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pour la Stabilisation en République  
démocratique du Congo

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Mission in the Democratic Republic of Congo



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OFFICE OF THE HIGH COMMISSIONER

PROTECT

STABILIZE

CONSOLIDATE PEACE

**Accountability for Human Rights Violations and Abuses in the DRC: Achievements, Challenges  
and Way forward  
(1 January 2014 - 31 March 2016)**

**October 2016**

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## LIST OF ACRONYMS

ADF	Allied democratic forces
CMO	<i>Cour militaire opérationnelle</i> (Military operational Court)
CNDH	<i>Commission nationale des droits de l'homme</i> (National Human Rights Commission)
DDR	<i>Disarmament, demobilization and reintegration</i>
DRC	Democratic Republic of Congo
FAPC	<i>Forces armées du peuple congolais</i> (Armed Forces of the Congolese people)
FARDC	<i>Forces armées de la République démocratique du Congo</i> (Congolese National Army)
FDLR	<i>Forces démocratiques de libération du Rwanda</i> (Democratic Forces for the liberation of Rwanda)
FRPI	<i>Forces de résistance patriotiques de l'Ituri</i> (Front for Patriotic Resistance of Ituri)
ICC	International Criminal Court
ICGLR	International Conference on the Great Lakes Region
LRA	Lord's Resistance Army
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MONUSCO	United Nations Organisation Stabilization Mission in the Democratic Republic of Congo
NGO	Non-governmental organisations
OHCHR	United Nations Office of the High Commissioner for Human Rights
PNC	Police nationale congolaise (Congolese National Police)
UNDP	United Nations Development Programme
UNJHRO	United Nations Joint Human Rights Office
UNPROVIT	<i>Unité de protection des victimes et des témoins</i> (Unit for the protection of victims and witnesses)

## **Executive Summary**

1. This report, jointly published by the Mission of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) and the High Commissioner for Human Rights (OHCHR), provides an analysis of the trends in the fight against impunity in the DRC from 1 January 2014 to 31 March 2016. It describes progress made by the Congolese authorities in adopting laws and judicial mechanisms promoting the fight against impunity and the prosecution of perpetrators of serious human rights violations and violations of international humanitarian law. It also identifies the numerous challenges to the effective implementation of the fight against impunity and proposes recommendations to address them.
2. The prosecution of perpetrators of human rights violations and abuses is a responsibility of the authorities and of the State institutions of the Democratic Republic of Congo (DRC) towards the Congolese society and particularly towards the victims of these violations. Effective justice is a major deterrent to prevent future violations of human rights and is the cornerstone for peace and future stability. After decades of conflict, the DRC is working to establish mechanisms that systematize and strengthen judicial accountability for perpetrators of human rights violations. This report aims to identify progress and challenges in this area.
3. The fight against impunity is an essential aspect of the mandate of MONUSCO. The United Nations Security Council resolution 2277 of 30 March 2016 contains clear provisions on the need to prosecute the perpetrators of serious violations of human rights and of international humanitarian law. Since its creation in February 2008, the United Nations Joint Human Rights Office (UNJHRO) is committed in the fight against impunity in line with the Strategic Management Plan of the United Nations Office of the High Commissioner for Human rights (OHCHR) and with provisions of the Security Council resolutions, in order to consolidate peace in the country, which are rooted in the respect for human rights.
4. This report follows the report on the Mapping project<sup>1</sup> published by OHCHR in August 2010, which documented 617 cases of serious human rights violations and violations of international humanitarian law committed by national and international actors in the DRC between March 1993 and June 2003, most of which remain unpunished to date. The Mapping report concludes by identifying three priority areas of institutional reforms to strengthen transitional justice policy<sup>2</sup>: the adoption of a law implementing the Rome Statute, the reform of the judicial system and the vetting of security forces. Six years after the publication of this report, its findings continue to be valid.

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<sup>1</sup> “Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003” (hereafter the Mapping Report), Office of the High Commissioner for Human rights, August 2010. Available at: [http://www.ohchr.org/Documents/Countries/CD/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf)

<sup>2</sup> “The concept of ‘administering justice during the transition period’ or ‘transitional justice’ comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”, Mapping Report, para. 989, p. 447; See Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para.7.

5. From 1 January 2014 to 31 March 2016, the DRC Government has shown the will to double its efforts in the fight against impunity of perpetrators of human rights violations and abuses. This commitment is not only illustrated by the adoption of several legislative provision and institutional instruments for a better functioning of the justice system, but also by the prosecution of perpetrators of serious human rights violations and abuses, namely of sexual violence, leading to the conclusion of emblematic cases and the conviction of the perpetrators.
6. However, many barriers to effective justice persist. The legal framework remains fragile and the lack of independence and of resources of the judiciary still represent important challenges to the prosecution of perpetrators of human rights violations and abuses. Difficulties in bringing perpetrators to justice and to ensure the enforcement of sentences have a negative impact on the protection of victims and witnesses, categories for which the legal protection framework is practically non-existent.
7. Initiatives and public advocacy conducted by the Congolese authorities, with the support of the international community, have resulted in the conviction of State agents for sexual violence in conflict in at least 231 cases, during the period under review. Also, according to information made available to the UNJHRO, at least 447 soldiers of the Congolese National Army (*Forces armées de la République démocratique du Congo – FARDC*) and 155 agents of the Congolese National Police (*Police nationale congolaise – PNC*) have been convicted for acts constituting human rights violations during the period under analysis. Despite the remarkable efforts made and considering the structural and financial difficulties facing the judicial system, this is a very low number compared to the 4,032 human rights violations committed by State agents. This, in addition to other factors, also shows that lack of effective prosecution contributes to the commission of other violations.
8. Concerning armed groups, the UNJHRO documented at least 3.356 human rights abuses committed by alleged combatants of different armed groups throughout the country during the period under review. Regrettably, only 28 combatants were convicted for human rights abuses during the same period.
9. The report concludes that, despite the remarkable progress made in holding perpetrators accountable, a very low number of State agents, especially senior officers, and leaders and combatants of armed groups, are prosecuted and convicted compared to the high number of violations reported. The report formulates recommendations aiming at supporting the Government to meet these challenges and calls in particular for the effective implementation of institutional and legislative reforms as well as for the public manifestation of the political will to prosecute those responsible for human rights violations and abuses, State agents and armed groups' combatants, with a view at putting an end to impunity.

## **I. Introduction**

10. Since its creation in February 2008, the UNJHRO firmly committed to support the efforts of the Congolese authorities in the fight against impunity, pursuant to MONUSCO mandate and the resolutions of the Security Council. The resolution 2277 of 30 March 2016 clearly recalls the importance of supporting the Government of the DRC in the fight against impunity “for the implementation of any appropriate recommendations for justice and prison sector reforms as contained in the final report of the *Etats généraux de la justice*, including on the fight against impunity, for genocide, war crimes and crimes against humanity, in order to develop independent, accountable and functioning justice and security institutions.”<sup>3</sup>.
11. The Mapping report published by the OHCHR in August 2010 on the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003, had documented 617 cases of serious violations committed by Congolese, Rwandan, Ugandan, Burundian, Angolan and Zimbabwean armies, as well as more than 20 Congolese and foreign armed groups. The report concluded with identifying three priority areas of institutional reforms to reinforce the transitional justice policy: the adoption of a law implementing the Rome Statute, the reform of the judicial system and the vetting of security forces. Furthermore, from 27 April to 2 May 2015, the Minister of justice and human rights convened the *Etats généraux de la justice* in Kinshasa, which allowed to identify the weakness of the judicial system and to propose reforms and priority actions to encourage the effective prosecution of the perpetrators of serious human rights violations and abuses.
12. The report analyses the situation of the fight against impunity in the DRC from 1 January 2014 to 31 March 2016 and covers cases of human rights violations and abuses committed by State agents<sup>4</sup> and combatants of armed groups documented by the UNJHRO throughout the DRC during this period. It describes the progress achieved by the Congolese authorities in the adoption of laws and judicial mechanisms to effectively fight against impunity. The report also presents progress made in the opening of judicial proceedings to bring to justice perpetrators of serious violations of human rights and international humanitarian law, especially regarding sexual violence. It also identifies the numerous challenges in the fight against impunity and proposes recommendations to overcome them.

## **II. Methodology and constraints**

13. The UNJHRO documented the information contained in this report through its 10 field offices, its six antennas<sup>5</sup> and the headquarter in Kinshasa, which cover all provinces of the DRC.
14. The data presented in this report refer to the impunity situation linked with human rights violations committed by State agents and armed groups combatants that the UNJHRO was able to document throughout the country. The report analyses the challenges, as well as the achievements and judicial

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<sup>3</sup>See page 14, paragraph i, d) of UN Security Council resolution 2277 dated 30 March 2016.

<sup>4</sup> Soldiers of the *Forces armées de la République démocratique du Congo* (FARDC), agents of the *Police nationale congolaise* (PNC), agents of the *Agence nationale de renseignements* (ANR) and administrative authorities.

<sup>5</sup> The UNJHRO is composed of 10 offices in Beni-Butembo, Bukavu, Bunia-Aru, Dungu, Goma, Kalemie, Kisangani, Lubumbashi, Uvira and (Kinshasa headquarter) and of six antennas in Bandundu, Kananga, Kindu, Matadi, Mbandaka and Mbuji-Mayi

responses to end impunity of perpetrators of human rights violations and abuses. Although generally mentioned, non-judicial mechanisms and processes – such as those of transitional justice and discipline measures – are beyond the scope of this report.

15. The figures mentioned in this report only provide an overview of the human rights violations and abuses committed in the DRC during the period under review. They only represent cases registered and verified by the UNJHRO using a specific methodology with a high threshold of verification, in line with OHCHR directives<sup>6</sup>. The monitoring of human rights violations committed by armed groups is more difficult for UNJHRO staff, especially in remote areas, mainly due to security constraints. The collaboration between MONUSCO military component and the FARDC facilitates the monitoring of human rights violations committed by soldiers of the national army and allows a better coverage of the conflict zones.
16. The UNJHRO figures and statistics can be different from those provided by other sources, such as United Nations agencies, NGOs and Congolese Ministries, because of the different methodologies used.
17. Regarding the number of convictions, the UNJHRO field offices do not have the capacity to attend and document all the judicial proceedings against alleged perpetrators of violations of international humanitarian law as well as human rights violations and abuses. Therefore, the number of convictions echoed in this report is lower than the actual number. Figures and correlations in percentages presented in this report are used purely as indicative and must be used with caution. In addition, to investigate human rights violations and abuses often takes several years. Therefore, judicial proceedings and convictions documented in this report correspond sometimes to incidents that occurred before the reporting period. The fact that there have been few perpetrators that were convicted during a period when field offices documented numerous violations and abuses does not mean that the crimes remained or will remain unpunished or vice versa. Besides, numerous violations may sometimes not even be investigated or prosecuted, but only result in disciplinary action taken against the perpetrators.
18. Moreover, a high number of convictions does not necessarily mean that they will be enforced. Indeed, sometimes convicted State agents do not serve the entirety of their sentences, although they were not granted a conditional release or a court order authorizing their release, based on the Code of Criminal procedure. They also often do not pay the damages ordered by the courts to the victims
19. Finally, before its publication, the UNJHRO shared the report with the Government of DRC for comments. The UNJHRO didn't receive any answer.

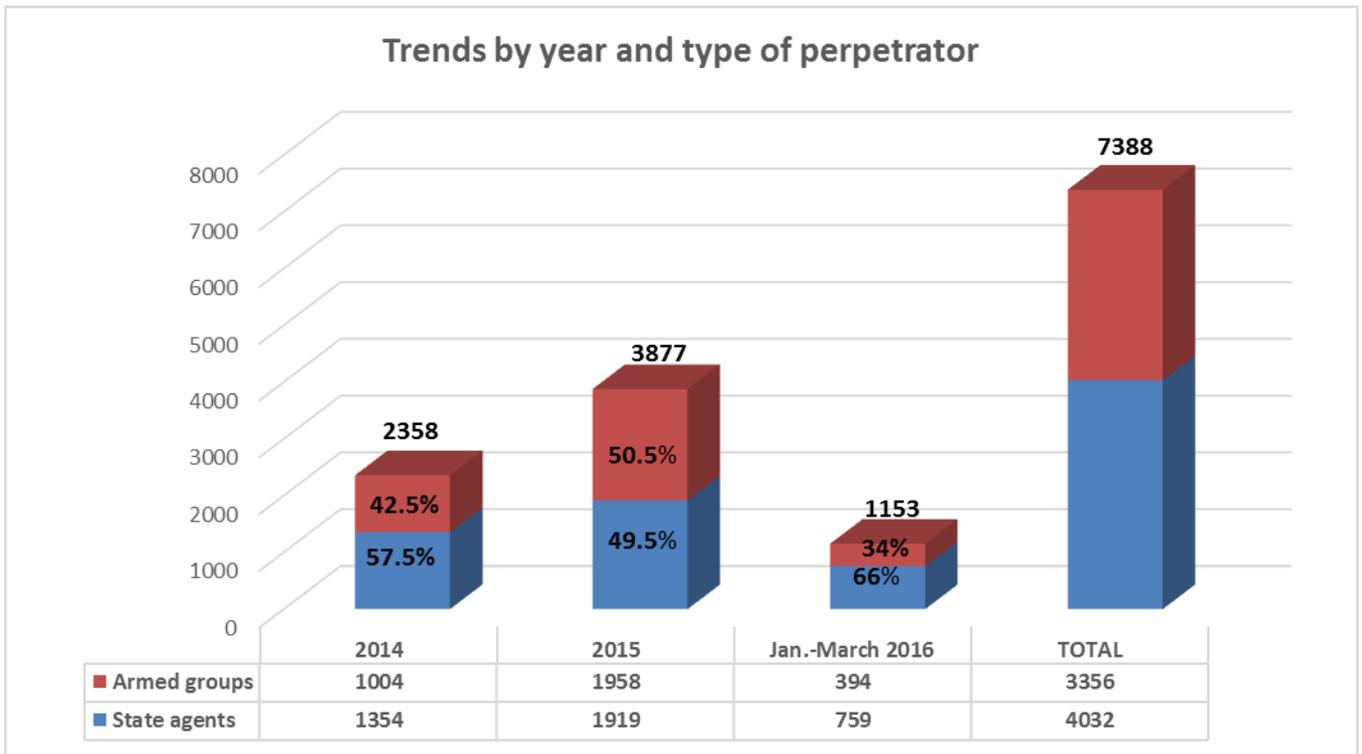
### **III. Challenges in the fight against impunity**

20. The human rights situation in the DRC is of concern, characterized by types of violations and abuses that vary, depending on very different contexts and motives. Between 1 January 2014 and end of

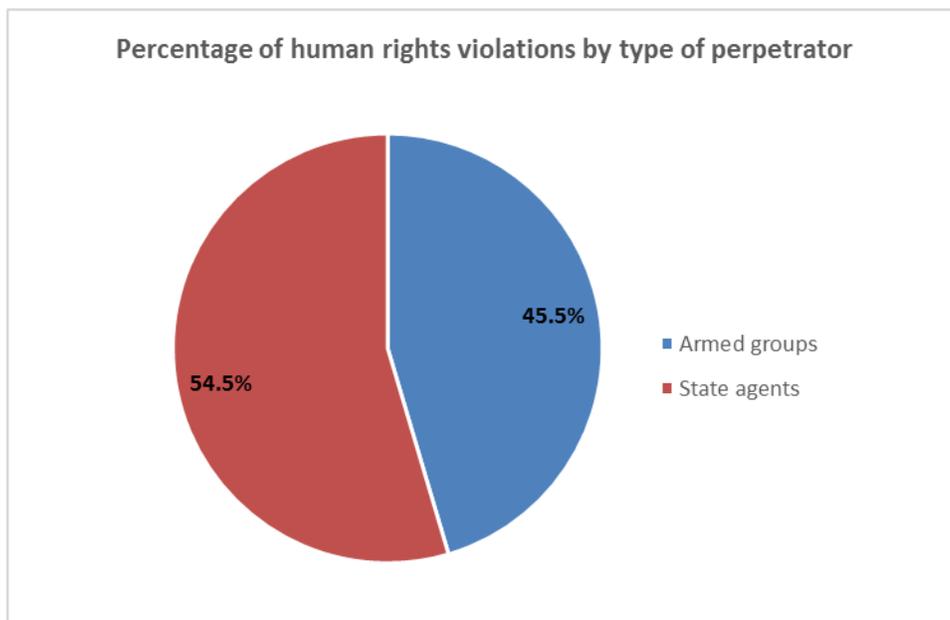
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<sup>6</sup> See also: Training Manual on Human Rights Monitoring, Chapter 7 “Gathering contextual information”, OHCHR, 2001 (under revision), available on the website of the Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/PublicationsResources/Pages/MethodologicalMaterials.aspx>

March 2016, the UNJHRO has documented a total of 7.388 human rights violations and abuses throughout the DRC.



**Fig. 1: Chart of human rights violations by type of perpetrator and by year**



**Fig. 2: Chart of documented human rights violations by type of perpetrators for the overall period under review**

Period under review	Type of alleged perpetrators	Number of human rights violations (HRV)	Percentage of the total share of all cases of HRV, by perpetrators altogether	Total number for HRV perpetrated by FARDC/PNC	Percentage of condemnations for HRV perpetrated by FARDC/PNC
2014	FARDC	699	30%	172	24.60%
	PNC	546	23%	79	14.46%
	TOTAL	1.245	53%	251	20.16%
2015	FARDC	847	22%	244	28.80%
	PNC	888	23%	65	7.31%
	TOTAL	1.735	45%	309	17.80%
Jan-March 2016	FARDC	262	23%	31	11.83%
	PNC	371	32%	11	2.96%
	TOTAL	633	55%	42	6.63%
TOTAL	FARDC	1.808	24%	447	24.72%
	PNC	1.805	24%	155	8.58%
	TOTAL	3.613	48%	602	16.66%

Fig. 3: Human rights violations and abuses by FARDC, PNC and armed groups and sentences

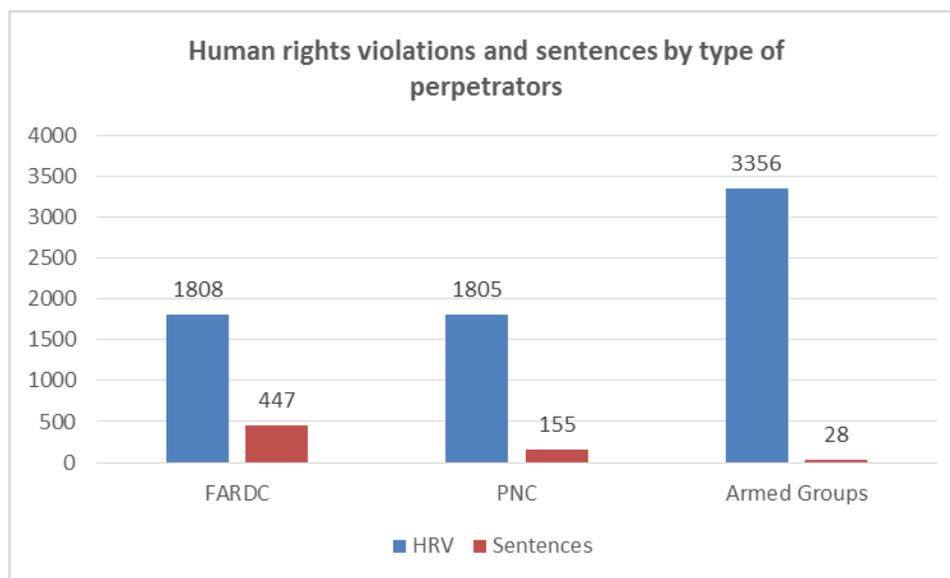


Fig. 4: Human rights violations and sentences by type of perpetrators from January 2014 to March 2016

21. During the reporting period, the six provinces affected by the conflict in eastern DRC, namely Ituri, North Kivu, South Kivu, Haut-Uélé, Bas-Uélé and Tshopo provinces registered the highest numbers of

human rights violations and abuses, which were mainly committed by combatants of more than 30 different armed groups. Between 1 January 2014 and end of March 2016, among the armed groups, the combatants of the Democratic Forces for the Liberation of Rwanda (FDLR) committed the largest number of abuses (685), followed by the Front for Patriotic Resistance in Ituri (FRPI) (662) and the Lord's Resistance Army (LRA) (424). These abuses were mainly committed during attacks launched on villages, in a bid to control territories rich in natural resources or in reprisal against some individuals suspected of cooperating with parties to the conflict.

22. State actors have also committed human rights violations in eastern DRC, in particular FARDC soldiers and PNC agents. These State actors, mainly FARDC soldiers, committed human rights violations or violations of international humanitarian law during military operations against armed groups.
23. Human rights violations and abuses were also committed in the context of interethnic conflict, some ethnic communities being perceived as collaborating with armed groups or with security and defence forces. In this volatile context, the UNJHRO continued to document, among others, the execution of civilians, as well as rapes, abductions and lootings perpetrated by armed groups and State agents.
24. With regards to conflict-related sexual violence (CRSV), the UNJHRO has observed a slight decrease in the number of victims documented during the period under review. In 2014, the UNJHRO and MONUSCO Child Protection Section had reported 698 victims of Sexual Violence in Conflict, including 361 women, 332 girls, three men and two boys. In 2015, 637 victims were documented, namely 375 women and 262 girls. However, the number of perpetrators brought to justice remains low with 135 individuals issued from security forces and armed groups convicted in 2014 and 109 members of security forces convicted in 2015. With regards to sexual violence against children, only 49 perpetrators were prosecuted and sentenced by military courts, during the reporting period, namely 37 FARDC soldiers, 10 PNC agents and two armed groups' combatants. It is important that the military justice system increases its efforts to prosecute sexual violence offenders in conflict areas. During the first quarter of 2016, the UNJHRO registered 119 victims of conflict related sexual violence including 75 women, 43 girls, and one boy. Five State agents were convicted by military courts.
25. With regards to the six grave violations against children during armed conflict<sup>7</sup>, at least 149 individuals were prosecuted and sentenced, namely 114 FARDC soldiers, 25 PNC agents and 10 combatants of armed groups, between 1 January 2014 and end of March 2016. At least 76 of them were sentenced to prison terms exceeding 20 years.
26. Since the beginning of 2015, in the western provinces of the DRC, an increasing restriction of the democratic space and of violations of the rights to freedom of expression, of opinion, of association and of peaceful assembly has been observed mainly in provinces hosting opposition and civil society strongholds. PNC agents and FARDC soldiers (including of the Republican Guard) have used excessive force and lethal weapons to restrict such rights and freedoms during demonstrations and

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<sup>7</sup> According to the UN Monitoring and Reporting Mechanism of grave violations against children in armed conflict (MRM), there are six types of grave violations against children during an armed conflict: recruitment and use of child soldiers, killing and mutilation of children, sexual violence against children attacks targeting schools and hospitals, abduction of children and preventing them from humanitarian access.

other gatherings. Arbitrary arrests and illegal detentions of civil society and opposition members and of representatives of the media, carried out by agents of the *Agence nationale de renseignements* (ANR), sometimes *incommunicado*, raise serious concern about the independence of the judiciary. Between 1 January 2015 and end of March 2016, the UNJHRO documented 429 violations related to the enjoyment of fundamental rights and freedoms<sup>8</sup> throughout the DRC. At least 189 of the violations (including 28 victims of extrajudicial killings) were perpetrated by PNC agents, which represents a 44% and a little less than half of the total number of this type of violations. PNC agents remain the main perpetrators of these types of violations.

27. In the context of the upcoming elections, restrictions of the democratic space as well as the increase of the human rights violations committed by PNC agents and directed towards dissenting voices towards the Government's action are worrying trends.

#### **A. Identifying the main causes of impunity**

28. In August 2010, OHCHR published the report of the Mapping exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003. The report documented 617 cases of serious human rights violations and abuses committed by Congolese, Rwandan, Ugandan, Burundian, Angolan and Zimbabwean armies as well as more than 20 Congolese and foreign armed groups. In its conclusion, the report identified three priority areas of institutional reforms to strengthen the policy of transitional justice: the adoption of a law that implements the Rome Statute, the reform of the judiciary and the vetting of security forces. Although significant progress was made with regards to the first priority area, with the promulgation on 31 December 2015 of a series of laws integrating the Rome Statute by amending some provisions of the criminal code, of the military criminal code and of the code of criminal procedure, the number of prosecution of senior officers remains low. This is partly due to an inadequate legal framework and the lack of capacity and resources. The low number of convictions of armed groups' members is also a factor which perpetuates impunity.

##### 1. The slow pace of judicial reform

29. With regard to the reform of the judiciary, the Mapping Report raised some recommendations in terms of transitional justice such as the creation of specialized mixed chambers for the prosecution of international crimes<sup>9</sup>. Several reform proposals for the creation of specialized chambers within the Courts of Appeals and the Court of Cassation with exclusive jurisdiction over international crimes have been put forward in recent years. The chambers would be composed of mixed personnel – national and international – (judges, prosecutors, court clerks, defense team), with a progressive reduction of the presence of international staff. The judges would have jurisdiction over all perpetrators of international crimes, notwithstanding the jurisdictional privileges and immunities foreseen for some individuals exercising public functions such as the Head of State, the Prime Minister, etc. Such courts would have

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<sup>8</sup> During the 2011 pre-electoral period, between 1<sup>st</sup> November 2010 and 30 September 2011, the UNJHRO documented 188 human rights violations related to the electoral process. See the UNJHRO's report on human rights and fundamental freedoms during the pre-electoral period in the DRC, published on 9 November 2011.

<sup>9</sup> War crimes, crimes against humanity, genocide and crimes of aggression.

expertise and specific competence of judicial professionals who try international crimes and should lead to their effective prosecution by a dedicated Chamber.

30. A bill proposed in 2014 was rejected by the Parliament for noncompliance with formal requirements, without a debate on the merits. Another text is currently under discussion within the Ministry of Justice, but the details on its contents are not known. Despite the inclusion of the need to create the mixed chambers with the specific jurisdiction over international crimes amongst the recommendations of the *Etats généraux de la justice* in 2015<sup>10</sup>, no development had yet taken place at the time of drafting this report. The initiatives in terms of transitional justice have so far remained theoretical.

## 2. Institutional framework

31. In addition to the legislative framework, the *Etats généraux de la justice* in 2015 have assessed the institutional framework and the effective implementation of the current judicial system. Several recommendations were made on the following topics: the military operational court (CMO); the independence of the judiciary and the penitentiary system. While some encouraging developments were observed since 2014, aiming at strengthening the capacity of national institutions in terms of fight against impunity, particularly of sexual violence perpetrators, important challenges lay ahead. Since 2015, the Ministry of Justice and Human Rights is involved in a planning exercise to determine a new sectorial policy in terms of judicial reforms based on the conclusions of the *Etats généraux*.

### a. The Military Operational Court (Cour militaire opérationnelle – CMO)

32. The military operational court was established in 2008 pursuant to a presidential prerogative on the setting up of a specialized judicial body in conflict zones<sup>11</sup>. The military operational court's jurisdiction covers "FARDC units operating in North Kivu province"<sup>12</sup> and it handles a significant number of cases every year.

33. However the fundamental procedural guarantees and the right to a fair trial<sup>13</sup> are not safeguarded by the current functioning of this court as the right to appeal against the court's decision, granted to ordinary military courts by the Judicial Code, does not apply to the military operational court<sup>14</sup>. Every ruling issued by the military operational court is final and therefore violates the right to appeal which is guaranteed by the Constitution of the DRC for all first instance judgments<sup>15</sup>. The right to appeal cannot be suspended under any circumstances<sup>16</sup>.

34. One of the recommendations of the *Etats généraux* of 2015 was specifically on the need to rectify this irregularity which violates provisions of the Constitution and to speed up the adoption of a bill

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<sup>10</sup> Recommendations 28 and 326.

<sup>11</sup> Art 18 and 19 of the military judicial code (Law 023/2002 dated 18 November 2002 on the military judicial code).

<sup>12</sup> Art. 1 of ordinance 08/003 of 9 January 2008 on the setting up of the Military Operational Court.

<sup>13</sup> Art. 14(5) of the International Covenant on civil and political rights guarantees that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

<sup>14</sup> Art. 87 and 276 of the Judicial Code (Law 023/2002 of 18 November 2002). Article 87 provides that: "Rulings issued by an operational military court cannot be appealed".

<sup>15</sup> Art. 21(2), of the 2011 Constitution.

<sup>16</sup> Art. 61(5) and 156(2), of the 2011 Constitution.

accordingly<sup>17</sup>. In this regard, a draft legislation amending the Judicial Military Code is pending before the Parliament.

*b. The independence of the judiciary*

35. The Congolese judicial system is organized around civil and military justice. In compliance with its mandate, the UNJHRO monitors the activities of military justice, particularly proceedings launched against violations committed by FARDC soldiers and PNC agents in the course of their duties or off-duty, as well as violations committed by all individuals carrying weapons of war. Unlike several other countries, Congolese military courts have a vast jurisdiction which does not limit itself to offences committed by soldiers on duty. In addition, the UNJHRO provides technical and logistical support to military justice in this regard.
36. Civil justice or common law, has jurisdiction over matters in which military justice is not competent and, since the promulgation of the organic law number 13/011-B dated 11 April 2013 on the organization, functioning and jurisdictions of the Judiciary (except military courts), civil appeals courts have a key role to play in the fight against impunity for crimes of genocide, crimes against humanity, and war crimes<sup>18</sup>. This law enables to organize the repartition of responsibilities between civil and military courts in line with the United Nations principles on the administration of justice through military tribunals, which stipulates that military courts must not try civilians<sup>19</sup>. The effective implementation of this law should strengthen the independence of the judiciary vis-à-vis the FARDC Command. Alleged perpetrators serving in the army can therefore be prosecuted by civil courts without the need to request that they are handed over by the military command. *De facto*, although the civil justice system has formally been given jurisdiction over international crimes three years ago, only one case was opened<sup>20</sup> by this jurisdiction since the promulgation of the law. This could be explained by the fact that in the DRC, most of this kind of crimes are committed by men carrying weapons, which makes them fall under the jurisdiction of military courts.
37. The efficiency of the Congolese military justice system depends on the cooperation granted by the military leadership. In practice, military justice can request that the incriminated soldiers be brought before the military courts but does not have any power to oblige the military leadership to cooperate with the investigations. Moreover, military judges cannot prosecute nor try cases against higher ranked colleagues<sup>21</sup>. As military justice executives are often lower in rank than the security forces leadership, several high ranking officers of the army and the police are often *de facto* out of reach of military justice, except when steps are taken when setting up courts, notably to ensure that military magistrates appointed are of ranks high enough to hear the cases.

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<sup>17</sup> Recommendation 50 of the 2015 *Etats généraux de la justice*.

<sup>18</sup> Art. 91 of Organic Law 13/011-B of 11 April 2013 on the Organization, Functioning and Jurisdictions of the Judiciary.

<sup>19</sup> Draft UN Governing the Administration of Justice through Military Tribunals, Doc. UN E/CN.4/2006/58, of 13 January 2006.

<sup>20</sup> RMP 5005/PG025/KKN and RP 116 involving 32 Bantu and Pygmy pre-trial detainees charged with crimes against humanity and war crimes for facts committed between July and August 2014 in Manono and Nyunzu, Tanganyika province, before the Appeal Court of Lubumbashi, Tanganyika province .

<sup>21</sup> Art 33 to 35 and 140 to 143 of the Military Judicial Code (Law 23/2002 of 18 November 2002).

38. Despite the promulgation of law number 13/005 of 15 January 2013 on the status of FARDC soldiers and its annex VIII on the correlation between ranks and functions, namely to guarantee to military justice an adequate scope which matches its responsibilities, these provisions have yet to be implemented effectively. For example, senior military prosecutors do not all have the rank of Brigadier general, as stipulated in the annex, which makes extremely difficult for them to prosecute suspects with the same or higher rank. Compliance with the annex was deemed as key during the *Etats généraux de la justice*<sup>22</sup>; the situation remains however unchanged to date.
39. This institutional weakness fosters interference with the judiciary and instrumentalization of judicial proceedings. Thus, provisional releases may at times translate into *de facto* acquittals, in cases where the defendants are no longer summoned to appear in court and investigations are not systematically conducted. The suspensive effect of the appeal poses the risk that it could be translated into a *de facto* acquittal. Thereby, an individual who is not in pre-trial detention when sentenced and appeals the ruling, may remain free until the appeal judgement is given. Consequently, if appeals procedures are not swiftly pursued, the accused can potentially remain free without having to ever serve his/her sentence.
40. In the current electoral context, concern has been expressed in relation to actions taken by the judiciary and viewed as Government interference in the justice system. For example, the Special Rapporteur on the situation of human rights defenders expressed concern about “the arbitrary detention of three human rights defenders, Mr Fred Bauma Winga, Mr Christopher Ngoy Mutamba and Mr Yves Makwambala, which seem to be related to their legitimate and peaceful human rights activities” as well as “allegations of illegal obtaining of evidence, procedural flaws and unfair trials”. The Special Rapporteur further “voiced his concern at the difficult situation in which human rights defenders exercise their right to freedom of association, of peaceful assembly, of opinion and expression, in the DRC”.<sup>23</sup>
41. The fact that the judiciary has limited resources is an additional and major challenge to the fight against impunity. Military courts are overwhelmed with cases. Approximately 400 military magistrates (judges and prosecutors) are assigned to 50 main military courts and external sections of prosecutor’s offices and responsible for processing a significant number of cases. With regards to civil courts, out of 660 scheduled to be disseminated throughout the country, one third has yet to be set up. Moreover, the anticipated number remains insufficient to cover the needs of a country with an estimated population of 75 million in 2014, and a territory of 2.3 million square meters, including conflict affected areas<sup>24</sup>. In addition, these jurisdictions have very limited budgetary resources<sup>25</sup>.

c. *The Congolese penitentiary system*

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<sup>22</sup> Recommendations 17 and 323.

<sup>23</sup> A/HRC/31/55/Add.1, Report of the Special Rapporteur on the situation of human rights defenders, paragraph 46, page 11.

<sup>24</sup> The World Bank, <http://www.worldbank.org/en/country/drc> (last visit on 3 June 2016).

<sup>25</sup> The budget allocated to the Judiciary for 2016 is 130,575,728,504 FC, which represents 1.79 % of the total national budget. In 2015, the judiciary was allocated 131,034,746,212 FC, representing 1, 98% of the total budget. In 2014, 126,016,752,000 FC were allocated, or 1, 91% of the total budget. These budget allocations remained relatively low (in comparison to others State institutions). Moreover, they did not take into account the real needs (travel costs, preliminary investigations, etc.) of the judiciary, hence weakening its inquisitorial and repressive activities.

42. Weaknesses in the penitentiary system have been raised on multiple occasions during 2015 *Etats généraux de la justice*, and identified as a major obstacle to the fight against impunity. The UNJHRO has documented the escape of 2,604 people from detention centres in 2014 and 2015<sup>26</sup>. Mass escapes take place on a regular basis throughout the country<sup>27</sup>. The most frequent causes are negligence and corruption of the guards, as well as the bad conditions of the prison infrastructures. Detainees sometimes also escape from medical centres after being transferred there to receive medical care.
43. Weaknesses in the penitentiary system also result in a lack of confidence by the population in the judicial institutions. Mass escapes of detainees also constitute a threat for the victims, witnesses and human rights defenders involved in investigations, and expose judges and judicial personnel. Finally, there are also risks of recidivism. The escape of Thomas Basele Besantu, *alias* Colonel Thoms<sup>28</sup>, from the Osio high-security prison, near Kisangani, Tshopo province, one year after his conviction by the garrison military court of Kisangani, on 9 June 2009, to life imprisonment and to fines for crime against humanity, voluntary assault and battery, illegal detention of weapons and ammunitions of war, harmful destruction and rape with violence, illustrates this situation. Since then, the militiaman has reconstituted his armed group and resumed his illegal activities. He has allegedly perpetrated grave abuses against the populations of forest lands between Ubundu (Lowa) and Opala territories, Tshopo province, and caused the forced displacement of more than 4,000 people in this region.

### 3. Need for vetting security forces

44. The vetting of security forces is essential to ensure the quality of agents serving within the State forces as well as to hold senior officers accountable, including for cases of human rights violations. The lack of vetting is a concern in the recruitment process of soldiers by the security forces through the ordinary procedure and during the integration of new personnel.
45. The *Etats généraux de la justice* of 2015 have recommended to strengthen the control by the *Inspectorat général des services du Conseil judiciaire* in order to contribute to a robust vetting of security forces. The *Inspectorat général* has the mandate to “control the functioning of jurisdictions, prosecutors and all services managed by the *Conseil judiciaire*”<sup>29</sup>. It does not, however, have the authority to refer judicial cases, and its role is therefore limited to investigations and recommendations, which does not allow it to fulfil its mandate of control and overview. It is imperative to nominate

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<sup>26</sup> 1,646 escaped persons in 2014 and 958 in 2015. This number includes persons accused and condemned serving their sentence(s).

<sup>27</sup> One illustrating example is the mass escape of 18 October 2014 of 326 out of the 433 detainees (130 condemned persons and 196 people in preventive detention) from the prison of Butembo, North Kivu province, following an attack on the prison by four men armed with AK-47 trying to free nine detained soldiers who turned out to be absent from the prison. To this day, only about a hundred of those escaped persons have been found.

<sup>28</sup> Thomas Basele Besantu Lutula, *aka* Colonel Thoms, is a Mayi-Mayi combatant operating in the equatorial forest, between Tshopo, Maniema and Tshuapa provinces. He momentarily joined the armed forces in 2005 after benefiting from the disarmament, demobilization and reintegration programme. He however quickly left the armed forces, partly because he was frustrated by his low military rank, and went back to his poaching activities. Between July and August 2007, he besieged several villages in the Opala territory, Tshopo province, and committed looting, ill-treatments and mass rapes. After investigation and trial, he was judged guilty on 9 June 2009, along with four of his subordinates, by the Garrison Military Court of Kisangani in a mobile hearing in Lieke Lesole. In June 2010, after he had been serving his sentence for a year in the Osio high-security prison, near Kisangani, Thoms escaped together with ten other inmates.

<sup>29</sup> Article 2 of Ordonnance 87-215 of 23 June 1987 creating the *Inspectorat général des services du Conseil judiciaire* (J.O.Z., number 13, 1 July 1987, p.5).

superior officers to empower the effective implementation of the *Inspectorat général*'s full controlling mandate. A draft law addressing these gaps is currently being prepared by the Ministry of Justice.

46. These legal and institutional gaps in the quality control of State defense and security agents means that high-rank officers may have perpetrated human rights violations in the past and remained unpunished. For instance, Colonel Ilunga Kabambi currently holds a position in operations despite charges against him in the case<sup>30</sup> of the extrajudicial execution of a human rights defender<sup>31</sup>, Pascal Kabungulu, in Bukavu, South Kivu province, on 31 July 2005. These charges have remained un-prosecuted since 22 December 2005, when the garrison military tribunal of Bukavu declared it had no jurisdiction over them and withdrew itself from the case, later transferred to Bukavu military court. No date has yet been set for the trial to resume and all the accused have been temporarily released. Colonel Ilunga Kabambi has remained active within the armed forces without being judged, and has not even been subjected to disciplinary measures.

#### 4. Low number of convictions for combatants of armed groups

47. As described above, the result of UNJHRO monitoring activities illustrates that armed group members are allegedly responsible for a significant number of violations committed against the population. The number of human rights abuses perpetrated by armed groups for which there is some kind of judicial follow-up – such as the opening of a criminal and a judicial investigation, or the referral to a court – remains very low. This is mainly due to the volatile security situation in the affected areas, which complicates investigations, particularly in terms of identifying the victims and the alleged perpetrators.

48. Thus, between January 2014 and end of March 2016, according to information available to the UNJHRO, 28 combatants of armed groups have been convicted by military courts for acts of common crime such as abductions, criminal association, participation in an insurrectionary movement, as well as for international crimes such as crimes against humanity of rape, murder and torture. Seventeen of them were sentenced to prison terms ranging from nine years to life imprisonment. The 11 other combatants were sentenced to the death penalty.

49. Abuses perpetrated by combatants of various armed groups can be prosecuted on several legal grounds. They fall under the category of common crime (murder, homicide, assault and battery) but also war crimes and crimes against humanity. Some of these abuses can be prosecuted as organized crime offenses (such as criminal association). Despite the existence of an adequate legislative framework, almost no legal actions have been taken, mainly because of the difficulty in identifying and apprehending those responsible.

50. For example, despite the conclusion by military justice authorities of several investigation missions conducted with the support of MONUSCO and partners, which enabled the identification of several

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<sup>30</sup> FARDC Colonel Ilunga Kabambi and several soldiers were charged with criminal association, murder, armed robbery, dissipation of ammunition and defamation.

<sup>31</sup> Pascal Kabungulu worked as Executive Secretary of the NGO “*Héritiers de la justice*”, which had notably published a report on the looting of natural resources by the *Rassemblement congolais pour la démocratie* (RCD-Goma), in which Colonel Ilunga was explicitly named.

victims of serious abuses that could amount to war crimes and crimes against humanity<sup>32</sup>, as of 31 March 2016, the military justice system had referred no case to civil or military Courts to try those accused so that victims could have access to justice and compensation.

51. The efforts of military justice authorities must be highlighted, in certain cases having had a significant impact in the fight against impunity in the DRC. On 29 December 2014, Bukavu garrison military tribunal, South Kivu province convicted to life imprisonment and other forms of privation of liberty a former FDLR combatant, Kizima Lenine Sabin<sup>33</sup>. On 16 April 2014, Ituri military garrison tribunal, at the end of mobile court hearings in Mambasa, Ituri province, convicted 13 Mayi Mayi Simba/Lumumba combatants, including a woman, to life in prison for war crimes of looting and crimes against humanity of murder, rape, deportation and torture, committed between November 2012 and February 2013. Six other accused, including a woman, were acquitted. These convictions are a strong signal for perpetrators of human rights abuses, showing that crimes of such gravity do not go unpunished.
52. Several factors can explain the weak number of convictions. Political considerations may influence the opening of investigations and of judicial proceedings against armed group members. The beginning of negotiations for the handing over of combatants, the launching of military operations or of the disarmament, demobilization and reinsertion of certain groups may constitute priorities higher than justice. Judicial officials are faced in these cases with situations in which the prosecution of perpetrators of grave crimes is bypassed by higher interests<sup>34</sup>.
53. *De facto* immunities of certain individuals holding customary powers constitute an additional obstacle to the fight against impunity. The candidature for the provincial elections in North Kivu of Ntabo Ntaberi Sheka, commander of the Mayi Mayi Sheka group, allegedly responsible for serious human rights abuses, including mass rape committed in July/August 2010 in Walikale, North Kivu<sup>35</sup> province is an example of this<sup>36</sup>. There has been no progress in the Walikale case file and the arrest warrant issued against Sheka remains unexecuted. In six years, despite the fact that his whereabouts are well known in Walikale territory, no security force has dared executing the arrest warrant. In a context of

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<sup>32</sup> From 1 October to 31 December 2014, at least 237 people – including 65 women and 35 children – were killed by suspected ADF combatants. At least 47 civilians were wounded, 20 were abducted and two were victims of sexual violence. During this period, suspected ADF elements have attacked at least 35 villages, using machetes, hammers and knives, amongst others, and carrying out summary executions of civilians. During the same period, the UNJHRO also documented the destruction and looting of houses. From 28 February 2016 to March 2016, civilians were targeted by suspected ADF combatants in several villages on both sides of the border between North Kivu and Ituri, in Bambuka-Kisiki (Beni territory, North Kivu province) and Bandavilemba (Irumu territory, Ituri province).

<sup>33</sup> Kizima Lenine Sabin is responsible for several violations of human rights and international humanitarian law, including summary executions, rape and looting in Bumaguba, Shabunda territory, South Kivu province, between February and August 2010 and in March 2011.

<sup>34</sup> See also the “UNJHRO report on Progress and obstacles in the Fight against impunity for sexual violence in the Democratic Republic of the Congo” published on 10 April 2014, in which this obstacle had already been highlighted with regard to the fact that the delay in transferring General Bosco Ntaganda to the ICC was used as a way to avoid developments that “would constitute an obstacle to any peace deal”, p. 17.

<sup>35</sup> Between 30 July and 2 August 2010, a coalition of different armed groups, including the Mayi Mayi Sheka group, attacked several villages in Walikale territory, North Kivu province, raped at least 387 civilians and subjected several others to cruel, inhuman or degrading treatments (See Final Report of the UNJHRO fact-finding missions into the mass rapes and other human rights violations committed by a coalition of armed groups along the Kibua-Mpofi axis in Walikale territory, North Kivu, from 30 July to 2 August 2010).

<sup>36</sup> See also Annex, Emblematic case Walikale.

armed conflict, where large scale violations continue to be committed, the opening of proceedings could have a dissuasive effect for the members of the groups.

54. Legal proceedings opened against armed group combatants not only send a strong signal to the national level, but also encourage the imposition of sanctions by regional and/or international bodies, which reduce the capacity and mobility of those groups with the view to deprive them of their support and economic and financial resources. Legal action also allows to strengthen current similar proceedings in third countries (like in Europe against FDLR). Furthermore, in a context where regional judicial cooperation is a new concept, legal proceedings by a State for cases perpetrated on its territory cannot be ignored neither by neighbouring countries, nor by third countries from where proxies of armed groups active in the DRC could operate. This is of crucial importance in a context where some actors are on foreign soil or operate beyond national borders.
55. Finally, an increase of judicial proceedings against armed groups would have a major impact in the vetting of security forces during Demobilization, disarmament and reintegration (DDR) programs and incorporation of former combatants within the national armed forces. If proceedings against the combatant of an armed group result in a conviction, he would be ineligible to integrate the National forces<sup>37</sup>. The existence of legal proceedings (investigation opened, warrant issued) and information collected by the judicial bodies may also be taken into account on the overall assessment of the ability of an individual to integrate the security forces, even in the absence of a final conviction. Similarly, since eligibility for amnesty measures generally excludes cases of grave crimes, the initiation of judicial procedures for suspected grave crimes could potentially have an impact in restricting admissibility to amnesties.

### **B. Main challenges with regard to the protection of victims during judicial proceedings**

56. Statements of victims and witnesses are essential elements of judicial proceedings. In most court records, only these declarations set out the judge's conviction in a context of lack of physical evidences. Their participation in investigations and trials is crucial for the outcome of the proceedings.
57. However, the difficulty in accessing justice, the slow pace of the judicial system, which lacks capacity, material and financial resources as well as independence, tend to exacerbate the lack of confidence of the population in the judiciary and is not conducive to cooperation with the judicial system.
58. Moreover, perpetrators of crimes may intimidate and threaten victims to force them not to file complaints, to abandon proceedings or not to testify. The inability of the State to protect victims and witnesses at all stages of the procedure has a direct negative impact on the fight against impunity and denies the right of access to justice for victims.<sup>38</sup>
59. At present, there is no mechanism or State institution dedicated to the protection of victims and witnesses in the DRC. Although legal provisions exist and partly grant protection to victims and witnesses, they are general and very limited, and are often not implemented. The context of armed

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<sup>37</sup> Article 27 of Law 13/005 of 15 January 2013 on the Status of FARDC soldiers: "No one may be recruited as part of the officers and non-commissioned officers [of the FARDC] if he doesn't satisfy the following conditions: [2] be of good character, and [3] not having been convicted of offenses contrary to honor, integrity, and morality."

<sup>38</sup> See Annex – emblematic cases: Yalisika and Musenyi

conflict makes this protection even more difficult to implement in areas where State authority is not present or under-represented.

60. However, for victims of sexual violence, the UNJHRO, along with State authorities, has established protection networks<sup>39</sup> and organized capacity-building activities on the protection of victims and witnesses of sexual violence, including for police officers, magistrates and judges. As each case has its own specificity, special measures of protection of victims and witnesses are put in place before, during and after the proceedings, to facilitate the trial of the alleged perpetrators and the participation of victims and witnesses in various stages of the procedure. These protection measures require means and resources, which are often insufficient. Also, all the actors involved in the fight against sexual violence didn't receive adequate training yet or do not have the means to implement these measures. Therefore, a law on the protection of victims and witnesses is essential.
61. The insertion of Articles 26ter and 74bis in the Code of Criminal Procedure by the Law 06/19 of 20 July 2006 amending and supplementing the Code of Criminal Procedure is a positive development in this respect since they explicitly provide a legal basis for the competent judge and prosecutor to decide and implement protective measures. However, these articles do not give any indication on the way to fulfil protection obligation since the articles do not refer to concrete measures that the judge should take. Accordingly, the implementation of judicial protection measures depends on the different judges, creating legal uncertainty for the victims who have no guarantee for protection. In some cases, following the actions taken by victims' counsellors and jurisdiction, specific protection measures have been taken with the help of national and international organizations, based on the provisions of the Rome Statute and the Rules of procedure and evidence. Therefore these victims have been given the right to appear under a pseudonym, with their faces hidden and all wearing the same clothes and shoes.
62. For instance, during the trial of Lieutenant-Colonel Bedi Mobuli Engangela, aka Colonel 106, concluded with his conviction on 15 December 2014, protective measures have been put in place to ensure the anonymity of victims such as the use of disguises, partitions, coding of the names and a psychological follow-up for all victims. In the Minova case<sup>40</sup>, for which a verdict was delivered on 5 May 2014, the Military Operational Court accepted the implementation of protection measures for the victims who also benefited of psychological support and transportation to go to the hearing.
63. However, the issue of victims' protection is only addressed in terms of the right for the victim to access to criminal trial while the establishment of legal and institutional frameworks sufficiently independent and funded would be essential to an accountability policy and a strategy to fight against impunity.
64. The draft law of 3 September 2013 for the prosecution of crimes of genocide, crimes against humanity and war crimes complementing the Organic Law on the organization, functioning and jurisdiction of the judiciary could have overcome this legal vacuum as it called for the creation, of a unit of protection

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<sup>39</sup> See Annex – emblematic case: Kavumu.

<sup>40</sup> In November 2012, after the capture of Goma by the M23 armed group, FARDC soldiers withdrew to Minova, in South Kivu province, where they committed mass rapes and other human rights violations during a period of 10 days. On 5 May 2014, the Military Operational Court of North Kivu delivered its verdict on this case and sentenced 26 FARDC soldiers to prison terms ranging from three years to life imprisonment for crimes against humanity. Thirteen other soldiers have meanwhile been acquitted.

of victims and witnesses (UNPROVIT), within the registry of each specialized division. This unit would have been responsible for overseeing the protection of victims and witnesses during the preliminary phase and during the trial. However, the bill was rejected in May 2014 for technical inconsistencies and has not been resubmitted to Parliament.

65. More recently, on the institutional level, the FARDC Action Plan in the fight against sexual violence provides a strategic axis for the protection of victims which brings a more binding institutional framework to the protection responsibilities of FARDC and military magistrates. This axis has the specific objective of facilitating public action, while respecting and taking into account the right of victims to testify without fear of reprisals. The plan highlights for instance the need for the military – especially the commanders –, to take all necessary measures to avoid that victims of sexual violence, witnesses or affiliated persons are not subjected to threats (physical or moral) or physical abuses by the alleged perpetrators or any soldier placed under their command. The Commission in charge of the implementation of the Action Plan was established by a ministerial decree on 29 October 2014. However, more than a year after its adoption, very few of the commitments have been implemented.

#### **IV. Actions taken by the Government to meet its commitments in the fight against impunity**

##### **A. Legal framework**

66. From 27 April to 2 May 2015, in Kinshasa, the Ministry of Justice and Human Rights, jointly with and the *Conseil supérieur de la magistrature* (High Judicial Council) organized the *Etats généraux de la justice* in order to identify weaknesses of the judicial system and establish a roadmap to strengthen justice and develop a national reform program. This initiative, which brought together nearly 300 participants of the civil and military justice sector in the country, was able to draw a precise inventory of the situation and identify challenges and obstacles in the fight against impunity. In total, 369 final recommendations were issued; some referring to intrinsic obstacles to the judicial system and the Congolese legislative framework, including the lack of appeal of first instance judgments rendered by the CMO, limitations of the actions of *Inspektorat général* or the legality of the death penalty.
67. Since the *Etats généraux*, the Ministry of Justice and Human Rights is involved in the drafting of legislation to strengthen the legal framework for better accountability.<sup>41</sup> Nevertheless, more than a year after completion of the *Etats généraux*, few concrete changes to the legal framework were made.
68. Among the legislative progresses recorded recently, was the adoption, respectively on 8 and 10 December 2015 by the Senate and the National Assembly, followed by the promulgation by the

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<sup>41</sup> See Final Report of the Mission in charge of developing priority documents for the reform of the judiciary, prepared by the Ministry of Justice and Human Rights' Senior legal team for drafting priority laws on 10 March 2016: draft Organic Law amending and complementing Organic Law 13/011-B of 11 April 2013 on the Organization, functioning and jurisdiction of the judiciary courts; Draft Law relating to Deprivation of liberty for national security reasons; Draft Law on the Organization of mediation for land, family and customary issues; Draft Law amending and supplementing the Decree of 6 August 1959 on the Congolese Code of Criminal Procedure; Decree-laws establishing a "Compensation Fund for victims of sexual violence" in the DRC; Draft Law relating to the Exercise of forensics in the DRC; Draft Decree on a Code of Ethics for prison staff in the DRC; Law amending and supplementing the Organic Law 13/010 of 19 February 2013 relating to the Proceedings before the Court of Cassation; Inter-Ministerial Decree on the enjoyment by children with one or both parent(s) imprisoned of the right to sanitation and the right to food; Table of salary scale for judges; Report on the Updating of criminal fines rates.

President of the Republic on 31 December 2015<sup>42</sup>, of legislation on implementation of the Rome Statute of the International Criminal Court (ICC), which amends and complete the Criminal Code, the Code of Criminal Procedure and the Military Criminal Code<sup>43</sup>.

69. This development for the fight against impunity for serious crimes incorporates in the Criminal Code a definition of international crimes, removes imprecise definitions of these crimes in the Military Criminal Code, abolishes the immunity of all officials including the President of the Republic and the deputies for these crimes, and excludes the possibility to grant amnesty for international crimes. This new body of law also creates a Section III *bis* to the Criminal Procedure Code on cooperation with the ICC and a Section IV on the rights and protection of the accused, victims, witnesses and intermediaries, including provisions completing the law on sexual violence.<sup>44</sup> However, it merely underlines the need to “protect” without providing effective protection to victims or establishing national mechanisms for the implementation of effective protection measures.
70. It is unfortunate that the legislation maintained the death penalty as punishment for crimes of genocide, crimes against humanity and war crimes. In DRC, the death penalty is still imposed by judges despite a moratorium on its application.<sup>45</sup> Its presence in the range of legal penalties is an issue for regional and international judicial cooperation, notably as it can be a justification for third countries to refuse extradition to the DRC.<sup>46</sup>
71. The adoption of Law 15/013 of 1 August 2015 on the rules for implementing women’s rights and gender parity, pursuant Articles 14 and 15 of the Constitution, represents a positive step forward in the fight against sexual violence. This law reaffirms the protection and promotion of women's rights and protection against gender-based violence, both in public and private life. Article 26 of the Law provides that the State shall ensure the judicial response to victims of gender-based violence, as well as reparation and socioeconomic reintegration.
72. In addition, a draft law on the status of a public institution called “reparation fund for victims of sexual violence” was developed by the Office of the Presidential Advisor on Sexual Violence and Child Recruitment, experts appointed by the Ministry of Justice and Human Rights and by the specialized committees of the Senate. This fund is to assist the Government in defining and conducting a national policy against sexual violence, through prevention, detection and repression mechanisms, and to support victims of sexual violence aiming at their re-socialization and rehabilitation. The project provides assistance to victims at all stages of the judicial process, including through information on their rights, guarantees of protection for the victims and their families, equitable and fair reparations in total at the outcome of the legal proceedings, as well as the coordination and support for private initiatives in protection, reparation and assistance to victims.

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<sup>42</sup> Published in the *Journal officiel* of the DRC on 16 February 2016.

<sup>43</sup> Law 15/022 of 31 December 2015 amending and supplementing the Decree of 30 January 1940 on the Criminal Code; Law 15/023 amending Law 024/2002 of 18 November 2002 on the Military Criminal Code; Law 15/024 amending and supplementing the Decree of 6 August 1959 on the Code of Criminal Procedure.

<sup>44</sup> Law 06/018 of 20 July 2006 amending and supplementing the Decree of 30 January 1940 on the Congolese Criminal Code.

<sup>45</sup> The last execution in application of the death penalty in the DRC was in 2003.

<sup>46</sup> For example, neighbouring countries such as Rwanda and Tanzania may refuse extradition to the DRC because of the death penalty in its legislation.

## **B. Institutional developments**

73. The Ministry of Justice and Human Rights, the *Etat-Major* of the FARDC and the General Commissariat of the PNC continued to work closely with the UNJHRO in a frank dialogue which led to the organization of joint missions and other activities in support to the Congolese authorities.<sup>47</sup> The UNJHRO benefits from a good collaboration with the Ministry of Justice and Human Rights, through meetings and sharing of information and comments provided before and after the publication of UNJHRO reports. The *Etat-Major* of the FARDC and the General Commissariat of the PNC follow attentively and react to UNJHRO monthly reports on human rights violations committed by soldiers and agents under their supervision. The UNJHRO also welcomes the adoption of several important legislations, as developed in the previous section of this report.
74. The implementation of the Action plan to end and prevent the recruitment and the use of children signed by the Government of the DRC on 4 October 2012 constitutes another positive commitment. The fight against impunity constitutes one of the four implementation axis of this Plan and has encouraged the arrest of three leaders of armed groups during the reporting period.<sup>48</sup> The conviction of individuals involved in child recruitment would also send a strong signal that this serious violation may go unpunished in a country where thousands of children have been associated with armed forces and armed groups.
75. The effective implementation of the Organic Law 13/011 of 21 March 2013 creating, organising and functioning the National Commission on Human Rights (CNDH) with the designation of its members on 1 April 2015 and their appointment on 23 July 2015, constitutes another strong signal in the fight against impunity. As a national institution on human rights, the CNDH aims to be an independent, pluralist and apolitical tool responsible for ensuring compliance with human rights and with the different mechanisms that promote and protect fundamental freedoms. The Commission is vested with a controlling power on the actions and omissions of the State and other actors that could constitute human rights violations. It is now essential that the State provides the Commission with sufficient resources necessary to the exercise of its powers independently and impartially in the interest of the protection and promotion of human rights.

## **C. Judicial developments**

76. During the reporting period, the Government of DRC demonstrated its will to commit in the fight against impunity, in particular by sentencing some State agents, including some high ranking officers. From January 2014 to March 2016, at least 447 FARDC soldiers and 155 PNC agents were convicted by military tribunals for human rights violations committed throughout the provinces of the country. From July 2014 to March 2016, 428 convictions of perpetrators of sexual violence (including civil

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<sup>47</sup> In 2014, the UNJHRO supported seven investigation missions and one mobile court hearing, in Orientale, South Kivu and Maniema provinces. In 2015, the UNJHRO supported nine mobile court hearings and nine investigation missions. Between January and March 2016, The UNJHRO supported seven investigation missions, two mobile court hearings and a notification to witnesses' mission.

<sup>48</sup>See paragraph 37 of this report.

perpetrators) were pronounced, with the support of legal clinics supported by the UNJHRO, in 13 provinces.<sup>49</sup>

77. Furthermore, the Government committed to prosecute the perpetrators of child recruitment in accordance with the 2009 Law on child protection. Thus, at least three leaders of armed groups were arrested and charged with child recruitment during the reporting period. Namely, Justin Banaloki, aka Cobra Matata,<sup>50</sup> leaders of FRPI armed group; Muchoma Bahani<sup>51</sup> and Habarugira,<sup>52</sup> members of Nyatura armed group. Nonetheless, only the latter has so far been the object of a thorough investigation and his trial is due to start in the coming months. In total, 50 perpetrators of grave violations against children were sentenced during the period under review, including 37 FARDC soldiers and 10 PNC agents.
78. Yet, most of the State agents convicted are junior or low ranking officers. Only a few senior officers were prosecuted and convicted by military courts during these last two years.<sup>53</sup>
79. On 28 March 2016, the Military Garrison Tribunal of Kinshasa-Gombe, sitting on a mobile court hearing at the Ndolo Military prison, opened the trial against FARDC soldiers of the former DRC contingent deployed at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). This trial follows investigations made by the Congolese judicial authorities on acts allegedly committed by the deployed elements, of which 12 relate to cases of sexual violence. The UNJHRO welcomes these legal measures as a positive development and encourages the judicial authorities to pursue procedures in respect of judicial guarantees and principles of protection of victims and witnesses.
80. Following a recommendation made during the *Etats généraux*,<sup>54</sup> three workshops gathering judicial actors in the provinces of North Kivu, South Kivu, Ituri and Tshopo were organised last year to identify prioritisation criteria and select priority cases.<sup>55</sup> Such strategy would enable the judiciary to focus on the prosecution of the most serious crimes and to fight against impunity more effectively, by maximizing available resources and the impact of justice. The provincial authorities settled criteria,

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<sup>49</sup> Since July 2014, with the financial support of the Government of Canada through projects to fight against sexual and gender-based violence (and in September 2014 and December 2014 with the support of the United Kingdom and of the UN team of experts on the rule of law and sexual violence in conflict, respectively), the UNJHRO supported NGOs in the establishment of legal clinics providing free legal assistance to victims of sexual violence.

<sup>50</sup> See annex, Emblematic case: Cobra Matata, former FRPI leaders, was arrested on 2 January 2015 and is still detained at Ndolo prison, in Kinshasa. He is charged with child-recruitment and use of child soldiers, but no investigation has been opened until now.

<sup>51</sup> Muchoma Bahani, former Nyatura combatant, was arrested on 28 February 2014 in Kotakoli, Kongo-Central province. An arrest warrant dated 23 October 2013 was issued charging him with child-recruitment and the use of child soldiers. He is detained at Ndolo prison, in Kinshasa, and no investigation has been opened until now.

<sup>52</sup> Habarugira, former Nyatura combatants, was arrested on 9 August 2014 in Masisi, North Kivu province. He is detained in Goma and charged with several counts, including child-recruitment.

<sup>53</sup> According to information made available to the UNJHRO, seven senior officers, including a general and three colonels of the FARDC, as well as three senior commissioners of the PNC, were convicted by military courts for acts constituting human rights violations.

<sup>54</sup> Democratic Republic of the Congo – Ministry of justice and human rights (August 2015): General Report of the *Etats généraux de la justice* in DRC, para. 367.

<sup>55</sup> With the support of the United Nations development programme (UNDP), the financial support of the UN Team of Experts on the Rule of Law and Sexual Violence in Conflict (ToE), and in cooperation with the International Centre for Transitional Justice (ICTJ), the Justice and Correction Section (JCS) and the UNJHRO.

such as the seriousness of the crimes or the number of victims, and identified a total of 17 judicial cases. Since the adoption of these provincial strategies, one case already led to a conviction and significant developments are noted in some others.

#### 1. Judicial developments identified in 2014

81. UNJHRO welcomes the conviction, at the end of 2014, of two former FARDC commanders whose names were on the list of five senior officers of the army transmitted to the President Joseph Kabila Kabange by a delegation of the United Nations Security Council in 2009. On 7 November 2014, the High Military Court sentenced General Jérôme Kakwavu, former leader of the *Forces armées du peuple congolais* (FAPC) and FARDC General in Ituri, to 10 years of imprisonment for his responsibility, both individual and as a commander, for the war crimes of rape, murder and torture committed in Ituri between 2003 and 2005.
82. On 15 December 2014, following a trial from 11 August to 7 October 2014, the Military Court of South Kivu in Bukavu convicted Lieutenant-Colonel Bedi Mobuli Engangela, *alias* Colonel 106,<sup>56</sup> for crimes against humanity for rape, inhuman treatments, sexual exploitation, imprisonment and murder and sentenced him to terms of 10 years in prison and life imprisonment. The most severe punishment was applied and he was convicted to life imprisonment as well as the inability to exercise his civil and political rights for 5 years and to damages to be paid to the victims *in solidum* with the Congolese State.

#### 2. Judicial developments identified in 2015

83. On 30 October 2016, the Military Court of Maniema, in Kindu, convicted the Deputy Commissioner Amuri Mpia Abraham in the case called “Dembo” for several human rights violations perpetrated by agents of the *Groupe mobile d'intervention* of the PNC under his command, in May 2012, in Dembo, Kibombo territory, Maniema province.<sup>57</sup> The Court sentenced him to 15 years of imprisonment for crimes against humanity.
84. On 19 December 2015, Thomas Lubanga Dyilo and Germain Katanga were transferred from The Hague, in the Netherlands, to Makala prison, in Kinshasa, to serve the end of their prison sentences pronounced by the ICC, on 10 July 2012 and 23 May 2014. This is the first time that the ICC designated a State to ensure the execution of sentences it pronounced. This development constitutes a positive sign in terms of cooperation between national institutions and the ICC. In November 2015, the ICC remitted the sentence of M. Katanga for good conduct, which should have led to his release on 18 January 2016. However, he remains in detention on new charges, as he is prosecuted by the High Military Court for different crimes than those examined by the ICC. He is now charged with child recruitment on children of less than 15 years old, participation in an insurrectionary movement and crimes against humanity for murder, committed in Ituri, between 2002 and 2005.

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<sup>56</sup> Lieutenant-Colonel Bedi Mobuli Engangela, aka Colonel 106, was an FARDC Commandant in South Kivu province. He was suspected of inciting to desertion, recruiting children, collaborating with Mayi-Mayi and FDLR combatants and taking part in numerous attacks against the local population in Kalehe territory, South Kivu province.

<sup>57</sup> In 2012, PNC agents, under the command of Deputy Commissioner Mpia Abraham, were sent on mission to Dembo, Kibombo territory, Maniema province, to restore the State authority. They committed rapes, lootings, tortures and other human rights violations. Seventy-nine persons testified during their trial, including victims of sexual violence.

85. Progress was also noted in the prosecution of inter-ethnic massacres perpetrators in North Kivu and Ituri provinces, with the arrest and the conviction for criminal association of Emmanuel Biriko, on 18 May 2015, by the military tribunal of Rutshuru, upheld on appeal by the Military court of Goma, on 8 January 2016; and the arrest, on 2 January 2015, of the FRPI leader, Justin Banakoli, *alias* Cobra Matata, by the Congolese authorities in Bunia, Ituri province.
86. The UNJHRO also note that legal actions are pursued against a few FARDC soldiers who took part to the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), for human rights violations. Trials started in March 2016, in Kinshasa.

### 3. Progress in the fight against impunity for conflict related sexual violence

87. The commitments of the Government in the fight against impunity for conflict related sexual violence are also a positive sign<sup>58</sup>. The appointment, on 14 July 2014, of Madam Jeannine Mabunda Lioko as Presidential adviser on sexual violence and child recruitment in the DRC reinforce the existing institutions<sup>59</sup>. In December 2014 and October 2015, Madam Mabunda launched two campaigns called “Break the silence” (in North and South Kivu provinces) to encourage victims of sexual violence to denounce and fight against sexual violence and to promote access to justice and core services. These campaigns set up an emergency telephone line for victims of sexual violence and pointed out the efforts made by the medical staffs treating victims of sexual violence in the 140 referenced medical centre of the country. Furthermore, in his state-of-the-nation speech, on 14 December 2015, the Head of State renewed his commitment to achieve “the morally acceptable objective of zero tolerance in the DRC”. He also underlined the efforts of the military justice to sentence rape perpetrators without consideration of rank or grade.
88. The UNJHRO welcomes the creation, since 28 August 2014, of the FARDC Action plan against sexual violence which contains a specific strategic axis to protect victims and witnesses of sexual violence. Moreover, a specific Commission in charge with the implementation of the FARDC Action plan was created by Ministerial order on 29 October 2015 and must act on five priority actions: prevention, prosecution, protection, communication and monitoring and evaluation. During the reporting period, the Commission gathered to determine and adopt its areas of work, its internal rules and the FARDC directives in the fight against impunity for sexual violence. Financial constraints delayed the implementation of the Action plan which would bring a more constraining institutional framework to

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<sup>58</sup> See also the UNJHRO Report on “Progress and Obstacles in the fight Against Impunity for Sexual Violence in the Democratic Republic of Congo”, published on 10 April 2014. In this report, several recommendations were made to the Government, including to provide the justice system with more adequate human and financial resources, particularly to allow its officials to independently conduct investigations and prosecute alleged perpetrators; to accelerate reforms to create and empower specialized mixed chambers to prosecute the perpetrators of the worst human rights violations; and to ensure that all victims of sexual violence have access to courts and tribunals. The Government adopted several positive measures to implement those three important recommendations, including the creation of special cells for the repression of sexual and gender-based violence within all prosecutors’ offices; the appointment of several women judges in the Eastern part of the country, and the organization of mobile court hearings in remote and rural areas. At the local level, there had been a better coordination between State institutions (administrative, judicial and security) with regard to the prevention and repression of sexual and gender-based violence and to the implementation of the National Strategy to Combat Sexual and Gender-based Violence.

<sup>59</sup> In 2009, the DRC adopted a National Strategy to Fight against Impunity for Sexual and Gender-based Violence and, in March 2013, it created a Gender Thematic Group. Both are managed by the Ministry of Gender.

the protective obligations of the FARDC and military magistrates. To date, only 35 FARDC commanders of military units signed declarations reaffirming their commitments to fight against sexual violence within their units.

89. The circular issued by the General prosecutor of the DRC on 6 February 2014, formalizing the installation of special cells for the prosecution of sexual violence and gender based violations within the prosecutor’s offices, constitute another interesting improvement. It led to the creation of a support framework for civil justice regarding sexual violence, which the UNJHRO uses to support the prosecutors financially and materially and strengthen the prosecution and the repression of those violations. However, the prosecution of sexual violence crimes by these special cells has a limited scope because of the absence of specialised judges within the civil and military tribunals and courts. No plan is in place to send specialised magistrates within the military tribunals and courts despite the numerous cases of sexual violence that are referred to them.
90. The joint efforts of the Government of the DRC and its partners led to a slight improvement in the fight against impunity for sexual violence committed by State agents (PNC/FARDC). During the reporting period, 38% of the convictions pronounced against FARDC soldiers and PNC agents are related to the repression of sexual violence.

Analysis period	Total number of sexual violence cases	Number of sexual violence cases perpetrated by FARDC/PNC	Percentage of sexual violence cases perpetrated by FARDC/ PNC compared to the total number of cases	Total number of convictions of FARDC/ PNC		Percentage of conviction of FARDC/PNC for sexual violence violations
				For human rights violations	For sexual violence	
2014	698	201 FARDC	29%	251	117	43 %
		157 PNC	22%		(FARDC/PNC)	
2015	637	133 FARDC	21%	309	109	35%
		28 PNC	4%		(FARDC/ PNC)	
Jan. - March 2016	119	29 FARDC	24%	42	5	12%
		8 PNC	7%		(FARDC/PNC)	
Total	1.454	363 FARDC	25%	602	231	38%
		196 PNC	13%		(FARDC/PNC)	

**Fig. 5: Conflict-related sexual violence perpetrated by FARDC and PNC and convictions**

## V. Conclusions and recommendations

91. Despite significant progresses registered in the fight against impunity of perpetrators of human rights violations in the DRC, such as the promulgation by the President of the Republic on 31 December 2015 of legislation on the implementation of the Rome Statute of the ICC, or the law n°15/013 of 1 August 2015 on rules for implementing women's rights and gender parity, several malfunctioning negatively impact on the Congolese justice system and hamper progress in the effective fight against impunity.
92. Initiatives and public advocacy led by the President and the Congolese authorities with the support of the international community resulted in the conviction of at least 231 State agents for conflict related sexual violence during the period under review. Moreover, according to UNJHRO information, at least 447 FARDC soldiers and PNC agents were convicted for crimes constituting human rights violations during the same period. This remains a low figure compared to the high number of human rights violations documented. The weak number of security agents effectively convicted, especially high rank officers, and the difficulty in prosecuting armed group combatants as they physically escape justice or are rather targeted by military operations, are alarming considerations while United Nations bodies regularly recall the importance of bringing to justice the perpetrators of serious violations of human rights and international humanitarian law to effectively fight against impunity.
93. The percentage of human rights violations committed by State agents (54,5%), is extremely worrying. It reveals serious institutional weaknesses and insufficient criminal prosecution of human rights violations, especially of high ranking officer. This situation must be urgently addressed, especially in the current electoral context of the country in which security forces are perceived as an instrument of the state to achieve political means, mainly to silence the voices of political opponents, civil society and the media.
94. Prosecution of armed group combatants for crimes constituting human rights violations remain extremely rare, with only 28 convictions, documented during the period under review. Armed group combatants often benefit from amnesty measures or integration into the FARDC ranks. This *de facto* impunity indirectly encourages the commission of violations and has a negative impact on the victims.
95. The *Etats généraux* de la justice organized by the Ministry of justice and human rights and the *Conseil supérieur de la magistrature* from 27 April to 2 May 2015, in Kinshasa, sent out an important signal on the commitment of the Government to reinforce the Congolese judicial system. The efforts of the Ministry of justice and human rights to institutionalize the reforms of the judicial system are commendable; however they need to be accompanied by vigorous prosecutions of perpetrators of human rights violations, legislative reforms and adequate resources provided by the Government and its international partners.
96. To fight against the impunity of perpetrators of human rights violations, the UNJHRO invites:

### A. The Congolese authorities to:

Generally:

- Prioritize the prosecution of international crimes perpetrated in conflict areas and the fight against impunity for human rights violations and violations of international humanitarian law through prompt prosecutions and convictions of the perpetrators;
- Publicly and systematically condemn human rights violations and abuses, regardless of the perpetrator, and extend support and assistance to the victims;
- Launch a “zero tolerance” public campaign to end human rights violations perpetrated by State agents, especially PNC agents, FARDC soldiers and ANR agents;
- Continue to ensure that the judicial proceedings opened against FARDC soldiers for crimes allegedly committed in the Central African Republic as they were serving within MINUSCA, are held in respect of international standards and judicial guarantees and of the principles of witnesses and victims’ protection;
- Because of the growing number of human rights violations committed by PNC agents, set up an action and reform plan to diminish the number of violations committed and prosecute the perpetrators;
- Accelerate ongoing efforts to eradicate sexual violence by State agents, as well as the effort to fight impunity for grave child rights violations, including child recruitment;
- Set up a vetting system for the army and the police to prevent alleged perpetrators of human rights violation from joining the FARDC or the PNC;
- Apply command and hierarchy responsibility in order to enforce discipline in the FARDC and PNC ranks;
- Encourage the increase of the number of women in the ranks of FARDC and PNC, particularly in commanding positions and within units deployed in conflict areas, as well as of the number of female magistrates, particularly for the handling of sexual violence cases;
- Ensure, together with the *Conseil supérieur de la Magistrature* that magistrates appointed to the prosecution of cases involving gross human rights violations are duly trained and have the necessary experience, namely in matters pertaining to gender and women’s’ rights;
- Set-up, within the *Haute Cour militaire* and the *Auditorat général*, a specific follow-up system for cases of serious human rights violations and abuses, in order to identify and catch-up with the delays in the handling of cases, the hearings and the sentence of the alleged perpetrators;

At the institutional and legislative level:

- Guarantee the respect of the right to fair trial for all the accused, namely by ensuring the independence of the judiciary, and refrain from all interference; ensure that the perpetrators are held accountable in reasonable time limits, and in respect of the right to defence;

- Accelerate the implementation of the recommendations made in the final report of the *Etats généraux de la justice*, especially those concerning the reforms of the judiciary and of the security sectors and those on the fight against impunity of the perpetrators of genocide, war crimes and crimes against humanity;
- Encourage the reform of military justice, including through wider institutional reforms and the creation of specialised mixed chambers to prosecute perpetrators of serious human rights violations, including individuals in the high ranks and commanding positions, as well as individuals who may benefit from political and other forms of support;
- Reinforce the power of the *Inspektorat général des services du Conseil judiciaire* to allow an effective control over the security forces, including a power of judicial referral and the introduction of disciplinary sanctions, and encourage cooperation between defence and security forces and civil and military justice;
- Ensure the judicial system is provided with sufficient funds from the national budget to adequately undertake investigations and prosecutions and progressively reduce the use external support from partners;
- Ensure that appropriate mechanisms are set up to guarantee that compensation decisions are executed and that compensations are effectively paid to the victims or their families, and ensure that compensation decisions are timely executed;
- Continue the efforts to reinforce the legislative corpus, including the adoption of the following laws and legislations without delays:
  - A law on protection of victims and witnesses, including specific provisions incriminating threats or intimidations against victims involved in judicial proceedings, and creating a damage fund for victims of serious crimes;
  - A law on the abolition of the death penalty and changes in the legislation to exclude the sentence of death penalty for genocides, crimes against humanity and war crimes;
  - A law modifying the Military Judicial Code recognizing the right of appeal before the CMO and the High Military Court;
  - A law on protection of human rights defenders;
- Strengthen the capacity and the security of the penitentiary system and adopt alternative measures to detention for minor offenses to reduce prison congestions;
- Continue the implementation of the 2009 Law on child protection, as well as of the “combating impunity” axis of the Action Plan to put an end to the recruitment of children and other grave violations of their rights;
- Apply a sensitive approach to specific gender needs among prisoners, with a special emphasis on pregnant women and minors;

- Accelerate efforts to prosecute perpetrators or accomplices of human rights violations and abuses identified in the Mapping report.

B. The international community to:

- Continue to support the national authorities in the fight against impunity at all stages of the criminal proceedings;
- Revitalize collaboration between States of the region through an effective judicial cooperation in conformity with applicable treaties and agreements and encourage judicial officials of the countries concerned to implement their obligations in judicial cooperation;
- Keep the fight against impunity as a priority in their agendas; support initiatives aimed at strengthening the legislative framework on the fight against impunity and engage in public advocacy for the fight against impunity, namely for the effective prosecution of perpetrators of human rights violations and abuses.

## **Annex: Emblematic cases**

This annex presents emblematic cases illustrating the challenges faced in combating impunity. Each of these cases highlights specific challenges and presents possible solutions to ensure that those responsible for human rights violations are held accountable. These cases also aim at being used as lessons-learned, to avoid similar flaws in the future.

### 1. In Eastern DRC

#### **WALIKALE**

Date: from 30 July to 2 August 2010

Alleged perpetrators: FDLR and Mayi Mayi Sheka combatants

Victims: 1429 victims

From 30 July to 2 August 2010, a coalition of armed groups including FDLR and Mayi Mayi Sheka combatants reportedly attacked several villages on the Kibua-Mpofi road axis, in Walikale territory, North Kivu province. At least 387 men, women and children were allegedly raped, 923 households looted and 116 people abducted, including 15 children, who were subjected to forced labour. Twelve men, including three children, were reportedly subjected to cruel, inhumane and degrading treatments. The attack allegedly aimed at retaliating against the communities which supported the FARDC and at setting up a coalition of armed groups.

In October 2010 and January 2011 several arrest warrants with crime against humanity and war crime charges, including theft, looting, killing and other cruel inhumane and degrading treatments, were issued against rebel leaders Sheka and Lionso, who were suspected of having planned the attacks and massive rapes of Walikale in 2010. Since then, five suspects were arrested. Two of them escaped a few weeks after being arrested while two others died in custody. Séraphin Lionso, who was arrested in February 2015, is currently detained at Angenga prison in Equateur province. Sheka is free and continues to be active in North Kivu, despite an arrest warrant against him since 2011. Two hearings were held before the Operational Military Court in November and December 2011, but the trial was interrupted following the M-23 invasion and the destruction of judicial documents in the armed group's possession. To this day, the judicial proceedings have not resumed. The UNJHRO regrets that, six years after those grave human rights violations occurred, no steps have been taken towards the resumption of the hearings and that military efforts to arrest Sheka have failed. The UNJHRO encourages a swift transfer of Séraphin Lionso to the jurisdictions of North Kivu.

#### **COBRA MATATA**

Date: from June 2011 to December 2014

Alleged perpetrators: Justin Banaloki, aka Cobra Matata

Victims: at least 400 minors

In 2012, Justin Banaloki, aka Cobra Matata, FRPI rebel leader integrated into the FARDC with the rank of colonel following a Presidential Decree of December 2004, was charged with several violations

of international human rights and humanitarian law, including murder, rape, looting, destruction of households, committed between June 2011 and May 2012, during attacks against civilian populations in Irumu territory, Ituri province.

Following the failure of the reintegration negotiations launched in 2013, Cobra Matata's prosecution resumed on 18 April 2014. In January 2015, he was re-arrested on new charges – including desertion with a war weapon, setting-up a rebel movement, crimes against humanity, war crimes, recruitment of child soldiers and attempted jailbreak – and transferred to Kinshasa. The case of Cobra Matata has been transferred to the *Auditorat militaire supérieur* of Gombe, in Kinshasa, and has been pending ever since, not recording any significant development. FRPI combatants are currently among the most active armed groups and are responsible for the greatest numbers of abuses, particularly sexual violence<sup>60</sup>. The sentencing of their leader would dissuade his comrades-in-arms from committing further abuses. The UNJHRO encourages the military justice to expedite the proceedings in this regard.

## MUSENYI

Date: from 20 to 22 September 2015

Alleged perpetrators: FARDC

Victims: 124 people

From 20 to 22 September 2015, FARDC soldiers assigned to 33071<sup>st</sup> Battalion under the leadership of Colonel Jules Dhenyo Beker reportedly committed several human rights violations in Musenyi village, in the vicinity of Maibano, Kalehe territory, South Kivu province, during an operation to track down Rayia Mutomboki chief Mweke Atobaibwa. Civilians were arrested and taken to a school used by the military operation's leadership. A 16-week old baby reportedly died following a beating. Nineteen women were raped (or gang-raped in some cases), 31 people were subjected to cruel, inhumane or degrading treatments and arbitrary arrests while 78 others were subjected to looting and/or extortions. The next day, a high ranking FARDC official reportedly visited the scene of the incident and ordered the population not to report what had happened.

In December 2015, MONUSCO supported the joint investigations launched by the *Auditorat Militaire Supérieur* on grave crimes, including 19 cases of rape committed by FARDC soldiers from the 33071<sup>st</sup> Battalion in Musenyi. Two commanding Officers – a Captain and a Colonel – were arrested on 21 November 2015. While the Captain was granted a provisional release in April, the Colonel remains in custody. The implicated FARDC unit has since been redeployed to North Kivu. Musenyi is located in remote area, which exacerbates the vulnerability of those victims who lodged a complaint and are awaiting a trial. Indeed, they have not benefited from any protection measures and the delay in the judicial proceedings exposes them to internal and external pressure. In addition to pressure by the FARDC, local authorities denied that rapes were ever committed, and reportedly held, in April 2006, a

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<sup>60</sup> In 2014, with 125 human rights violations committed out of the 1,004 committed by all armed groups, FRPI combatants ranked third among armed groups perpetrating the most violations, and were responsible for at least 28 cases of rape. In 2015, FRPI combatants ranked second as they were the perpetrators of 407 out of the 1,943 human rights violations committed by all armed groups, and committed 140 cases of rape. In 2014 and 2015 combined, FRPI combatants detained at least 208 children (including 16 girls).

meeting to ask the victims to retract their statements. They also addressed a letter to the judicial authorities charged with this case to express their indignation. This shows how crucial it is to expedite judicial proceedings in order to prevent victims from being discouraged and pressure from the community.

## **KAVUMU**

Date: from May 2013

Alleged perpetrators: Unknown

Victims: at least 53 people

Since May 2013, at least 20 children under 12 and thirty children aged between 12 and 17 have reportedly been abducted, raped and subjected to genital mutilations in Kavumu, 35 km from Bukavu, in the *groupement* of Bugorhe, Kabare territory, South Kivu province. The victims were reportedly abducted in their sleep without any witness and returned home or near their residence after being raped or mutilated. According to judicial authorities, these crimes were reportedly perpetrated in the context of initiation rituals and fetishist practices. Reportedly, these rapes and abductions also sought to terrorize the local population. On 17 March 2016, in Kavumu, a human rights defender who had spoken out on cases of rape against children in Kavumu and denounced the implication of a local leader, as well as the inaction of judicial authorities, was summarily executed by armed men wearing PNC uniforms.

Since 2013, the identification and prosecution of the alleged perpetrators has been faced by important obstacles. However on 17 March 2016, the Commissioner of the *Police de protection de l'enfance et de la lutte contre les violences sexuelles* stated that the alleged perpetrators of 29 cases of rape and abduction, as well as six cases of attempted abduction and rape, were identified as armed group combatants. A task force composed of several United Nations agencies, including the UNJHRO, as well as the Panzi Hospital and local and international NGOs has been set up to support the prosecution of the alleged perpetrators and to ensure the protection of the victims, including through awareness-raising activities and through the implementation of a Protection alert plan in affected areas.

## 2. In Western DRC

### **YALISIKA**

Date: 2 May 2011

Alleged perpetrators: PNC agents, FARDC soldiers from the naval force and SIFORCO agents

Victims: 45 villagers from Yalisika, including 14 who received compensation

In Yalisika, Bumba territory, Equateur province, tension grew progressively between the local community and a company called SIFORCO as a result of the delayed implementation of its commitments, including the construction of roads, schools, etc. After the local community attempted to block the activities of SIFORCO by looting some of its assets, SIFORCO called the PNC and FARDC Naval force to the rescue. On 2 May 2011, during a joint operation by PNC and the Navy, many human rights violations were committed against at least 45 villagers, including rape, murder, looting, cruel, inhumane or degrading treatments. Two proceedings were launched before the Congolese military justice and a German court following a complaint lodged in the name of the victims by international NGOs against the DANZER group. These proceedings have different objectives: the German complaint is targeting a DANZER leader, who is not involved in the Congolese procedure.

From 5 June to 14 December 2015, in Mbandaka, five FARDC soldiers and PNC agents – including a colonel, a captain, a lieutenant, – a Second Lieutenant and a police commissioner – were sentenced by the Military Court of Equateur to two to three years in prison for crime against humanity of torturing or failing to denounce acts of torture. The court also sentenced *in solidum* the defendants and the State to pay 50.000 US dollars to the 14 civil parties for damages, while SIFORCO was acquitted despite the civil parties' complaints. Civil parties and the Military Prosecutor's office have both appealed the court's decision before the Military High Court. The weakness of the sentences, the fact that SIFORCO was not held responsible, as well as several procedural issues that emerged during the trial, are a matter of concern. Furthermore, this emblematic case did not allow to determine the company's responsibility for the human rights violations. The UNJHRO is also concerned by the weakness of protection measures for victims and witnesses. Indeed, concrete protection measures initially set up during the trial remained the same throughout the prosecution, which limited their implementation.