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Technical assistance and capacity-building

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

Summary

This report is submitted pursuant to Human Rights Council resolution 41/26 of 12 July 2019, which renewed the mandate of the team of international experts on the situation in Kasai and requested it to submit a final report to the Council at its forty-fifth session. The report, preceded by an oral report from early March whose presentation was postponed to 17 June 2020, covers the period from July 2019 to August 2020. Its submission takes place in the context of the COVID-19 coronavirus pandemic, which has had a negative impact on the implementation of the mandate of the team of international experts. The period in question was marked by a relative lull in the violence in the Kasai region, despite daily human rights violations, continuing crime and a worsened humanitarian situation. There is a serious humanitarian crisis there due to the massive return of several hundred thousand Congolese nationals, most of whom were expelled by the Angolan authorities, supposedly to prevent the spread of COVID-19 by relieving crowding at prisons and expelling undocumented foreigners. The problem is compounded by a difficult political context, with several provincial assemblies and governments in crisis.

Despite this difficult context, the team of international experts has noted definite progress in the judicial processing of cases opened in the context of the crisis affecting Kasai between 2016 and 2018. Such progress, however, falls short, as the fight against impunity is still a challenge that is far from being met by the Congolese justice system.

Several recommendations made in previous reports have not yet been implemented by the State; such is the case for the disarmament of all militia members, followed by their social and economic reintegration; the freeing of the women taken hostage by the Bana Mura militia; and the provision of sufficient human and material resources to the judiciary to enable it to carry out its work in a timely manner and in acceptable conditions.

With regard to strategies for reconciliation, transitional justice, victim assistance and reparations, the team of international experts notes that there has been progress in the implementation of the project entitled Peace, Justice, Reconciliation and Reconstruction in Kasai Central, with community consultations and the establishment of a drafting committee tasked with drawing up a decree for the implementation of the recommendations. In early August 2020, the Congolese Government expressed its

* The present report was submitted after the deadline in order to reflect the most recent developments.



willingness to create a legal framework for transitional justice and reparation for victims.

Some victims have formed associations to take legal action. The team of international experts welcomes this initiative and urges all those involved to support them in their struggle for the respect of their rights.

I. Introduction

1. Taking note of the observation by the team of international experts in its previous report that the current lull in the violence in Kasai is fragile, ethnic tensions remain high and the situation must still be monitored closely, (A/HRC/41/31, paras. 19 and 72), the Human Rights Council, in its resolution 41/26 of 12 July 2019, renewed the mandate of the team of international experts, tasking it with observing, assessing and assisting the efforts of the Democratic Republic of the Congo in implementing the recommendations contained in the report of the previous team of international experts and instructing it to submit a final report to the Council at its forty-fifth session.
2. In order to facilitate its performance of this mandate, the Human Rights Council requested the United Nations High Commissioner for Human Rights to provide, at the request of the authorities, technical assistance, including the necessary forensic expertise, to the Government of the Democratic Republic of the Congo in order to support the judicial authorities in their investigations into allegations of human rights violations and abuses in the Kasai region and other regions of the country, with a view to bringing those responsible to justice.
3. The international experts, Bacre Waly Ndiaye, of Senegal, as Chair of the team, and Sheila B. Keetharuth, of Mauritius, as a team member, were appointed for this purpose by the Human Rights Council. In carrying out its mandate, the team of international experts was supported by a secretariat based in Kananga, composed of three international members and one national member. The team of international experts proceeded to draw up its workplan and to plan its field visits. Of the six planned visits, the team carried out only two: from 7 to 16 November 2019 and from 12 to 28 January 2020. The team of international experts was unable to implement its workplan as foreseen owing to the coronavirus (COVID-19) pandemic.
4. However, on 17 June 2020, both international experts took part in the Human Rights Council's interactive dialogue on the Democratic Republic of the Congo, participating by videoconference from their respective countries because of the COVID-19 restrictions in force during the Council's forty-third session. At that time, they reported on the progress of their work and shared some preliminary findings.
5. The present report, submitted to the Human Rights Council at its forty-fifth session, contains the conclusions and recommendations of the team of international experts.

II. Mandate

6. To carry out its new mandate, the team of international experts adopted a three-pronged approach, namely: (a) monitoring judicial cases in the context of the fight against impunity; (b) monitoring the reconciliation, transitional justice and reparation process; and (c) providing institutional support for the State bodies responsible for implementing recommendations.
7. This mandate has been taken up not only in a context where the World Bank and several international non-governmental organizations (NGOs) are launching humanitarian and development projects in the Kasai region, but also in a period of transition, where the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) is gradually arranging for its withdrawal from the country. In view of the presence of multiple actors in the Kasai region, it goes without saying that the mandate of the team of international experts will have added value only if it is seen as a catalyst and guide for the social and judicial policies undertaken in the region. Thus, during each of the visits of the team of international experts, meetings with the country's highest authorities play a decisive role in facilitating and accelerating the implementation of activities on the ground. Indeed, in addition to the activities carried out by MONUSCO and the United Nations Joint Human Rights Office, each visit to the Democratic Republic of the Congo by the team of international experts is an opportunity to assess the Government's efforts to prosecute the perpetrators of serious crimes committed during the crisis linked to the Kamuina Nsapu militia in the Kasai region and also to question the Government on obstacles observed in the fight against impunity and the promotion of reconciliation and social reintegration, transitional justice and reparations.

8. Such visits have also provided an opportunity for advocacy, which most of the time, with every visit by the team of international experts, has facilitated progress. They are thus a tool for political and legal support for the activities carried out by the Government, MONUSCO, the United Nations Joint Human Rights Office and others operating in the Kasai region.

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

9. The team of international experts appreciated the spirit of cooperation and openness that marked its exchanges with the national and provincial authorities of the Democratic Republic of the Congo over the course of its missions. This cooperation was reflected in several actions, including the facilitation of the team's two visits to the country through the issuance of courtesy visas and the organization of various meetings at the national and provincial levels and of working sessions organized with State services. In addition, the members of the secretariat based in Kananga had their work facilitated in the same way at the provincial and national levels.

10. The authorities of the Democratic Republic of the Congo were able to fully appreciate the contribution made by the team of international experts to the Kasai peace process. Thanks to this, the Minister for Human Rights expressed the wish, at the meeting of the Task Force on 20 January 2020, that the mandate of the team of international experts would eventually be extended to the other provinces affected by armed conflict, specifically Tanganyika, Nord-Kivu, Sud-Kivu, Ituri and Mai-Ndombe.

IV. Current situation in the Kasai region

11. The team of international experts has noted a relative lull in the violence in the Kasai region; the crisis related to the Kamuina Nsapu militia, in its original form, has all but disappeared. However, there has been an increase in crime, mainly attributable to acts by some members of the security forces, the fact that ex-militiamen have not been fully disarmed and the lack of a social and economic reintegration policy for those who have surrendered their weapons. Recently, there have been reports in the commune of Nganza and around the Kananga airport that former Kamuina Nsapu militiamen are reorganizing. This is alarming and calls for urgent measures to be taken to prevent the resurgence of militias and their redeployment in political, land or inter-communal conflicts.

12. In addition, the United Nations Joint Human Rights Office has documented several cases of rape and sexual assault, mostly committed by armed men and certain elements of the Armed Forces of the Democratic Republic of the Congo or the security forces. The impunity enjoyed by the perpetrators of these acts only makes the situation worse. There is thus an urgent need for the authorities responsible for security and justice to firmly combat this phenomenon.

13. Socioeconomically, the situation in the Kasai region has hardly improved at all. Poverty is still pervasive and the cost of living has worsened as a result of the depreciation of the Congolese franc against the United States dollar, which has led to an increase in the price of basic foodstuffs.

14. The situation is made worse by the fact that the Kasai region is heavily dependent on imports from Angola. With the closure of the borders under measures taken by the Congolese and Angolan authorities to combat the spread of COVID-19, several basic commodities are unavailable in the provinces of Kasai and Kasai Central; those that are still available are very expensive and thus beyond the means of the vast majority of people.

15. On the political front, the Kasai region is facing a series of crises marked by institutional changes and movements advancing political demands.

16. In Kasai Central Province, the Governor was removed from office on 24 June 2020 following a motion of censure put forward by a group of deputies. The same steps were undertaken in Kasai Province, but with no result.

17. There have also been peaceful political marches by protest movements in the region. For example, on 7 and 9 July 2020, public demonstrations were organized by the Lutte pour le changement and Filimbi citizens' movements and the Union pour la démocratie et le progrès social political party in Kananga (Kasai Central Province), Tshikapa (Kasai Province) and Mbuji-Mayi (Kasai Oriental Province) to protest against the "confirmation" of the candidate proposed by the National Assembly on 2 July 2020 as chair of the Independent National Electoral Commission. The demonstrators also called for the reform of the national electoral system, which they considered "non-negotiable", in the next electoral cycle.

18. The political situation in the Kasai region is influenced by divisions within the governing coalition that currently rules the country.

19. On the health front, the measures taken by the Congolese authorities to prevent the spread of COVID-19 from Kinshasa or the eastern provinces into the country's interior have met with some success, and no cases had been reported in the Kasai region through the end of July 2020, when emergency measures were lifted in the country. At the time of writing, there were two confirmed cases of COVID-19 in Kasai Province, one in Tshikapa and one confirmed case in Kasai Central Province.

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

20. The recommendations contained in the report of the previous team of international experts (A/HRC/38/31) can be divided into two main groups, namely, those for combating impunity and those for supporting reconciliation efforts and transitional justice.

21. In its previous report, the team of international experts referred to the State's establishment of a working group to implement the recommendations. As a reminder, resolution 41/26 of the Human Rights Council encouraged the Government to ensure that the working group would meet as many times as necessary in order to regularly assess the progress made in implementing the recommendations, improve the coordination between the administrative authorities and stakeholders and recommend appropriate measures to the Government.

22. In its interactions with the national authorities, the team of international experts supported the Government's efforts to facilitate the working group's action by encouraging the resumption of meetings. Thus, on 20 January 2020, the working group was able to hold its first meeting in the presence of members of the Government, the technical and judicial bodies involved in the implementation of the recommendations and the team of international experts.

23. To support the working group, the team of international experts, through its secretariat, drew up a suggested workplan to help the working group with the methodology and planning of its activities. The team of international experts proposed that the working group should meet at least once every two months to evaluate and follow up on its activities.

24. Owing to the COVID-19 pandemic and the restrictive measures taken by the Government in response to it, the working group was no longer able to formally meet to continue its activities. However, from a meeting with the Minister for Human Rights, it was ascertained that the Minister had been able to hold meetings with, inter alia, the Chief Military Prosecutor and the deputy minister of justice to assess the implementation of the items falling within their competence. The team of international experts did not, however, receive any notes on those assessments. The team recommends that a plan for the implementation of the recommendations be drawn up with a timetable and allocation of the corresponding budgetary resources, which would enable the working group to carry out its mandate effectively.

25. The situation described above notwithstanding, the team of international experts was able to continue its work by supporting the Government's efforts in combating impunity and providing for reconciliation and transitional justice.

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

1. Efforts to combat impunity

(a) Context and analysis

26. Following the recommendation in the previous report of the team of international experts to adopt an investigation and prosecution strategy that encompasses all categories of perpetrators of serious crimes in Kasai (A/HRC/41/31, para. 80 (b)), 16 cases had been identified as priorities by the senior military prosecutor's office at the military court of the former Kasai Occidental Province. These cases concern the following localities: Tshisuku, Nganza, Katoka, Diboko, Malenga, Tshikapapa, Mutshima, Maswika, Nkoto, Tshinyembe, Tshimbulu, Kabeya-Madi, Luebo and Kamonia.

27. The team of international experts notes that, despite the priority given to these 16 cases, which requires that they be dealt with expeditiously, none has had its investigation completed and been referred to a trial court.

28. During each of its visits to the Democratic Republic of the Congo, the team of international experts held working meetings with both the Chief Military Prosecutor at the Military High Court and the senior military prosecutor at the military court of the former Kasai Occidental Province. The team noted a number of circumstances slowing the judicial investigation of the cases, including: (a) difficulties in obtaining the lifting of the parliamentary immunity of a member of parliament suspected of serious human rights violations; (b) a delay in the execution of warrants; and (c) procedural difficulties related to personal jurisdiction which have arisen in investigations of cases involving military officers with the rank of general.

29. The team of international experts notes, however, that with the support of MONUSCO and the United Nations Joint Human Rights Office, some progress has been made in prosecutions, with the help of the technical assistance team.

(b) Prosecution and investigation of court cases

30. The team of international experts welcomes the arrest on 29 May 2020 by the garrison military prosecutor's office in Kananga, in Kasai Central Province, of Trésor Mputu Kankonde, one of the leaders of the Kamuina Nsapu militia wanted by the military justice system for several cases of human rights violations in the territory of Dibaya. This militia leader is also suspected of having participated in the murder of Zaida Catalán and Michael Sharp, members of the Group of Experts on the Democratic Republic of the Congo established pursuant to United Nations Security Council resolution 1533 (2004), who were killed on 12 March 2017.

31. The team of international experts notes with satisfaction that in February 2020, a team of military judges and judicial police officers interviewed nearly 803 victims and witnesses in the commune of Nganza, in Kananga. After this mission, information on the situation of the persons in question both prior to and after their death was compiled. It was thus possible to identify 620 victims of summary and extrajudicial executions committed between 28 and 30 March 2017 and implicating the defence and security forces. Additional information on these victims was also collected to facilitate their identification by their families after exhumation.

32. The team of international experts notes, however, that despite the recommendations made in its previous reports, the women abducted by the Bana Mura militia have still not been freed, and they remain in captivity.

33. In November 2019, a group of these women was able to escape. According to their accounts, many others are still being held as sex slaves. The team of international experts regrets that the judicial authorities and security forces did not take this opportunity to find the hostage-takers and free the women still held in captivity.

34. The team of international experts notes that, despite previous recommendations, the recruitment of women into the military justice system, including their deployment to the Kasai region, has not yet taken place. Their presence would clearly be advantageous,

particularly in building the confidence of women and girl victims in the context of current investigations and inquiries into cases, especially those involving rape and sexual violence.

35. The team of international experts is also concerned about the obstruction of the lifting of the parliamentary immunity of a legislator from the province of Kasai who is suspected of serious human rights violations. It notes that despite the fact that the senior military prosecutor at the military court of the former Kasai Occidental has claimed that efforts have been made to charge the suspect, to date, no judicial action has been taken against him. The team of international experts therefore urges the Kasai Provincial Assembly to cooperate fully with the military justice system so as to enable it to carry out its tasks of investigating and prosecuting allegations of serious crimes against one of the Assembly's members.

36. The team of international experts commends the efforts undertaken by the senior military prosecutor's office at the military court of the former Kasai Occidental, with the support of the Chief Military Prosecutor, in the execution of warrants. It takes note of the arrest in July 2020 of certain officers and non-commissioned officers of the Armed Forces of the Democratic Republic of the Congo suspected in particular in connection with the killings in Nganza and Tshimbulu.

37. The team notes, however, that most of the cases for which these investigations have been carried out have been referred to the Chief Military Prosecutor's office, owing to the ranks of the officers involved in these cases. The team hopes that the Chief Military Prosecutor's office will speed up the processing of these cases, which have been stalled for several years.

38. With regard to the trial of the alleged killers of Zaida Catalán and Michael Sharp, the team notes that the trial is continuing, although it is apparently far from over. The trial initially held at the Kananga garrison military court has been transferred to the military court of the former Kasai Occidental after charges were filed against a colonel of the Armed Forces of the Democratic Republic of the Congo. The case involving the disappearance, in the same event, of the victims' four Congolese colleagues is still at the preliminary investigation stage. In January 2020 the Chief Military Prosecutor at the Military High Court said that it had not yet been formally established that the colleagues had died.

39. The team of international experts is concerned about these proceedings, which are moving along at two different speeds. When the two judicial procedures eventually come together, which is virtually inevitable to ensure the proper administration of justice, the trial already under way for the murder of the two Security Council experts is very likely to be prolonged indefinitely.

40. The team of international experts emphasizes that the fight against impunity in the Kasai region must go beyond the prosecution of those responsible for the murder of Zaida Catalán, Michael Sharp and those who accompanied them.

41. In view of the slow pace in the processing of cases related to the crisis involving the Kamuina Nsapu militia, the team of international experts doubts that, with its current resources, the Congolese justice system is able to work effectively and that the proceedings it has initiated can meet the need for justice arising from this crisis, even in cases chosen for their symbolic significance. This concern is shared by civil society in Kasai, in particular the Société congolaise pour l'État de droit, an NGO represented by the president of the Bar Association of Kasai Central, who in a statement dated 16 July 2020 deplored the judiciary's lack of will to support the rule of law in the Kasai crisis. He also recommended that the President of the Republic should refer the situation in Kasai to the International Criminal Court or, failing that, should establish a special criminal court for Kasai.

2. Problem of the resources required to facilitate the administration of justice in the Kasai region

42. In its previous report, the team of international experts had noted the link between the fight against impunity and the deployment of resources, indicating that a genuine fight against impunity in the Kasai region required significant human, financial and logistical resources for the military justice system (A/HRC/41/31, para. 75).

43. In January 2020, when the team of international experts met with the Minister of Justice of Kasai Central Province, the Minister presented all the challenges facing the justice system in general, and the military and civilian justice systems in particular. Specifically cited were the challenges they faced owing to the poor functioning of the courts in the territories of the province other than Kananga, where the Minister claimed that the courts were operational. The Minister also referred to obstacles related to the lack of judges and the high cost of travel to process certain cases in the territories, as well as the problems of prison overcrowding, the lack of prison facilities and the dilapidated state of existing prisons, which led to numerous escapes.

44. Lastly, the team of international experts notes that the performance of military justice activities in the Kasai region is heavily dependent on international organizations, in particular MONUSCO, for logistical and financial support.

45. In the area of capacity-building and support, the team of international experts welcomes the deployment by the Office of the United Nations High Commissioner for Human Rights of a technical assistance team which is providing valuable support to the Congolese military justice system in the investigation of cases of international crimes committed during the Kasai crisis.

46. The team of international experts also notes with satisfaction the contribution of the National Human Rights Commission and international NGOs in the training of judicial personnel and court officials in the area of international crimes.

47. In October 2019, the National Human Rights Commission, in partnership with TRIAL International and with the financial support of the United Nations Development Programme, organized training on the documentation of international crimes and basic human rights concepts for human rights NGOs in Kananga and in the territories of Kazumba, Dibaya and Luiza.

48. In February 2020, TRIAL International conducted a training workshop in Kananga on the investigation and prosecution of serious crimes for civilian and military judges, lawyers, the national police and health-care staff of Kananga Provincial Hospital, and also for NGOs working to combat violence against women.

49. TRIAL International also provided financial support for mobile court hearings to be held from 10 to 17 July 2020 in Tshikapa by the military court of the former Kasai Occidental, specifically ensuring that women victims of sexual violence and their lawyers would be heard.

3. Support for victims and witnesses

50. The team of international experts notes that: (a) the victims – particularly those in the communes of Nganza, Mulombodi, Tshilumba, Katoka, Tubuluku and Meteo (in Kananga) and in the territories of Tshimbulu and Tshisuku – have established a hub of associations; (b) some of these victims were able to obtain death certificates from the Kananga city hall; and (c) other victims, on the other hand, have not able to do so, owing to the suspension of the issuance of such certificates. The team of international experts therefore urges the administrative and judicial authorities to facilitate the issuance of death certificates to make it possible for such persons to take legal action. In addition, the team takes note of the complaint lodged on 3 August 2020 by a group of victims from the commune of Nganza with the senior military prosecutor's office of the military court of the former Kasai Occidental against members of the Armed Forces of the Democratic Republic of the Congo involved in handling the Kamuina Nsapu militia crisis and against the Minister of the Interior who was in office at the time of the events.

51. The team of international experts welcomes the Government's idea of establishing a national fund for victims of serious human rights violations. Such a fund will no doubt initially relieve the suffering of victims while they await compensation resulting from court decisions. The team of international experts would therefore like to see prompt implementation of this project.

B. Reconciliation and transitional justice in the Kasai region

52. In its previous report, the team of international experts recommended that the Government should revitalize community reconciliation efforts in Kasai without delay and establish an inclusive and appropriate transitional justice mechanism (A/HRC/41/31, para. 80 (j)).

53. The team of international experts notes with satisfaction that the Government plans to set up a national council for conflict prevention and transformation. It notes that this government initiative comes after community consultations were held in the province of Kasai Central as part of the implementation of the joint peace, justice, reconciliation and reconstruction programme in that province.

54. The team of international experts also notes that, in addition to Kasai Central, there are plans for similar transitional justice mechanisms in Kasai and Tanganyika provinces. In this regard it is concerned about the question of how the provincial, regional and national dimensions of transitional justice, truth and reconciliation projects fit together in the Democratic Republic of the Congo.

55. This reconciliation process, which does not cover the entire Kasai region, nonetheless affected by the same crisis, unfortunately is taking place in a context where the security and humanitarian situation in the region is still alarming.

1. Community consultations in Kasai Central Province

56. The team of international experts welcomes the organization of the community consultations that took place in Kasai Central Province from 15 to 23 August 2019. These inclusive consultations made it possible to hear the views of local populations affected by the violence regarding the needs for justice, reparation, reconciliation, truth, peaceful coexistence and the prevention of further conflict.

57. During the ceremony for the formal presentation of the consultations' report, the provincial government committed itself to fully implementing the recommendations issued as a result of the consultations. The team of international experts is concerned about the fact that, to its knowledge, no action has been taken by the Government of the Democratic Republic of the Congo to take on board the results of the community consultations. In addition, it is concerned that the implementation of the recommendations resulting from the consultations is being delayed owing, inter alia, to the dismissal of the Governor of Kasai Central Province.

58. The team of international experts also notes that on 11 June 2020 the provincial Minister of Justice issued an order appointing the members of a drafting committee for the draft provincial decree on the establishment and operation of the provincial truth, justice and reconciliation commission.

2. Question of how the provincial, regional and national dimensions of the truth and reconciliation commissions in the Democratic Republic of the Congo fit together

59. At various meetings held by the team of international experts with the national authorities, the authorities welcomed the pilot project on transitional justice in Kasai Central Province and expressed the hope that the experiment would be extended to other provinces that have had social conflicts, in particular Tanganyika, Nord-Kivu, Sud-Kivu, Ituri and Mai-Ndombe.

60. However, the team of international experts notes that there has been a new approach to the transitional justice process. According to the Ministry of Human Rights, transitional justice mechanisms must be led by the Government of the Democratic Republic of the Congo and not by the provincial authorities, the latter apparently being the case at present with the experiment in Kasai Central. During the interactive dialogue on the Democratic Republic of the Congo, the Minister stated that his country intended "to revive the Truth and Reconciliation Commission, which proved its worth between 2003 and 2006". During a telephone meeting held on 10 August 2020 with the international experts, the Minister for Human Rights stated that the draft decree on the transitional justice mechanism in the Democratic Republic of the Congo would be adopted very soon.

61. In the view of the team of international experts, this approach should be given sufficient consideration to make it possible to decide on the best way for the provincial, regional and national dimensions of transitional justice, truth and reconciliation mechanisms to fit together in the Democratic Republic of the Congo. For this reason, the team of international experts had planned to organize a workshop on this subject in April 2020 in Tshikapa, Kasai Province. The workshop's terms of reference have been drawn up and the panellists identified, but as of the time of writing, the COVID-19 pandemic has prevented it from being held.

3. Disarmament and socioeconomic reintegration measures

62. The team of international experts notes that the crisis related to the Kamuina Nsapu militia, in its original form, has all but disappeared. However, with regard to the recommendations in the previous report calling on the Congolese authorities to ensure that the disarmament process under way applied to all militias without distinction (A/HRC/41/31, para. 80 (1)), the team of international experts has ascertained that the Bana Mura and Écurie Mbembe militiamen, who are still present in Kasai Province, were never disarmed and that the voluntary disarmament initiatives launched by some militias have not continued, while those who have laid down their weapons have not benefited from socioeconomic reintegration measures. It is feared that the former militiamen may reorganize into armed groups that attack civilians to survive or that they could sell their services for political or economic gain.

63. The team of international experts reiterates the urgent need to disarm all militiamen without distinction and to ensure their socioeconomic reintegration.

4. Socioeconomic and humanitarian situation

64. As the team of international experts mentioned in its previous report, the efforts made to combat impunity and to achieve reconciliation will not produce tangible and satisfactory results unless the socioeconomic dimension of the conflict in Kasai is taken into consideration (A/HRC/41/31, para. 78).

65. Noting that the overwhelming majority of the population lives in a state of extreme poverty despite the fact that the territory is replete with potential sources of wealth, the team of international experts reiterates that strong measures must be taken to address this situation.

66. The team of international experts also welcomes the 100-day programme launched by the President of the Democratic Republic of the Congo, which contains components for the development of the Kasai region. It looks forward to the effective implementation of this programme, which calls in particular for the provision of better access to Sankuru Province and the rehabilitation of schools and the modernization of major trunk roads.

67. The team of international experts also notes with satisfaction that during its visit, the Congolese authorities announced that a project had begun in Kasai Central Province for the development of agriculture, education and health services, with financial support from the World Bank.

68. The team of international experts welcomes this cooperation and invites other development actors to follow the lead of the World Bank, while calling on the Government to invest more in the Kasai region and to ensure that the exploitation of mining resources includes an appropriate approach to social responsibility.

69. On the humanitarian front, the team of international experts notes that the situation has hardly improved at all and remains marked by security challenges, in particular related to the disarmament of militias and the lack of other initiatives. Furthermore, there is a serious humanitarian crisis owing to the massive return of several hundred thousand Congolese nationals, most of whom were expelled by the Angolan authorities with the aim of preventing the spread of COVID-19 by relieving crowding at prisons and by expelling undocumented foreigners.

70. It is in this context that in April 2020 numerous Congolese citizens were driven out at the Kamako border post and at the Kandiadji and Kabungu crossing points, into Kasai Province. Between 27 April and 14 May 2020, at least 1,127 people – including 218 women, 58 boys and 57 girls – were forcibly repatriated by the Angolan police and the

country's migration service. While some were quarantined, quarantine was impossible for those who returned through unofficial border crossings. A climate of mistrust thus developed, leading to discrimination and stigmatization. Some of the people who were forced to return do not wish to go back to their communities because they are afraid of being outcasts; others have had their land and property taken away.

71. According to the United Nations Office for the Coordination of Humanitarian Affairs, “[i]n the first half of 2020, there were several alerts of continuing operations to expel undocumented Congolese from Angola to the provinces of Kasai and Kwango. According to the Directorate General for Migrations of Kasai Province, 13,686 deportees and 764 voluntary returnees crossed various border points on the Angolan border between January and June 2020. They thus joined hundreds of thousands of other returnees in the provinces of Kasai, Kasai Central, Kasai Oriental, Lomami and Kwango, where more than 516,000 people (expelled from Angola, returnees from the Kamuina Nsapu crisis or repatriated persons) were registered in 2019”.¹

72. This new influx increased the number of displaced persons and further complicated an already dire humanitarian situation; persons who had previously been displaced are living in difficult circumstances without any sustainable solutions. This situation has led to serious problems, including health issues, as reception infrastructures are either inadequate or practically non-existent. In addition to the violence that they have suffered in Angola, returning displaced persons and expelled persons also appear to be subjected to violence and extortion in the Democratic Republic of the Congo, by the defence and security forces in particular. The humanitarian crisis is an obstacle to reconciliation efforts in this area of Kasai. It was reported to the team of international experts that, while the wounds have not yet had time to heal, the population is now a mishmash of executioners and victims of the crisis that has been raging in Kasai since 2016. In these circumstances, which are complicated further by the humanitarian crisis, a dialogue of reconciliation may not be a realistic prospect. Resolving the humanitarian crisis at the Angolan border and addressing the situation of displaced persons throughout the Kasai region is therefore a major challenge that must be overcome in order to restore lasting peace in Kasai.

73. With regard to women, the team of international experts notes that no measures have been taken specifically for women in the context of management of the humanitarian crisis. Yet special attention has to be paid to displaced women heads of household and girls, owing to their specific vulnerability.

74. The team of international experts calls on humanitarian organizations to provide further support to the Congolese authorities to address this situation. It urges the Governments of the Democratic Republic of the Congo and Angola to include the humanitarian dimension and respect for human rights in any expulsion or repatriation measures.

VI. Conclusions and recommendations

75. The team of international experts welcomes the full cooperation of the Government and its openness to implementing the recommendations on Kasai.

76. The team of international experts reiterates the urgent need to make the fight against impunity the foundation and the catalyst for a return of the region to peace and stability. For this reason, while noting that some militiamen have been prosecuted and arrested, it encourages the courts to act just as effectively against all the alleged perpetrators of serious human rights violations committed during the Kamuina Nsapu militia crisis.

77. The 16 priority cases identified by the senior military prosecutor's office at the military court of the former Kasai Occidental are still in the preliminary investigation stage. Nearly three years after the cases were opened, none is about to be closed or referred to the courts for trial. Thus, the fight against impunity is still an entirely open question.

¹ United Nations Office for the Coordination of Humanitarian Affairs, “Plan opérationnel 2020 : région Kasai, Kwango et Kwilu”, second half of 2020, p. 8.

78. The security situation in the Kasai region is relatively calm, characterized by a worrying socioeconomic and humanitarian situation that has been made worse by the hazards of the COVID-19 pandemic.

79. While there have been some positive developments – including the establishment of the interministerial working group responsible for implementing recommendations and the holding of community consultations in Kasai Central – the concerns expressed in the previous report of the team of international experts (A/HRC/41/31) are still valid.

80. In the light of the above, the team of international experts reiterates the recommendations contained in its previous report, which called for the Government of the Democratic Republic of the Congo to adopt the following measures:

(a) Continue to work to secure the immediate release of the women and children who are still being held captive by the Bana Mura militia in Kamonia territory (Kasai Province);

(b) Adopt an investigation and prosecution strategy that encompasses all categories of perpetrators of serious crimes in Kasai, regardless of their status or position, their motive and the place where the crime was committed;

(c) Allocate to the military justice system in Kasai sufficient financial resources and the personnel, equipment and logistical resources that are necessary for it to investigate cases and issue rulings without undue delay;

(d) Consider the possibility of recruiting female staff to work for the military justice authorities in Kasai, and overcome the shortage of staff by making greater use of the civil justice system and the pool of talent offered by the bar association;

(e) Ensure that specialized personnel are assigned the specific task of investigating and prosecuting crimes of sexual violence and crimes involving minors; and

(f) Ensure that the disarmament process that is under way applies to all militias without distinction and helps to facilitate reconciliation by ensuring the effective return of militia members to their respective communities, with a gender-specific approach.

81. Furthermore, the team of international experts recommends that the Government of the Democratic Republic of the Congo should take the following steps:

(a) Establish genuine reparation mechanisms for victims and ensure that they function effectively;

(b) Provide the interministerial working group with substantial financial and material resources to facilitate its effective functioning and with a plan for the implementation of the recommendations, with a timetable and allocation of the corresponding budgetary resources;

(c) Extend to other conflict-affected provinces the lessons learned from the transitional justice mechanisms pilot project in Kasai Central Province;

(d) Proceed with the effective disarmament of all militias, without distinction;

(e) Ensure that the disarmament of ex-militia members is accompanied with socioeconomic reintegration measures;

(f) Ensure the effective functioning of the courts in the Kasai region;

(g) Recruit women judges and station them in the military courts of the Kasai region to better address the numerous cases of rape and sexual violence against women and the specific situation of displaced women and girls; and

(h) Give effect to the outcomes of the community consultations conducted in Kasai Central Province.

82. The team of international experts recommends that the Chief Military Prosecutor's office should appoint a team of investigating judges dedicated exclusively to cases related to the Kamuina Nsapu militia crisis and that it should be provided with sufficient resources.

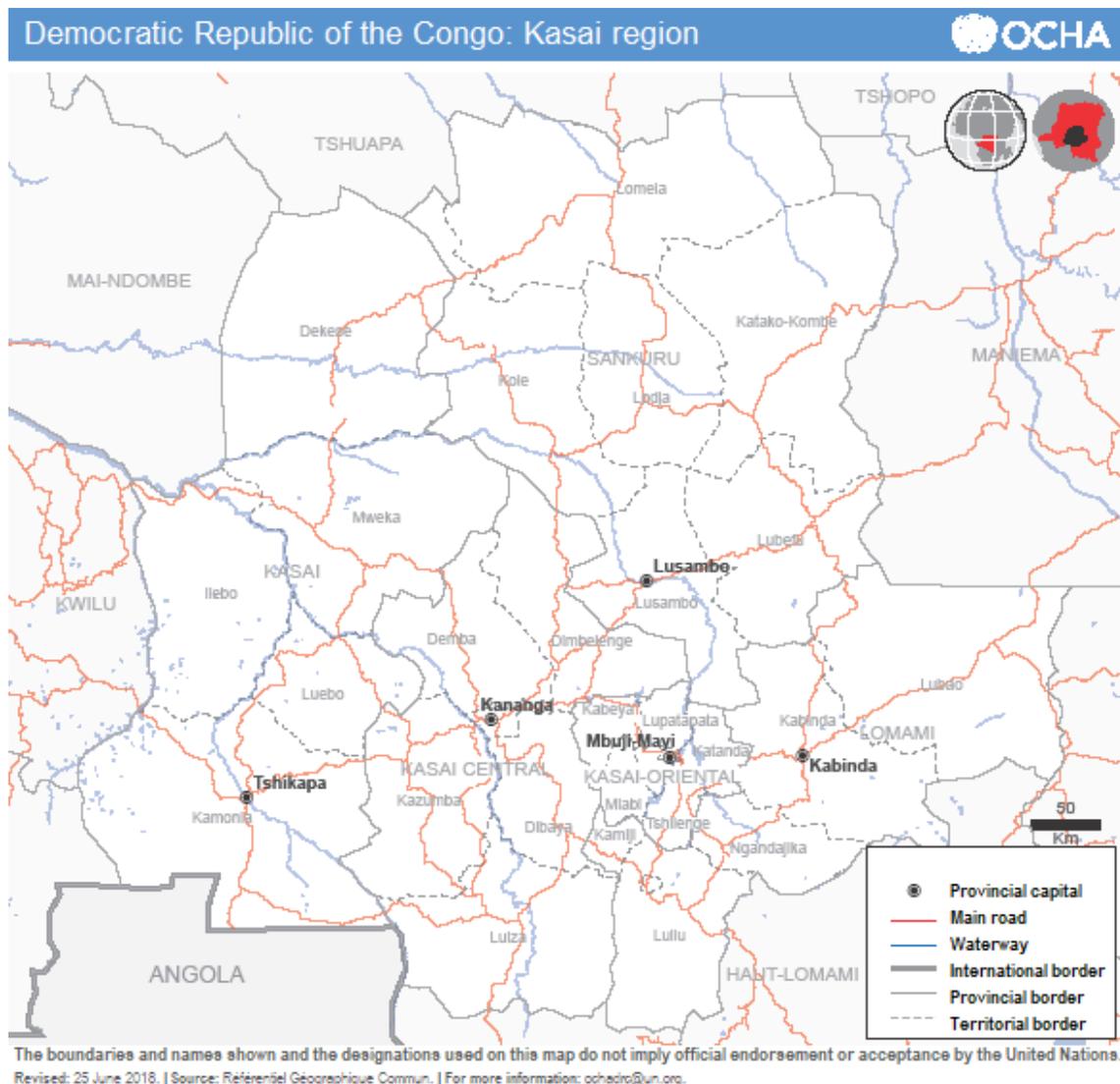
83. The team of international experts recommends that the parliament should contribute to the proper administration of justice by lifting the parliamentary immunity of any deputy suspected of serious human rights violations.

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

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

Annex

Map of Kasai



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

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Revised: 25 June 2018. *Source:* Référentiel Géographique Commun. For more information: ochadrc@un.org.