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**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

PROTECT

STABILIZE

CONSOLIDATE PEACE

**REPORT OF THE UNITED NATIONS JOINT HUMAN RIGHTS OFFICE ON HUMAN  
RIGHTS AND FUNDAMENTAL FREEDOMS DURING THE PRE-ELECTORAL  
PERIOD IN THE DEMOCRATIC REPUBLIC OF THE CONGO BETWEEN 1  
JANUARY AND 30 SEPTEMBER 2015**

DECEMBER 2015

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## LIST OF ACRONYMS

ACHPR	African Charter on Human and People's Rights
ANR	<i>Agence nationale de renseignements</i> (National Intelligence Agency)
CENI	<i>Commission électorale nationale indépendante</i> (National Independent Electoral Commission)
CSAC	<i>Conseil supérieur de l'audiovisuel et de la communication</i> (Higher Audio-visual and Communication Council)
DRC	Democratic Republic of the Congo
EMRM	<i>Etat-Major des renseignements militaires</i> (Headquarters of Military Intelligence)
FARDC	<i>Forces armées de la République démocratique du Congo</i> (Armed Forces of the Democratic Republic of the Congo)
GR	Republican Guard
ICCPR	International Covenant on Civil and Political Rights
MONUSCO	United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo
MP	Military Police
OHCHR	Office of the United Nations High Commissioner for Human Rights
PNC	<i>Police nationale congolaise</i> (Congolesse National Police)
UDHR	Universal Declaration of Human Rights
UNJHRO	United Nations Joint Human Rights Office

## **I. Executive summary**

1. This report of the United Nations Joint Human Rights Office (UNJHRO), jointly published by the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), documents violations of human rights and fundamental freedoms committed between 1 January and 30 September 2015 within the framework of the pre-electoral process and measures taken by the Congolese government in response to these violations. By virtue of its mandate, only cases where state agents or armed groups are responsible for violations and abuses have been documented by the UNJHRO, in accordance with international law.
2. Since 12 February 2015, the date of the publication of the electoral calendar by the National Independent Electoral Commission (CENI) and the promulgation of the electoral law by the President of the Republic, the Democratic Republic of the Congo (DRC) has embarked on a process that will culminate in the organisation of direct and indirect elections at the local, provincial and national levels that should take place up until 27 November 2016.
3. In 2015, there was an increase in the number of violations of political rights and public freedoms committed by state agents. In many provinces, the month of January 2015 was marked by violent repression by defence and security forces of public demonstrations, some violent, against a provision of the draft electoral law. Even though the number of incidents of this nature dropped after March 2015, the UNJHRO registered a resurgence of threats, arbitrary arrests, manipulation of justice against civil society activists and media professionals from July 2015 onwards. This trend of restricting freedom of expression and violating the security of those taking a critical stance on the government's actions, indicates a shrinking of the democratic space likely to compromise the credibility of the electoral process.
4. In line with Resolution 2211 of the United Nations Security Council of 26 March 2015, which specifically mandated MONUSCO to document and denounce human rights violations, including election-related violations, the UNJHRO documented 143 human rights violations in relation to the electoral process throughout the Congolese territory between 1 January and 30 September 2015. The UNJHRO can confirm eight violations of the right to life, 16 violations of the right to physical integrity and 42 violations of the right to the liberty and security of the person. Moreover, the UNJHRO documented 27 violations of the right to peaceful assembly, 41 violations of freedom of expression, as well as one violation of freedom of association.
5. Members of opposition political parties (111 cases) and of civil society (50 cases) as well as media professionals (22 cases) were particularly targeted by state agents, who hampered their activities, in such a way as to limit their activities, intimidate and repress them, and dissuade them from exercising their fundamental freedoms. The main perpetrators of documented violations are agents of the Congolese National Police (PNC) and of the National Intelligence Agency (ANR), often acting outside the legal framework of their positions.
6. This report also analyses the government's response to the documented human rights violations. Although some measures have been taken to end these violations, more

efforts need to be made considering the magnitude of the violations documented. For the most part, (and at the time this report was drafted) impunity of the perpetrators of human rights violations prevailed. The report makes recommendations to the Congolese authorities and to the international community. It advocates for the adoption of measures aimed at preventing and minimising the risk of violence in order for the electoral process to take place in a credible manner and in a calm environment conducive to the respect of human rights.

## II. Introduction

7. Since the publication of the electoral calendar by the National Independent Electoral Commission (CENI) and the promulgation of the electoral law by the President of the Republic on 12 February 2015, the Democratic Republic of the Congo (DRC) entered an electoral process that should lead to the organisation of 11 direct and indirect elections at the local, provincial and national levels which should take place up until 27 November 2016.
8. In view of the challenges posed by the electoral process to peace and stability in the DRC, United Nations Security Council Resolution 2211 of 26 March 2015 authorises the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO) to « monitor, report and follow-up on human rights violations and abuses and violations of international humanitarian law, including in the context of elections. »<sup>1</sup>
9. During the last legislative and presidential elections in 2011, the United Nations Joint Human Rights Office (UNJHRO) documented more than 530 human rights violations, which occurred between 1 November 2010 and 31 January 2012 throughout the national territory.<sup>2</sup> To prevent the recurrence of such violations, which have remained unpunished in most cases, this report aims at analysing trends of human rights violations committed within the framework of the on-going electoral process and the measures taken by the Congolese authorities to respond to this situation. The report addresses recommendations to the authorities and their partners, in order to ensure credible elections in a calm environment conducive to the respect of human rights and fundamental freedoms.
10. The beginning of 2015 was marred by an increase of violations of political rights and public freedom committed by state agents. In several provinces, January 2015 was marked by violent repressions of popular demonstrations, some of which were violent, by defence and security forces. These events took place in protest against a provision of the draft electoral law and the consequences of this provision on respect for the electoral calendar as well as the suggestion that President Kabila might run for a third term.
11. Even though the number of incidents of this nature dropped after March 2015, the UNJHRO noticed a resurgence of threats, arbitrary arrests and manipulation of justice against civil society activists and media professionals taking place from July 2015 onwards. This trend shows a determination to restrict freedom of expression and to violate the security of those taking a critical stance on the government's action.
12. Since 1 January 2015, the UNJHRO has documented 143 human rights violations related to the electoral process throughout the Congolese territory. These violations

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<sup>1</sup> Para 15.b) of resolution 2211 of 26 March 2015.

<sup>2</sup> See *Report of the United Nations Joint Human Rights Office on human rights and fundamental freedoms during the pre-electoral period in the Democratic Republic of Congo*, published on 9 November 2011, and *Report by the United Nations Joint Human Rights Office on the violations of human rights and fundamental freedoms committed during the electoral period in the DRC, as well as on the actions taken by Congolese authorities in response to these violations*, published in December 2013.

occurred mainly in provinces<sup>3</sup> where civil society and opposition parties were more active, or in provinces sought after by both the political majority and the opposition, mainly Kinshasa (33 cases), North-Kivu (27 cases), South-Kivu (20 cases), Eastern Kasai (18 cases), Orientale province (17 cases) and Western Kasai (11 cases).

13. The most reported types of violations are those of the right to liberty and security of the person (42 cases) and freedom of expression (41 cases). Victims were mainly members of opposition political parties (111 cases) and of civil society (50 cases), as well as media professionals (22 cases). The main perpetrators of the documented violations are agents of the Congolese National Police (PNC) (69 cases) and the National Intelligence Agency (ANR) (24 cases).

### **III. Methodology and constraints**

14. The present report was drafted on the basis of information gathered by the UNJHRO through its headquarters in Kinshasa, its 10 field offices in the East and its six antenna offices in the West, and from different sources such as victims and witnesses of human rights violations, members of civil society, representatives of political parties, media and health professionals, as well as officials of different units of the Police, of the Armed Forces of the Democratic Republic of the Congo (FARDC) and other Congolese authorities.
15. This report only presents cases that have been documented and verified by the UNJHRO and does not give an exhaustive overview of human rights violations perpetrated in the DRC during the period under review. One incident can be at the origin of the violation of several human rights. For this report, the UNJHRO included only the human rights violations which were related to the electoral process. The investigations conducted by the UNJHRO are not judicial in nature but rather seek to support the Government's efforts towards the respect for human rights and the fight against impunity.
16. This report was shared with the Government of DRC for comments on 13 November 2015.<sup>4</sup> On 2 December 2015, the Government sent its observations<sup>5</sup> to the UNJHRO who analysed and incorporated them.
17. Certain allegations reported to the UNJHRO could not be verified. They were therefore not taken into account in this report. Investigations and access to information were hindered by various restrictions. Movement of UNJHRO personnel was limited due to the security situation that prevailed during certain incidents.<sup>6</sup> In some cases, UNJHRO personnel were denied access to certain detention facilities upon the instruction of senior officials of these facilities who requested prior

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<sup>3</sup> For the sake of consistency, this report refers to the former territorial and administrative organization into 11 provinces which was effective during the first six months covered by this report. The re-organization into 26 provinces was put in place in July 2015.

<sup>4</sup> Letter n° BCNUDH/HT/543/2015.

<sup>5</sup> Letter n° 3429/RN1099/HMT/CAB/MIN/JGS&DH/2015 of Minister of Justice, Keeper of the Seals and Human Rights.

<sup>6</sup> As an example, during the incidents from 19 to 21 January 2015 in Kinshasa, the confrontations between demonstrators and law enforcement forces and the deterioration of the security situation prevented the UNJHRO from investigating on the ground during these three days.

authorisation from their supervisors or from the concerned Ministry. The UNJHRO highlights the systematic and continued denial of access to UNJHRO staff to the ANR's detention facilities and to persons detained by the ANR services. It deplors the lack of judicial supervision of detention facilities under ANR supervision and the lack of access to detainees, contrary to legal guarantees and to the DRC's international commitments.

18. Similarly, the UNJHRO was denied access by senior officials of health centre to some hospitals where wounded victims were to be found and to morgues with corpses of people who died during the period under review, notably in Kinshasa.<sup>7</sup> Certain provincial political and administrative authorities in charge of health issues did not provide information to the UNJHRO for fear of reprisals. Finally, the generalized fear of reprisals from members of the Congolese defence and security forces, considered as the main alleged perpetrators of reported human rights violations, equally limited the cooperation of some victims and witnesses with the UNJHRO.

#### **IV. Context and institutional framework**

19. According to the Congolese constitution, the President of the Republic is elected by direct universal suffrage for a five-year term renewable once.<sup>8</sup> President Joseph Kabila Kabange was elected for a second term after the elections on 28 November 2011, with effect from 20 December 2011. According to constitutional provisions, the next legislative and presidential elections must be organized before 19 December 2016 to elect a new President of the Republic and Members of Parliament whose term of office ends on the same date.<sup>9</sup> Local and provincial elected officials as well as senators are equally to be elected for a five-year term.<sup>10</sup> Initially scheduled for 2008, then re-scheduled for 2012, local elections have been continuously postponed.
20. On 17 January 2015, the National Assembly adopted a draft law including a provision conditioning the holding of 2016 presidential and legislative elections to the organization of a national census.<sup>11</sup> Due to technical and financial difficulties related to such a census, many civil society actors and opposition political parties interpreted this provision as a political manoeuvre seeking a "*glissement*"<sup>12</sup> of the electoral calendar to allow President Kabila to prolong his term beyond 2016. Dissatisfaction with this draft law led to demonstrations across the country, many of which were violent, organised by opposition leaders and civil society actors in January 2015. Most of these demonstrations were violently repressed by police forces and by FARDC units.

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<sup>7</sup> For example, the UNJHRO did not have access to the morgue of the General Hospital of Kinshasa (HGRK) or the town hall of Kinshasa, nor to certain detention facilities of the PNC, ANR and FARDC.

<sup>8</sup> Articles 70 and 220 of the Constitution.

<sup>9</sup> Article 103 of the Constitution.

<sup>10</sup> Articles 105, 197 and 198 of the Constitution, articles 175, 183, 193, 199, 209 and 215 of the electoral law.

<sup>11</sup> Article 8 of the draft law, in its initial version, stipulated that "the electoral roll must be updated by taking into account the evolution of demographic data and the identification of the population."

<sup>12</sup> The term "*glissement*" (sliding) is used to make reference to the postponement of the elections because of delays in their organization.



21. On 23 January 2015, the disputed provision relating to the presidential election was removed from the draft electoral law. The law was adopted and promulgated by the President of the Republic on 12 February 2015.<sup>13</sup> On the same day, on the basis of this law, the CENI<sup>14</sup> published an electoral calendar for 2015 and 2016, which provides for the organisation of 11 direct and indirect elections within 13 months, from October 2015 to November 2016. The electoral calendar therefore respects the deadline for elections laid down by the constitution. The CENI conditioned the implementation of this calendar on 23 external constraints related to the legal and regulatory framework required for the drafting of electoral procedures and the availability of funds for operations as per the established disbursement plan. At the time this report was drafted, some of these constraints had been considerably delayed whereas others had not been addressed.
22. The electoral calendar calls for the adoption and promulgation of the law on distribution of seats for local and municipal elections scheduled for 25 October 2015. This law<sup>15</sup> was only promulgated on 25 August 2015, whereas it should have been promulgated before 20 April 2015. Similarly, the CENI, due to difficulties relating to dual candidatures and to appeal court decisions confirming the candidatures of candidates ineligible under the law, has been late in publishing the final lists of candidates for provincial elections.
23. Following the administrative and territorial re-organization, the election of interim governors in the 21 newly created provinces was added to the electoral calendar.<sup>16</sup> In a decision of 8 September 2015,<sup>17</sup> responding to a request for interpretation introduced by the CENI in relation to the blockages with the elections, the Constitutional Court instructed that elections of governors of the new provinces were to be held before the next provincial elections scheduled for 25 October 2015, which left room for the latter to be postponed. In light of the difficulties in organising and financing elections in the new provinces within the set time frame, several civil society and political opposition actors interpreted this decision as a new attempt of “*glissement*” of the electoral calendar. In its decision, the Constitutional Court, acknowledging *force majeure*, asked the government to “immediately take exceptional transitional measures to maintain public order and security, and to ensure

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<sup>13</sup> Law n° 15/001 of 12 February 2015 modifying and completing law n° 06/006 of 9 March 2006 on the organization of presidential, legislative, provincial, urban, municipal and local elections, as modified by the law n° 11/003 of 25 June 2011.

<sup>14</sup> The CENI was created by the organic law n° 10/013 of 28 July 2010. It is composed by 13 members, among whom six delegates (including two women) appointed by the majority, four delegates (including one woman) appointed by the opposition at the National Assembly, and three delegates representing civil society (article 10). According to Ordinance n° 13/058 of 12 June 2013 on the nomination of the members of the CENI, at the time of the drafting of this report, it is constituted of four women and nine men stemming from political parties of the majority and the opposition as well as from civil society.

<sup>15</sup> Law n° 15/016 of 25 August 2015 on the distribution of seats for local and municipal elections.

<sup>16</sup> The new administrative and territorial re-organization, which took place in accordance with article 2 of the Constitution, has been effective since 19 July 2015. The provinces of Bandundu, Equator, Western Kasai, Eastern Kasai, Katanga and Orientale were replaced by 21 new provinces. Planned initially for 31 August 2015, the elections for interim governors were postponed at a later date, still to be defined at the date of the present report.

<sup>17</sup> This decision responds to a request introduced by the CENI on 29 July 2015 for interpretation of article 10 of the programming law n° 15/004 of 28 February 2015, determining the modalities of installation of the new provinces, and article 168 of the electoral law.

the regularity and continuity of public services in the provinces concerned”, without mentioning specific measures. In addition, the Court asked the CENI to evaluate “in all independence and impartiality” the entire electoral process as prescribed in the general electoral calendar published in February 2015.

24. The update of the electoral roll is also a major constraint raised by the CENI.<sup>18</sup> This would involve the registration of Congolese abroad as a modification to Article 5 of the Electoral Law in February 2015 allows Congolese living abroad to vote for presidential elections. Another difficulty arose concerning persons who reached the age of electoral majority<sup>19</sup> after the 2011 elections – the “new adults” – whose population is estimated at about 8 million.<sup>20</sup> The CENI had announced<sup>21</sup> that they could not participate in local elections scheduled for October 2015 but that they could vote during the presidential and legislative elections on 27 November 2016. The UNJHRO commends the efforts made by CENI’s technical services to consider them in all future elections.
25. In order to improve dialogue, the CENI has created nine consultation frameworks with electoral process stakeholders,<sup>22</sup> as venues for information sharing and coordination of activities, which involve almost all political and social components in the process and cover all electoral topics. On 25 May 2015, the CENI initiated a framework of consultation with political parties. The code of good conduct, adopted on 8 February 2015, was signed by the majority of political parties and groups registered with the Ministry of Interior. The UNJHRO commends the efforts of the CENI and stakeholders in promoting dialogue and encourages civil society and political parties to take ownership of these frameworks.
26. Moreover, on 9 September 2015, the CENI, the Higher Audio-visual and Communication Council (*Conseil supérieur de l’audiovisuel et de la communication* – CSAC) and the National Union of Congolese Press (UNPC) signed an agreement creating a Media and Elections *ad hoc* Committee, which seeks to promote better collaboration between the CENI and support structures for media or journalists, in order to ensure a professional media coverage of the electoral process.<sup>23</sup>
27. Finally, in conformity with the recommendations of the evaluation mission on electoral needs deployed to DRC in September 2013 by the Secretary General of the United Nations, the United Nations Development Programme (UNDP) has set up a Project for the Support of the Electoral Cycle in Congo (PACEC) for the 2015 – 2017 period, with a common fund to receive contributions from donors. The promotion and respect of human rights are incorporated within the PACEC project.

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<sup>18</sup> Articles 6 and 8 of the electoral law: the CENI is in charge of the list of voters.

<sup>19</sup> Article 5 of the Constitution.

<sup>20</sup> Presentation of the audit report of the electoral roll by the mission of the International Organization of *La Francophonie* (OIF).

<sup>21</sup> [www.radiookapi.net/actualite/2015/03/05/elections-les-nouveaux-majeurs-voteront-seulement-la-presidentielle-aux-legislatives-de-2016](http://www.radiookapi.net/actualite/2015/03/05/elections-les-nouveaux-majeurs-voteront-seulement-la-presidentielle-aux-legislatives-de-2016) (19 August 2015).

<sup>22</sup> Civil society and religious orders; political parties; inter-institutional and traditional chiefs; young people and people living with disabilities; electoral justice; electoral security; elections and human rights; media and elections; and gender and elections.

<sup>23</sup> The CENI organized the accreditation of journalists in Kinshasa from 13 January to 7 February 2015. Out of 487 applications made, 103 were rejected for non-compliance with the criteria.

## V. Legal framework

### 1. International law

28. All of the rights referred to in this report are guaranteed and protected by several international instruments ratified by the DRC,<sup>24</sup> notably the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights (ACHPR).<sup>25</sup> These rights are also protected by the Universal Declaration of Human Rights (UDHR), several provisions of which are considered to be customary international law. The ICCPR specifically guarantees the right to life (article 6), the right to physical integrity and prohibition of torture or other cruel, inhuman or degrading treatment or punishment (article 7), the right to liberty and security of person (article 9) and equality before the courts and tribunals (article 14). The ACHPR provides for the right to respect for life and the integrity of the person (article 4), the prohibition of cruel, inhuman or degrading punishment or treatment (article 5), as well as the right of every individual to liberty and security of the person (article 6).
29. These two instruments also guarantee freedom of peaceful assembly (articles 21 of the ICCPR and 11 of the ACHPR), freedom of expression (articles 19 of the ICCPR and 9 of the ACHPR) and freedom of association (articles 22 of the ICCPR and 10 of the ACHPR), while recognising and regulating the possibility of limiting these rights in certain well defined circumstances.<sup>26</sup>
30. The right to vote and to be elected is also protected by international instruments.<sup>27</sup> In addition, in 2008, the DRC signed but has yet to ratify,<sup>28</sup> the African Charter on Democracy, Elections and Governance,<sup>29</sup> based on universal values of democracy, respect of human rights, sovereignty of the law and supremacy of the Constitution and constitutional order in political arrangements of States.

### 2. National law applicable to elections and public participation

31. The 18 February 2006 Constitution of the DRC, as modified by the law n° 11/002 of 20 January 2011, also guarantees all these rights. More specifically, article 16 protects the right to life and articles 17 and 18 are related to individual liberty and the rights of arrested or detained persons.

#### *a) Freedoms of expression and opinion*

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<sup>24</sup> Article 215 of DRC Constitution recognizes the principle of the primacy of international law.

<sup>25</sup> The DRC (Zaire at that time) ratified the ICCPR in 1976 and the ACHPR in 1987.

<sup>26</sup> According to the same ICCPR articles, freedoms of peaceful assembly and of association can be limited. These restrictions shall be provided in conformity with the law and have to be considered as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The freedom of expression can also be limited under conditions strictly provided by law and necessary for the respect of the rights or reputations of others or for the protection of national security or of public order or of public health or morals.

<sup>27</sup> ICCPR, art. 25 b) and ACHPR, art. 13.

<sup>28</sup> The draft law authorising the Charter's ratification is on the agenda of the Parliamentary session that began in September 2015.

<sup>29</sup> The Charter was adopted in 2007 and entered into force in 2012.

32. Freedoms of expression and opinion are guaranteed by articles 22 and 23 of the Constitution and by article 24 which provides that the State has to foster a pluralistic media environment in conformity with international law.
33. The CSAC<sup>30</sup> is mandated, among other responsibilities, to ensure equal access of political parties, associations and any other person to official means of information and communication<sup>31</sup> and to examine each violation of the press law.<sup>32</sup> Journalists and media professionals are protected in the regular exercise of their profession as well as against any kind of prevention of access to information sources.<sup>33</sup> Violations of freedom of expression or of the right to demonstrate during the electoral campaign are forbidden.<sup>34</sup> On 5 March 2015, the CSAC adopted a directive<sup>35</sup> regulating the 2015-2016 electoral campaign by the media, which especially prohibits media from programming and broadcasting phone-in programmes.<sup>36</sup> The CSAC may decide, solely through a decision of the council, to suspend a radio or television broadcast for a maximum period of three months.<sup>37</sup>
34. The Congolese legal system contains potential obstacles to freedom of expression. Ordinance-law n° 300 of 16 December 1963 on punishment of offenses against the Head of State, the criminal punishment of defamation (*imputation dommageable*)<sup>38</sup> and press offenses<sup>39</sup> are clear examples. Offenses by the press involve multiple levels of criminal liability implicating, in the absence of the author, the manager and the editor-in-chief of the publication, contrary to the principle of individual responsibility in criminal law.<sup>40</sup>
35. During the electoral period, the electoral law allows for the punishment of any person who “uses threat, violence, insults or assault against a voter with the aim of preventing him from voting or of influencing his choice; who involves, places an individual or brings together a group of individuals armed or not, with the aim of intimidating voters or disturbing public order”.<sup>41</sup> Threats against voters is an offense punishable by a prison term and a fine.
36. In spite of many advocacy efforts made by civil society during the past years, no major progress has been made towards adopting a bill on the protection of human

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<sup>30</sup> The CSAC was created by the organic law n° 11/001 of 10 January 2015 on the composition, attribution and functioning of the CSAC; presidential decree n° 11/054 of 12 August 2015 on the appointment of members of the CSAC.

<sup>31</sup> Articles 8 and 59.

<sup>32</sup> Article 58.

<sup>33</sup> Article 5.

<sup>34</sup> Article 81 of the electoral law; punishable by a prison term of not more than 12 months and a fine from 100.000 to 500.000 Congolese francs.

<sup>35</sup> CSAC’s directive n° CSAC/AP/001/2015 of 5 March 2015 related to the electoral campaign through the media.

<sup>36</sup> Article 4 al. 4 of the above-mentioned directive.

<sup>37</sup> Article 59.

<sup>38</sup> “*Imputation dommageable*” is defined by article 74 of the Criminal Code as the fact to impute to a person viciously and publicly, with the intent to harm, a particular fact which might be prejudicial to his honour or his reputation or to expose him to public contempt. It is punishable by a prison term from eight days to one year and a fine.

<sup>39</sup> Press offenses are defined by Title 4 of the 1996 law on freedom of the press.

<sup>40</sup> Article 28 of the 1996 law on freedom of the press.

<sup>41</sup> Article 88 of the electoral law.

rights defenders. On 1 November 2013, with support from the UNJHRO, human rights organisations, parliamentarians and the Ministry of Justice and Human Rights, came together in a technical workshop during which participants agreed on changes in some provisions of the bill. However, this bill has not yet been submitted to the National Assembly as, according to parliamentarians, some of their peers are of the opinion that the bill will only protect a certain category of people. In order to persuade parliamentarians, civil society members requested an examination of the constitutionality of the bill. The conclusions were presented in March 2015.

*b) Freedom of association*

37. Freedom of association and political pluralism are fundamental principles of the Congolese legal and political system, guaranteed by articles 6 and 8 of the Constitution and by law n° 4/002 of 15 March 2004 on organisation and functioning of political parties. The procedure for the registration of political parties is in conformity with international standards.<sup>42</sup>
38. Local authorities may suspend the activities of a political party if it threatens or damages national unity and independence, territorial integrity of the Republic, sovereignty of the Congolese State and democratic institutional order, or if it seriously disturbs public order. Local authorities may then seize the office of the prosecutor. This suspension is subject to a judge's decision and shall not exceed 30 days.<sup>43</sup> Only the Supreme Court of Justice has the power to dissolve a political party in case of a violation of constitutional, legislative or regulatory provisions.<sup>44</sup> The legal existence of the political parties seems guaranteed by this procedure in front of the country's highest judicial authority. However, lack of clear reasons to motivate suspension and alternative sanctions<sup>45</sup> could lead to abusive use of suspension or dissolution measures, in violation of international law.

*c) Freedom of peaceful assembly*

39. Articles 25 and 26 of the Constitution guarantee the right to organise and participate in peaceful meetings and demonstrations subject to the provision of prior information of local authorities.<sup>46</sup> Article 29 of the electoral law provides that during electoral campaigns "electoral meetings shall be held freely over the national territory. A written notification is sent to the competent local authority at least 24 hours before the meeting." Any legally authorised political party as well as any candidate recognised by the CENI has the right to convene an electoral meeting. However, in application of law n° 196 of 29 July 1999, the system of prior authorisation remains in force. This is

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<sup>42</sup> See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (2012), 21 May 2012 p. 21, para. 95. According to the law n° 4/002 of 15 March 2004, applications for the registration of a political party should be addressed to the Minister of the Interior and Security which shall, within a 30-day limit, either register the party or ask for more information to complete the registration file with the elements required by law. In the absence of response from the Minister within the prescribed time, the party is automatically registered and the receipt of the deposit of the file is considered as registration document.

<sup>43</sup> Article 29 of the law on political parties.

<sup>44</sup> Article 31.

<sup>45</sup> A/HRC/20/27 (2012), p. 18, para. 75.

<sup>46</sup> Ministerial circular n° 002/2006 of 29 June 2006 of the Ministry of Interior and Security stated that the notification has to be made three days before the demonstration.

contrary to the Constitution which only requires prior information in conformity with international law.

40. The UNJHRO welcomed the adoption by the National Assembly on 8 June 2015 of a draft law setting out measures implementing the freedom of demonstration. The draft law establishes the system of prior information, in conformity with the Constitution and international law. This draft law has yet to be adopted by the Senate.<sup>47</sup> It provides that any group of persons wishing to organize a demonstration has to inform the local authorities one week in advance.<sup>48</sup> If no response is received after 48 hours, the demonstration can take place.<sup>49</sup> The draft law does not recognise spontaneous demonstrations, without explicitly prohibiting them.<sup>50</sup>
41. The draft law provides that local authorities, for reasons of public order, good moral standards or respect for the law, may ban a demonstration and inform the organisers that the said demonstration cannot take place.<sup>51</sup> This limitation to peaceful assembly is in conformity with international law.<sup>52</sup> It is worth noting that the draft law does not provide for the possibility of a judicial review of the decision taken by the competent authority.<sup>53</sup>
42. In compliance with certain aspects of international law, the draft law provides a proportional use of force, if necessary, after three prior warnings. Even in these circumstances, law enforcement officials can only use non-lethal weapons.<sup>54</sup> Nevertheless, the text does not make a distinction between illegal peaceful meetings and violent meetings.<sup>55</sup> The text also does not provide gives details on the use of non-violent means by security forces, and on the authorisation to use force only if all other means have been exhausted.<sup>56</sup> However, the draft law does clearly indicate that the PNC is the security force responsible for managing demonstrations.<sup>57</sup> Finally, the draft law qualifies as an offense any interference in the holding of demonstrations, including interference from the authorities,<sup>58</sup> and protects persons who participated or refused to participate in a demonstration from disciplinary or discriminatory measures.<sup>59</sup>

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<sup>47</sup> Examination of this text is on the agenda of the Parliamentary session which started in September 2015.

<sup>48</sup> Article 7.

<sup>49</sup> Article 10.

<sup>50</sup> See A/HRC/20/27 (2012), p. 9, para. 29.

<sup>51</sup> Articles 2, 4 and 11.

<sup>52</sup> ICCPR, article 21.

<sup>53</sup> A/HRC/20/27 (2012), p. 20, para. 84, recommendation e).

<sup>54</sup> Articles 19 and 20.

<sup>55</sup> Principles 13 and 14, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The draft law does not clearly state that in the case of non-violent illegal demonstrations, the authorities should not resort to force, and where this is not possible, must limit the use of minimum necessary force (Principle 13).

<sup>56</sup> Article 4, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>57</sup> Article 19.

<sup>58</sup> Articles 4, 17 and 24.

<sup>59</sup> Article 2.

43. Organic laws on the organisation and functioning of the PNC<sup>60</sup> and Armed Forces<sup>61</sup> provide that defence and security forces shall use force only in cases of absolute necessity and solely to achieve a legitimate goal. As provided for by international standards,<sup>62</sup> the use of force and firearms has to be proportionate and respect the principle of graduated response. If the use of force is necessary for maintaining public order, it has to respect the above-mentioned principles.

*d) Right to political participation*

44. In conformity with international law,<sup>63</sup> article 14 of the Constitution and article 13 of the electoral law, as modified in 2015, guarantee equal representation of men and women and of persons with disabilities. However, women are in the minority in political institutions, both at the national and local levels. For example, about nine per cent of parliamentarians elected in 2011 were women, and in the current government, only seven out of 48 ministers are women.

45. It is regrettable that the final text of the electoral law did not retain a provision that at least one-third of the candidates in the lists presented by political parties must be female, strengthened by a clause providing that the list could be rejected for non-compliance with this rule. International law expressly allows the adoption of special provisional measures aiming at accelerating equality between men and women.<sup>64</sup> The UNJHRO welcomed the publication on 2 August 2015 of the law on the implementation of parity between men and women, which specifically recognizes the representation of women in political and administrative institutions,<sup>65</sup> even though this law does not provide for quotas or binding measures to ensure parity.

46. Article 13 of the Constitution protects Congolese against any discriminatory measure because of their religion, family origin, social condition, residence, political opinion and conviction, race, ethnic group, tribe and cultural or linguistic minority affiliation. However, the electoral law is silent on the rights of minority groups although they have the right to participate in public life.<sup>66</sup>

## **VI. Human rights violations**

47. Between 1 January and 30 September 2015, the UNJHRO documented 143 human rights violations in relation to the electoral process, in the provinces of Kinshasa (33 cases), North-Kivu (27 cases), South-Kivu (20 cases), Eastern Kasai (18 cases), Orientale province (17 cases), Western Kasai (11 cases), Katanga (seven cases), Bas-

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<sup>60</sup> Articles 8 and 9 of the organic law n° 11/013 of 11 August 2011 on the organization and functioning of the PNC.

<sup>61</sup> Organic law n° 11/012 of 11 August 2011, on the organization and functioning of the Armed Forces.

<sup>62</sup> See Code of Conduct of the United Nations for Law Enforcement Officials, adopted by the United Nations General Assembly on 11 December 1979 (Resolution 34/169), as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), from 27 August to 7 September 1990.

<sup>63</sup> Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and article 29 of the Convention on the Rights of Persons with Disabilities.

<sup>64</sup> CEDAW, article 4.

<sup>65</sup> Chapter 2, section 1 of the law.

<sup>66</sup> Article 2 (2), Declaration on the rights of the persons belonging to national or ethnic, religious and linguistic minorities.

Congo (six cases), Equateur (two cases) and Maniema (two cases). The most affected provinces are those in which the civil society and opposition political parties are most active or those sought after by both the political majority and the opposition.

48. The most reported types of violations are violations of the right to liberty and security of the person (42 cases) and of freedom of expression (41 cases). Victims are mainly members of opposition political parties (111 cases) and of civil society (50 cases), as well as media professionals (22 cases).

### **1. Rights to life and to physical integrity**

49. During the period under review, the UNJHRO documented eight violations of the right to life affecting 30 victims, 21 of which were extra-judicial killings perpetrated by state agents. The UNJHRO also documented 16 cases of violations of the right to physical integrity affecting 102 victims. These violations, most of the time, resulted from attempts to intimidate political opposition members, members of civil society or demonstrators in order to restrain or discourage their activities.
50. The UNJHRO documented that throughout the national territory, at least 20 persons were victims of extra-judicial killings and 77 persons were wounded by elements of the PNC, the Republican Guard (GR), the Military Police (PM) and the ANR during repressions of popular uprisings (some of which were violent) against the draft electoral law between 6 and 27 January 2015.
51. The UNJHRO documented the highest numbers of human rights violations and victims in Kinshasa. Investigations carried out by the UNJHRO confirmed that at least 16 persons, including two women and four children, were extra-judicially executed, and that at least 64 persons were wounded by elements of the PNC, PM and GR in several municipalities of Kinshasa between 6 and 22 January 2015. In Goma, North-Kivu province, between 19 and 23 January 2015, the UNJHRO documented that at least four men, two of which minors, were arbitrarily executed and that at least 11 persons, six of which minors, were wounded by agents of the PNC and PM.
52. Victims of these acts can be divided into two categories: demonstrators (members of political parties, civil society and students) and bystanders and persons who were in their homes. All these victims were shot by elements of security forces deployed to the field (PNC agents and soldiers of the GR and PM). They reportedly did not give any warning before shooting.
53. As an example, on 11 January 2015, in Kinshasa, a 28-year-old student taking part in a meeting organized on that day was shot in his lower abdomen and in his arm by security forces who did not give any summons before shooting. Participants had received an order from the police to disperse on the ground that the demonstration was prohibited. However, they objected, claiming that the demonstration was not illegal. On 19 January 2015, a 17-year old boy was shot in the neck by a police agent while he was observing the demonstrations through the window of his room with other persons.
54. On 18 February 2015, in Tshikapa, Kamonia territory, Western Kasai province, police agents brutally repressed a peaceful demonstration against the systematic refusal of



the town mayor to authorise activities of opposition political parties. Police agents shot in the air to disperse the demonstrators who reacted by throwing projectiles. Three boys were wounded. The federal president of the *Union pour la démocratie et le progrès social* (UDPS) and two of his collaborators were arrested and later released by PNC agents for having organised this demonstration.

55. During the period under review, throughout the country, at least 38 persons received threats of death or arrest due to their activities in relation to the electoral process. Although it was sometimes difficult to determine the source of these threats, in some cases the testimonies indicated that they emanated from state agents including ANR agents (six cases), FARDC soldiers (one case), local administrative authorities (four cases) and judicial authorities (three cases). For example, in May and June 2015, in Bukavu, South-Kivu province, a journalist of a local radio station received threats by telephone from a member of the governor's investigation unit for having broadcasted an excerpt of a speech by the president of the *Union pour la nation congolaise* (UNC) – an opposition party. This broadcast was interpreted as an attack on the governor's person.

## **2. Right to liberty and security of the person**

56. During the period under review, the UNJHRO documented 42 cases of violation of the right to liberty and security of the person affecting 649 victims. Arbitrary arrests and detentions, in particular of political opponents, civil society activists or demonstrators, were a frequent means of intimidation used by the security forces to restrict freedoms of expression and of peaceful assembly. Various cases documented by the UNJHRO confirm that the rights of individuals arrested, especially during demonstrations by PNC agents and those arrested by the ANR, were often violated, including the legal 48-hour limit on custody without a warrant, the right to be promptly brought before a judge, the obligation for a judge to examine preventive detention or the right to contact family relatives or a lawyer.
57. In some instances, Congolese authorities have taken certain measures to put an end to arbitrary and/or illegal arrests and detentions. During the January 2015 demonstrations in Kinshasa, defence and security forces (PNC, GR, PM) deployed on the ground arrested demonstrators: five people on 11 January 2015, two on 12 January 2015 and 399 including 45 minors from 19 to 21 January 2015. Those arrested on 11 and 12 January 2015 were released on the same day following some verification procedures in accordance with the legal time limit for custody. Those arrested from 19 to 21 January 2015 remained in PNC and FARDC detention facilities beyond the legal limit. Among them, 237 were transferred to various prosecutors' offices and courts while all the others were released. Charged with looting, destruction of property, rebellion and participation in an insurrectional movement, those transferred before the courts were tried in accordance with the procedure for offences committed in *flagrante*, in infringement of applicable time limits. In fact, in some instances, their trials took place ten days after the event occurred whereas trial for *flagrante* should take place on the same day of the arrest of the alleged offender or the following day.<sup>67</sup> The UNJHRO noted that 56 accused were acquitted and 47 were given prison sentence ranging from one month to 10 years.

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<sup>67</sup> Article 1, ordinance-law n° 78-001 of 24 February 1978 on the repression of *flagrante* infractions.

58. The UNJHRHO is closely monitoring cases of political opponents, human right defenders and media professionals who were arrested during and after civic and political events. Political interference into the course of trials and the lack of progress in the prosecution of some of the accused demonstrate the instrumentalization of justice in order to silence those individuals and as a result to intimidate civil society as a whole.
59. For example, on 22 January 2015, Ernest Kyaviro, federal president of the party *Rassemblement congolais pour la démocratie/Mouvement de libération de Kisangani* (RCD/KML), was arrested by the PM in Goma, North-Kivu province. His wife, a journalist, was threatened by unidentified armed men for reporting the arrest. On 16 April 2015, after being transferred to the ANR in Kinshasa, Mr. Kyaviro was transferred and placed in preventive custody at Makala prison. On 18 September 2015, he was sentenced for incitement to civil disobedience to three years of imprisonment, the maximum penalty requested by the prosecutor.
60. The UNJHRO also noted recent arrests in relation with old cases that have been pending before the courts for a considerable period of time. This may constitute an abuse of proceedings targeting opposition members or sympathizers or individuals charged for their participation in demonstrations. This is the case of the national president of the party *Solidarité congolaise pour la démocratie (SCODE)*, Jean-Claude Muyambo Kyassa. He was arrested in Kinshasa, detained at the ANR, brought to the General Prosecutor's office and finally transferred to Makala central prison on 20 January 2015. He was charged with breach of trust and *stellionat*<sup>68</sup> in the context of his activities as a lawyer in 2002 in Lubumbashi, Katanga province.
61. Human rights defenders and civil society activists were also arrested. On 15 March 2015, in Kinshasa, at least 30 persons were arrested by PNC agents, ANR agents in civilian clothes and PM elements during an authorized workshop organized by the Congolese civil society platform *Filimbi* to promote peaceful and responsible civic engagement of Congolese youths. All of those arrested were detained at ANR premises in Kinshasa. Most of them were released in the following days. Foreigners, namely from Burkina Faso and Senegal, were expelled from the DRC for having attended the workshop.
62. Three of those arrested were held in custody by the ANR. One of the workshop organizers, Sylvain Saluseke, was arrested on 16 March 2015 and released on 21 April 2015. The computer specialist managing the webpage of the *Filimbi* platform and Fred Bauma, leader of the movement *Lutte pour le changement* (Lucha) and organizer of the workshop, were brought to justice before the courts on 24 April and 5 May 2015 respectively. They are currently in detention pending trial at the Makala central prison and are charged with participation in an insurrection, attempted killing of the Head of State, threats to State security and treason. Some members of the *Filimbi* platform and several workshop participants received anonymous threats of arrest in the following days.

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<sup>68</sup> According to article 96 of the penal Code, *stellionat* is the fact for a person to sell or to pawn a building that does not belong to him/her.

63. In Goma, North-Kivu province, the UNJHRO documented three cases of arbitrary arrests during activities organized by the Lucha movement to protest against the wave of arrests related to the workshop in Kinshasa. For example, on 7 April 2015, during a meeting to call for the release of their leader, four Lucha members were arrested by agents of the *Police des polices* Unit and placed in custody. They were beaten by police agents during their arrest and custody. They were later transferred to the Public Prosecutor's Office and then to Goma central prison on 13 April 2015. On 29 April 2015, they were provisionally released on bail upon payment of approximately \$630 US dollars. On 18 September 2015, they were sentenced to six months' imprisonment with 12 months' probation on charges of incitement to civil disobedience.
64. The aforementioned cases demonstrate that the PNC, ANR and other state agents often rely on state security and threats to the Head of State to justify arbitrary arrests and detentions and tend to use a disproportionate characterization of the alleged facts. As an example, Jean Bertrand Ewanga, Secretary General of UNC, was released from the Makala central prison in Kinshasa on 30 July 2015 after serving a 12-month sentence for insulting the Head of State, the President of the Senate, the Speaker of the National Assembly and the Prime Minister. He was arrested on 5 August 2014 following a speech he had delivered the previous day during a political rally organized by 13 parties. During the rally, opposition parties called on the President of the Republic to hold a dialogue in order to "arrange his smooth exit from power".
65. The UNJHRO has documented at least five allegations of psychological torture by the ANR. The practice of isolation and *incommunicado* detention by the ANR without possibility of access to family relatives and lawyers, causes psychological and moral suffering to those in custody, especially as this seems to be inflicted intentionally to punish, intimidate or obtain confessions. The ANR has a legal obligation to respect the law during any arrest or detention procedure.<sup>69</sup> However, the UNJHRO has documented at least 11 cases of persons who reported having been arrested by ANR agents with no arrest warrant and/or without having been informed of the reason for their arrest. In addition, the legal limit for custody without a warrant and the rules of preventive detention were not respected. At least six persons spent more than a month in the cells of this institution without appearing in front of a judge and with no access to either their relatives or a lawyer.<sup>70</sup> The UNJHRO is particularly concerned with detention conditions at the ANR as, according to testimonies, they violate the rights of detainees including the right to food, to medical attention and the respect of hygiene conditions in detention premises.

### 3. Freedom of expression

66. During the period under review, the UNJHRO documented 41 cases of violations of the right to freedom of expression. These violations were often related to violations of freedom of opinion, thereby creating a general atmosphere of intimidation and a narrowing of the democratic space. The UNJHRO noted with concern an increase in

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<sup>69</sup> Article 23 of Decree-law n° 003-2003 of 11 January 2003 on the creation and organization of the ANR states that: "ANR judiciary police officers are, in the exercise of the functions attached to this quality, under the exclusive orders and the surveillance of the General Administrator and carry out their missions of criminal investigation in the respect of laws and regulations."

<sup>70</sup> Only the judge of peace court may place a person under preventive detention according to article 29 of the Criminal Procedural Code.

the number of cases of violations and/or threats targeting media professionals, human rights defenders and political opponents starting from July 2015.

67. The cases documented by the UNJHRO clearly show that freedom of expression is often violated via breaches of other civil and political rights such as restrictions on the right to peaceful assembly or ill-treatment inflicted on the basis of someone's opinions. State agents have repeatedly made use of summons to the ANR offices and have conducted arrests in order to intimidate people who criticize authorities or those perceived as such.
68. For example, on 13 July 2015, in Kinshasa, ANR agents arrested a distributor of the newspaper C News with two other persons working at the printing house of this newspaper, which was then also sealed. At the time of the drafting of this report, these three persons were reported still in custody at ANR without any prosecution initiated against them. The chief editor of the same newspaper also received a summons from the criminal investigation office on 1 July 2015 in connection with an article published on 29 June 2015. In this article, the Special Adviser to the Head of State in charge of the fight against corruption was called upon to initiate an investigation into the source of the wealth of the presidential family. C News was successor of the newspaper Congo News, whose editor was released on 16 July 2015 on Kinshasa upon serving an 11-month sentence in prison for defamation.
69. On 21 July 2015, in Kananga, Western Kasai province, on the instructions of the Prosecutor's office, an investigation magistrate at the Public Prosecutor's Office arrested a journalist of the radio station Radio Full-contact, broadcasting in Kananga. The journalist was accused of defamatory statements against the Governor of the province during a radio program called "*kazolo dilumbuluile*" (Stand up for your rights). During this radio program, he allegedly declared: "the Governor had no power left, it was time for him to leave and under his term the Province has become heavily indebted". This journalist was arrested and placed in custody on the same day. He was released two days later as a result of pressure by provincial Members of Parliament.
70. In the context of the January 2015 demonstrations against the draft electoral law, the Government blocked access to SMS services and to the internet between 20 January and 7 and 8 February 2015 respectively. Access to social networks was blocked until early March 2015. The Government justified this measure on the basis of the spreading of false rumours and images.<sup>71</sup> During the same period, television programs and radio stations were suspended. For example, on 17 January 2015, *Canal Kin Télévision* (CKTV) owned by the opposition leader Jean-Pierre Bemba and *Radio Télé Catholique Elikya* (RTCE) were suspended. Public officials accused them of allegedly broadcast inflammatory messages concerning the draft electoral law. CKTV was still suspended at the time of drafting of this report whereas RTCE resumed its broadcasting on 16 June 2015.

#### **4. Freedom of peaceful assembly**

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<sup>71</sup> See page 13 of Government observations on the report, annex of Letter n° 3429/RN1099/HMT/CAB/MIN/JGS&DH/2015 of Minister of Justice, Keeper of the Seals and Human Rights of 2 December 2015.

71. The UNJHRO has documented 27 violations of the freedom of peaceful assembly. Most of these cases involved a disproportionate use of force by defence and security forces, mainly PNC agents but also agents of the GR, PM and ANR to repress peaceful meetings and demonstrations. Such violations have significantly limited the right of peaceful assembly and created a climate of fear aimed at reducing the space of expression by political opponents and other members of civil society.
72. For example, on 29 July 2015, in Bunia, Orientale province, ANR agents interrupted a training on securing elections jointly organized by the Office of military cooperation of the Embassy of the United States in the DRC and the CENI sub-office in Bunia. The interruption was made on the grounds that the organizers had not obtained prior authorization from the Ministry of Interior.
73. Defence and security forces have sometimes resorted to arbitrary and/or illegal arrests and detentions to prevent the organization of demonstrations or disperse demonstrators. On 14 May 2015, in Butembo, North-Kivu province, five members of the organization *Mouvement international de la jeunesse d'Afrique* were arrested by PNC agents during a peaceful demonstration that was officially authorized by the mayor of the city. A sixth person was arrested on 16 May 2015 during a visit to those already in detention. On 18 May 2015, after the intervention of the UNJHRO, the six men, who were detained at the peace tribunal's detention centre, were released by the magistrate examining their case.
74. Local authorities have also overused their police power to ban political rallies of parties other than the party of their choice. On 24 April 2015, the party UDPS called upon its supporters to march peacefully in Mbuji-Mayi, Western Kasai province, following the discovery of a mass grave in the municipality of Maluku in Kinshasa.<sup>72</sup> The party had submitted an information letter to the mayor of the city of Mbuji-Mayi who irregularly refused to authorize the event on the grounds that the justification for the march was not consistent. On the day of the march, the police used tear gas to disperse participants who tried to demonstrate. Sixteen men were arrested; two of them were slightly injured and transferred to a hospital.
75. In September 2015, throughout the Congolese territory, five demonstrations organized by opposition parties and/or civil society organizations were either violently repressed by the security forces or prohibited. Meanwhile, at least 17 demonstrations, including eight organized by the ruling party, took place without any disturbance. Most of these demonstrations were related to the separation from the presidential majority of seven political parties ("Group of 7"). For example, on 22 September 2015, in Mbuji-Mayi, Western Kasai province, the Governor of the province organized a march in favour of the Head of State through which he reaffirmed his support to the presidential majority. On 1 October 2015, the march organized by the opposition party UDPS to express support to their national leader was banned by the mayor of Mbuji-Mayi. Police agents were deployed at all intersections of the city to prevent the march, despite the

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<sup>72</sup> In March 2015, a mass grave with 421 bodies was discovered by members of the municipality of Maluku, Kinshasa province. The Government argues that the mass grave contains bodies of indigents, stillborn babies and abandoned or unidentified bodies. The Government committed to carry out a transparent and credible investigation. However, the UNJHRO does not have knowledge of the results of this investigation.

fact that the organizers had initially informed the local authorities in accordance with the law.

## **5. Other violations**

76. According to the investigations conducted by the UNJHRO, violations of the right to property and right to freedom of association were committed alongside other violations. During the period under review, state agents, especially of the PNC, damaged or destroyed properties belonging to political opposition parties or to media outlets on at least on four occasions. These actions were done with the apparent aim of deterring them from pursuing their activities or limiting their freedom of expression.
77. On 30 June 2015, in Mbuji-Mayi, Western Kasai province, a group of seven people, dissidents of the UDPS opposition party who had joined the political party *Alliance chrétienne pour la démocratie et le développement* (ACDD), the party of the Governor of the province, broke into the home of the UDPS branch president in the town of Muya and destroyed valuables; they left the scene uttering death threats against the owner. This action was intended to persuade him to leave the opposition in order to join the Governor's party.

## **VII. Identification of the alleged perpetrators**

78. The alleged perpetrators of the violations documented by the UNJHRO between 1 January 2015 and 30 September 2015 were primarily agents of the PNC (69 cases), the ANR (24 cases) and the FARDC (nine cases). Other state agents, mainly political, administrative and judicial authorities, such as governors, mayors or magistrates, were reportedly responsible for 40 cases of human rights violations.
79. The 2011 organic law governing the organization and functioning of the PNC provides that "when Armed Forces and National Police units are jointly called upon to intervene to enforce the law, except in situations of State of siege or of emergency, the lead of public order restoration and enforcement falls on the commander of PNC units."<sup>73</sup> During demonstrations, such as those of January 2015, the police were often reinforced by soldiers from the GR and the PM.
80. The *modus operandi* for dispersing demonstrators generally consisted of using excessive force including the disproportionate use of tear gas and non-justified use of live ammunition.<sup>74</sup> The inadequacy of financial, logistical and human resources (in terms of training) of the PNC and other security services does not foster the respect of human rights. During demonstrations against the draft electoral law in January 2015, the PNC and FARDC were supplied with significant military equipment including tanks, tear gas and rubber bullets guns. Some victims reported that the Commander of the provincial police of the PNC in Kinshasa and his deputy in charge of administration were present alongside PNC agents on 11 and 12 January 2015.

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<sup>73</sup> Article 81, paragraph 1, organic law n° 11/013 of 11 August 2011 on the organization and functioning of the PNC.

<sup>74</sup> Principle 9 of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

81. The alleged role of the intelligence services, such as the ANR and the *Etat-major des renseignements militaires* (EMRM) –Headquarters of Military Intelligence- in the violations documented by the UNJHRO is a source of concern as law enforcement during demonstrations, arrests and detentions is not within their competence. The EMRM is responsible for establishing and managing the intelligence system required for the development of military policy, decision-making and employment of forces.<sup>75</sup> The ANR can only arrest persons alleged to have committed crimes against State security,<sup>76</sup> as defined by Title VIII of the Criminal Code.<sup>77</sup> There is no other legal provision authorizing the ANR to examine and investigate other types of offenses. Thus, the offense of insulting the Head of State<sup>78</sup> is not within its competence. Victims of violations committed by ANR agents are all political opponents, members of the civil society and media professionals, which suggests that the ANR is being used in order to intimidate civil society as a whole.

### **VIII. Measures taken by the Government**

82. The UNJHRO welcomes significant recent progress in the field of human rights in the DRC, and in particular the strengthening of the national human rights protection system through the appointment of members of the National Human Rights Commission (CNDH). Moreover, the UNJHRO commends the CENI and the CNDH for having signed on 29 September 2015, a Memorandum of Understanding defining the terms of their collaboration. Both institutions committed themselves to conduct outreach and sensitization activities on political and electoral rights, to closely monitor and investigate all allegations of human rights violations that may occur before, during and after the electoral process. The UNJHRO urges the CENI and the CNDH to establish the *ad hoc* subcommittee "Elections and Human Rights" as provided by the Memorandum. Furthermore, the UNJHRO welcomes the adoption by the National Assembly of the draft law measures implementing the freedom of demonstration, which, in accordance with the Constitution and international law, restores the system of prior notification.

83. Acknowledging that without adequate training, equipment and weapons, security forces can only commit further violations, authorities have called on the international community to remedy this situation. The General Commissioner of the PNC has on several occasions requested that the UNJHRO and MONUSCO support the training of police officers in the field of human rights, crowd control and the maintenance and restoration of law and order. From 1 January to 30 September 2015, more than 800 police officers were trained by MONUSCO on ensuring security during the electoral process. Authorities, and in particular the PNC, have welcomed the new procedures in

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<sup>75</sup> Article 33, organic law n° 11/012 of 11 August 2011 on the organization and functioning of Armed Forces.

<sup>76</sup> Article 3, decree – law n° 003/2003 of 11 January 2003.

<sup>77</sup> Crimes against external State security (articles 181 to 192) are treason and espionage. Crimes against internal State security (articles 193 to 220) are attacks and plotting against the Head of State, attacks, plotting and other offenses against the authority of the State and territorial integrity, attacks and plots aiming at bringing about massacres, devastation or looting, participation in armed groups, participation in an insurrectional movement.

<sup>78</sup> This offence is defined by ordinance law n° 300 of 16 December 1963, article 1: “an offense publically committed against the person of the Head of State is punished by a prison sentence of 3 months to 2 years and a fine of 2.000 to 10.000 Congolese francs or only one of these sentences.”

relation to the United Nations Human Rights Due Diligence Policy<sup>79</sup> as promulgated on 7 September 2015.

84. The UNJHRO also notes with satisfaction the significant and encouraging progress in the fight against impunity. In this domain, from 1 January to 30 September 2015, 146 FARDC soldiers and 40 PNC agents were sentenced for acts constituting human rights violations. However, none of these cases were related to the electoral process.
85. Although since January 2015 many protesters have been charged with looting, destruction of property and insurrection, no state agent has been investigated or prosecuted for acts constituting violations committed during the repression of demonstrations. However, following the January 2015 unrest related to the draft electoral law, the Government acknowledged the deaths of 27 people (23 in Kinshasa and four in Goma), including two police agents, whose cause of death was not disclosed. The Government also announced that police investigations would be conducted to identify abuses and establish responsibility.<sup>80</sup> The lack of investigation and prosecution of violations committed during the January 2015 events raises the issue of the independence of the judiciary and its capacity to deal with cases of violations targeting political opponents and other civil society actors.
86. This situation is of particular concern as four years after the 2011 presidential and legislative elections, out of the 530 violations documented by the UNJHRO between 1 November 2010 and 31 January 2012, less than a dozen violations resulted in a trial; though judicial authorities had several times committed themselves to prosecute alleged perpetrators.<sup>81</sup> As for the infringements on freedoms of expression and peaceful demonstration, as per UNJHRO records, neither prosecutions nor administrative action were taken against perpetrators, although in most cases, those responsible were identified. Proceedings were opened concerning serious human rights violations committed by agents of the security forces in Kinshasa and an investigation team was set up by the judicial authorities in March 2012. However, to the knowledge of the UNJHRO, none of the alleged perpetrators of these human rights violations has been arrested to date.

## **IX. Actions and activities of the UNJHRO**

87. The UNJHRO functions include monitoring and reporting on the situation of human rights, advocating for the protection of civilians and human rights defenders, and helping national authorities to fight against impunity for serious violations of international human rights law. Resolution 2211 of the Security Council of 26 March 2015 mandated to the UNJHRO the task of recording and denouncing human rights violations, infringements to these rights and breaches of international humanitarian law, including those that may occur in the context of elections.

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<sup>79</sup> See paragraph 91 of the report.

<sup>80</sup> Declaration of the Government's spokesperson, Lambert Mende, of 5 February 2015.

<sup>81</sup> As an example, on 2 December 2011, the Minister of Justice and Human Rights ordered the Attorney General of the Republic and the General Prosecutor of the FARDC to open preliminary investigations into these allegations in order to establish the responsibility of the alleged perpetrators of human rights violations and to bring them to justice: Order for opening the preliminary investigation No. 4583/LK1053 B/RILU/CAB/MIN/J&DH/2011.



88. Since January 2015, teams of UNJHRO human rights specialists have conducted fact-finding missions on the violations of human rights that were reported to them. UNJHRO activities have been strengthened, in coordination with national organizations of human rights, to improve mechanisms and early warning processes and strengthen advocacy on the promotion and protection of human rights in the context of elections. The UNJHRO has also strengthened its advocacy and information exchange with the authorities, in order to ensure that people arbitrarily and/or *incommunicado* detained are released or promptly brought before legally competent courts. The UNJHRO publishes monthly and weekly reports that are shared with 16 national authorities of the DRC, allowing them to be duly informed of the violations, to investigate and to take any other appropriate measures.
89. The UNJHRO is closely following the trial of leaders and members of opposition parties, as well as those concerning civil society. The UNJHRO has also provided legal assistance and multifaceted targeted protection to human rights activists, journalists, victims and witnesses of gross human rights violations who were at risk of reprisals for having testified during trial, as well as human rights defenders and journalists who received threats.
90. The UNJHRO organized or supported 32 training sessions on modules covering human rights in relation to the electoral process; these trainings were attended by 1.622 participants including members of civil society, journalists, political and administrative authorities, PNC agents as well as political actors in the provinces of Bandundu, Western Kasai, Katanga, Maniema, North-Kivu and Orientale.
91. Human rights violations committed during the election period as documented by the UNJHRO are taken into account in the implementation of Human Rights Due Diligence Policy with respect to the support requested by the government from MONUSCO, including in relation to the electoral process. In accordance with this policy, the United Nations support to non-United Nations security forces in the DRC – such as the PNC – is provided in a manner consistent with the purposes and principles of the Organization, as set out in the Charter of the United Nations, and its obligations under international humanitarian law, international human rights law and international refugee law. MONUSCO and other UN agencies cannot therefore provide any support where there are substantial grounds to believe that there is a real risk that those who are to benefit from the support may commit serious violations of international humanitarian law, international human rights law and international refugee law, and where competent authorities do not take corrective actions or required mitigating measures.

## **X. Conclusions and recommendations**

92. 2015 was marked by a trend of increasing cases of violations of political rights and public liberties committed by state agents. In several provinces, January 2015 was marked by violent repression by defence and security forces of popular demonstrations (some of which were violent) against a provision of the draft electoral law. Although such incidents declined after March 2015, from July 2015 onwards, the UNJHRO observed an increase in the number of cases of threats, arbitrary arrests and manipulation of justice targeting civil society activists and media professionals.

93. Between 1 January and 30 September 2015, throughout the Congolese territory, the UNJHRO documented 143 violations of human rights in relation to the electoral process. This report only presents cases that have been documented and verified by the UNJHRO and therefore does not give a comprehensive overview of human rights violations that occurred in the entire territory of the DRC during the period under review.
94. The UNJHRO can confirm eight violations of the right to life, 16 violations of the right to physical integrity, 42 violations of the right to liberty and security of the person. Furthermore, the UNJHRO has documented 27 violations of freedom of peaceful assembly, 41 violations of freedom of expression, and one violation of freedom of association. Members of opposition political parties (111 cases), civil society activists (50 cases) and media professionals (22 cases) were particularly targeted by state agents in order to restrict their activities, and intimidate or deter them from exercising their fundamental freedoms. The main perpetrators of the documented violations were PNC and ANR agents, often acting outside the legal framework of their official duties.
95. Restrictions on freedom of expression and attacks targeting the security of those expressing critical opinions against government actions is an indication of a narrowing of the democratic space. This trend is of particular concern with the approach of elections and given increased political activities. This situation is all the more worrying given that, four years after the 2011 presidential and legislative elections, out of the 530 violations documented by the UNJHRO between 1 November 2010 and 31 January 2012, less than a dozen violations have led to a trial, while judicial authorities had several times committed to prosecute alleged perpetrators. It is therefore critical to prevent and respond diligently to these types of violations as the impact on the electoral environment and ultimately on the credibility of the electoral process will be critical.
96. Thus, the UNJHRO recommends:

**To the Congolese authorities:**

- To take the necessary steps to open the democratic space by respecting freedoms of opinion, expression and peaceful assembly, thus contributing to the credibility of the electoral process.
- To carry out prompt, independent, credible and impartial investigations into human rights violations committed in the context of the electoral process; and if there is evidence of crimes having been committed, to bring to justice all suspected perpetrators, regardless of their rank; and to guarantee the victims' right to fair and equitable compensation.
- To take disciplinary action against civil servants and state agents who have abused or exceeded their powers.
- To release all those arrested and detained unlawfully and/or arbitrarily, and to close down all secret detention facilities; to allow the UNJHRO access to all detention centres.

- To put an end to arbitrary arrests and *incommunicado* detentions without judicial supervision by intelligence services, including the ANR.
- To ensure that force during law enforcement operations is used by defence and security forces only when strictly necessary and in a manner proportional to a legitimate aim.
- To equip PNC units with material resources to enable them to adequately deal with the enforcement and restoration of public order.
- To increase PNC training efforts in the area of crowd management, policing and the enforcement and restoration of public order, including the use of adequate equipment and less lethal weapons.
- To table the draft law on protection of human rights defenders on the agenda of the National Assembly for adoption; and for the Senate to adopt the draft law setting out measures implementing freedom of demonstration in order to respect the prior authorization system for demonstrations.
- To ensure the right to vote of “new adults”.
- To guarantee the right of women to participate in politics, including through the adoption of special temporary measures.
- To suppress any criminal penalty regarding the content of publications either via the press, audio-visual, Internet.

**To political parties, media and civil society:**

- To respect and publicly promote respect by their adherents, members or employees, of the rights protected by the Constitution, national laws, the Code of Conduct of the political parties and media, and public order.
- To refrain from and strongly condemn incitement to violence and manipulation, especially of youth groups.

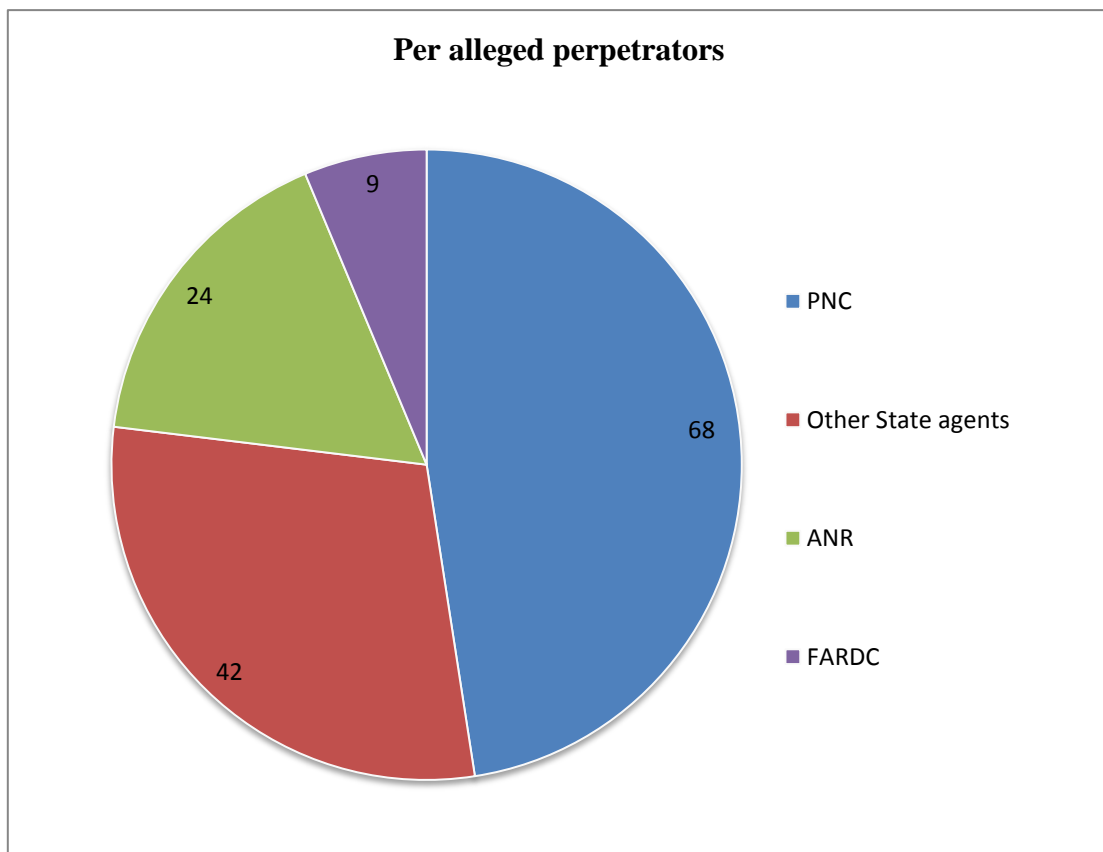
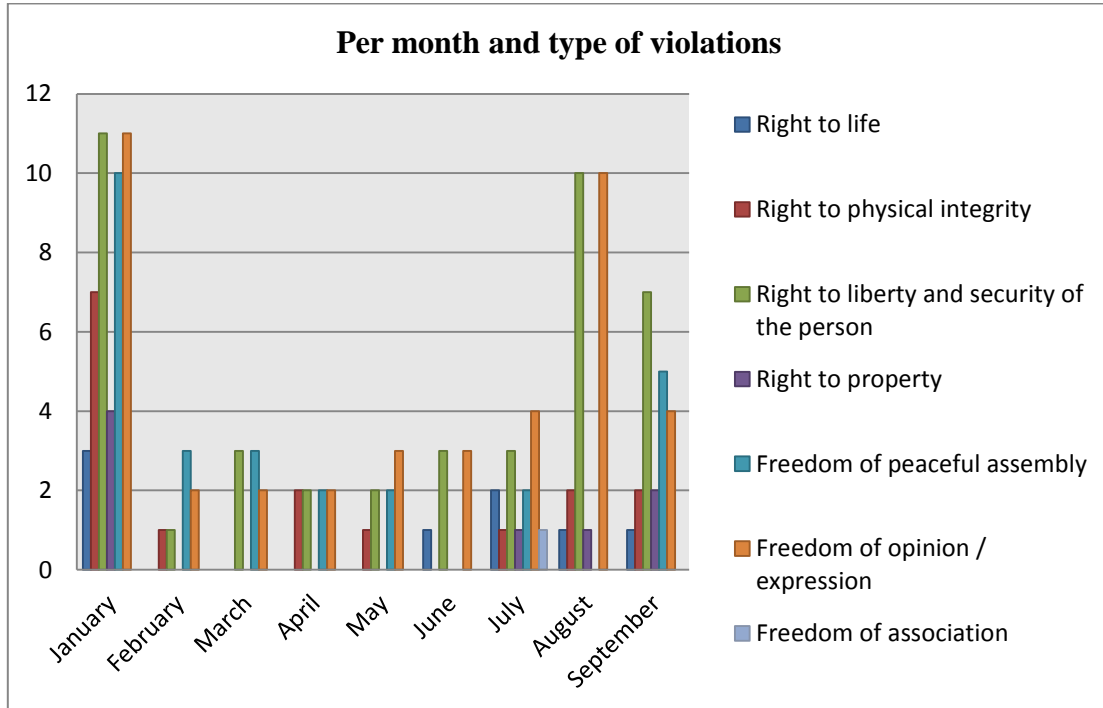
**To the international community:**

- To request political opposition stakeholders to pursue their goals through peaceful means and squarely ensure that their actions strictly comply with the laws and regulations in force in the DRC.
- To provide the necessary support to the Government to ensure the investigation and prosecution of alleged perpetrators of human rights violations committed during the electoral process.
- To engage with the Government to take preventive measures so that violations are not repeated and to monitor measures taken by the authorities in response to these violations.

- To support the capacity building of PNC officers in the domain of crowd management, public order enforcement and restoration; and of local political and administrative authorities on their responsibilities *vis-à-vis* the protection of political rights and public freedoms.
- To ensure that any support to the defence and security forces of the DRC provided by the United Nations system is in strict compliance with the Human Rights Due Diligence Policy and in particular to ensure that support is only granted to units whose members have no records of gross violations of human rights or of international humanitarian law.
- To make use where needed of advocacy mechanisms towards different stakeholders, including the good offices of the Special Representative of the Secretary-General of the United Nations in the DRC, or the PACEC decision-making organs.

## Annex

### Number of human rights violations in relation to the electoral process documented between 1 January and 30 September 2015



### Per provinces

