



MONUSCO

The United Nations Organization Stabilization
Mission in the Democratic Republic of the Congo



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

**REPORT OF THE UNITED NATIONS JOINT HUMAN RIGHTS OFFICE
ON SERIOUS HUMAN RIGHTS VIOLATIONS COMMITTED
BY MEMBERS OF THE CONGOLESE DEFENSE AND SECURITY FORCES
IN KINSHASA IN THE DEMOCRATIC REPUBLIC OF THE CONGO
BETWEEN 26 NOVEMBER AND 25 DECEMBER 2011**

MARS 2012

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ANR	National Intelligence Agency
CENI	<i>Commission électorale nationale indépendante</i>
CPRK	<i>Centre pénitentiaire et de rééducation de Kinshasa</i>
DGRSS	<i>Direction générale des renseignements et services spéciaux</i>
DRC	Democratic Republic of the Congo
EMRM	Military intelligence headquarters (previously <i>Détection militaire des activités anti-patrie - DEMIAP</i>)
FARDC	Armed forces of the Democratic Republic of the Congo
GLM	Litho Moboti Group
GMI	<i>Groupe mobile d'intervention</i>
GR	<i>Garde républicaine</i>
ICCPR	International Covenant on Civil and Political Rights
IPKIN	<i>Inspection provinciale de la PNC à Kinshasa</i>
LENI	<i>Légion nationale d'intervention (former Police d'intervention rapide)</i>
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
MROP	<i>Maintien et rétablissement de l'ordre public</i>
OHCHR	Office of the High Commissioner for Human rights
OPJ	<i>Officier de police judiciaire</i>
PALU	<i>Parti lumumbiste unifié</i>
PNC	National Congolese Police
PPRD	<i>Parti du peuple pour la reconstruction et la démocratie</i>
UDPS	<i>Union pour la démocratie et le progrès social</i>
UNJHRO	United Nations Joint Human Rights Office

I. Executive summary

The present report of the United Nations Joint Human Rights Office (UNJHRO) deals with serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa between 26 November and 25 December 2011 in the context of the presidential and legislative elections held in the Democratic Republic of the Congo (DRC) on 28 November 2011.

This report is based on the Resolution 1991 of 28 June 2011 in which the Security Council urges the DRC government and all parties concerned “*to ensure an environment conducive to a free, fair, credible, inclusive, transparent, peaceful and timely electoral process which includes free and constructive political debate, freedom of expression, freedom of assembly, equitable access to media including State media, safety for all candidates, as well as for election observers and witnesses, journalists, human rights defenders and actors from the civil society including women*”. Moreover, in the same Resolution, the Security Council “*decides that MONUSCO shall support the organisation and conduct of national, provincial and local elections (...) by supporting the CENI [inter alia] by monitoring, reporting and following-up on human rights violations in the context of the elections (...)*”.

The overall electoral context in the DRC was particularly marked by fierce tensions linked with what national and international observers have described as an electoral process lacking transparency and marred by irregularities. Between 26 November and 25 December 2011, the UNJHRO received numerous allegations of serious human rights violations committed by members of the Congolese defense and security forces in Kinshasa, in particular of the rights to life, to physical integrity and to the liberty and security of person. In response, the UNJHRO deployed, on 29 November 2011, a special investigation team in Kinshasa.

At the end of its investigation, the UNJHRO is able to confirm that at least 33 people were killed, including 22 by gunshot, as well as at least 83 others injured, including 61 by gunshot, between 26 November and 25 December 2011 by members of the defense and security forces. At least 16 people remain unaccounted for. Furthermore, the UNJHRO documented the arrest of at least 265 civilians, most of whom have been detained illegally and/or arbitrarily, mainly due to their real or alleged affiliation to a political opposition party or for coming from Mr. Etienne Tshisekedi’s home province or to other provinces where he enjoys significant support. These human rights violations were attributed mainly to elements of the *Garde républicaine* (GR), officers of the National Congolese Police (PNC) and its specialized units, such as the *Légion nationale d’intervention* (LENI), the criminal investigation brigade and the *Groupe mobile d’intervention* (GMI), and to a lesser extent, to soldiers of the Armed Forces of the Democratic Republic of the Congo (FARDC) not belonging to the GR. Moreover, agents of the National Intelligence Agency (ANR) were also allegedly responsible for several cases of arbitrary arrest and illegal detention.

Given the seriousness of the human rights violations documented, the report makes recommendations to bring the alleged perpetrators of these violations to justice, to provide redress to victims, including through fair, effective and prompt reparation, to prevent the occurrence of such violations in the future and to encourage the Congolese authorities to establish democratic institutions respectful of human rights.

II. Introduction

1. On 28 November 2011, the DRC held its second presidential and parliamentary elections since the end of the transition period in 2006. The election campaign for these ballots started on 28 October 2011 and ended on 26 November 2011. The *Commission électorale nationale indépendante* (CENI) announced the provisional results of the presidential election¹ on 9 December 2011. The Supreme Court of Justice validated the results on 16 December 2011, and the elected president, Mr. Joseph Kabila, was inaugurated on 20 December 2011. Mr. Etienne Tshisekedi, presidential candidate for the *Union pour la démocratie et le progrès social* (UDPS) and main opponent of Mr. Joseph Kabila, rejected the results announced by the CENI, based on reports of both national and international observers which reported irregularities.² Mr. Etienne Tshisekedi proclaimed himself President and organized his own inauguration ceremony on 23 December 2011, at his residence located in the commune of Limete in Kinshasa.

2. These elections, which were intended to be peaceful, transparent and to be illustrative of the country's democratic progress, took place in an atmosphere of high tension³ and were marked with acts of political intolerance and violence that claimed many lives. Each of the stages of the electoral process was actually marked by fierce tensions that degenerated into clashes between members and supporters of opposition political parties and the security forces, as well as fights between members and supporters of rival political parties.⁴

3. From 26 November 2011, the last day of the election campaign, the UNJHRO⁵ was informed, through its partners and its hotline⁶, set up during the electoral period, of several allegations of serious human rights violations in the city of Kinshasa. Given the scope and seriousness of these allegations, the UNJHRO deployed a special team in Kinshasa, primarily to investigate the violations of the rights to life, physical integrity, and to liberty and security of person, which occurred between 26 November and 25 December 2011. This report focuses on the serious human rights violations documented by the special team during this period.

¹ The CENI announced the provisional results of the presidential election according to which Mr. Joseph Kabila won a total of 48.95% of the votes against 32.33% for Mr. Etienne Tshisekedi.

² Refer to www.cenco.cd/index.php/actualite/248-mise-au-point-du-secretariat-general-de-la-cenco-sur-les-elections.html. On 14 December 2011, in an official statement, the Minister of Communication and Media and Government spokesman, Mr. Lambert Mende Omalanga, explicitly acknowledged that the voting process was marred “by irregularities and serious failures”. However, he stated that they “were not likely to change the order of winners as presented by CENI.”

³ Refer to http://www.ohchr.oGR/Documents/Countries/ZR/UNJHRO_HRElectionsReport_fr.pdf.

⁴ For example, on 26 December 2011, clashes took place between members and supporters of the parties of the presidential majority, such as the *Parti lumumbiste unifié* (PALU) and the *Parti du peuple pour la reconstruction et la démocratie* (PPRD), and members and supporters of opposition parties, in particular the *Union pour la démocratie et le progrès social* (UDPS). Similarly, certain political leaders, such as Mr. Etienne Tshisekedi in an interview on Radio Lisanga Television on 6 November 2011, indulged remarks inciting to violence and hatred during their political rallies and during interviews in the media remarks inciting to violence and hatred.

⁵ On 1 February 2008, the Division of Human Rights (DHR) of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Democratic Republic of the Congo (DRC) were merged creating the United Nations Joint Human Rights Office in the DRC (UNJHRO) which functions according to their respective mandates.

⁶ This is a free 24/7 hotline established by the UNJHRO from 27 November 2011 to 17 January 2012 to gather information on alleged election-related human rights violations in the DRC.

III. Methodology and constraints

4. The investigation team, hereinafter the “team”, began its investigation on 29 November 2011 and completed it on 20 January 2012. In total, the team collected approximately 110 testimonies on serious human rights violations that were perpetrated by members of the defense and security forces in Kinshasa between 26 November and 25 December 2011. It interviewed dozens of victims and witnesses, met with government officials, leaders of political parties and National Congolese Police (PNC) officers and the National Intelligence Agency (ANR) agents. It also visited several detention facilities, as well as hospitals, clinics and health centres in Kinshasa. The team cross-checked the information collected with credible sources, in particular state and non-state partners. It also analysed the information received through the UNJHRO free hotline.

5. This investigation was conducted in accordance with the methods of collection and verification of information on human rights violations specific to the United Nations High Commissioner for Human Rights (OHCHR). This investigation, which is not judiciary in nature, does not exempt the Congolese authorities from respecting their obligations by conducting their judicial inquiry on the allegations of serious human rights violations described in this report.

6. The team faced several difficulties during its investigation. In particular, Government officials of the DRC⁷ have forbidden the officials of certain public hospitals to provide information on the people injured and killed as a result of these incidents. Therefore, public hospitals and some private clinics refused to collaborate with the team members, thus reducing its ability to collect information.

7. Moreover, the widespread fear of reprisals from members of the Congolese defense and security forces, presumed to be the main alleged perpetrators of these reported human rights violations, also limited the cooperation of several witnesses and victims with the team. Fierce tensions and clashes between rival political factions or members and supporters of the opposition and the security forces in several areas of the city of Kinshasa have also repeatedly hindered the team’s ability to move around to collect and verify the information.

8. The team has also faced difficulties in accessing several detention facilities in the city of Kinshasa. It had only limited access to the detention cells of Tshatshi camp. Similarly, it was impossible to visit the Airborne Troops Training Centre (CETA) and Kibomango camps, the building of Litho Moboti Group (GLM), the *Palais de la Nation* and the *Palais de Marbre*⁸ in which several people were allegedly detained. Moreover, the team did not have access to the

⁷ Circular note No. 1250/CAB/MIN/SP/9745/DC/OMK/2011 of 12 December 2011 from the Minister of Public Health, Dr. Victor Makwenge Kaput, instructing the doctors in charge of hospitals to provide information on the wounded and the dead only with his consent.

⁸ The CETA camp belongs to the Republican Guard (GR), which is located in the commune of N’sele. The Kibomango camp is also located in the commune of N’sele and is under the administration of the GR. The *Palais de Marbre* located in the commune of Ngaliema is the official residence of the Head of State’s mother. It is guarded by the Republican Guard. The *Palais de la Nation*, in the commune of Gombe, is the office of the Head of State and the Republican Guard ensures its security. The building of Litho Moboti Group is located in the commune of Gombe and is under the control of the GR. These places are not official detention centres. They fall beyond the control of the Public Prosecutor.

detention cells of the ANR and the Military intelligence headquarters (EMRM), formerly called the *Détection militaire des activités anti-patrie* (DEMIAP).

IV. Legal framework

9. All the rights mentioned in this report, namely the right to life, the right to physical integrity and the right to liberty and security of person, are guaranteed and protected by the International Covenant on Civil and Political Rights (ICCPR)⁹ and the African Charter on Human and Peoples' Rights (ACHPR)¹⁰. Having ratified these conventions, the DRC has to guarantee the exercise of fundamental freedoms, including during the electoral period, and to ensure their protection by the various law enforcement institutions.¹¹ It is also required to exercise due diligence in order to prevent and punish the violations of these rights committed by members of its own defense and security forces or by non-state actors.

10. The Constitution of the DRC of 18 February 2006 also guarantees the respect of these rights.¹² More specifically, Article 16 of the Constitution provides in particular that "*The person is sacred. The State has an obligation to respect and protect it. Every individual has the right to life, to physical integrity as well as the free development of his personality subject to respect for the law and the public law and order, other people's rights, and standards of good behaviour. No individual shall be held in slavery or in a similar condition. No individual shall be subjected to cruel, inhuman or degrading treatment. No individual shall be obliged to engage in forced or compulsory labour*". Articles 17 and 18 of the Constitution relate to the respect for individual freedom and the rights of the persons arrested and detained. Indeed, people may only be arrested in accordance with the procedures established by the Constitution and the Criminal Code and the Code of Criminal Procedure. This implies that individuals concerned should be informed of the reasons for their arrest, should be able to immediately contact their families or counsellor and be brought before a judge in the shortest delays.

11. The duties of the PNC and the FARDC were respectively defined by the Organic Law No. 11/013 on the organization and functioning of the PNC and the Organic Law No. 11/012 on the organisation and functioning of the Armed Forces promulgated on 11 August 2011.¹³ Article 114 of the Law No. 11/012 defines precisely the tasks of the Republican Guard.¹⁴ Moreover, the

⁹ The International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Zaire acceded in 1976, guarantees in particular the right to life (Article 6), the right to physical integrity and prohibition of torture and cruel, inhuman or degrading treatment and punishment (Article 7), the right to liberty and security of person (Article 9) and the equality before tribunals (Article 14).

¹⁰ The African Charter on Human and Peoples' Rights, adopted on 2 June 1981 in Nairobi and ratified by the Republic of Zaire in 1987, provides for the right to respect for life and physical and moral integrity of the person (Article 4), no one may be arbitrarily deprived of this right. The Charter also provides for the prohibition of cruel, inhuman or degrading treatment or punishment (Article 5), and the right of every individual to liberty and security of person (Article 6).

¹¹ See also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, 27 August to 7 September 1990.

¹² See Articles 16, 17, 18, 25 and 26 of the Congolese Constitution of 2006.

¹³ See Article 2 of the *Loi organique n° 11/013 portant organisation et fonctionnement de la PNC* and in particular Article 44 of the *Loi organique n° 11/012 portant organisation et fonctionnement des Forces armées*.

¹⁴ Article 114 of the *Loi organique n° 11/012 portant organisation et fonctionnement des Forces armées* provides that : "*The Republican Guard is a unit of the Armed Forces whose mission is to ensure – the guard and protection of*

provisions of the Organic Law No. 11/013 provide for the police the use of force only when absolutely necessary and solely to achieve a legitimate objective, and that in any event, the use of force must observe the principle of proportionality and progressiveness.¹⁵ If the police officers want to disperse the crowd using firearms, they must also obtain prior approval from the authority legally responsible for maintaining order.¹⁶

12. During the elections, the prerogatives of the FARDC, PNC and other security forces units have been specified in the Decree No. 05/026 of 6 May 2005 concerning the operational plan for securing the electoral process. Article 27 of the aforesaid Decree conditions the constitution within FARDC of reserve units ready to strengthen the PNC in the execution of the *Maintien et rétablissement de l'ordre public* (MROP) to a prior requisition of the political and administrative Authority, namely the Deputy Prime Minister and the Minister for Interior and Security, Decentralisation and Land-Use Planning, Mr. Adolphe Lumanu¹⁷, or of CENI, through its chairman, Reverend Pastor Daniel Ngoy Mulunda.¹⁸ Article 28 of the aforesaid Decree also restricts the GR activities during elections to “*the guard and protection of the President of the Republic and his distinguished guests and the security of presidential facilities*”.

V. Human rights violations

A. Violations of the right to life

13. Between 26 November and 25 December 2011, the team documented 33 cases of civilians killed in Kinshasa by members of the defense and security forces, 22 of them being shot.¹⁹ The number of deaths could be much higher as the team faced many difficulties in documenting the allegations of violations of the right to life that were reported. Thus, the team was unable to confirm several allegations.

14. On 26 November 2011 and over the following days, 17 people were killed, nine of them shot by members of the defense and security forces during the dispersal of UDPS members and supporters in the vicinity of N'djili international airport, on the Lumumba Boulevard and in the communes of Masina, Matete and Kingabwa.²⁰ According to information gathered by the team, thousands of UDPS members and supporters and those of the *Parti du peuple pour la reconstruction et la démocratie* (PPRD) gathered that day at N'djili international airport in order to welcome the presidents of their respective parties, who were reported to be landing around mid-day. The atmosphere between the supporters of both camps was tense and police officers and members of the GR were deployed in the area in order to contain any outburst. Around

the President of the Republic and the distinguished guests of the Republic; - the security of the Presidential facilities; - escorts and honors at the President of the Republic level”.

¹⁵ Articles 8 and 9 of the *Loi organique n° 11/013 portant organisation et fonctionnement de la PNC*.

¹⁶ Article 9 of the aforementioned Law.

¹⁷ In his capacity of chairman of the Steering Committee for Security of the Electoral Process (CPSE).

¹⁸ This prerogative is also granted to the chairman of the CENI.

¹⁹ For each case documented the investigation team cross-checked the information gathered with direct or indirect witnesses, family members, victims and credible partners. The team has at least two corroborating sources for each documented violations of the right to life.

²⁰ Political rallies were banned on 26 November 2011 following the incidents that had occurred the day before and in the morning.

1p.m., the convoy coming for President Kabila arrived at N'djili airport and was booed and giped by thousands of UDPS members and supporters. After entering the airport perimeter, some members of the GR opened fire to disperse the crowd. While some members of the GR fired into the air, several others fired live ammunitions at people gathered on the esplanade of the airport. After the convoy left the airport to Kinshasa without the President, members of the GR also shot at passers-by along the Lumumba Boulevard, which stretches from the N'djili airport to the commune of Limete, mainly in the areas of Badara, near the CETA camp, Mikondo, Mokali, Bitabe, Liberty and Eucalyptus Squares. For example, during these incidents, a 39-year-old man who was at N'djili airport to welcome the UDPS president was shot in the head by an element of the GR while he was stationed on the road a few meters from the airport. The man died instantly.

15. Another case illustrates the excessive use of force by members of the defense and security forces: on 28 November 2011, around 9:30p.m. in the commune of Matete, an FARDC military vehicle came close to a group of young people who were expressing their joy at the rumours of favourable results obtained by Mr. Etienne Tshisekedi. Some of the occupants of the vehicle, wearing PNC uniforms, fired at point-blank range at two of them. One of them was shot in the chest and died before reaching the hospital.

16. On 9 December 2011 and in the days that followed the publication by CENI of the provisional results for the presidential election, 13 people in total were killed in Kinshasa; eight of them were shot, including three minors. Following the announcement by CENI of the provisional results declaring the victory of Mr. Joseph Kabila, young people came out in large numbers in the streets of some areas of Kinshasa to protest against these results and erected barriers, burned tires and threw stones at the members of the defense and security forces. Some members of the GR and PNC officers responded by firing in most cases live ammunitions at demonstrators and passers-by, in particular in the communes of Bandalungwa, Kalamu, Kasa Vubu, Kimbanseke, Limete and Ngaliema. People killed on 9 December 2011 and over the following days were, in some cases, killed while they were home and were not taking part in any protest. For example, on 10 December 2011, a woman died after being shot in the back while she was in her yard in the commune of Ngaliema. People who were demonstrating in the main street entered her yard after being dispersed by PNC officers. The police officers who chased them also entered the said yard and fired at close range at the victim, killing her instantly.

17. On 23 December 2011 and over the following days, three people were killed, one of them shot and two others after being mistreated by members of the defense and security forces during the rallies organised by UDPS and its allies on the occasion of the self-nomination of Mr. Etienne Tshisekedi at the Martyrs Stadium. At this point, the GR had positioned tanks and rocket launchers and had deployed a large number of its forces in addition to PNC officers. According to concurring testimonies, a man was shot in the head on 23 December 2011, near the Martyrs Stadium, by members of the GR who were dispersing UDPS supporters, who had come to attend the "*swearing-in*" ceremony of the UDPS president, fusing tear gas and live ammunitions. The victim's body was carried away by members of the GR and has not been found since in any morgue in the city, despite members of his family searching.

18. Between 25 and 27 November 2011, seven male bodies were found on the riverbank in the area of Kinsuka, commune of Ngaliema. Two bodies had been beheaded and the other five had bullet holes on their foreheads. After the local authorities were informed, the bodies were

recovered by people wearing white coats escorted by members of the GR or other FARDC soldiers. Again in the area of Kinsuka, in the aforesaid commune, on 24 December 2011, witnesses saw five bodies floating on the river. Two had been tied up and had visible injuries, while the other three had bullet holes on their foreheads. The team is not able to say where the bodies were taken. According to concurring testimonies received, people witnessed bodies being thrown into the river on 26 and 27 November 2011 and, on the night of 23 to 24 December 2011 by men in uniform behind the *Palais de la Nation*. Information gathered by the team from credible sources accuses these men in uniform of the executions and disembowelment of the victims before throwing them into the river so that their bodies would not rise to the surface. As the team has not been able to identify these victims, it did not consider them in the number of people reported killed in this report.

19. In addition, the team collected credible and concurring information on the burial, on 5 December 2011, of at least five bodies in a mass grave in the cemetery of Mayulu in Kimwenza by men in military uniform and others wearing white coats. The team received similar information about a mass grave in the cemetery of Mitendi, commune of Mont Ngafula. The team went there on 16 January 2012 but the cemetery was guarded at that time by a dozen of armed members of the GR, and so the team could not confirm the information. Thus, it did not consider these victims in its toll.

20. During the period covered by this report, the team also recorded the disappearance of 16 civilians it has not been able to locate despite searching. In addition, six UDPS supporters abducted on 26 November 2011 at the N'djili airport by members of the GR and taken to the training centre of the GR at Kibomango, commune of N'sele, cannot be found. The team fears they were executed by members of the GR as, according to credible sources, all the people directed to Kibomango were executed by members of the GR before being buried in a mass grave located in the vicinity of the said camp.

21. On 23 December 2011, the team went to the PNC police station in the district of Funa, commune of Kalamu, where it was not allowed to meet with the 54 detainees who were in the courtyard of the said police station. Among them, five men were taken in front of the team by four men who introduced themselves to the team as ANR agents. The latter indicated to the team that the five men were going to be transferred to the ANR detention cells. On 24 December 2011, the team returned to the PNC police station in the district of Funa. The team was not allowed access to premises, but was informed that the five prisoners had been transferred to the *Direction générale des renseignements et services spéciaux* (DGRSS). The team went there but could not find the prisoners. The team was also informed that all the prisoners who had been arrested the day before had been transferred to the provincial police station of Kinshasa. The team went immediately to the said location, but did not find them there. To date, the team has not been able to locate them. According to some sources, several were reportedly executed by members of the defense and security forces, but the team was not able to confirm these allegations. These 54 detainees have not been taken into account by the team in the report of persons victims of enforced disappearance because they could not be identified.

22. In addition, PNC officers and members of the GR established a system of removal and concealment of the victims' bodies during MROP operations. According to information and testimonies collected, while the PNC officers would fire tear gas, some members of the GR

would fire live ammunition, while others would recover the victims' bodies, placing them in their trucks. These bodies have often not been found. For example, the UNJHRO documented two cases where families, whose members had been killed during MROP operations, could not find their bodies despite searching various morgues of Kinshasa.

B. Violations of the right to physical integrity

23. Between 26 November and 25 December 2011, 83 civilians were wounded, 61 of them were shot, among which one PNC agent. Other people were victims of cruel, inhuman or degrading treatments.

24. On 26 November 2011, at least 69 people were wounded in the vicinity of the N'djili airport and on the Lumumba Boulevard during the dispersion of demonstrators by members of the GR and PNC officers. Some victims were waiting for Mr. Etienne Tshisekedi at the airport, while others were simply in the vicinity of the airport. Most victims were shot in the legs and thighs, but others were shot in the head, neck, buttocks or shoulder. The wounded were taken by demonstrators and, in some cases by members of the defense and security forces, to various hospitals, clinics and health centres in the city.²¹ Again, on 26 November 2011, a PNC agent in charge at the Town Hall of Kimbanseke, used as an office for the PNC in the area of Kingasani, was shot in the thigh while on duty inside the police station. Members of the GR were allegedly responsible for gunshot wounds in at least 28 of the cases documented by the team. The involvement of members of the GR in these violations was confirmed in particular by photos and videos taken during these incidents, of which the team was able to obtain copies. Moreover, on the Lumumba Boulevard, commune of Limete, three adults and a two-year-old girl were severely burned after a police officer, among those deployed to protect the local PALU headquarters which was attacked by UDPS supporters, launched an incendiary device on the bus they were in.

25. The team has also documented two cases in which members of the GR used unidentified substances on the people arrested, resulting in paralysis of the leg for one and behavioural problems for the other. One victim testifies: *"I was arrested by members of the GR on 26 November 2011 while I was at the N'djili airport and I was immediately sent with two other UDPS activists to the CETA camp located near the N'djili airport; (...) They said that we were subversive and they were going to wipe us off the map; (...) One person was executed upon our arrival at the CETA camp; (...) We were beaten thoroughly and my friend lost his teeth due to the brutality of the members of the GR; (...) Then they came back and forcibly injected a liquid into my left leg, the effects of which I do not know; (...) A few minutes later, I started to lose the use of my leg and I could no longer feel it (...)"*.

26. On 9 December 2011 and over the following days, 14 people were wounded, ten of which were shot by members of the defense and security forces. Some were wounded while protesting against the election results and were being dispersed by members of the defense and security forces using live ammunitions. Others were simple passers-by or were wounded while they were in their homes or in the street. According to credible testimonies, people were also victims of mistreatment, either during their arrest by PNC officers, members of the GR or agents

²¹ Victims were transported in particular to the Akram, Bondeko and Saint Joseph clinics located in the commune of Limete, the Marie Biamba Mutombo clinic in the commune of Masina, the general hospital of Kinshasa in the commune of Gombe and the Sino-Congolese Friendship Hospital in the commune of Kimbanseke.

of the intelligence services, whether civilians or soldiers, or during their detention in various official and unofficial detention facilities in the city. For example, one victim told the team that police officers arrived at her home in the commune of Lingwala, on 12 December 2011, and took her to Tshatshi camp where they bound her hands and feet. Then she was tied to a tap and whipped with cords and a belt. She also explained that the prisoners were in turn “*invited to have coffee*” which meant being taken out of the prison cell and mistreated.

27. Three persons of the same family were arrested on 23 December 2011 in front of their yard and taken to Tshatshi camp, where they were victims of cruel, inhuman or degrading treatments, reported as follows: “*They handcuffed us and started to beat us and tied down two others. We were taken to Tshatshi camp (...). We found at least 50 people there who had been tortured by members of the GR. Then they covered them with a canvas and began to stab them through it. There was a lot of blood flowing (...). As there was no room, we were transported to another location (still in Tshatshi camp), but before being transported there, we saw wounded people, taken to the river in single file (...)*”. The victims were plunged into a gutter full of excrements and then each received 150 lashes. One of the soldiers asked them to contact their family and required US \$600.00 in exchange for their release. Their family paid him US \$150.00 and before releasing the victims, the soldier allegedly said: “*You do not know how lucky they are. Other people who were arrested at the same time with them are being eaten by the fish*”.

C. Violations of the right to liberty and security of person

28. During the period covered by this report, the team documented the arrest and detention by members of the defense and security forces in Kinshasa of 265 people, in particular members and supporters of opposition parties, mainly from UDPS, as well as street children and simple passers-by or citizens taken from their homes because of their proven or suspected support to the opposition. Among them there are also two PNC officers and three FARDC soldiers accused of being close to the opposition and accused of being “*moles*” by the authorities. Most of these people were arbitrarily and/or illegally arrested and detained. The mere fact of being in a group in the street or discussing politics was enough to get arrested.

29. From 26 November 2011, PNC officers and members of the GR increased the systematic round-ups of civilians in several communes of the city of Kinshasa, such as Limete, Kasa Vubu and Kimbanseke. Most of the people arrested by members of the GR, both in civilian clothes or in uniform, were detained in violation of the rules governing arrest and detention and beyond the legal period of police custody in prison cells such as those of the EMRM, at the training centre of GR at Kibomango, in Tshatshi, CETA and Kokolo camps²², in the *Palais de la Nation* and the *Palais de Marbre*, as well as in the LMG building and in the ANR.

30. Some officials of the PNC met by the team indicated that the “*preventive*” round-ups allowed for the containment of a possible manipulation of “*fighters*”²³ and street children, commonly called “*shégués*”, if there were outbursts of violence following the publication of provisional results of the presidential election.

²² The Kokolo camp is located in the commune of Bandalungwa is a camp where the detention cells of the FARDC military police are located.

²³ Term used by the UDPS for its supporters.

31. A victim residing in the commune of Matete and arrested on 10 December 2011 by officers wearing PNC uniforms reported: *“I went into a store to do shopping and I saw a vehicle of the PNC going up and down the area; (...) The young people were fleeing in every directions; (...) Panicked, I ran home; (...) A few minutes later, the van stopped in front of my yard and eight PNC officers got out, entered my house and searched the whole house. There was the picture of the UDPS president posted on the wall; (...) One of the officers snatched and tore the picture while the others suggested that, as my wife and I were keeping Tshisekedi’s picture in the house, we were also supporters of Tshisekedi and therefore demonstrators and troublemakers; (...) Thus I was arrested with another young boy who had also taken refuge in my house; (...) We were thrown into a van and taken to Kokolo camp. There were at least 45 prisoners in Kokolo camp upon my arrival and the number increased with the hours.”*

32. On 23 December 2011 and over the following days, local sources reported that over 300 civilians, in particular members and supporters of the UDPS and others going to the “swearing-in” ceremony of Mr. Etienne Tshisekedi in the Martyrs Stadium were arrested in several commune of Kinshasa by PNC officers, members of the GR and intelligence services. On 23 December 2011, the team found 54 prisoners at the police station of PNC in the district of Funa who were arrested in the afternoon. On 24 December 2011, the team visited the detention cells of LENI and found 88 men arrested, including two minors.

VI. Identification of alleged perpetrators

33. The human rights violations listed above have been attributed by victims and witnesses to members of the GR²⁴, PNC officers²⁵ and its specialised units, in particular LENI, GMI and the criminal investigation brigade, as well as to armed men in civilian clothes who fired live ammunition at demonstrators and simple passers-by and repressed demonstrators protesting against the elections using violence and disproportionate use of force. The name Colonel Kanyama, PNC commander in the Lukunga district (Lufungula Camp) in Kinshasa and nicknamed “*death spirit*” by Kinshasa inhabitants, was in particular cited in testimonies as a key team leader responsible for removing and getting rid of the bodies of the victims killed. According to concurring testimonies, these groups arrived in “*a PNC vehicle from which officers fired tear gas; the vehicle was followed by a dilapidated vehicle from which marksmen in civilian clothes fired at demonstrators, and then a covered lorry with body collectors*”. Moreover, FARDC soldiers circulating throughout the city of Kinshasa on 26 November 2011 and on 9, 10 and 11 December 2011 also committed arbitrary arrests, abductions and violations of the right to life and physical integrity.

34. In order to address the threats and risks that could disrupt the voting process, an operational plan for securing the electoral process was established, relying mainly on the PNC. Implementation began on 27 October 2011 with the deployment throughout the territory, including in the city of Kinshasa, of PNC officers and members of its specialised units, such as LENI, GMI and the criminal investigation brigade, together with armed men in civilian clothes. While the political and administrative dimension of this plan was the responsibility of the Deputy Prime Minister and the Minister for Interior and Security, Decentralisation and Land-Use

²⁴ The Republican Guard is under the command of General Banze Lubunji.

²⁵ The *ad interim* Chief Commissioner of the PNC is the deputy police chief, Mr. Charles Bisengimana.

Planning, aspects relating to the conduct of operations were under the command of the PNC *ad interim* Chief Commissioner.²⁶

35. While the top-level authorities proclaimed that the security situation was under control²⁷ and that public order had not sufficiently deteriorated so as to require additional forces²⁸, in particular soldiers of the FARDC, officers of the PNC, most of them trained in MROP techniques²⁹, were gradually replaced by a large number of members of the GR who became increasingly present in the streets of Kinshasa. Indeed, beside the PNC officers, in particular from LENI, who were trained in MROP techniques and were equipped with non-lethal weapons by MONUSCO and international partners of the DRC prior to deployment in the city of Kinshasa as part of MROP operations, FARDC soldiers from other units and subunits of the PNC³⁰ not trained on these techniques and poorly equipped for such operations have also taken part in the MROP operations. When the latter intervened during MROP operations, they did so without sufficient professionalism. Credible sources reported that certain elements of the GR were wearing PNC uniforms during the MROP operations.³¹ This infiltration may have happened, according to some explanations, in response to information that some members of the Congolese defense and security forces might have had allegiance to the opposition and in order to neutralize these “moles”.³²

²⁶ This function is currently carried out by the chief Commissioner of the PNC. See Articles 7 and 17 of the *Décret n° 05/026 du 6 mai 2005 portant plan opérationnel de sécurisation du processus électoral en RDC*.

²⁷ At a meeting of the Steering Committee held in Kinshasa on 6 December 2011, where elements of the diplomatic community and MONUSCO were present, among others, the Deputy Prime Minister and the Minister for Interior and Security, Decentralisation and Land-Use Planning, Mr. Adolphe Lumanu, stated that the security situation was under control and it was not necessary to requisition the FARDC. See also the *Human Rights Watch* press release at the following link: <http://www.hrw.org/fr/news/2011/12/21/rd-congo-24-morts-depuis-l-annonce-du-r-sultat-de-l-election-pr-sidentielle>.

²⁸ Article 23 of the aforementioned Decree foresees “*Without prejudice to its usual missions, the PNC is responsible for (...) maintaining and restoring public order and tranquillity in the country during the electoral process*”. Pursuant to the abovementioned Decree, a correspondence of the chief Commissioner of the PNC No. 1900/CNO/PNC/CG/COMDT of 10 October 2011 referring to the operational order No. 1703/CNO/PNC/CG/COMDT/2011 concerning the security of elections in the DRC between 2011 and 2013, provides in its sections 1.3 and 3.3.1 that the PNC may be supported by forces such as the FARDC (without any mention of the GR) and that this requisition shall occur only in the event of a serious deterioration of the public order upon request of the CENI or the political and administrative authority aforementioned, while ensuring that the Commander of PNC units is responsible for the coordination of on-site operations.

²⁹ From 3 May to 15 October 2011, the MONUSCO police and other partners of the DRC, in particular European Union Police Mission (EUPOL) and France, trained 26 PNC trainers, as well as 3,756 LENI officers in MROP intervention methods respectful of human rights. Moreover, MONUSCO, France, Angola, Canada and South Africa have provided the PNC on behalf of LENI with non-lethal equipment consisting among other things of shields, greaves, helmets, truncheons, riot gears, grenade launchers and tear gas grenades.

³⁰ The district and commune police officers of the PNC.

³¹ There was no MRPO PNC/FARDC/GR joint operation in Kinshasa. Therefore, the FARDC soldiers and members of the GR that were deployed in the city of Kinshasa were not under the operational command of Mr. Charles Bisengimana, PNC *ad interim* Chief Commissioner, but they rather obeyed the instructions of their respective hierarchies.

³² This is a term used by a governmental authority to qualify the members of the Congolese defense and security forces suspected to be loyal to Mr. Etienne Tshisekedi.

VII. Measures taken by the Congolese authorities, MONUSCO and other United Nations actors and by the international community

A. The Congolese authorities

36. During the pre-election period, the *ad interim* Chief Commissioner of the PNC, along with the senior police officer of MONUSCO, conducted an awareness campaign for the heads of PNC units in Kinshasa on the illegal use of force and respect for human rights during the conduct of MROP operations. The PNC *ad interim* Chief Commissioner clearly stated that he would not protect any of its agents who would commit such acts and that he would collaborate actively with the justice system so that the alleged perpetrators would be punished according to the law. In this regard, he created an investigation commission tasked with recording human rights violations committed by PNC officers during operations to secure the electoral process before, during and after Election Day on 28 November 2011.³³

37. 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.³⁴ At the time of the publication of this report, these instructions do not seem to have progressed significantly. However, according to information available to the UNJHRO, two police officers were allegedly arrested for the murder of two persons. Other police officers were allegedly arrested and indicted, among other charges, for violation of orders.

38. The Congolese authorities have taken a series of measures to try to correct the arbitrary and/or illegal arrests and detentions which had been conducted. On 10 December 2011, 57 civilians, detained at PNC police stations and sub-stations in Kinshasa, were transferred for the most part to the *Centre pénitentiaire et de rééducation de Kinshasa (CPRK)*. On 21 December 2011, nine of them, arrested for attempted murder and looting, were acquitted by the *Tribunal de grande instance* of Gombe, while three others charged with looting were sentenced to 12 months imprisonment. These trials are related to the events concerning the publication of the presidential election results.

39. In addition, some of the officials in charge of detention facilities, in particular the LENI, released at least 100 of the people arrested on 23 December 2011 either because they were minors, or because their charges were not justified. An *ad hoc* committee composed of various LENI departments was set up to hear and record the accounts of every person in detention in order to decide whether to release or to transfer them to various prosecutors' offices in the city of Kinshasa. On 27 December 2011, 28 civilians, including 21 UDPS supporters, arrested by members of the defense and security forces in relation to the incidents in Kinshasa were transferred to the Public Prosecutor's Office in Kalamu, while 28 others were transferred to the Public Prosecutor's Office in Gombe. Eighteen among the latter were acquitted and 10 others transferred to the CPRK on charges of looting and incitement to violence.

³³ See note No. 237/PNC/CG/COMDT/2011 of 30 December 2011.

³⁴ See the injunctions for opening the preliminary investigation No. 4583/LK1053 B/RILU/CAB/MIN/J&DH/2011 et n° n°4584/LK1052 B/RILU/CAB/MIN/J&DH/2011.

B. MONUSCO

40. During the pre-election and election period, the UNJHRO strengthened its monitoring of human rights violations throughout the city of Kinshasa. On 27 November 2011, the UNJHRO implemented a free 24/7 hotline in order to gather more information on alleged election-related human rights violations in the DRC. As of 29 November 2011, it deployed a special team to investigate the serious human rights violations committed in Kinshasa. The Electoral Division, the Centre for Joint Operations and the Joint Mission Analysis Cell (JMAC) of MONUSCO also set up crisis centers to collect information related to the monitoring of the electoral process and to provide technical and logistical assistance to assist the CENI and the government authorities to resolve them.

41. On several occasions, the UNJHRO, in collaboration with other sections and divisions of MONUSCO³⁵, monitored the conditions of detention of people arrested by members of the Congolese defense and security forces in relation to the electoral process in Kinshasa. During visits to detention cells, the UNJHRO pleaded with the authorities for the release of 40 persons and the transfer of 50 files to the judicial authorities. A meeting with the Executive Director of the ANR was held on 23 December 2011, in order to inquire about the status of the people arrested by his agents. In addition, six people declared missing by the families and imprisoned in secret for several days were located.

42. In preparation for the elections, the UNJHRO trained, during the month of November 2011, in collaboration with other partners, more than 2,854 people, namely members of the civil society, political and administrative authorities, PNC officers and political actors on the respect for human rights during the election period in all the country's provinces.

43. In press releases dated 27 November and 12 December 2011, MONUSCO urged the authorities and leaders of political parties to refrain from any action likely to cause or incite to violence. It also urged the security services to exercise with restraint during their missions and to "*comply with international human rights law in dealing with public demonstrations, and to respect the rights of all citizens, including supporters of political parties and candidates, to life, physical integrity, and freedom of assembly and expression as guaranteed by the Constitution of the Democratic Republic of the Congo.*"³⁶ On 14 December 2011, MONUSCO redeployed 1,400 peacekeepers and eight Formed Police Units (FPU) in Kinshasa and in other areas at risk of post-election crisis in order to protect the population, as well as United Nations personnel and facilities, if the security situation were to deteriorate.

44. Following allegations of house arrest of Mr. Etienne Tshisekedi by the Congolese Government since 23 December 2011, a MONUSCO joint team went on 29 December 2011 to his residence located in the commune of Limete in order to inquire about his situation. The team noticed that the establishment by members of the antiriot police of several checkpoints on the

³⁵ On 7, 9, 21, 22, 23, 24 and 30 December 2011, the UNJHRO and the MONUSCO Child Protection Section visited the detention facilities of LENI, MIG, ANR, of Lufungula camp, of DGRSS, of the provincial police inspectorate in Kinshasa (IPKIN), of Tshatshi and Kokolo camps, of the police station of the PNC in Kalamu and Limete, of the PNC of the districts of Tshangu, Funa and Mont Amba, of the *Centre pénitentiaire et de rééducation de Kinshasa* (CPRK), as well as those of the Public Prosecutor's Offices of Gombe, Matete and Kalamu.

³⁶ "MONUSCO calls on INEC to address electoral observer missions' concerns" MONUSCO, Press Release, CD/OSRM/121211, Kinshasa, 12 December 2011.

axis leading to the Mr. Etienne Tshisekedi's residence was a restriction to his right to freedom of movement.³⁷

C. Other United Nations and international community actors

45. On 1 December 2011, the United Nations High Commissioner for Human Rights³⁸, Mrs. Navy Pillay, warned against post-electoral violence and called for restraint. She deplored the killings and other acts of violence committed by Congolese defense and security forces and supporters of political parties in the country during the presidential and legislative elections. She also stressed that the political party leaders of all sides “*may be held criminally responsible for their actions as well as for acts committed by their supporters.*”

46. On 6 December 2011, the Prosecutor of the International Criminal Court³⁹ (ICC), Mr. Luis Moreno-Ocampo, said he received “*multiple reports of violent attacks against civilians (...) as well as attacks by (...) the national security forces. (...) I am also aware of reports of violence by armed groups apparently associated with different political parties, politicians and party officials.*” He also urged to obtain “*information from the DRC authorities on the allegations that security forces fired at demonstrators*” and said he “*welcome and are closely following the initiatives taken by national authorities to investigate and prosecute those responsible for such attacks against the civilian population.*” He reiterated that the Court was closely monitoring the situation in the DRC and will not tolerate any use of violence. He added that “*Electoral violence is no longer a ticket to power, I assure you. It is a ticket to The Hague.*”

47. On 9 December 2011, the United Nations Secretary-General, Mr. Ban Ki-Moon, said in a press release that he took note of the announcement by CENI of the provisional results stating that Mr. Joseph Kabila “*garnered the most votes*” in the presidential election, that he was following closely the situation and he “*strongly condemned any acts of violence in connection with the electoral process*” in the DRC.⁴⁰ He also asked all candidates and their supporters to exercise restraint and to refrain from any acts of violence, provocation and incitement.

48. Several States, international institutions and organisations also condemned the human rights violations committed in the DRC during the election period.⁴¹

³⁷ Mr. Etienne Tshisekedi uses his residence as an office and often organises press briefings there. However, the police officers prevented party supporters and journalists from attending them or from ensuring media coverage. Only a few close members, in particular the Secretary General of the UDPS, his principal private secretary and his spokesman have access to Mr. Etienne Tshisekedi. The presidents of the opposition parties may not visit him or it is difficult to do so.

³⁸ <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=11666&LangID=F>.

³⁹ <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/otpstatement061211>.

⁴⁰ <http://www.un.org/apps/news/fr/storyF.asp?NewsID=27110&Cr=RDC&Cr1=>.

⁴¹ See the press releases of the Human Rights Watch organization at the enclosed links: <http://www.hrw.org/fr/news/2011/12/02/rd-congo-les-autorit-s-doivent-contr-ler-les-forces-de-s-curit> and <http://www.hrw.org/fr/news/2011/12/21/rd-congo-24-morts-depuis-l-annonce-du-r-sultat-de-l-lection-presidentielle>, and the Declaration of the High Representative of the European Union on behalf of the European Union (EU) on the final results of the presidential elections in the DRC and the continuation of the ongoing electoral process, Brussels, 20 December 2011, 18917/1/11 REV 1/PRESSE 518: http://www.europa.eu/articles/fr/article_11738_fr.htm.

VIII. Conclusions and recommendations

49. Between 26 November and 25 December 2011, in Kinshasa, members of the Congolese defense and security forces, mainly the GR, the PNC and, to a lesser extent, FARDC soldiers not belonging to the GR, seriously violated human rights of civilians, in particular the rights to life, physical integrity and liberty and security of person, as documented in this report. They are responsible for multiple cases of arbitrary executions and enforced disappearances of civilians and excessive use of force, in particular by firing live ammunition at civilians during demonstrations.

50. Moreover, several arrests were made, and persons detained, either indiscriminately by being targeting particularly on grounds of their province of origin or their political affiliation. Many civilians were detained in unofficial detention cells for long periods of time.

51. Members of the Congolese defense and security forces have thus breached the international standards concerning the rights to life, physical integrity, liberty and security of person and in particular have violated Articles 16, 17 and 18 of the Congolese Constitution.⁴² The team was not informed of a prior authorization from the competent authority to use firearms to disperse crowds. Without such authorization, the use of firearms is in violation of the Organic Law No. 11/013 on the organization and functioning of the PNC.⁴³ In any case, members of the Congolese defense and security forces failed to observe the basic principles on the use of force and firearms, in particular the principles of distinction, proportionality and precaution. The competent judicial authorities must ensure that members of the defense and security forces who are allegedly responsible for such violations be brought for their acts before the relevant authorities.

52. It should be also noted that members of the defense and security forces, in particular members of the GR and FARDC soldiers not belonging to the GR, have been deployed in violation of the provisions of Articles 27 and 28 of Decree No. 05/026 of 6 May 2006 concerning the operational plan for securing the electoral process and in violation of the Organic Law No. 11/012 on the organization and functioning of the Armed Forces.⁴⁴ The team was not informed of the existence of a requisition from the relevant authorities for the deployment of FARDC soldiers within MROP operations. Therefore, the members of the GR should not be deployed during such operations.

53. Finally, by subjecting the prerogative of the use of additional defense and security forces to several authorities, the Government of the DRC limited the possibilities to establish liability in the event of serious administrative failures of the defense and security forces.

⁴² See paragraph 10 of this report.

⁴³ See paragraph 11 of this report.

⁴⁴ See paragraphs 11 and 12 of this report.

54. Thus, the UNJHRO recommends:

A. To the authorities of the DRC

- to conduct an independent, credible and impartial investigation into all the cases of serious human rights violations committed in Kinshasa between 26 November and 25 December 2011 and to bring all the alleged perpetrators of such violations to justice, whether they are members of the GR, other FARDC soldiers or PNC officers, and irrespective of their rank;
- to carry out the release of every person arrested and detained illegally and/or arbitrarily, and to close down all illegal detention facilities in the city of Kinshasa, which violate the provisions of the Constitution and the Congolese laws as they are not subject to the control of judicial authorities;
- not to resort to excessive use of force when members of the defense and security forces during law enforcement operations and to comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations;
- to equip the PNC units, in particular the territorial units and GMI, with material allowing them to properly deal with MROP situations;
- to give complete access to Public Prosecutors and UNJHRO human rights officers to all detention facilities in the city of Kinshasa and throughout the country;
- to prevent and put an end to conflicts of authority within the Congolese defense and security forces by establishing security institutions with clear modalities of operation, whose elements are regularly trained, acting in compliance with international and national standards on the protection of human rights and the MROP techniques.

B. To the international community

- to urge the Congolese authorities to prosecute and bring to justice the members of the defense and security forces who are allegedly responsible for the human rights violations mentioned in this report;
- to ask the Congolese authorities to take preventive measures so that such violations should not be repeated and to monitor the implementation of the measures taken by the Congolese authorities in response to these violations;
- to continue to support the Congolese authorities in order to ensure that State institutions of the DRC operate in a democratic, responsible and transparent manner, including the members of the defense and security forces.
