogue regarding Kasai.

IV. Current situation in Kasai

15. Since the previous team of international experts completed its work, the situation in the Democratic Republic of the Congo and Kasai has changed significantly in ways that have affected the implementation of the team's recommendations.

16. On 30 December 2018, the people of the Democratic Republic of the Congo went to the polls to elect a new president. On 20 January 2019, the Constitutional Court proclaimed Félix Tshisekedi President of the Republic, thus paving the way for the first peaceful transition in the history of the country. The election of Mr. Tshisekedi, a native of Kasai, gave the people of that region hope that they would no longer feel abandoned by the central Government. Moreover, Mr. Tshisekedi's commitment to making human rights a priority could give fresh impetus to the fight against impunity and to reconciliation and transitional justice efforts in Kasai.

17. The election of Mr. Tshisekedi sparked a spontaneous voluntary disarmament movement among members of the Kamuina Nsapu militia.⁸ The election of a "son of Kasai" seems to have made some Kamuina Nsapu militia members feel as though they are now part of the central authority that they had previously fought against. In Kananga, the provincial authorities have offered monetary compensation according to the type of weapon that is handed in.

18. The team of international experts notes, however, that the disarmament process is being conducted in a highly questionable manner and lacks supervision and perspective. Weapons are deposited in exchange for money and the circulation of those weapons is not effectively controlled. Furthermore, the process does not address the issue of reintegration, especially that of girls, or the issue of criminal responsibility. It should be noted that the process has been suspended and MONUSCO has offered its assistance.

⁸ It is worth noting that this is not the first disarmament movement that has occurred among the Kamuina Nsapu militia. After the forum for peace, reconciliation and development in September 2017 and the election of the Governor of Kasai Central Province in December 2017, some Kamuina Nsapu militia leaders handed in their weapons, although in circumstances that raise many questions.

19. The disarmament movement could lose its fragile momentum at any time. Moreover, it is taking place in a context where ethnic tensions remain high, as illustrated by the events of 24 February 2019 in Kamako (Kasai Province), where several Kamuina Nsapu militia members who had surrendered their weapons were killed by the Armed Forces of the Democratic Republic of the Congo after clashes between the Luba and Tetela peoples. So far, there is nothing to suggest that the Bana Mura and Écurie Mbembe militias intend to follow the example of the Kamuina Nsapu militia. Worse still, there are signs that a Tetela militia may be forming.

20. Meanwhile, a serious humanitarian crisis is raging as a result of the mass return of several hundred thousand Congolese nationals, most of whom have been expelled from or forced to leave Angola by the Angolan authorities. This influx has put additional pressure on the almost non-existent reception facilities at the border and has caused serious problems, including health problems, as a result. In addition to the violence that they have suffered in Angola, returning displaced persons and expelled persons also appear to be subjected to violence and extortion in the Democratic Republic of the Congo, by the defence and security forces in particular. The humanitarian crisis is an obstacle to reconciliation efforts in this area of Kasai. It was reported to the team of international experts that, while the wounds have not yet had time to heal, the population is now a mishmash of executioners and victims of the crisis that has been raging in Kasai since 2016. In these circumstances, which are complicated further by the humanitarian crisis, a dialogue of reconciliation may not be a realistic prospect. Resolving the humanitarian crisis at the Angolan border is therefore a major challenge that must be overcome in order to restore lasting peace in Kasai.

V. Monitoring, evaluation and support for the implementation by the Democratic Republic of the Congo of the recommendations made by the team of international experts

21. The conclusions of the team of international experts are based on the team's observations and interactions with various stakeholders, namely the political, judicial and military authorities, the police, traditional leaders, the bar association, the academic community, civil society organizations, MONUSCO and other United Nations entities, and the diplomatic community.

22. The team of international experts appreciates the State's public commitment to promoting justice and reconciliation in Kasai. In November 2018, under the aegis of the then Minister of Justice, a working group, comprising the Minister of Defence, the Minister for Human Rights, the Personal Representative of the Head of State for Combating Sexual Violence and Child Recruitment and the Chief Military Prosecutor of the Armed Forces of the Democratic Republic of the Congo, was set up to deal with issues relating to Kasai. The meeting of this ministerial group was to be followed by technical working meetings, which unfortunately had not yet been held when the team of international experts was finalizing this report.

23. The team of international experts proposes to review below the implementation of the recommendations contained in the previous team's report, which concern two main areas, namely the fight against impunity and support for reconciliation and transitional justice efforts.

A. Monitoring of accountability concerning the events in the Kasai region

24. Calling on the authorities of the Democratic Republic of the Congo to begin combating impunity for the serious crimes committed in Kasai without further delay, the team of international experts made a number of recommendations regarding the investigation and prosecution of those crimes and the support provided to victims and witnesses.

1. Analysis of the prosecution process

25. In the Democratic Republic of the Congo, the prosecution of international crimes is largely dealt with by the military justice authorities. Although Congolese law provides for the concurrent jurisdiction of the civil and military justice authorities over such cases,⁹ in practice, the latter handle almost all prosecutions, whether they concern members of the armed forces or civilians. The team of international experts found that the military justice authorities in Kasai are theoretically capable of investigating and prosecuting the serious crimes that have been committed there. The commitment, professionalism and competence of the members of the military prosecutors' offices in Kasai were demonstrated during the workshop in Tshikapa and the heads of those offices have gained experience in the east of the Democratic Republic of the Congo. Nevertheless, representatives of the civil justice system and the bar association of Kananga recommended building the capacity of the civil justice authorities to deal with such cases as well. The team shares this view, for the prosecution process would be strengthened by the parallel involvement of the civil justice authorities.

26. Since the investigations into the serious crimes committed in Kasai are still at the initial stage, the team of international experts interacted with the military prosecution services mainly for the purposes of monitoring, evaluating and supporting: (a) the implementation of investigation and prosecution strategies; and (b) the allocation of human and logistical resources to this end. It will be necessary to carry out follow-up work with the military courts when the investigations lead to trials and possible convictions.¹⁰

27. The team of international experts points out that the map of military judicial districts in Kasai is based on the old provincial divisions, which changed as a result of the territorial reform in 2015. Thus, two senior military prosecutors' offices are responsible for the five current provinces of Kasai, one for the former Province of Kasai Occidental (covering the Provinces of Kasai and Kasai Central) and the other for the former Province of Kasai Oriental (covering the Provinces of Kasai Oriental, Lomami and Sankuru).

(a) Existence of an inclusive and comprehensive strategy of investigation and prosecution, with a particular focus on crimes of sexual violence

28. The previous team of international experts called on the competent authorities to apply a prosecution strategy that covered all perpetrators who had been involved in the violence in Kasai.¹¹

29. With the support of MONUSCO and guided by international principles relating to the selection and prioritization of cases, the senior military prosecutor's office of the former Province of Kasai Occidental has drawn up a list of 16 incidents that are to be investigated as a priority. The cases concern the following regions and localities: Tshisuku, Nganza, Katoka, Diboko, Malenga, Tshikapa, Mutshima, Maswika, Nkoto, Tshinyembe, Tshimbulu, Kabeya-Madi, Luebo and Kamonia (bearing in mind that some of these places feature in more than one case).

30. At the workshop in Tshikapa on 28 February 2019, the senior military prosecutor of the former Province of Kasai Occidental explained that he had selected and prioritized

⁹ See article 91 of Organic Act No. 13/011-B of 11 April 2013 on the Organization, Functioning and Jurisdiction of the Ordinary Courts. See also article 2 of Act No. 15/023 of 31 December 2015 amending Act No. 024-2002 of 18 November 2002 establishing the Military Criminal Code (repealing article 207 of the Military Criminal Code, which granted the military courts exclusive jurisdiction over offences under the Code, including genocide, crimes against humanity and war crimes).

¹⁰ Given that there have been no convictions to date for the serious crimes committed since 2016, it will be the responsibility of a follow-up mechanism to review the implementation of the previous team's recommendation that the authorities should ensure that persons convicted of crimes of sexual violence are given appropriate sentences and are prohibited from joining or remaining in the defence and security forces (A/HRC/38/31, para. 111 (f)). The same goes for the recommendation concerning alleged child offenders (A/HRC/38/31, para. 111 (g)).

¹¹ A/HRC/38/31, para. 111 (c) (iii).

cases on the basis of three criteria, focusing on: (a) the easiest cases (or the low-hanging fruit); (b) high impact cases; and (c) the cases involving the most serious violations.¹²

31. The strategy defined by the military prosecutor's office focuses on cases that have become emblematic owing to the particularly shocking circumstances in which the crimes were committed, such as: (a) the "door-to-door" operations of the Armed Forces of the Democratic Republic of the Congo in the commune of Nganza in Kananga (Kasai Central Province) in March 2017;¹³ (b) the disappearance of national school inspectors in Kazumba territory (Kasai Central Province) at the end of April 2017, which was attributed to the Kamuina Nsapu militia;¹⁴ (c) the attack on the Tshikulu village market in Kazumba territory by members of the Armed Forces of the Democratic Republic of Congo in May 2017;¹⁵ (d) the killing of 37 members of the National Response Legion of the national police by the Kamuina Nsapu militia near the village of Malenga in Kamonia territory (Kasai Province);¹⁶ and (e) the holding of women and children in captivity by the Bana Mura militia in Kamonia territory.¹⁷

32. Only one of these cases is ready to be tried, namely the one involving crimes committed by the Kamuina Nsapu militia in Luebo. Little progress has been made on most of the other cases since the adoption of the strategy, despite the investigations that have been conducted jointly with MONUSCO and the technical assistance team.¹⁸ While progress is hindered in some cases by the unstable security situation in certain areas, in other cases, the problem seems to be a lack of cooperation on the part of senior military officials, who have failed to act upon requests for judicial assistance to allow for the questioning of suspects who are members of the Armed Forces of the Democratic Republic of the Congo and have been redeployed elsewhere in the country. Lastly, in some cases, the slow progress seems to be due to a lack of human or logistical resources, as discussed below.

33. Although it is true that there is an investigation and prosecution strategy in place, the team of international experts believes that this strategy can be refined, strengthened and implemented more quickly.

34. In the context of transitional justice, strategically selecting cases for prosecution has the potential to contribute more broadly to reconciliation efforts by highlighting the root causes of the crisis. Furthermore, a strategic approach to prosecution helps to ensure objective fact-finding and to establish the truth. With that in mind, and as discussed at the workshop in Tshikapa on 28 February 2019, the team of international experts believes that the strategy adopted by the military prosecutor's office should incorporate a number of other issues that were brought to light by the 2016 crisis.

35. The team of international experts notes, firstly, that the vast majority of the cases that are currently under investigation involve abuses committed by the Kamuina Nsapu militia. Yet the defence and security forces and the Bana Mura and Écurie Mbembe militias have also committed abuses on a large scale, as detailed in the previous team's report, and the strategy of the military prosecutor's office does not properly take into account the extent of these crimes. The strategy also fails to address the ethnic dimension of the

¹² The team of international experts notes that these criteria are similar to those identified by the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff (A/HRC/27/56, paras. 44 ff.).

¹³ A/HRC/38/31, para. 60.

¹⁴ Ibid., para. 61.

¹⁵ Ibid., para. 61.

¹⁶ Ibid., para. 72.

¹⁷ Ibid., para. 86.

¹⁸ Missions of this kind have been undertaken in the commune of Nganza in the city of Kananga, Kasai Central Province (May and June 2018); in Tshikulu, Kazumba territory, Kasai Central Province (June 2018); in Luebo, Luebo territory, Kasai Province (June 2018); and in Tshikapa, Kasai Province (October 2018).

conflict, including the emergence of the Bana Mura and Écurie Mbembe militias as of January 2017¹⁹ and the crimes of persecution to which that led.²⁰

36. Secondly, although there are some investigations into sexual crimes, the team of international experts notes that the strategy does not adequately reflect the massive scale or the fundamentally sexist nature of these crimes. The previous team of international experts emphasized in its report that women and children were the main victims of violence in Kasai between 2016 and 2017, especially sexual violence.²¹ This sexual violence took many forms: although most cases involved rape, there were also cases of sexual slavery, sexual mutilation, forced exposure of private parts and forced witnessing of relatives being subjected to rape and sexual violence. All parties engaged in such acts, including the defence and security forces, even though their main task is to protect the population.²² A robust response from the criminal justice system is therefore necessary in order to condemn such acts in the strongest possible terms and prevent repeat offences. An investigation and prosecution strategy to combat sexual violence as a whole would also give a voice to victims who are prevented from speaking out by the taboos and social stigma attached to sexual violence.²³ Lastly, a strategy that addresses sexual crimes in a comprehensive manner would pave the way for public recognition of the sexist nature of these crimes, which may facilitate the social rehabilitation of victims.

37. The problem of the recruitment and use of child soldiers also reached alarming proportions during the conflict, with the forcible recruitment of young persons (or even very young persons)²⁴ by the militias, who took advantage of their vulnerability in order to make them commit crimes. The senior military prosecutor's office of the former Province of Kasai Occidental affirms that it is investigating cases of this kind but the strategy, in its current form, certainly does not convey the scale of the problem.

38. The systematic and widespread nature of the violence in Kasai is also evident from the extensive use of beheading as a means of killing people or mutilating dead bodies and the burning down of public buildings and houses.²⁵ While the team of international experts recognizes that such crimes are being investigated, it feels that the strategy should comprehensively address the systematic and widespread nature of these crimes so as to better reflect the wave of violence as a whole.

39. The team of international experts believes that an investigation and prosecution strategy that fails to incorporate the aspects mentioned above may lead to greater impunity and, consequently, undermine victims' trust in the justice system, which is essential for reconciliation. The team therefore calls on the military justice authorities to improve their strategy with respect to the crimes committed in the Provinces of Kasai and Kasai Central and to increase the involvement of civil society, especially associations that work with victims. The Congolese Criminal Code, which has been amended to include definitions of international crimes, provides a legal basis for the prosecution of all perpetrators.²⁶ The military justice authorities must also step up the pace, for some crimes date back almost three years and the passage of time works against the criminal justice system by weakening

¹⁹ A/HRC/38/31, paras. 54 ff.

²⁰ Ibid., paras. 97–98.

²¹ Ibid., paras. 93 and 95.

²² Members of the Armed Forces of the Democratic Republic of the Congo even went so far as to exploit the vulnerability of women who were fleeing the violence (ibid., para. 83).

²³ Ibid., para. 95.

²⁴ See, for example, A/HRC/38/31, para. 62.

²⁵ Ibid., paras. 97–98.

²⁶ Ibid., paras. 14 and 111 (b). Moreover, the recent decision of the Appeals Chamber of the International Criminal Court, in which it refused to exclude violence against members of the armed forces from the scope of war crimes, gives the Congolese military justice authorities the legal means to expand the scope of their investigations into sexual crimes committed against child soldiers. See *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeal of Mr. Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", 15 June 2017, ICC-01/04-02/06-1962.

the reliability of testimony, which is often the only evidence available, and making it more difficult to identify and preserve physical evidence, such as mass graves.

40. The team of international experts notes that the senior military prosecutor's office of the former Province of Kasai Oriental has not yet opened any investigations into the international crimes committed in this region, owing to the recent arrival of a new senior military prosecutor. Although the Provinces of Kasai Oriental, Lomami and Sankuru were not so heavily affected by the violence, the fact remains that serious crimes, including crimes of sexual violence, were committed in this area by members of the Kamuina Nsapu militia and the defence and security forces.²⁷ At the workshop in Tshikapa on 28 February 2019, the team could see that the military prosecutor's office for this region was willing to start the investigation process. Given that the availability and quality of evidence is affected by the passage of time, it is urgently necessary to launch the criminal investigations as soon as possible.

(b) Allocation of sufficient specialized human and logistical resources

41. The Kasai region covers an area of more than 320,000 km². There are virtually no roads or tracks that are suitable for vehicles and the security conditions are unstable. Conducting investigations there in order to identify the perpetrators of the many crimes committed requires considerable human and logistical resources. For example, at the International Criminal Court, which has jurisdiction over the Democratic Republic of the Congo, a single case involves a team of more than a dozen professionals, including both investigators and prosecutors, with specialized equipment and a budget that allows them to travel to the sites where crimes were committed. It was in this context that the previous team of international experts recommended that the authorities of the Democratic Republic of the Congo should increase the human and logistical resources of military prosecutors' offices in Kasai.²⁸ Since the cases identified by the senior military prosecutor's office of the former Province of Kasai Occidental are still at the investigation stage, the team of international experts has focused its attention primarily on the resources allocated to military prosecutors' offices.

42. The team of international experts notes with concern that the senior military prosecutors' offices in Kasai face a severe lack of resources that has not been remedied since the submission of the previous team's report. For example, at present, the senior military prosecutor's office of the former Province of Kasai Occidental has only two prosecutors: a senior military prosecutor and his deputy. The military prosecutors' offices of the garrisons of Kananga and Tshikapa, which are under the responsibility of the senior military prosecutor's office, have only seven prosecutors in total. These prosecutors must not only lead the investigations into the serious crimes committed since 2016 but also deal with cases that are pending. The premises of the military prosecutor's office are in a bad state of disrepair and lack a secure space for storing evidence. Furthermore, the office has no specialized equipment for forensic investigations, including the exhumation of mass graves.²⁹ The team of international experts was informed that, in 2018, the operating funds of the senior military prosecutor's office of the former Province of Kasai Occidental provided for in the Budget Act had not yet been transferred.

43. Given the number and the scale of the international crimes committed in Kasai since 2016, these levels of staffing and resources are far below what is required in order to be able to conduct investigations effectively and build strong cases against those who have committed serious crimes, even if only those who are suspected of bearing the greatest responsibility. The team of international experts believes that this shortage of resources is one of the factors that explains why the investigation and prosecution strategy has not yielded tangible results.

44. The few investigations that have been carried out thus far by the senior military prosecutor's office of the former Province of Kasai Occidental would not have been

²⁷ A/HRC/38/31, paras. 49–50 (Kasai Oriental Province) and para. 65 (Lomami Province).

²⁸ Ibid., para. 111 (c) (i).

²⁹ For the moment, it is the technical assistance team that provides the necessary expertise.

possible without the financial and logistical support of MONUSCO and the technical assistance team through the joint investigation mechanism. The team of international experts is concerned by this over-reliance on external actors, whose role is to provide assistance in specific instances and for a limited time only, especially as discussions on an exit strategy for MONUSCO have begun.³⁰ At the workshop in Tshikapa on 28 February 2019, the international experts addressed the issue of empowering the military prosecutors' offices to work independently and building on the progress that has been made thanks to external actors.

45. In this context, the team of international experts calls on the military justice authorities as a whole to review the allocation of resources to the Kasai region. At the moment, the only trial concerning events in Kasai that is under way – namely, the trial for the killing of the two Security Council experts, Michael Sharp and Zaida Catalán, and the four Congolese nationals who were accompanying them – is fully mobilizing the scarce resources available, as the military court of the garrison of Kananga has only two members. To ease the burden placed on the Kasai military justice system, the team of international experts calls on the national authorities to consider the possibility of temporarily deploying additional public prosecutors and judges to Kasai. Since the public prosecution service is being directly represented by the general military prosecutor's office at the trial for the killing of the experts and the four persons who were accompanying them, the team expects the same level of interest to be shown for all other cases involving acts of violence committed in Kasai.

46. Public prosecutors and inspectors need specialized knowledge and skills in order to be able to deal with crimes of the kind that were committed by all parties to the conflict, that is, crimes against humanity and war crimes. In this connection, the team of international experts notes that the previous team recommended in its report that the national authorities should, for example, ensure that specialized personnel are assigned the specific task of investigating and prosecuting crimes of sexual violence.³¹

47. The workshop that was held in Tshikapa on 28 February 2019 brought together members of the military prosecutors' offices in Kasai and representatives of the bar association and the civil justice system around the same table for the first time. Both during this workshop and at earlier work sessions, the team of international experts noted that the members of the military prosecutors' offices had a good knowledge of the legal framework applicable to international crimes, including sexual crimes. However, the team also noted that the military prosecutors' offices in Kasai lacked women prosecutors. Given that women are among the main victims of the violence in Kasai, the team considers that particular attention should be paid to the recruitment of women into the military justice system in Kasai.

48. Lastly, the team of international experts draws attention to the previous team's recommendation that the authorities of the Democratic Republic of the Congo should ensure that the officers in charge of the prosecutors' offices have at least the same rank as the operational officers who may be held criminally liable.³² The two senior military prosecutors who are currently in charge of the military prosecutors' offices in Kasai have the rank of colonel. Since senior military prosecutors in other regions of the country hold the rank of general, and in order to ensure that members of the Armed Forces of the Democratic Republic of the Congo who were involved in the crimes committed in 2016 and 2017 can be investigated without fear of rank-related conflict between prosecutors and suspects, the team of international experts reiterates the previous team's recommendation that the military prosecutors' offices in Kasai should be placed under the authority of officers with the rank of general.

³⁰ See Security Council resolution 2463 (2019) of 29 March 2019, para. 44.

³¹ A/HRC/38/31, para. 111 (d).

³² *Ibid.*, paras. 109 and 111 (c) (ii). See also article 67 of Act No. 023/2002 of 18 November 2002 establishing the Code of Military Justice: "The prosecutor who represents the public prosecutor's office at the hearing must hold a rank higher than or equal to that of the accused."

(c) The fate of the women and children still in captivity in Kamonia territory (Kasai Province)

49. The team of international experts notes that the previous team reported that several dozen Luba women and girls were being held against their will by the Bana Mura militia on farms in Kamonia territory (Kasai Province), where they were forced to work and subjected to sexual slavery,³³ and called for their immediate release.³⁴ Although the team of international experts has neither the mandate nor the resources to investigate new allegations of serious human rights violations, during its interaction with the national political authorities and representatives of MONUSCO on the ground, it obtained some information which suggests that women and children are still being held by the Bana Mura militia. During a joint fact-finding mission undertaken by the senior military prosecutor's office of the former Province of Kasai Occidental and MONUSCO in October 2018, a total of 38 people were interviewed, including at least 22 women and 4 children who had allegedly been abducted and subjected to sexual violence and forced labour. During their visit to Tshikapa in February 2019, the international experts had the opportunity to speak to women who had successfully escaped from the farms where they were being held and who said that several other women were still there. At every opportunity, the team called for the immediate release of these women and children.

50. The team of international experts notes that, during the team's first mission to the Democratic Republic of the Congo in November 2018, the Government expressed doubts as to whether the situation was truly as described. The Government subsequently qualified its comments and acknowledged its obligation to work to secure the victims' release. The team of international experts stresses once again that it is urgently necessary to secure the immediate release of these women and children and to ensure that those who have managed to flee are not left to fend for themselves.

2. Support for victims and witnesses

51. In the light of its findings on the extent of the sexual crimes committed in Kasai, the previous team of international experts recommended that the authorities of the Democratic Republic of the Congo should enforce the application of judicial protection measures for victims of crimes of sexual violence and, by providing legal assistance, encourage them to lodge complaints and to testify before the courts.³⁵ It also called on the authorities to take concrete and effective steps to ensure, by incorporating a gender perspective, that victims of sexual violence have access to appropriate medical, psychosocial and socioeconomic services.³⁶ It made substantially similar recommendations with respect to child victims.³⁷ Support and care for victims of sexual violence and child victims is essential in order to be able to repair the social fabric of Kasai.

52. Since none of the cases selected by the military justice authorities have been brought to trial yet, the team of international experts has focused its attention on the way in which the military prosecutor's office conducts investigations into cases involving victims of sexual crimes and child victims. The team is pleased to note that, during the investigations of this kind that were conducted jointly with MONUSCO and the technical assistance team, appropriate and sufficient measures were taken to protect witnesses and victims of crimes of sexual violence and child victims during hearings. In the field, the investigators and prosecutors from the military prosecutor's office attended briefings, which covered issues such as the protection of information.³⁸ During the hearings, which were conducted in such a way as to protect the identity of the witnesses, the investigators were accompanied by

³³ A/HRC/38/31, para. 86.

³⁴ Ibid., para. 111 (j).

³⁵ Ibid., para. 111 (e).

³⁶ Ibid., para. 111 (i).

³⁷ Ibid., para. 111 (h) and (i).

³⁸ These briefings were given by members of MONUSCO (in particular, the Child Protection Section) and members of the technical assistance team, the bar association of Kananga and local NGOs with expertise in this area. In addition, in April 2018, the technical assistance team ran a training workshop for members of the military prosecutors' offices on protective measures.

psychosocial support workers. After the hearings, the persons who had been interviewed received psychological support. The team calls on the military justice authorities to institutionalize these practices with a view to ensuring that investigations are conducted independently and in an appropriate manner.

53. As regards legal aid, the bar association of Kananga runs a legal clinic in Kananga that helps victims to take legal action. There is also a project entitled Combating Gender-based Violence: Justice, Empowerment and Dignity for Women and Girls in the Democratic Republic of the Congo, which is being implemented jointly by the United Nations Development Programme, the United Nations Population Fund and the United Nations Joint Human Rights Office. One of the aims of this project is to strengthen legal aid mechanisms for victims of sexual violence in certain regions of the country, including Kasai Central. This project is also partly focused on supporting efforts to provide medical care and psychosocial support to victims and to ensure their socioeconomic reintegration. Médecins sans frontières (international) is active in Kasai Central, where it deploys mobile clinics to provide surgical, medical and psychosocial assistance to victims of sexual violence. Meanwhile, the Ministry of Health, Family and Gender Issues of Kasai Central Province is involved in a campaign to raise awareness of sexual violence among traditional leaders and the general public.

54. The team of international experts notes that almost all victim support initiatives are being run by external partners. Given the ever-increasing need for support,³⁹ the State must, in accordance with its Constitution⁴⁰ and the National Strategy to Combat Gender-based Violence of 2009, shoulder its responsibilities in this regard and seek to ensure the long-term future of the mechanisms that are supported by international partners.

B. Reconciliation and transitional justice in the Kasai region

55. Noting that criminal penalties alone would not be sufficient to prevent violence from recurring, the previous team of international experts recommended that the authorities of the Democratic Republic of the Congo engage in an inclusive process of transitional justice aimed at establishing the truth, identifying the root causes of the crisis and providing redress to victims, in order to ensure reconciliation.⁴¹

56. The team of international experts notes that the Government held a forum for peace, reconciliation and development in the Kasai region, from 19 to 22 September 2017 in Kananga. The then Prime Minister stated that the aim of this forum was to promote the restoration of peace, reconciliation and the reconstruction of Kasai.⁴²

57. At the time of writing the present report, the team of international experts had no knowledge of the conclusions and recommendations issued as a result of the forum and noted that there was no follow-up mechanism.

58. In order to gain a better understanding of the issue of reconciliation in Kasai, the team of international experts held a workshop in Kananga on 17 and 18 April 2019. This workshop brought together around 60 persons from the five provinces of the Kasai region. The participants included representatives of the provincial authorities, traditional leaders, members of the Catholic clergy, academics and researchers from the Kasai region, members of the bar association, members of the Armed Forces of the Democratic Republic of the Congo and the national police, and representatives of civil society organizations.

³⁹ Although the fighting has abated since August 2017, sexual violence remains persistent in Kasai. See, for example: Médecins sans frontières (international), "Sexual violence committed by armed men in Kasai", 1 November 2018, available at www.msf.org/drc-sexual-violence-committed-armed-men-kasai. See also the data provided by Médecins sans frontières (international) to the secretariat of the team of international experts.

⁴⁰ See articles 14, 15 and 41 of the Constitution.

⁴¹ A/HRC/38/31, para. 111 (a).

⁴² See Prime Minister Bruno Tshibala's statement of 23 September 2017, available at www.primature.cd/public/2017/09/23/bruno-tshibala-affirme-que-le-forum-sur-la-paix-dans-le-grand-kasai-sest-tres-bien-passe/.

Representatives of humanitarian organizations, United Nations agencies and MONUSCO were also present. Various topics were discussed during the workshop, including traditional reconciliation practices in the Kasai region, the responsibilities of the State, the issue of disarmament and the socioeconomic situation.

1. Traditional reconciliation practices in the Kasai region

59. During the workshop in Kananga, three reconciliation rituals from the Kasai region were discussed, namely: (a) drinking from the same cup (*kunua cibalu* in Luba); (b) warding off evil (*mucipu cikandakanda*); and (c) making a pact for peace (*kutua ndondo wa bupole*). It was also explained that communities in Kasai are, for the most part, lineage-based and acephalous. Traditionally, they lived separately from one another and were led by their elders (*bakulu*). The elders played the role of arbiters in matters concerning their lineage. They served as advisers and priests who led the worship of ancestors. Within each lineage, individuals were related through their paternal family (patrilineal descent) or their maternal family (matrilineal descent). If there was a conflict between two lineages or within a lineage, the elders, as representatives of the deceased, were supposed to settle the dispute amicably. The persons in conflict were then invited, as a gesture of reconciliation, to drink from the same cup and to wash their hands. In some cases, sacrifices were made to appease the spirits of the ancestors.⁴³

60. Conflict of any kind was considered an evil that disrupts communities. Steps were therefore taken to ward off conflict, bring an end to it and reconcile the warring parties. Women played a crucial role in this regard. With brooms, mixing implements and other objects in their hands, they performed rituals to ward off evil, singing and calling on the men to stop fighting and to be reconciled.⁴⁴

61. It was also noted that there was bloodshed in Kasai on the eve of national independence. There were clashes between the Luba and Lulua peoples in 1959, in and around Luluabourg.⁴⁵ In a vain attempt to bring an end to this crisis, the traditional leaders of the Luba and Lulua peoples signed two conventions, one in Munkamba on 12 January 1960 before the arbitration mission that was chaired by the Belgian lawyer Rae, and the other in Brussels on 27 February 1960 in the presence of the Minister of the Belgian Congo and Rwanda-Urundi.⁴⁶

62. This conflict was eventually resolved through the use of a traditional practice, which took the form of the Ntenda Pact of 20 October 1961. On this occasion, as a gesture of reconciliation, the traditional leaders of the Luba, Lulua, Kanyok, Kuba, Songye, Kete and Bindji peoples and the political leaders of the Luba and Lulua peoples took part in several ritual ceremonies. The final reconciliation was marked by festivities that took place from 21 to 25 October 1961 in the cities of Luluabourg and Bakwanga, in the presence of the then Head of State, Joseph Kasavubu.⁴⁷

63. With that in mind, the team of international experts invites all political actors and other segments of society in Kasai to take inspiration from these events and to initiate an inclusive and sustainable reconciliation process that is appropriate to the present-day situation in Kasai.

2. The responsibilities of the State

64. The workshop in Kananga also covered the issue of State responsibilities and the related questions of what the State has already done and how, and what more it needs to do in order to achieve reconciliation. It was noted that legal proceedings had been brought against members of the Kamuina Nsapu militia and traditional leaders who are currently in prison. However, considering the scale of what took place, these measures are inadequate

⁴³ Presentation by Cipamba Ntumba, a professor at Kananga Teacher Training University.

⁴⁴ Ibid.

⁴⁵ Now known as Kananga.

⁴⁶ Presentation by Cipamba Ntumba, a professor at Kananga Teacher Training University.

⁴⁷ Ibid.

and further steps should be taken to prosecute, in addition, the members of the defence and security forces who were involved in serious crimes.⁴⁸

65. Legal proceedings alone will not be enough to restore peace and bring about reconciliation in the Kasai region. Since most criminals are insolvent, it naturally falls to the State to ensure that victims obtain reparation, even if it is merely symbolic. It was noted that the new President of the Republic, Félix Tshisekedi, had recently considered setting up a fund for the provision of reparation to victims of large-scale violence.⁴⁹

66. The team of international experts is of the view that the measures taken in this regard should, above all, support the rebuilding of communities, while providing victims with the legal aid that they need in order to effectively assert their rights before the courts.

3. The issue of disarmament

67. As mentioned above, a disarmament process involving the Kamuina Nsapu militia was initiated in the days following the forum for peace, reconciliation and development in Kasai that was held in September 2017. The comments of the team of international experts on this operation, which has been suspended for several weeks, are as follows.

68. In view of the failures observed in the east of the Democratic Republic of the Congo, the team of international experts considers that the disarmament process initiated in Kasai should not be based on the traditional approach of demobilization, disarmament and reintegration, whereby former militia members and combatants are routinely integrated into the regular defence and security forces. Instead, disarmament should be an integral part of the reintegration and reconciliation process and emphasis should be placed on integrating combatants into their respective communities. It also seems logical that significantly reducing the military presence and shutting down the zone of operations would help to support and encourage the disarmament of the militias.

4. The socioeconomic situation

69. Many of the recommendations made during the workshop in Kananga relate to the socioeconomic situation in the Kasai region. Participants suggested, for example, developing socioeconomic programmes to combat chronic youth unemployment and to support the economic integration of communities; launching construction projects where young persons could be employed to rebuild roads and tracks in Kasai; and renovating public buildings, such as the schools and health centres that were the targets of widespread destruction and looting during the conflict.

70. As the previous team of international experts mentioned in its report, the violence that erupted in Kasai assumed the proportions that it did because the local communities are suffering from extreme poverty, partly as a result of being abandoned by the central authorities and partly because the region of Kasai is virtually inaccessible by road or rail. These circumstances make it impossible for the region of Kasai, as a whole, to maintain regular trade and economic relations with the rest of the country, even though it has many potential sources of wealth.

71. The team of international experts believes that it is urgently necessary to adopt a real emergency plan for the development of the Kasai region in order to ensure that its economy and agriculture are sustainable and capable of reducing long-term unemployment among young persons, bearing in mind that such persons made up a large proportion of the militias that were involved in the violence. This will require large-scale investment in infrastructure, including roads, railways and access to electricity and water. The responsibility for this pressing task must be shouldered primarily by the Government, which could be assisted in its efforts by donors.

⁴⁸ Presentation by Joséphine Bitota, professor and chancellor of the University of Kasai Central.

⁴⁹ Ibid.

VI. Conclusions and recommendations

72. The current lull in the violence in Kasai is fragile and the situation must still be monitored closely. The positive impact of the political transition on the security situation in Kasai must be consolidated by a relentless fight against impunity, coupled with efforts to achieve reconciliation and to rebuild the economy in the Kasai region. Otherwise, the window of opportunity that remains open in Kasai is likely to close rapidly and to prove fruitless.

73. As regards the fight against impunity, the investigation and prosecution strategy must be structured in such a way as to cover all the types of human rights violations that characterized the crisis in Kasai. The strategy must also make it possible to establish the historical truth and to work towards transitional justice and reconciliation.

74. Although there is an investigation and prosecution strategy in place and several cases of violence are being investigated by the military prosecutors' offices in Kasai, specifically those in Kananga and Tshikapa, the team of international experts finds it regrettable that these cases do not cover in a balanced way the full range of perpetrators who were involved. Moreover, the cases do not reflect the full range of crimes against humanity and war crimes that were committed during the crisis in Kasai. In particular, cases should be selected in such a way as to take into account the ethnic persecution that took place, the scale of the sexual violence, the crimes committed against children, the use of beheading and the burning down of countless public buildings and dwellings, so that these events are encompassed by the proceedings as a whole. With that in mind, it is important that the competent authorities adopt a much broader strategy of investigation and prosecution, otherwise the efforts to combat impunity in Kasai will be futile and will not help to achieve effective reconciliation between communities.

75. The team of international experts considers that the military justice authorities require significant human, financial and logistical resources if they are to effectively combat impunity in Kasai. It notes, however, that the resources made available by the State are utterly inadequate and that the local judicial authorities are overly reliant on external partners, including MONUSCO. Since the latter is set to withdraw from the country, the team urges the Government to put in place an independent strategy for funding the efforts of the military and civil justice authorities to prevent and punish serious crimes. For the time being, additional resources and personnel should be deployed to the military prosecutors' offices in Kasai in order to expedite proceedings and ensure that judgments are handed down within a reasonable time frame.

76. The team of international experts acknowledges the efforts that have already been made by the Government to reconcile the communities of Kasai, including the holding of a forum for peace, reconciliation and development in September 2017. The team considers that these efforts need to be supported by specific initiatives that set in motion a culturally appropriate and legally acceptable process of reconciliation between the communities concerned. This process, which should be developed in cooperation with academics, traditionalists and researchers, should draw upon positive examples from the past and should rule out the possibility of a general pardon for those who committed crimes against humanity and war crimes in Kasai.

77. Since the current crisis stemmed from a conflict that was linked to traditional leadership, it is important to review the rules and practices relating to State supervision of the exercise of customary power. In addition, given the criticism levelled at the State itself by a sector of the population, it is necessary to reassess the relationship and the policies of communication between the administrative authorities and the defence and security forces, on the one hand, and the population, on the other hand, taking into account the sense of abandonment in Kasai.

78. The team of international experts believes that the efforts made to combat impunity and to achieve reconciliation will not produce tangible and satisfactory

results unless the socioeconomic dimension of the conflict in Kasai is taken into consideration. The vast majority of inhabitants live in a state of extreme poverty even though the region is brimming with potential wealth. It is therefore urgently necessary to take robust measures to address this discrepancy. In particular, the team considers that the exploitation of mineral resources in the Kasai region could be used to finance, among other things, the rebuilding of infrastructure, access to water and electricity for all, and the revival of a sound economy and sustainable agriculture, in the framework of a real emergency plan for the development of Kasai, with the support of the international community and the diaspora.

79. The team of international experts considers that, in order to emerge from the crisis in Kasai, it is essential to step up efforts to combat impunity and to speed up the process of community reconciliation and the establishment of an inclusive transitional justice mechanism that is aimed at establishing the truth, identifying the root causes of the crisis and providing redress to victims.

80. The team of international experts recommends that the authorities of the Democratic Republic of the Congo take the following steps:

- (a) Work to secure the immediate release of the women and children who are still being held captive by the Bana Mura militia in Kamonia territory (Kasai Province);
- (b) Adopt an investigation and prosecution strategy that encompasses all categories of perpetrators of serious crimes in Kasai, regardless of their status or position, their motive and the place where the crime was committed;
- (c) Allocate sufficient financial resources and the personnel, equipment and logistical resources that are necessary to enable the military justice authorities in Kasai to investigate and try cases without undue delay;
- (d) Consider the possibility of recruiting female staff to work for the military justice authorities in Kasai, and overcome the shortage of staff by making greater use of the civil justice system and the pool of talent offered by the bar association;
- (e) Ensure that specialized personnel are assigned the specific task of investigating and prosecuting crimes of sexual violence and crimes involving minors;
- (f) Enforce the application of judicial protection measures for victims of crimes of sexual violence and child victims and encourage these persons to lodge complaints by providing them with effective legal assistance;
- (g) Set up a reparation fund in order to assist victims individually and to speed up the rebuilding of communities affected by the violence;
- (h) Ensure that persons convicted of crimes are given appropriate sentences and are prohibited from joining or remaining in the defence and security forces;
- (i) Ensure that, in cases where minors are to be tried, investigators are given specialized training and that accused minors are tried in specialized chambers with appropriate procedures in place;
- (j) Revitalize community reconciliation efforts in Kasai without delay and establish an inclusive and appropriate transitional justice mechanism;
- (k) Launch audiovisual information programmes in order to reduce the ethnic tensions that the crisis may have caused and promote dialogue and reconciliation between communities;
- (l) Ensure that the disarmament process that is under way applies to all militias without distinction and helps to facilitate reconciliation by ensuring the effective return of militia members to their respective communities;
- (m) Organize a conference on Kasai, with the support of the international community and the diaspora, in order to mobilize resources for major projects relating to road and rail communications, water and electricity distribution and

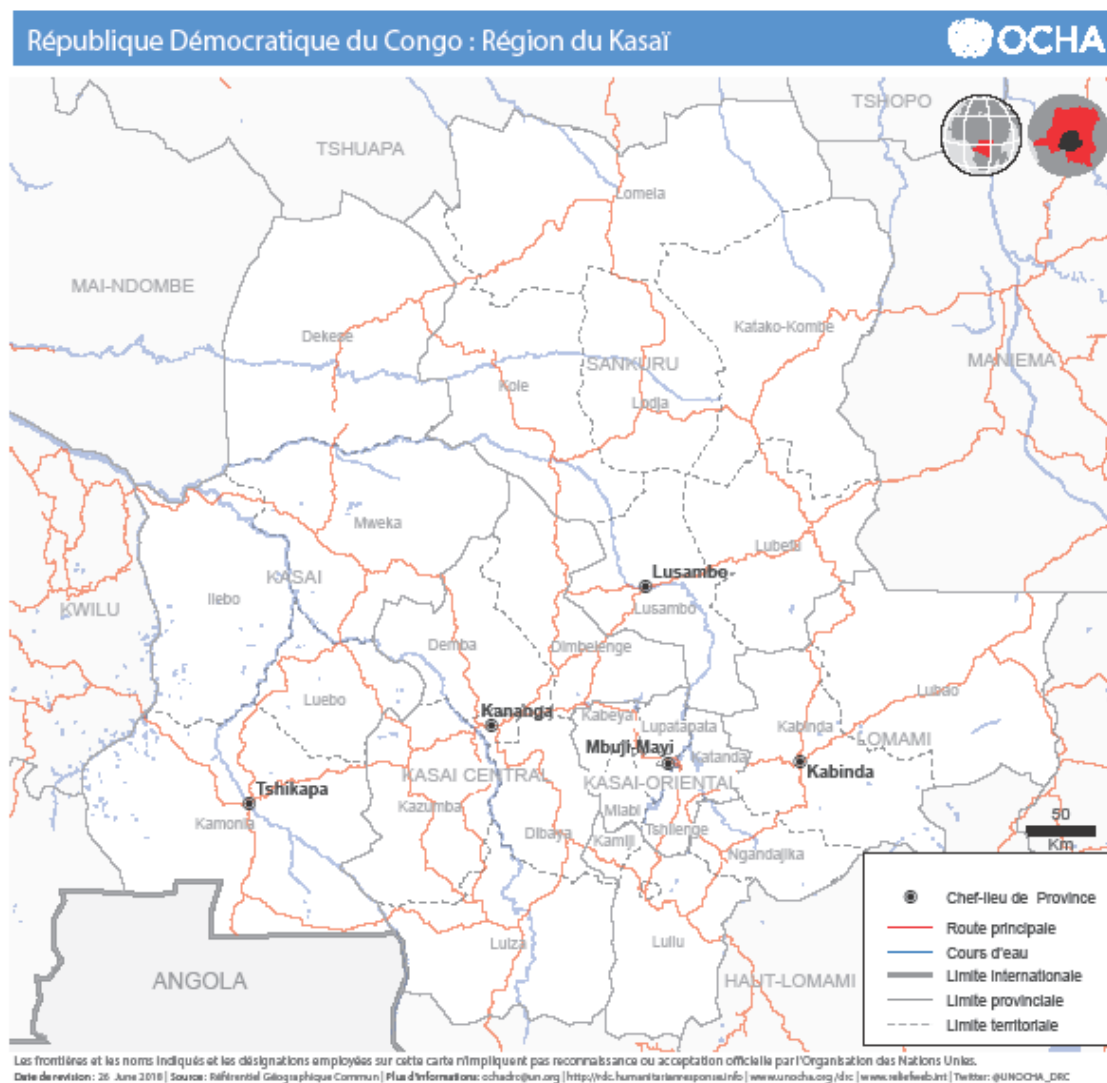
agricultural development, with a view to reducing long-term unemployment among young persons in the region and paving the way for the economic recovery of Kasai within the Democratic Republic of the Congo.

81. The team of international experts recommends that MONUSCO, the United Nations system and the Peacebuilding Fund should, through their various projects and programmes, provide concrete support to the competent authorities in the fight against impunity, with a particular focus on strengthening the autonomy of national institutions and promoting reconciliation and transitional justice.

82. The team of international experts recommends that the Office of the United Nations High Commissioner for Human Rights, MONUSCO and the United Nations system in general should remain actively involved in Kasai by providing technical support for all measures taken to combat impunity and to reconcile communities in Kasai, including those relating to disarmament and community reintegration.

Annex

Map of Kasai



Map courtesy of the United Nations Office for the Coordination of Humanitarian Affairs.