

人权理事会  
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## 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

法外处决、即审即决或任意处决问题特别报告员  
赫里斯托夫·海恩斯的报告

增编

国别建议的后续行动：刚果民主共和国\*

## 内容提要

本报告分析了刚果民主共和国在落实前任法外处决、即审即决或任意处决问题特别报告员菲利普·奥尔斯顿 2009 年 10 月 5 日至 15 日访问该国之后提出的建议(A/HRC/14/24/Add.3)的进展情况。在访问期间，特别报告员记录下了武装团伙和刚果军队在南北基伍省和东方省普遍实施法外处决、政治谋杀和监狱中死亡事件的情况。此外，他还调查了由性暴力死事件、人权维护者和记者遭杀害和私刑杀人事件，其中包括怀疑是“巫婆”的杀人行为。他的结论是，一切形式的杀戮行为不受惩罚的现象极为普遍。

在本报告所涉期间，政府已采取了一些措施，打击有罪不罚现象，以及一些初步措施，以解决监狱的严峻的情况。联合国组织在刚果民主共和国稳定特派团和其他国际行动者已实施的若干建议，以在国际一级加强保护平民和打击有罪不罚现象。

\* 本文件的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以提交语文和法文分发。

然而，这些措施对当地居民的生命权的实际影响和保护作用仍然是非常有限。法外处决在经调查的所有领域仍然普遍存在。叛乱团伙和刚果民主共和国武装部队(刚果武装部队)的杀戮行为以及与选举有关的暴力行为，尤其令人关注。应大大加强了打击有罪不罚现象的力度，高级指挥官的这种行为也不能例外，并保护证人和受害者。

## Annex

### Follow-up to the recommendations regarding the Democratic Republic of the Congo made by the Special Rapporteur on extrajudicial, summary or arbitrary executions

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## I. Methodology

1. In paragraph 8 of its resolution 17/5, the Human Rights Council urged States to, *inter alia*, cooperate with and assist the Special Rapporteur on extrajudicial, summary or arbitrary executions in the performance of his tasks, supply all necessary information requested by him, and ensure appropriate follow-up to the recommendations and conclusions formulated by him, including by providing information on the actions taken on those recommendations

2. The Special Rapporteur shares the views of the previous mandate holder on the importance of follow-up reports as essential elements of his work after the conduct of country visits and the formulation of recommendations on ensuring respect for the right to life. Follow-up reports offer the opportunity to assess the progress made in respecting the right to life and the status of implementation of the respective recommendations within a certain time frame, thus ensuring continuity in the efforts to uphold human rights in the country visited.

3. In accordance with the established practice,<sup>1</sup> the present report concerns the follow-up to the recommendations made by the previous mandate holder regarding his visit to the Democratic Republic of the Congo in 2009.

4. The report was prepared on the basis of all available information. The Special Rapporteur requested information from the Government and other actors on the measures that had been taken to implement the recommendations formulated by his predecessor. Information on the non-implementation of recommendations was also sought. Further information was gathered on the current situation concerning extrajudicial executions in the country, including on the extent to which the situation has improved, deteriorated or remained static since the visit took place.

5. The Special Rapporteur expresses his gratitude to all stakeholders who contributed to the preparation of the present report. He regrets that the Government of the Democratic Republic of the Congo was not able to follow up on his request and provide information on measures undertaken to implement the recommendations made by his predecessor.

## II. Introduction

6. In the present report, the Special Rapporteur analyses the steps taken by the Democratic Republic of the Congo to implement the recommendations made by his predecessor, following his visit to the country from 5 to 15 October 2009. The conclusions of the visit and the recommendations thereof were contained in the mission report, submitted to the Human Rights Council at its fourteenth session (A/HRC/14/24/Add.3).

7. The mission report revealed a very worrying level of violations of the right to life, in particular in the following areas: the numerous extrajudicial executions of civilians in separate conflicts in the Kivu Provinces and Province Orientale, both by rebel groups and Government forces; political killings; deaths in prison; killings of human rights defenders and journalists; and sorcery-related and vigilante killings. The previous mandate holder concluded that impunity was rampant, and put forward a series of recommendations to redress violations and fight impunity in the areas mentioned.

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<sup>1</sup> In 2006, the previous mandate holder initiated the practice of preparing follow-up reports on country visits to assess the extent to which States implement the recommendations contained in the mission reports. The practice has been followed by the Special Rapporteur on a regular basis.

8. The Special Rapporteur notes that the context of the period under review has been influenced by several developments. Among them is the Security Council's decision, in its resolution 1925 (2010), that the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) would, as of 1 July 2010, bear the title of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). The mandate of the Mission focuses, in order of priority, on the protection of civilians and on stabilization and peace consolidation.<sup>2</sup>

9. Chapter VIII of the present report deals with the fight against impunity as crucial to bringing to justice all those responsible for unlawful killings in the Democratic Republic of the Congo. Consequently, other chapters will not address the issue.

### III. Extrajudicial executions in the Kivu provinces

10. In his mission report, the previous mandate holder established that several hundred civilians had been killed in the context of the conflict in the Kivu provinces. Rebel groups, in particular the Forces démocratiques de libération du Rwanda (FDLR), as well as the Government forces, committed unlawful killings. The previous mandate holder emphasized that the measures taken by the Government and MONUC to protect civilians were insufficient. He put forward recommendations to a number of actors, aimed at reducing killings and protecting civilians.

#### A. Current situation of extrajudicial killings in the Kivu provinces

11. The current situation of human rights abuses, including of the right to life, remains of grave concern in North Kivu and South Kivu. During the period under review, civilians continued to be killed and subjected to other serious human rights violations, in particular mass rapes. Both sides of the conflict, that is, various rebel groups and the Forces armées de la République démocratique du Congo (FARDC), continue to attack civilians, with cases resulting in a considerable number of deaths.

##### 1. Protection of civilians in the context of killings by FDLR

12. With respect to FDLR activities in the Kivu provinces, brutal attacks against civilians continue to be committed. The attacks against civilians registered in 2010<sup>3</sup> followed a pattern of reprisals similar to the one described in the mission report (A/HRC/14/24/Add.3, paras. 13-15). A reduction in the scale of deadly attacks was observed during 2011, where the main trend consisted in committing other types of grave human rights abuses. Despite reports of weakened FDLR capacities, the recent massacre in Shabunda territory, South Kivu, where suspected FDLR combatants killed an estimated 45 people between 1 and 4 January 2012,<sup>4</sup> raised concerns over the renewed activity of the FDLR and its strategy of mass killings of civilians as a means of intimidation.

13. In 2010, the previous mandate holder called upon FDLR commanders to immediately issue orders to their soldiers to comply with human rights and humanitarian law at all times. The Special Rapporteur concludes that no serious steps were taken to implement that recommendation. On the contrary, FDLR continues to kill, abduct, rape, loot and commit other grave human rights abuses against civilians in the Kivu provinces.

<sup>2</sup> In its resolution 1991 (2011), the Security Council extended the MONUSCO mandate until 30 June 2012.

<sup>3</sup> See, for instance, Human Rights Watch, *World Report 2011* (New York, 2011), pp. 103-110, available from [www.hrw.org/sites/default/files/reports/wr2011.pdf](http://www.hrw.org/sites/default/files/reports/wr2011.pdf).

<sup>4</sup> See the report of the Secretary-General on MONUSCO (S/2012/65), para. 24.

The Special Rapporteur reiterates the recommendation of his predecessor that FDLR commanders take steps to ensure compliance with human rights and humanitarian law.

14. The previous mandate holder also pointed out that, while FDLR bore direct responsibility for the killings, that did not relieve the Government and MONUC of their international obligations to protect civilians and plan military operations to minimize the loss of civilian life—obligations they did not sufficiently fulfil within the Kimia II military operation (A/HRC/14/24/Add.3, para. 20).

15. In this context, another military operation, Amani Leo, was launched against rebel forces in North and South Kivu on 1 January 2010. It was led by FARDC with MONUC/MONUSCO support, and follows the Kimia II operation. The main goals of the Amani Leo operation were to protect civilians and eliminate the threat of FDLR and other armed groups in North and South Kivu. Separate military operations were also conducted by FARDC and by MONUC/MONUSCO during the period under review.<sup>5</sup>

16. The current level of protection of civilians remains inadequate, as evidenced by the frequency and intensity of the attacks against them. The Special Rapporteur gives due consideration to the difficulties relating to terrain and inaccessibility of villages, as well as to resource constraints. He further notes the critical shortage of military utility helicopters and a lack of attack helicopters within MONUSCO in 2011.

17. However, such constraints do not remove the responsibility incumbent upon the Government to secure the right to life of individuals in the Democratic Republic of the Congo. The Special Rapporteur believes that efforts need to be critically stepped up in terms of military planning, in particular by FARDC. The most vivid example is illustrated by the transfer of FARDC soldiers to training centres during the FARDC reconfiguration process in 2011. During these transfers, entire areas in the Kivu provinces were temporarily left without effective military control, resulting in increased vulnerability of civilians to attacks and the regaining of positions by FDLR and other armed groups.<sup>6</sup> The Special Rapporteur was also particularly concerned about information regarding poor communication to MONUSCO of these FARDC movements, which further diminished opportunities to protect several areas and deepened the level of exposure of civilians to FDLR attacks.

## **2. Killings of civilians by the Congolese Armed Forces**

18. In the period under review, civilians in the Kivu provinces continued to be attacked and killed by FARDC, notably by its former Congrès national pour la défense du peuple (CNDP) elements. At least 105 civilians were reported to have been killed in Masisi Territory in 2011, where integrated former CNDP troops conducted unilateral operations against FDLR and its allies.<sup>7</sup> Patterns of accusing the local population of supporting the other side of the conflict, as well as opportunistic killings, have been reported.

19. The previous mandate holder identified the poorly planned and accelerated integration of CNDP troops, known for human rights atrocities, into the regular armed forces as one of the most important causes of the killings committed by FARDC (A/HRC/14/24/Add.3, p. 2). This process of integration led to the creation of an unclear, parallel chain of command within FARDC, with former CNDP fighters largely continuing to respond to their former commanders, thus creating a context for indiscipline and further

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<sup>5</sup> For a detailed description of the various military operations conducted and MONUSCO measures to strengthen civilian protection, see the reports of the Secretary-General on MONUSCO, available from [www.un.org/en/peacekeeping/missions/monusco/reports.shtml](http://www.un.org/en/peacekeeping/missions/monusco/reports.shtml).

<sup>6</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo (A/HRC/19/48), para. 57.

<sup>7</sup> Human Rights Watch, *World Report 2011* (p. 104).

human rights abuses. According to the latest information received, the parallel chain of command was further reinforced during the period under review.

20. In an attempt to foster the integration process, the Congolese authorities launched the so-called process of regimentation of FARDC, as part of the Armed Forces reform announced in January 2010. The process of regimentation started in January 2011 and ended in the last quarter of that year. It was aimed at the reconfiguration of the Armed Forces and redistribution of the soldiers to other units after completion of a training course. A number of command positions created as part of the process were offered to former CNDP commanders. However, the positive results of the regimentation are regrettably very limited, and it may even lead to a further strengthening of the parallel command structure. A number of former CNDP elements reportedly continue to maintain the parallel chain of command, while others have resisted orders to redeploy outside their current areas of operation. Of major concern are reports that most integrated former CNDP elements remain in operation in areas in the Kivu provinces, where they previously committed grave human rights abuses.

21. These effects have a negative impact not only on the prevention of future human rights abuses by FARDC, but also on the fight against impunity. Various actors who contributed to the present report referred to the difficulty of carrying out investigations, in particular in the Masisi region, as a result of the parallel administration. Additionally, the local population reportedly encounters difficulties in identifying the new soldiers redeployed to their regions.

22. The Special Rapporteur also notes the calls from the Security Council and the United Nations High Commissioner for Human Rights to establish an adequate vetting mechanism to ensure that those responsible for grave human rights violations are removed from the army and are not permitted into the chain of command (A/HRC/19/48, para. 56). During the universal periodic review, the Government committed to proceed with the establishment of such a mechanism (A/HRC/13/8, para. 94.44); however, no measures have been reported to date. The Special Rapporteur concurs with the recommendation and emphasizes the urgency of establishing a vetting mechanism, and calls upon the Congolese authorities to take all necessary steps in this direction.

23. Regarding the identification of the soldiers committing abuses, the former mandate holder recommended that all FARDC soldiers should be provided with, and be required to wear, uniforms that identify their name and relevant unit. Furthermore, he recommended that the Security Council make this a precondition for United Nations assistance to the Congolese military operations.

24. The Special Rapporteur was informed that the distribution to FARDC soldiers of a new uniform, with Velcro strips for attaching name tags, took place in 2010. However, the uniforms were not distributed to all soldiers, and the extent to which tags have been distributed to troops in the Kivu provinces is unclear. Moreover, the tags may be easily removed by the soldiers wearing them. Additional reports indicate that a number of soldiers refuse to wear tags, arguing that the tags do not reflect their new positions. The Special Rapporteur believes that this recommendation should be fully implemented.

25. Using tags with the soldier's name and unit is currently not a precondition for MONUSCO support to FARDC battalions. The Security Council has not transformed this requirement into a precondition. Furthermore, the Standard Operating Procedures on MONUSCO Protection Mechanisms and Procedures for the Proposition of Support to the FARDC and the PNC [Congolese National Police], specifying these conditions, do not contain a reference to name and unit tags. Bearing in mind the current level of human rights violations committed by FARDC soldiers and the fact that the FARDC process to integrate various former rebel groups is ongoing, the Special Rapporteur considers that the obligation

to wear uniforms with name and unit tags should be incorporated into the Standard Operating Procedures.

## **B. The role of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo**

26. The previous mandate holder established that FARDC units had been receiving MONUC support, including in cases of reported human rights violations by its battalions (A/HRC/14/24/Add.3, para. 36). He formulated several recommendations on the duty of MONUC to base its support activities on a strong conditionality policy towards FARDC, requiring full adherence to international human rights and humanitarian law. The policy would be coupled with monitoring, investigation and reporting actions on allegations of human rights violations committed by FARDC. The Special Rapporteur notes that these recommendations, while designed to address primarily the situation in the Kivu provinces, can be and have been applied to the entire country.

### **1. MONUSCO conditionality policy**

27. The Special Rapporteur notes that MONUC drafted a conditionality policy paper late in 2009, and that steps have been taken to adhere to it. As stated by the Security Council in its resolutions 1906 (2009), 1925 (2010) and 1991 (2011), MONUSCO, like MONUC before it, is required to participate in or support only those operations that fully comply with international humanitarian, human rights and refugee law, and only operations that are jointly planned. Screening of the FARDC battalions is conducted before logistical or other support is delivered. The Special Rapporteur was informed that, over the course of 2011, MONUSCO support to three FARDC battalions was suspended. Still, challenges have been identified in monitoring the conduct of FARDC units on the ground and in securing the removal of problematic FARDC officers from the wider chain of command, in particular in North Kivu.<sup>8</sup>

28. The MONUSCO policy regarding support to FARDC and the fact that such support is governed by conditions have been laid out and referred to in United Nations public documents. However, the population remains uninformed as regards the object and content of the policy, as MONUC/MONUSCO has not organized a communication campaign explicitly aimed at informing it thereof. Meanwhile, other awareness campaigns have been conducted, focusing on key stakeholders such as FARDC.

29. The former mandate holder also suggested that steps taken under the conditionality policy be made public. The reports submitted by the Secretary-General to the Security Council regularly contain information on steps taken by the Mission in the application of the policy, but vary in their degree of detail. However, measures taken to exclude or suspend certain FARDC units from support are explicitly communicated to the media only in certain emblematic cases, for example, the suspension of MONUC support to the FARDC 213 brigade following what has often been referred to as the “Lukweti massacre” of 2009. The publication of such information should be done in all cases.

### **2. Investigating, monitoring and reporting on human rights violations**

30. With regard to the recommendations relating to the investigation and monitoring of human rights, the Special Rapporteur notes that the United Nations Joint Human Rights

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<sup>8</sup> See reports of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, available from [www.un.org/en/peacekeeping/missions/monusco/reports.shtml](http://www.un.org/en/peacekeeping/missions/monusco/reports.shtml).



Office (UNJHRO) in the Democratic Republic of the Congo contributes to the independent monitoring and investigation of human rights violations. The UNJHRO field offices continually monitor and verify allegations of human rights violations, including those implicating FARDC units supported by MONUSCO. The investigations are carried out in accordance with United Nations standards on human rights investigations, including independence and impartiality. If the circumstances so require, UNJHRO provides support to the Congolese judicial authorities to investigate allegations of grave human rights violations committed by FARDC or armed groups. UNJHRO regularly reports on violations committed by FARDC and it has also published reports on the outcome of special investigations.<sup>9</sup> UNJHRO has also taken important measures to make its human rights reports public within a reasonable time period after investigations take place, and publishes regular human rights situation updates. Meanwhile, several representatives of the local civil society expressed to the Special Rapporteur their wish that MONUSCO cooperate to a greater extent with local organizations engaged in activities in the field.

31. Follow-up was ensured, in particular, in relation to the recommendation on the release of the results of the United Nations mapping project investigations in the Democratic Republic of the Congo. In October 2010, the United Nations published its “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”.<sup>10</sup> Documenting over 600 cases, the report concluded with an observation of the severely limited capacity of the Congolese justice system to bring an end to impunity in respect of the crimes identified. It contained a series of recommendations for the Congolese authorities, including on the establishment of judicial and truth-seeking mechanisms, institutional reform and reparations for victims. The Special Rapporteur stresses that the implementation of these recommendations is crucial for delivering justice to the victims of the abuses, and calls upon the Government of the Democratic Republic of the Congo to take all necessary measures in this area.

#### IV. Extrajudicial executions in Province Orientale

32. In the mission report, the previous mandate holder concluded that numerous extrajudicial executions in Province Orientale occurred as a consequence of the brutal attacks on civilians by the Lord’s Resistance Army (LRA) and, to a considerably smaller extent, abuses by FARDC. He formulated a series of recommendations aimed at protecting civilians in a context where he considered the LRA to present a continuing serious threat to Province Orientale, as well as to the region generally.

33. During the period under review, the LRA continued to pose a serious security threat to civilians in the Province Orientale, including in terms of the right to life. Moreover, the activities of several domestic militias further contribute to the current insecurity in the area, in parallel to the activity of the LRA. Several recent reports suggest that the LRA has fragmented into several highly mobile groups as a consequence of military operations,<sup>11</sup>

<sup>9</sup> Among others, in September 2010, UNJHRO published a preliminary report on mass rapes and other human rights violations committed between 30 July and 2 August 2010 along the Kibua-Mpofi axis, Walikale Territory, North Kivu. In July 2011, UNJHRO published a report on the aforementioned human rights violations in Walikale and another one on human rights violations, including mass rapes, committed in Bushani and Kalambahiro, Masisi Territory, North Kivu, on 31 December 2010 and 1 January 2011.

<sup>10</sup> Available from [www.ohchr.org/EN/Countries/AfricaRegion/Pages/RDCProjetMapping.aspx](http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/RDCProjetMapping.aspx).

<sup>11</sup> See, for instance, the report of the Secretary-General on the Lord’s Resistance Army-affected areas (S/2011/693), para. 7.

which weakened its capacity. By all accounts, however, the impact of these operations on the protection of civilians against the LRA has been limited. The LRA continues to stage well-planned, sudden and very brutal attacks. For the period between January and August 2011, for instance, the Office for the Coordination of Humanitarian Affairs received 254 reports of attacks on civilians, resulting in 125 deaths and 368 persons abducted; an estimated 440,000 persons were internally displaced or living as refugees.<sup>12</sup> One of the worst massacres within the period under review took place in the Makombo area, Haut Uélé District, in December 2009, where the LRA killed at least 321 civilians and abducted 250 others, including at least 80 children.<sup>13</sup>

34. One of the main recommendations of the previous mandate holder was that the military presence of the Government and MONUC, as well as their ability to respond to the LRA attacks, should be strengthened. The Special Rapporteur was informed that the current military presence of MONUSCO in Province Orientale is concentrated in the Haut Uélé District, where the LRA is reported to occupy a zone of 20,000 km<sup>2</sup>. Since June 2010, there has been a stable presence of one battalion, including Guatemalan Special Forces. As of November 2011, this presence comprised about 1,200 troops (S/2011/693, para. 42).

35. The frequency of MONUSCO operations has increased during the period under review. The Special Rapporteur was informed that during the past year, about 20 joint operations with FARDC were conducted against the LRA, broadly in the framework of Operation Rudia II. Following the LRA massacres that took place in December 2008 and December 2009, and with the aim of preventing their repetition, MONUSCO launched a unilateral operation in December 2010 to ensure the protection of civilians during the end-of-year period. This was replicated in December 2011 with a joint MONUSCO-FARDC operation code-named "Santa Claus".

36. The Special Rapporteur considers that the conduct of the end-of-year operations played a crucial role in ensuring the protection of civilians in a period of high risk of attack from the LRA. He commends this initiative and calls upon MONUSCO to replicate it. Meanwhile, he believes that the positive consequences of these operations reaffirm the conclusions of his predecessor on the need to increase military presence on the ground in order to deter LRA attacks and ensure a high capacity of response.

37. With respect to the series of recommendations on establishing community-based communications networks and improving community outreach with the aim of receiving and responding quickly to warnings of LRA attacks on the civilian population, the Special Rapporteur was informed that MONUSCO has set up a Community Alert Network (CAN) project as a follow-up to Security Council resolution 1925 (2010). Within the project, focal points within remote communities in the Orientale and Kivu provinces are equipped with communication devices for contacting MONUSCO in case of a security threat. These threats are then responded to in coordination with the Congolese security forces. Measures have been taken to ensure the safety of the focal points. Currently, around 225 villages are covered by the project. During the second phase of implementation, scheduled for the first quarter of 2012, CANs are to be established in additional areas of Haut Uélé and Ituri Districts. MONUSCO is also collaborating with the United States Agency for International Development (USAID) and Vodacom on a project to extend mobile network coverage in the Haut Uélé District.

38. The establishment of CANs is accompanied by joint visits by representatives of the MONUSCO Civil Affairs Section and the MONUSCO Force to the zones covered by the project. These visits are reportedly aimed at informing the population and the local

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<sup>12</sup> Ibid., para. 11.

<sup>13</sup> Human Rights Watch, *Trail of Death: LRA Atrocities in Northeastern Congo* (2010), p. 3.

authorities about the project and the role of MONUSCO therein, and at inviting them to participate.

39. The Special Rapporteur notes meanwhile that no CAN has been established in the Bas Uélé District. The explanation provided is that it is not possible to establish a CAN in the absence of a military presence in Haut Uélé, as the Force must be able to react within one hour of the alert. The Special Rapporteur welcomes these communication-related steps, but invites MONUSCO to further intensify and expand them.

40. At the level of regional efforts to combat the LRA, the Special Rapporteur was informed that, after holding two Ministerial Meetings, in October 2010 and June 2011, the African Union launched the Regional Cooperation Initiative for the Elimination of the LRA. Under the initiative, operational coordination and joint border patrols between affected countries are to be facilitated, as well as the delivery of humanitarian aid to the affected population. Measures will be taken to establish a regional task force of brigade size (5,000 troops), composed of units provided by the affected countries. In addition, the United States of America has deployed about 100 soldiers as advisors in the region in order to tackle the LRA threat.

41. The recommendation of the previous mandate holder relating to necessary regional efforts focused also on the need to establish measures to facilitate desertions from the LRA. The Special Rapporteur notes that a constant effort is being made to repatriate foreign LRA combatants and to demobilize Congolese children associated with the LRA. However, no formal programme to demobilize and reintegrate adult LRA combatants has been implemented, due, *inter alia*, to a lack of funding.

## **V. Extrajudicial executions in the context of the socio-political situation in the Democratic Republic of the Congo**

42. The 2009 mission revealed that politically motivated human rights abuses, including killings of opposition supporters, constituted a serious problem that received only minor attention in the Democratic Republic of the Congo. Hundreds of civilians were killed in 2007 and 2008 for election-related and political reasons, in particular by security forces. The former mandate holder warned of a very high risk of further violence during the next election period if urgent steps were not taken. He invited MONUC and the international community to give serious consideration to that risk, closely monitor the situation and put in place contingencies for civilian protection. In addition, steps were recommended for the reform of the security forces and closure of all detention facilities operating outside the law and not subjected to judicial scrutiny. Finally, the previous mandate holder drew attention to the killings of human rights defenders and journalists as a result of their work on human rights violations and impunity issues (A/HRC/14/24/Add.3, paras. 92-93).

### **A. Killings in the context of the elections of November 2011**

43. Presidential and parliamentary elections were held in the country on 28 November 2011. The Special Rapporteur takes note of the efforts of MONUSCO in monitoring the electoral situation, assessing the risks of violence and taking measures to prevent or contain violence. In a report published in November 2011, UNJHRO warned against the serious risk of an increase in human rights violations and violence during the electoral period, due

to, inter alia, the influence exercised by political actors on State security forces.<sup>14</sup> Moreover, steps were taken to ensure civilian protection. In the west, MONUSCO deployed forces in areas identified as hot spots and kept reserve forces on standby. Additionally, 13 military observer team sites were deployed to monitor the security situation throughout the west. An ad hoc structure was also set up in Kinshasa to monitor the security situation and respond to any deteriorating situation.

44. Notwithstanding these measures, the Special Rapporteur regrets that the elections were characterized by a high level of tension, as well as by serious and numerous human rights violations. Human rights abuses, including extrajudicial killings and death threats, were registered in the pre-electoral, electoral and post-electoral periods. Excessive and indiscriminate use of force during demonstrations was of particular concern, including in cases of small-scale crowds.<sup>15</sup> The victims were mainly opposition activists, their supporters, demonstrators and bystanders. Congolese security and defence forces, especially the Republican Guard, are considered to be largely responsible for these violations.

45. The violence culminated on 26 November 2011, the final day of the electoral campaign, in clashes at Kinshasa's N'djili Airport between the supporters of the opposition Union for Democracy and Social Progress (UDPS) party and those of the incumbent president, as well as between UDPS and national security forces. According to the investigations carried out by UNJHRO, at least 33 people were killed, including 22 by gunshot, and at least 83 others were wounded, including 61 by gunshot, in Kinshasa between 26 November and 25 December 2011, by members of the defence and security forces.<sup>16</sup> However, the number could be higher, as UNJHRO reported difficulties in documenting violations of the right to life, such as victims' and witnesses' fears of reprisal; difficulties in accessing detention facilities and alleged mass graves; and obstacles in obtaining information from hospital staff, who were reportedly forbidden to provide information.<sup>17</sup> Furthermore, the UNJHRO report addressed only the violations committed in Kinshasa, given the scope and gravity of the allegations committed in that city. The Special Rapporteur was informed that violations committed in other parts of the country will be addressed in a forthcoming report.

46. A report on elections, human rights and related issues was published by the Government in March 2012. The Special Rapporteur notes inconsistencies with the number of killings reported by UNJHRO, as the Government concludes that 20 people died, in circumstances different to those described by UNJHRO.<sup>18</sup> He welcomes the fact that a judicial investigation was opened to investigate the alleged violations, including a commission of inquiry to investigate the abuses committed by the PNC. However, the Special Rapporteur stresses the need to conduct thorough, independent and impartial investigations into the killings and other numerous abuses relating to the November 2011

<sup>14</sup> Report of UNJHRO on human rights and fundamental freedoms during the pre-electoral period in the Democratic Republic of Congo (November 2011), available from [www.ohchr.org/Documents/Countries/ZR/UNJHRO\\_HRElectionsReport\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/UNJHRO_HRElectionsReport_en.pdf), para. 64.

<sup>15</sup> See, for instance, S/2012/65; stakeholder submission from Amnesty International; or Human Rights Watch, "DR Congo: rein in security forces", 2 December 2011, available from [www.hrw.org/news/2011/12/02/dr-congo-rein-security-forces](http://www.hrw.org/news/2011/12/02/dr-congo-rein-security-forces), and "DR Congo: 24 killed since election results announced", 21 December 2011, available from [www.hrw.org/news/2011/12/21/dr-congo-24-killed-election-results-announced](http://www.hrw.org/news/2011/12/21/dr-congo-24-killed-election-results-announced).

<sup>16</sup> See the UNJHRO report on serious human rights violations committed by members of the Congolese defence and security forces in Kinshasa in the Democratic Republic of the Congo between 26 November and 25 December 2011 (March 2012), paras. 13, 23 and 49. Available from [www.ohchr.org/Documents/Countries/ZR/ReportDRC\\_26Nov\\_25Dec2011\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/ReportDRC_26Nov_25Dec2011_en.pdf).

<sup>17</sup> *Ibid.*, paras. 6-8, 13, 18-22.

<sup>18</sup> Rapport du Ministère de la Justice et Droits Humains, 21 mars 2012, paras. 37 and 43.

elections, ensure accountability for the perpetrated crimes, and provide compensation for the victims or their families. He also regrets that little information was provided on the progress made in prosecuting and sanctioning the perpetrators of the killings.

47. The Special Rapporteur further considers that the recommendation of his predecessor on the full integration of the Republican Guard into the regular Congolese army, with the aim of rendering its actions accountable, was not properly implemented. Although new legislation was adopted that addressed this issue, it did not provide for a viable solution. Thus, according to article 56 of Law No. 11/012 of 11 August 2011 on the organization and functioning of the Armed Forces, the Republican Guard constitutes an integral part of FARDC. However, under the same Law, it remains an independent entity within the army, over which the Presidency retains control (art. 154). The President appoints the commander and two deputy commanders and decides by presidential decree its organization and functioning (arts. 156 and 157).

48. Nor was follow-up ensured on the important recommendation to immediately close all detention facilities operated outside the law by security forces, including by the Republican Guard. Some reportedly still remain operational, in particular in remote areas. As noted above, monitors, including from the United Nations, are denied access to the majority of them. Despite several Security Council resolutions and a Presidential directive of 5 July 2005, UNJHRO is still denied access to most of the detention facilities of the National Intelligence Agency (ANR) and to all but one of the detention facilities of the Republican Guard. The Special Rapporteur reiterates the need to close all unlawful detention centres, which, due to the lack of judicial supervision, are places where serious human rights abuses continue to be reported.

## **B. Killings of human rights defenders and journalists**

49. During the period under review, an increase was registered in attacks against human rights defenders and journalists, who continued to receive death threats and be killed as a consequence of their activities. In the electoral context of 2011, human rights defenders and journalists remained in a particularly precarious situation, especially those touching upon the sensitive issues of corruption, extortion or elections. According to Protection International, the most exposed are those who investigate and publicly denounce human rights violations, assist victims and call for justice. Other categories at risk are journalists and defenders cooperating with the International Criminal Court, women and defenders working in rural areas.<sup>19</sup>

50. The most emblematic case is the murder during the night of 1 to 2 June 2010, in Kinshasa, of Floribert Chebeya, executive-secretary of the Réseau national des ONG des droits de l'homme de la République démocratique du Congo and president of the Congolese NGO Voix des Sans-Voix pour les droits de l'homme, and his driver, Fidèle Bazana, whose body has not yet been found. The Special Rapporteur is aware of the investigations and trial launched in this case and will address this aspect in chapter VIII below.

51. The Special Rapporteur expresses his concern at the current level of attacks against human rights defenders and journalists, and urges the Congolese authorities to ensure protection of the right to life of these professionals. He takes note of the recent initiatives of the Government to create a legislative and institutional framework to achieve this goal, such as the introduction of a draft law in the Parliament on the protection of human rights activists in May 2011, and the adoption of the Ministerial Decision from June 2011 to establish a protection cell for human rights defenders within the Ministry of Justice and

<sup>19</sup> Submission from Protection International.

Human Rights. These mechanisms should be implemented swiftly and become effectively functional as soon as possible.

## VI. Deaths in prisons

52. The previous mandate holder concluded that a high number of prisoners died in Congolese prisons due to a severe lack of the most basic standards of organization, monitoring and health. The current prison situation continues to raise grave concerns, with endemic overcrowding, very poor conditions and a high level of insecurity leading to a considerable number of deaths, including from preventable illness. According to the High Commissioner for Human Rights, 119 deaths in custody were registered between January and June 2010 (A/HRC/16/27, para. 16); 41 were reported between January and September 2011 (A/HRC/19/48, para. 9). Chronic malnutrition, severe ill-treatment and a lack of access to basic health care constitute the main reasons for deaths in custody. Prison unrest, including mass escapes<sup>20</sup>, prisoners' riots and strikes by the staff, is also of serious concern. For instance, a prison break attempt on 1 January 2012 at the Bukavu Central Prison, in South Kivu, resulted in the death of 8 prisoners and the injury of 47 prisoners (S/2012/65, para. 67).

53. To tackle the situation of deaths in custody, the mission report focused on three recommendations necessary for taking first steps to improve the very poor prison system in the Democratic Republic of the Congo: the conduct of a comprehensive census of the prison population and release of all arbitrarily detained prisoners; the establishment of a reasonable budget for every prison; and the recording and regular reporting of deaths in prisons by prison officials.

54. With respect to the recommendation on the conducting of a comprehensive census of the prison population, the Special Rapporteur was informed that within the period under review the Congolese authorities, with support from the MONUSCO Corrections Unit, conducted a census in those correction facilities that are located near a MONUSCO presence. A two-year project is currently being developed with funding from the Government of France to conduct a comprehensive census of the entire prison population.

55. Regarding the recording and reporting of deaths in custody, the Special Rapporteur received information that prison authorities currently send incident reports on deaths in detention to the Director of Prisons at the Ministry of Justice and Human Rights on a case-by-case basis. During the period under review, the drafting of those reports has become significantly more frequent.

56. The allocation by the Government of reasonable budgets for every prison remains a challenge. The Special Rapporteur received information that some steps have been taken to restructure the management and human resources allocated to the penitentiary system since June 2010. However, those steps were not accompanied by sufficient budgetary allocations. As a result, penitentiary employees are significantly underpaid, lack dedication, and are susceptible to corruption. Only the central prisons, including the Ndolo military prison in Kinshasa, receive a small, but still insufficient, budget for feeding detainees. By consequence, detainees remain dependent upon their families, friends and charitable

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<sup>20</sup> One of the most serious cases is the reported escape of more than 960 prisoners from Kasapa prison, Lubumbashi, Katanga Province, on 7 September 2011, following an attack by several armed men outside the prison. The escapees included the former Mai-Mai chief Gédéon Kyungu Mutanga, who was convicted of war crimes, crimes against humanity and terrorism in March 2009 (see submission from Amnesty International). For further information, see media reports, for example, Radio Okapi, "Lubumbashi: 963 prisonniers s'évadent de la prison de Kasapa", 7 September 2011, [http://radiookapi.net/actualite/2011/09/07/lubumbashi-963-prisonniers-s-%E2%80%99evadent-de-la-prison-de-kasapa/](http://radiookapi.net/actualite/2011/09/07/lubumbashi-963-prisonniers-s%E2%80%99evadent-de-la-prison-de-kasapa/).

organizations for their nutrition and survival. Living conditions remain dire due to, inter alia, the lack of basic health care.

57. Despite the persisting difficult conditions and the severe overcrowding in prisons, the recommendation relating to the release of all arbitrarily detained prisoners was not followed up. As documented by the civil society in 2011, a considerable percentage of the prison population is in prolonged detention without trial or charge. Numerous detainees have never appeared before a court, or been allowed to challenge the legality of their detention.<sup>21</sup> Furthermore, it is reported that convicted prisoners are often not freed at the end of their sentence, a situation that is exacerbated by the lack of prison records. Meanwhile, arbitrary arrests continue to be frequent, thus further increasing the pressure on the prisons.<sup>22</sup>

## VII. Killings related to sexual violence, witchcraft and vigilantism

### A. Extrajudicial executions and sexual violence

58. The previous mandate holder raised the issue of the prevalence and atrocious nature of sexual violence in the Democratic Republic of the Congo, which had reached such a grave level that it was resulting in deaths. The Special Rapporteur confirms that during the period under review, sexual violence, including mass rape, continued to be committed at an unabated rate. Investigation reports indicate that FARDC soldiers and various armed groups remain, by a large margin, the main perpetrators, although media reports from 2011 also point to an increase in sexual violence committed by civilians, as well as its proliferation throughout the entire country. The Special Rapporteur has encountered the same difficulties as his predecessor regarding the lack of statistics on deaths resulting from sexual violence. However, having analysed various reports on sexual violence in the Democratic Republic of the Congo, he observes with concern that death threats and killings related to sexual violence continue to occur, in particular in cases of resistance or rescue attempts, as well as in situations where the victims decide to report the case and seek justice.

59. The previous mandate holder noted that MONUC had launched a comprehensive strategy against sexual violence in April 2009, but that implementation had been delayed (A/HRC/14/24/Add.3, para. 68); he recommended full implementation of the strategy. The Special Rapporteur was informed that the implementation of the comprehensive strategy began in 2010, with the first projects launched within its framework. It is now the national strategy against gender-based violence, and is supported by the United Nations system. The strategy is aimed at ensuring the coherence and harmonization of international support to tackle sexual violence. Five working groups were created to ensure coordination among various agencies. The MONUSCO Sexual Violence Unit ensures the overall coordination of the five working groups. Congolese ministries are reported to participate in each of the working groups. The comprehensive strategy has been replicated at the national Government level as the National Strategy on Sexual and Gender-based Violence, and at the provincial level. The Special Rapporteur welcomes the start of the implementation of this strategy and insists on the importance of its effective and full realization, given the scale of the problem of sexual violence in the Democratic Republic of the Congo.

<sup>21</sup> Amnesty International, *The Time for Justice is Now: New Strategy Needed in the Democratic Republic of the Congo* (London, 2011), p. 51. Available from [www.amnesty.org/en/library/info/AFR62/006/2011/en](http://www.amnesty.org/en/library/info/AFR62/006/2011/en).

<sup>22</sup> *Ibid.*, p. 43.

## **B. Vigilante justice killings, including for witchcraft**

60. The Special Rapporteur concurs with his predecessor on the spread of vigilante killings and mob justice, which is mainly due to a lack of trust in the justice system and the high costs of turning to the mechanisms of the justice system. The victims, as before, include suspected witches, in particular women and children, as well as persons suspected of crimes such as theft or rape. While data are not sufficiently available to establish precise statistics on the number of killings, local media and NGO reports indicate that they are still widely carried out.<sup>23</sup> For instance, 15 persons are reported to have been killed in June 2011 in the territories of Lubero, Beni and Rutshuru in North Kivu as a consequence of “popular justice”.<sup>24</sup>

61. The previous mandate holder put forward recommendations on the need to investigate and punish the killings of “witches” and those resulting from vigilante justice, as well as to sanction police or other officials who fail to take reasonable steps in this direction. Another recommendation suggested strengthening public awareness campaigns on this problem. The Special Rapporteur has regrettably not received sufficient information to assess the follow-up to those recommendations. He takes note however of the information received that the current efforts made by the Congolese authorities to bring those responsible for these killings to justice are insufficient.

## **VIII. Fight against impunity in cases of extrajudicial executions**

62. The previous mandate holder concluded that impunity for all forms of killings in the Democratic Republic of the Congo was prevalent, which was partly due to systemic problems of the justice system. Impunity for senior military commanders constituted a particularly serious concern (A/HRC/14/24/Add.3, para. 96).

### **A. Systemic problems in the Congolese justice system**

63. During the period under review, the Congolese authorities, with international support, have taken some steps to address the systemic problems in the justice system. For instance, in an attempt to strengthen the capacity of the system, 2,000 additional magistrates were to be trained and deployed between January 2010 and January 2012. The establishment of prosecution support cells and efforts to equip judiciary institutions with modern technologies were reported. While these steps are welcomed, the Congolese justice system still has poor capacity to ensure a proper administration of justice. It continues to be severely affected by inadequate resources, endemic corruption, political interference, poor enforcement of judgments<sup>25</sup> and very limited access to justice for the majority of the Congolese population. Interference is of particular concern in both the military and civilian justice systems. In the military justice system, officers have been reported to protect the soldiers under their command from accountability and to avoid cooperation with the judiciary, thus undermining efforts to fight impunity within the military.

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<sup>23</sup> Oxfam, “ ‘We are entirely exploitable’: the lack of protection of civilians in eastern DRC”, Oxfam briefing note, 28 July 2011, p. 9, available from [www.oxfam.org/sites/www.oxfam.org/files/bn-protection-civilians-eastern-drc-2011-08-02-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/bn-protection-civilians-eastern-drc-2011-08-02-en.pdf).

<sup>24</sup> Radio Okapi, “Justice populaire au Nord-Kivu: la société civile dénonce le silence des autorités ?”, 23 June 2011, available from <http://radiookapi.net/actualite/2011/06/23/justice-populaire-au-nord-kivu-la-societe-civile-denonce-le-silence-des-autorites/>.

<sup>25</sup> A/HRC/19/48, para. 51; see also the submission from Amnesty International.



64. Witness protection raises serious concerns. The former mandate holder drew attention to the lack of a national witness protection programme as a major obstacle to fighting impunity (A/HRC/14/24/Add.3, para. 100). Despite the fact that the Government, in its Plan of Action for the Reform of Justice from 2007, had envisaged the creation of a protection programme for victims and witnesses, such a programme has not yet been established. This perpetuates a situation in which victims fear to seek justice, and reinforces the climate of impunity in the country.

65. There are currently only two such protection programmes in place in the country: one under the International Criminal Court and one implemented by UNJHRO. The former programme is limited to supporting only victims and witnesses “who appear before the Court, and others who are at risk on account of testimony given by such witnesses”.<sup>26</sup> Furthermore, “intermediaries”, such as local NGOs, grass-roots associations or individuals who have supported the work of the International Criminal Court, currently do not benefit from this protection programme.

66. The UNJHRO protection programme is aimed at protecting victims, witnesses of human rights violations, human rights defenders and journalists. While the former mandate holder commended the programme, he also acknowledged its limited reach and resources, and recommended that it be expanded. The Special Rapporteur was regrettably informed that throughout 2010 and 2011 there was no increase in either financial support or personnel for the programme. Efforts were made with NGOs from the cities to expand the protection networks into territories further afield. As a result, 174 people enjoyed protective measures under the programme in 2010; another 147 received protection from January to November 2011.

67. Bearing in mind that witness and victim protection constitutes a crucial element of the fight against impunity, the Special Rapporteur calls upon the Congolese authorities to establish as soon as possible a national programme for the protection of witnesses and victims. In parallel, he strongly believes that the UNJHRO protection programme should urgently be expanded, in terms of both resources and reach.

## **B. Efforts at the national level to combat impunity**

### **1. Implementation of the “zero tolerance” policy of the Government**

68. An essential recommendation from the mission report requested the Government of the Democratic Republic of the Congo to fully implement its “zero tolerance” policy, announced on 5 July 2009, with the aim of addressing a lack of discipline among and criminal activity by FARDC members. The former mandate holder recommended that FARDC members responsible for abuses be investigated, arrested and prosecuted. He listed five senior commanders suspected of involvement in war crimes, to whom the “zero tolerance” policy should apply primarily.

69. The Special Rapporteur was informed that the implementation of the zero-tolerance policy had gained momentum since 2010. A considerable number of mobile hearings were held by various military courts and tribunals. In South Kivu, for instance, court hearings held between January and August 2011 led to rape convictions of at least 50 FARDC soldiers, including several officers. In one trial, nine soldiers from the Congolese Armed Forces, including Lieutenant Colonel Kibibi Mutware, were convicted of crimes against humanity, notably rape, committed on 1 January 2011 in Fizi, South Kivu. They were given

<sup>26</sup> Article 43, paragraph 6, of the Rome Statute of the International Criminal Court.

prison sentences ranging from 10 to 20 years in February 2011.<sup>27</sup> Such positive measures should also be taken to bring to justice perpetrators of extrajudicial executions.

70. However, many officers still evade justice and are rarely, if ever, prosecuted for their command responsibility. The situation is complicated by the political discourse of the Congolese authorities of prioritizing stability over justice, which is aimed at not undermining the integration process of former rebel groups into the FARDC and implies a certain level of tolerance towards their record of serious human rights abuses. Consequently, well-known perpetrators of crimes under international law are not held accountable and even remain in positions of command.<sup>28</sup>

71. The current situation of the five senior commanders listed in the recommendation from the mission report confirms this trend. According to information received, General Bosco Ntaganda, the subject of an International Criminal Court arrest warrant, is still at large in Goma. Moreover, in October 2011, the President of the Democratic Republic of the Congo reiterated the authorities' refusal to surrender Bosco Ntaganda to the Court.<sup>29</sup> Colonel Sultani Makenga is the Deputy Commander of the FARDC Amani Leo Operation for South Kivu. Colonel Innocent Zimurinda is the Commander of the 811th FARDC Regiment deployed in Masisi Territory, North Kivu. Colonel Bernard Byamungu is the Commander of the 9th FARDC Sector based in Uvira, Uvira Territory, South Kivu. Finally, Lieutenant Colonel Salumu Mulenda was the Deputy Commander (Operations and Intelligence) of the 113th FARDC Regiment based in South Kivu. He reportedly died on 12 December 2011 in Kigali as a result of injuries sustained during an ambush, and his body arrived in Goma on 14 December 2011.

72. Furthermore, the Special Rapporteur welcomes the conviction by the International Criminal Court of Thomas Lubanga Dyilo on 14 March 2012 as a major step in the fight against impunity. Mr. Lubanga Dyilo was found guilty of the war crimes of conscripting and enlisting children under the age of 15 into the Patriotic Force for the Liberation of Congo, and using them to actively participate in hostilities in the country's north-eastern Ituri District from September 2002 to August 2003.<sup>30</sup>

## 2. Other measures to combat impunity

73. The Congolese authorities have made additional efforts in fighting impunity, in an attempt to follow up on one of the main recommendations of the United Nations report on the mapping exercise (see para. 31 above). The Minister of Justice and Human Rights devised in 2011 a draft law concerning the creation and organization of a specialized court, composed of national and international judges, to deal with the crimes committed during the period from 1993 to 2003. On 22 August 2011, the Senate decided to return the draft law to the Government for review. The Senate considered, *inter alia*, that the draft would be unconstitutional as it would contradict the constitutional provisions regarding immunities and privileges of jurisdiction.

74. Beyond the issue of accountability of the Armed Forces, another example of an attempt to fight impunity in Congolese society was the trial on the killings of Floribert Chebeya and Fidèle Bazana (see para. 50 above). On 23 June 2011, the Military Court of

<sup>27</sup> Submission from Amnesty International.

<sup>28</sup> *Ibid.*

<sup>29</sup> Press conference by the President of the Democratic Republic of the Congo, Joseph Kabila, Kinshasa, 19 October 2011.

<sup>30</sup> International Criminal Court, "ICC first verdict: Thomas Lubanga guilty of conscripting and enlisting children under the age of 15 and using them to participate in hostilities", press release, 14 March 2012, available from [www.icc-pi.int/NR/exeres/A70A5D27-18B4-4294-816F-BE68155242E0.htm](http://www.icc-pi.int/NR/exeres/A70A5D27-18B4-4294-816F-BE68155242E0.htm).

Kinshasa/Gombe rendered its judgment, convicting and sentencing four policemen to the death penalty, and a fifth to life imprisonment. Three persons were acquitted for lack of evidence. Various NGOs reported concerns relating to the proper clarification of the circumstances of the deaths of Mr. Chebeya and Mr. Bazana, the conviction of all alleged perpetrators, as well as to the competences of a military court to rule on cases of ordinary law.<sup>31</sup> At the moment of drafting the present report, the United Nations was still verifying aspects relating to the respect of fair trial guarantees within this trial. An appeal has also been filed, but no hearing has yet taken place. The head of the police at the time of the killings, John Numbi, who is believed to have been involved in the death of Floribert Chebeya, was suspended, but regrettably no legal examination into his role in the death has taken place.

### **C. International measures to fight impunity in the Democratic Republic of the Congo**

75. The previous mandate holder formulated additional recommendations for international actors to contribute to the fight against impunity in the Democratic Republic of the Congo. One concerned the need to investigate, arrest and prosecute senior leaders of FDLR based abroad. Another was addressed to the Prosecutor of the International Criminal Court, suggesting he emphasize crimes of sexual violence in his investigations in the Democratic Republic of the Congo.

76. With respect to the FDLR leaders based abroad, the Special Rapporteur was informed that on 11 October 2010, the French authorities arrested Callixte Mbarushimana and transferred him to the International Criminal Court on 25 January 2011. On 16 December 2011, the Court's Pre-Trial Chamber I declined to confirm the charges against Mr. Mbarushimana and ordered his release on the grounds that there was insufficient evidence to establish substantial grounds to believe that he could be held criminally responsible for the eight counts of war crimes and five counts of crimes against humanity brought against him by the Prosecutor. Mr. Mbarushimana was released on 23 December 2011, although he is currently being investigated in France for his alleged role in the genocide in Rwanda in 1994.

77. In parallel, on 4 May 2011, the trial of Ignace Murwanashyaka and Straton Muson started before the Oberlandesgericht in Stuttgart, Germany, for their alleged role in war crimes and crimes against humanity reportedly committed by the FDLR. The trial is ongoing at the moment of drafting this report.

78. With regard to the recommendation made to the Prosecutor of the International Criminal Court, in two out of four cases before the Court concerning the situation in the Democratic Republic of the Congo, the Prosecutor has charged the accused with rape and sexual slavery both as war crimes and as crimes against humanity. The trial for the first case, against Germain Katanga and Mathieu Ngudjolo Chui, began on 24 November 2009. The second case concerned Mr. Mbarushimana.

## **IX. Conclusion**

**79. The situation of extrajudicial executions in the Democratic Republic of the Congo remains complex. The Special Rapporteur welcomes the series of steps taken**

<sup>31</sup> See Sophie Roudil and Gaëlle Perrier, *Rapport d'observation du procès « Chebeya - Bazana » en première instance devant la Cour militaire de Kinshasa-Gombe (R.D. Congo)* (Brussels, Protection International, 2011).

by the Government and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), in particular those to ensure better protection of civilians. He concludes, however, that their impact on the population remains limited. The population continues to be subjected to grave and massive abuses of human rights, including killings, by rebel groups and various Congolese forces, including the Congolese Armed Forces (FARDC). The Special Rapporteur further regrets the fact that election-related violence, including killings, was not prevented, and invites all concerned actors to examine the related reasons and strengthen contingency plans during future electoral cycles.

80. The Special Rapporteur welcomes the measures taken at both the national and international levels to fight impunity in the Democratic Republic of the Congo. Additional resolute and robust steps need to be taken in this area by the Congolese authorities. In particular, senior FARDC commanders suspected of human rights violations, including the five persons listed in the mission report, need to be investigated, arrested and prosecuted. Practical follow-up to the report on the mapping exercise released by the United Nations in 2010 needs to be ensured, including through the creation of a specialized court to address the human rights violations committed between 1993 and 2003.

81. The fight against impunity should also be considerably strengthened in the civilian justice system. The Special Rapporteur stresses the importance of witness and victim protection mechanisms in the fight against impunity, and regrets their very limited functioning in the Democratic Republic of the Congo. He invites the Government to establish a national programme for the protection of witnesses and victims, and invites MONUSCO to expand its own programme in this field.

## Appendix

### Summary of follow-up to each recommendation<sup>32</sup>

#### A. Extrajudicial executions in the Kivus

1. Large numbers of civilians have been killed in the Kivus, either in revenge attacks by rebel groups, or in opportunistic attacks or massacres committed by the Congolese army. Much more should urgently be done to reduce killings and protect civilians.

2. All FARDC soldiers should be provided, and be required to wear, uniforms that identify their name and relevant unit. The Security Council should make this a precondition for United Nations assistance to Congolese military operations.

This recommendation has been partially implemented.

3. The Government should fully implement its “zero tolerance” policy, and investigate, arrest and prosecute FARDC members responsible for abuses. This especially includes the following senior commanders suspected of involvement in war crimes: General Bosco Ntaganda, Colonel Sultani Makenga, Colonel Innocent Zimurinda, Colonel Bernard Byamungu and Lieutenant Colonel Salumu Mulenda.

This recommendation has been partially implemented.

4. Senior leaders of the FDLR based outside the country, including in Germany and France, should be investigated for their role in war crimes and crimes against humanity in the Democratic Republic of the Congo, and arrested and prosecuted accordingly.

This recommendation has been implemented.

5. FDLR commanders should immediately issue orders to their soldiers to comply with human rights and humanitarian law at all times.

This recommendation has not been implemented.

6. The conditionality policy of MONUC, setting out the terms on which it provides support to the Congolese Armed Forces, should be made public. It should be strictly adhered to, and the steps taken under it made public at an appropriate time.

This recommendation has been partially implemented.

7. The United Nations should consider creating an independent mechanism to monitor and investigate human rights violations in accordance with the principles of impartiality, effectiveness and credibility.

This recommendation has been implemented.

8. The United Nations should ensure that its human rights reports are made public within a reasonable time period after investigations take place, and take steps to publish regular human rights situation updates.

This recommendation has been implemented.

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<sup>32</sup> As contained in A/HRC/14/24/Add.3.

9. **It is of the utmost importance that the United Nations release the results of its mapping project investigations.**

This recommendation has been implemented.

## **B. The Lord's Resistance Army and killings in Province Orientale**

10. **The LRA continues to present a serious threat to Province Orientale, as well as to the region.**

11. **The Government and MONUC military presence in Province Orientale, and its ability to respond to LRA attacks, should be strengthened.**

This recommendation has not been implemented.

12. **The Governments of countries affected by the LRA, including Uganda, the Central African Republic, the DRC and the Sudan should, with international support, renew their regional military strategy with respect to the LRA. This should include measures to facilitate desertions from the LRA.**

This recommendation has been partially implemented.

13. **MONUC and the Government should work together to establish a community-based communications network in Province Orientale, with a view to receiving and responding quickly to warnings of LRA attacks on civilian populations.**

This recommendation has been partially implemented.

14. **MONUC should take steps to improve its relationship with civilians in Province Orientale, including by improving its community outreach and by better explaining its role.**

This recommendation has been partially implemented.

## **C. Sexual violence**

15. **Sexual violence is a significant cause of death of women, especially in the Kivus.**

16. **The comprehensive MONUC strategy against sexual violence should be implemented fully.**

This recommendation is under implementation.

17. **The Prosecutor of the International Criminal Court should emphasize crimes of sexual violence in his investigations in the Democratic Republic of the Congo.**

This recommendation has been implemented.

## **D. Prisons**

18. **Far too many prisoners die in a prison system that falls well below even the most basic standards of organization, monitoring and health.**

19. **The Government, with international support, should immediately conduct a comprehensive census of the prison population. Any prisoners arbitrarily detained should be released.**

This recommendation has not been implemented.

20. **Government should establish a reasonable budget for every prison.**

This recommendation has not been implemented.

21. **Prison officials should record the details of any deaths in prisons, and regularly report to the Ministry of Justice.**

This recommendation has been partially implemented.

## **E. Election-related violence**

22. **MONUC and the international community should consider the risk of violence by Government security forces during the next election period to be high. The security situation in the west of the Democratic Republic of the Congo should be closely monitored, and contingencies put in place for civilian protection.**

This recommendation was partially implemented, however, election-related violence was not fully prevented.

23. **The Republican Guard should be fully integrated into the regular Congolese army.**

This recommendation has not been implemented.

24. **Detention facilities operated outside the law by security agencies such as the Republican Guard should be closed immediately.**

This recommendation has not been implemented.

## **F. Witness protection**

25. **The MONUC witness protection programme is commendable, but needs expansion.**

This recommendation has not been implemented.

## **G. Killings of “witches” and vigilante justice**

26. **Far too many attacks by vigilantes and against “witches” take place and remain unpunished.**

27. **The Government should make clear that killings by private actors, whether against alleged “witches” or criminals, will not be tolerated. All such killings should be investigated and punished.**

The information provided is insufficient to assess the level of implementation of this recommendation.

28. **The Government should sanction police or other officials who fail to take reasonable steps to prevent and investigate killings by private actors.**

The information provided is insufficient to assess the level of implementation of this recommendation.

29. **To eliminate “witch” hunts, non-governmental organizations and development agencies should strengthen public awareness campaigns, especially those directed at parents and religious leaders.**

The information provided is insufficient to assess the level of implementation of this recommendation.