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INFORME ANUAL DEL ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS DERECHOS HUMANOS E INFORMES DE LA OFICINA DEL ALTO COMISIONADO Y DEL SECRETARIO GENERAL

Informe de la Alta Comisionada de las Naciones Unidas sobre la situación de los derechos humanos y las actividades de su Oficina en la República Democrática del Congo*

* Este informe se presenta con retraso para incluir en él la información más reciente. El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho se distribuye como se recibió, únicamente en inglés.

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Resumen

En su resolución 7/20, el Consejo de Derechos Humanos invitó a la Alta Comisionada de las Naciones Unidas para los Derechos Humanos a que, en su décimo período de sesiones, le informara sobre la situación de los derechos humanos en la República Democrática del Congo y sobre las actividades realizadas en el país por la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH). En su resolución S-8/1, el Consejo invitó a la Alta Comisionada a que, en su décimo período de sesiones, le informara sobre la situación de los derechos humanos en la zona oriental de la República Democrática del Congo y sobre las actividades realizadas por el ACNUDH en la región.

La situación de derechos humanos en la República Democrática del Congo sigue siendo motivo de gran preocupación. Los graves conflictos y los persistentes problemas estructurales existentes han empeorado las de por sí precarias condiciones de vida de los congoleños. En este informe se ofrece una visión general de la situación de derechos humanos y de las actividades llevadas a cabo por el ACNUDH en el país, incluida su zona oriental.

Durante el período considerado en el informe, varios grupos armados se han opuesto con frecuencia al control del Gobierno, o lo han reemplazado, generando o perpetuando conflictos que han llevado aparejadas graves violaciones de los derechos humanos, como ejecuciones arbitrarias, actos de violencia sexual, secuestros y saqueos.

Aunque la atención internacional se ha centrado en la zona oriental del país, en el resto del país también ha disminuido considerablemente el espacio público para protestar y criticar, y las autoridades suelen reprimir a quienes critican sus políticas. Debido en gran medida a los insuficientes salarios, los policías y los militares suelen abusar de su poder para extorsionar a los civiles a cambio de dinero, en muchos casos mediante detenciones arbitrarias y la fuerza física. El sistema judicial se enfrenta a enormes problemas, desde una profunda falta de recursos hasta una corrupción generalizada y la injerencia de políticos y militares. La inexistencia de un poder judicial independiente priva a los ciudadanos de un marco jurídico eficaz que les permita presentar denuncias y buscar reparaciones.

Durante el período considerado, la Oficina Conjunta de Derechos Humanos de las Naciones Unidas en la República Democrática del Congo, integrada por la División de Derechos Humanos de la Misión de las Naciones Unidas en la República Democrática del Congo (conocida como MONUC, por sus siglas en francés) y la oficina del ACNUDH en el país, ha incrementado sus actividades de vigilancia y promoción. En las áreas donde se registran conflictos armados, la Oficina Conjunta de Derechos Humanos se integró a equipos mixtos de protección creados por la MONUC para ampliar su capacidad de protección de civiles en riesgo inminente de violencia física. Para ayudar al Gobierno a realizar un seguimiento judicial y disciplinario de las violaciones de derechos a manos de agentes estatales, se crearon comités integrados por miembros de las Fuerzas Armadas de la República Democrática del Congo (FARDC), la Policía Nacional Congoleña (PNC) y el poder judicial. La Oficina Conjunta de Derechos Humanos ha intensificado su lucha contra la impunidad en materia de violencia sexual,

entre otras cosas mediante la vigilancia sistemática de los juicios y la ejecución de programas de fomento de la capacidad. El proceso de registro que se está llevando a cabo actualmente bajo la dirección del ACNUDH contribuirá considerablemente a combatir los problemas de justicia y rendición de cuentas existentes en la República Democrática del Congo, mediante una compilación de los casos de violaciones más graves de los derechos humanos y el derecho internacional humanitario cometidas entre 1993 y 2003 y la formulación de recomendaciones sobre la administración de justicia de transición.

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Introduction

1. The human rights situation in the Democratic Republic of the Congo has been of grave concern throughout the period under review. Mass killings, sexual violence and other serious human rights and international humanitarian law violations were perpetrated as conflict resumed in North Kivu in August 2008 and unprecedented attacks by the Lord's Resistance Army of Uganda (LRA) were carried out against civilians in Oriental Province resulting in several hundreds of deaths. The launching in January 2009 of an unprecedented joint military operation by the Forces Armées de la République démocratique du Congo (FARDC) and the Rwandan army to disarm Rwandan Hutu rebels in eastern Congo put a halt to the ongoing conflict between Government forces and the Congrès National pour la Défense du Peuple (CNDP), but raised new concerns about protection of civilians and the issue of accountability being sidelined in the reintegration of CNDP forces - now led by Bosco Ntaganda, an indictee of the International Criminal Court (ICC) - into the FARDC.

2. During the reporting period the fight against impunity made no progress, mainly due to lack of capacity, political will and interference from the authorities. The continued practice of appointing and promoting, among the ranks of the FARDC, human rights violators undermined the fight against impunity and perpetuated the cycle of violence by preserving or enhancing the power of human rights abusers. In the most dramatic setback, the Congolese Government was considering appointing Bosco Ntaganda to a senior position within the FARDC. Despite several requests by the Security Council, most recently in resolution 1856 of 22 December 2008, the Congolese authorities have yet to establish a vetting mechanism to screen senior military and police officers alleged to be responsible for serious human rights violations.

3. While international attention has focused mainly on the conflicts in eastern Congo, the public space for protests and criticism has diminished considerably throughout the country during the reporting period. In spite of relatively recent presidential, national and provincial elections, rather than fostering public debate, central and local authorities have attempted to stifle those critical of their policies. The clashes in Bas-Congo province in February-March 2008 between the Police nationale Congolaise (PNC) and the local politico-religious movement Bundu Dia Kongo (BDK), which caused over 100 deaths, are the most striking examples of such repression. Members of other political groups or parties, such as the Movement de libération du Congo (MLC) have also been the targets of threats, arbitrary arrests followed by incommunicado detention, torture and other forms of intimidation or repression. At the time of writing, an estimated 160 political detainees continue to be kept in pre-trial or illegal detention.

4. Mainly as a result of inadequate wages for law enforcement agents, police and army officers commonly use their position to obtain financial or other benefits by using arbitrary arrests and physical force. Equally underfunded is the management of prisons and detention centers, where the lack of food and health care has led to an alarming number of starvation cases and even more escapes during the reporting period. The judiciary is endowed with similar flaws of underfunding. As a consequence, the judicial system is hampered by corruption and by the interference of external actors such as agents of the executive branch. The lack of an independent and impartial judiciary deprives citizens of a functioning legal or official framework through which to lodge complaints or seek redress.

5. Sexual violence has reached pandemic proportions in the Democratic Republic of the Congo. Far from being limited to the context of armed conflict, it occurs throughout the country. Despite the reinforcement of laws punishing sexual violence and the increased attention given to the problem of sexual violence in eastern Congo by the Government and the international community, cases of sexual violence, often perpetrated by members of the FARDC, PNC and armed groups, remain widespread.

I. HUMAN RIGHTS ABUSES IN THE CONTEXT OF ARMED CONFLICTS IN EASTERN CONGO

A. Massive human rights violations committed by all forces in North Kivu

6. In spite of the Goma Peace Agreements, signed in early 2008, large scale violations of human rights and international humanitarian law occurred in North Kivu both before and after open hostilities resumed on 28 August 2008 involving the FARDC, the CNDP, the Patriotes Résistants Congolais (PARECO) Mayi-Mayi and the FDLR. Fighting between the FARDC and the CNDP subsided with the launching in January 2009 of a joint Congolese-Rwandan operation to disarm the FDLR and the planned reintegration of CNDP forces into the FARDC.

7. On 5 November 2008, in the deadliest massacre of the conflict which had pitted the CNDP against the FARDC and pro-Government Mayi-Mayi forces, the CNDP arbitrarily executed at least 64 people in the town of Kiwanja, mainly young men accused of being members of the Mayi-Mayi or of collaborating with them. There are strong indications that the death toll was higher, but the UNJHRO has been unable to confirm additional deaths due to concerns for the safety of victims and witnesses and the volatile security situation in Kiwanja. The CNDP occupied Kiwanja after FARDC soldiers retreated from the locality. Camps for internally displaced persons in Kiwanja and neighbouring Rutshuru were dismantled. During the same period, 65 men were abducted by the CNDP, of which more than half were later released following contacts between the UNJHRO and CNDP authorities in Rutshuru. UNJHRO also obtained first-hand witness testimony of other human rights abuses, including forced recruitment, forced disappearance, rape, castration, arbitrary arrest, looting and destruction of property.

8. FARDC troops were also responsible for serious human rights violations during the recent conflict in North Kivu. As the CNDP expanded its control over the region north of Goma throughout September and October 2008, fleeing FARDC elements committed numerous human rights violations including 11 cases of arbitrary killing, 2 cases of summary execution and 49 cases of rape, according to an UNHJRO investigation. FARDC troops also pillaged houses, shops, medical centres, schools and humanitarian convoys along their way. During investigation missions carried out in November 2008, the UNJHRO observed evidence of pillaging in various locations on the Kanyabayonga-Lubero axis. Members of eight FARDC brigades, for instance, looted private property between 10 and 20 November 2008 in Kanyabayonga, a village which at the time had been under their control for over three weeks.

9. UNJHRO investigations also point to serious abuses committed by FDLR forces. More than 100 retaliatory killings by the FDLR against civilians attempting to flee their villages or resist looting are alleged to have taken place since the beginning of the aforementioned

Congolese-Rwandan military operation. For example, since 26 January 2009 at least 29 civilians were allegedly killed and 30 wounded by FDLR elements in three villages located near Kibua. The FDLR also killed a prominent traditional chief in Pinga, Walikale territory, on 14 February, and committed 28 rapes in the same area since the beginning of February 2009.

10. The UNJHRO has also confirmed reports of an FDLR attack on Kanyatsi village, 140 kilometres south-west of Butembo, on 19 February 2009. During the attack, the FDLR gang-raped eight women and looted village homes. As a result of the above-mentioned attacks, many families have fled towards the towns of Kirumba, Kayna and Kanyabayonga. On 20 February 2009 in Mukeberwa village, also in southern Lubero territory, the FDLR allegedly killed three men who were working in their fields.

11. On 21 February 2009, the UNJHRO participated in a MONUC multidisciplinary humanitarian assessment mission to Remeka, in South Masisi which confirmed the presence there of more than 3,000 internally displaced persons. Reportedly, more than 20 villages in Walikale and Masisi territories have been vacated due to recent FDLR attacks.

12. Previously, on 4 June 2008, some 20 FDLR militiamen led by an individual known as Colonel Soki attacked the Kinyandoni II camp for internally displaced persons, firing indiscriminately. The attackers then moved towards the Kinyandoni I camp for internally displaced persons. Encountering opposition from the FARDC, they fled the area, once again firing indiscriminately and looting as they did so. Four civilians were killed and 15 civilians were injured.

13. The UNJHRO also documented seven arbitrary executions and four rapes in Kahunga, near Kiwanja, reportedly carried out by members of the FDLR. On 26 November, a group of four men, including 12 and 15 year-old boys, and eight women, including a 16 year-old girl, were on their way to cultivate their fields in Kahunga, near Kiwanja, when they were intercepted by six unidentified armed men. The armed men led the 12 persons into a nearby forest where, according to eye witnesses, they killed the four men, raped four of the women, and beat the remaining four women, three of whom died as a result of the beatings.

B. Unprecedented attacks against civilians by the Lord's Resistance Army in Oriental Province

14. In the months of September and October 2008, the LRA considerably intensified its attacks against civilians in Oriental Province, first targeting villages north of Dungu and infiltrating the town itself between 1 and 2 November 2008. During those attacks, at least 76 civilians were killed and 177 children abducted, according to information gathered by the UNJHRO.

15. While the LRA seems to have been dispersed during the "Lightning Thunder" joint operation launched by the FARDC, the Uganda People's Defence Force (UPDF) and the South Sudan army in December 2008, they have not refrained from committing subsequent, massive abuses, as evidenced by the massacres of several hundreds of civilians during a series of attacks between 25 to 27 December 2008 in the town of Faradje and the villages of Doruma and Gurba, in the Haut-Uele district of Oriental Province. The UNJHRO has also obtained information indicating that at least 30 civilians from the territories of Dungu and Faradje have been killed by the LRA in subsequent incidents since the beginning of February 2009.

16. The UNJHRO has also received information indicating that a series of LRA attacks on civilians in the Bas-Uele and Ituri districts on 14-15 February resulted in the killing of at least six persons and the abduction of more than 20.

II. OVERALL HUMAN RIGHTS SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

A. Generalized impunity - a main contributing factor to violations

17. During the reporting period, efforts to combat impunity in the Democratic Republic of the Congo suffered serious setbacks. Examples illustrating this situation include the lack of a judicial investigation into the violent quelling by the PNC in early 2007 and 2008 of a series of demonstrations by members of the BDK politico-religious movement, which led to more than 200 deaths, as documented by the UNJHRO, and the failure of the authorities to investigate the Kinshasa events of 22-25 March 2007, during which at least 300 persons were killed, including by arbitrary executions and disproportionate use of force.[1]

18. Cases where the UNJHRO has participated in joint investigation missions with Congolese prosecutorial authorities have often been left incomplete. In those cases where the authorities did proceed to arrest persons suspected of having committed human rights abuses, the latter's trials often did not register any progress over the reporting period. Several Ituri warlords arrested in March 2005, for instance, remain in prolonged detention in Kinshasa with no indication of an upcoming trial.

19. The passivity of the judiciary can often be ascribed to a combination of lack of political will, capacity and interference from the authorities. An example of the latter is the FARDC's occasional practice of promoting perpetrators of human rights abuses rather than sanctioning them or preventing escapes in those cases where they have been sentenced. An illustrative case is that of Justin Matata Wanaloki, known as Cobra Matata. Investigations conducted by several entities and organizations, including the UNJHRO, confirmed that Cobra Matata was one of the key rebel commanders involved in the Nyakunde massacre of September 5, 2002, during which at least 1,200 civilians were killed. Matata was later promoted to the rank of Colonel in the FARDC.

20. Security Council resolution 1856 of 22 December 2008 reiterated the Security Council's past requests to the Congolese authorities to "establish a vetting mechanism to take into account when they select candidates for official positions, including key posts in the armed forces, national police and other security services, the candidates' past actions in terms of respect for international humanitarian law and human rights". No such process has been formally initiated.

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[1] MONUC Human Rights Division and OHCHR, *Special Investigation into the Kinshasa Events of March 2007 and their Aftermath: Preliminary Findings*, June 2007, published by OHCHR in January 2008.

On the contrary, the process of reintegration of CNDP forces into the FARDC, which began in February 2009, did not take into account issues of accountability, despite the fact that several high-ranking CNDP officers are alleged to have been responsible for serious human rights abuses.

21. In the most significant setback, current CNDP leader Bosco Ntaganda, indicted by the ICC for the enlistment, conscription and active use of children in hostilities in Ituri between July 2002 and December 2003 while he was chief of military operations for the Union des patriotes Congolais (UPC) was being considered for a senior position in the FARDC.

22. Similarly, there is no indication that Laurent Nkunda, the former CNDP leader apprehended in Rwanda in January 2009, will be brought to justice. Nkunda is one of the most well known perpetrators of human rights violations in the Democratic Republic of the Congo. Several human rights investigations point to his responsibility for a massacre in Kisangani in 2002 and for the widespread summary executions, rape and looting that followed the invasion by his forces of Bukavu in June 2004, among other incidents.

23. Given the difficulties experienced at the national level in prosecuting perpetrators of human rights abuses and execute sentences when pronounced, investigations undertaken by the ICC are a welcome complementary endeavor in efforts to combat impunity. The ICC has undertaken several steps throughout the reporting period in the context of its proceedings regarding the Democratic Republic of the Congo. Mathieu Ngudjolo Chui, the former commander of the Front des Nationalistes et Intégrationnistes (FNI), was arrested on 6 February 2008, and on the following day he was surrendered by the Congolese authorities and transferred to the Hague. He will stand trial for war crimes and crimes against humanity. The trial of Thomas Lubanga, who was the first suspect to be transferred to the ICC and is facing charges related to the recruitment and use of child soldiers, opened on 26 January 2009. Besides, former Congolese Vice President Jean-Pierre Bemba was arrested on 24 May 2008 by Belgian authorities pursuant to an ICC arrest warrant for war crimes and crimes against humanity allegedly committed by his Mouvement pour la libération du Congo (MLC) troops in Central African Republic between 15 October 2002 and 20 March 2003.

24. One critical development in terms of efforts to combat impunity was the launching in July 2008 of the OHCHR-led Mapping Exercise aimed at creating an inventory of the most serious human rights and international humanitarian law violations in the Democratic Republic of the Congo from 1993 to 2003. The team carrying out the Mapping Exercise, a collaborative effort between OHCHR and the Department of Peacekeeping Operations (DPKO) which follows a request by the Secretary-General, is also mandated by the Security Council to make an assessment of the judicial system in the Democratic Republic of the Congo and to formulate options for transitional justice, and will play a crucial role in assisting the Congolese authorities to devise a strategy to address the enormous volume of war crimes and crimes against humanity perpetrated during the period covered by the exercise. The Mapping Exercise entered its operational phase in October 2008 and is scheduled to end in June 2009 with the submission of a report, through the High Commissioner for Human Rights and the Under-Secretary-General for Peacekeeping Operations, to the Secretary-General.

B. Increasing political repression and related human rights violations

25. Two years after presidential, national and provincial elections, a climate of intimidation has expanded and seriously hampers any form of critical dialogue, political tolerance or free expression. More than 100 members of the politico-religious movement BDK in Bas-Congo died in February and March 2008 as a result of unwarranted and excessive use of force and in some cases arbitrary executions by the PNC. The PNC operation was launched to address increasing incidents of violence, including killings, by BDK members and serious cases of usurpation of state power. In addition to the massacre of BDK members, state security forces have been increasingly implicated in a climate of impunity in politically-motivated human rights violations against human rights defenders, journalists and members of opposition parties. Most notably, several members of the Mouvement de Libération du Congo (MLC) of former Vice-President Jean-Pierre Bemba have been targets of political repression.

26. Throughout May 2008, several persons from Equateur - Bemba's home province - were detained by various branches of the security forces (the Garde républicaine, or Republican Guard, the Special Services Branch of the PNC, and Military Intelligence) following a wave of arrests. Most of them were former officers of Jean-Pierre Bemba's security detail (the DPP), FARDC and PNC officers. The exact number of persons arrested remains unknown. Some of the arrests have been officially acknowledged by the authorities. However, despite several attempts, the security services have declined to provide MONUC with information on their status and whereabouts. On 1 September 2008, 13 of the officers arrested in May 2008 were transferred to the Centre pénitentiare et de reeducation de Kinshasa (CPRK), the city's main prison. Similarly, since October 2008, dozens of new cases of arbitrary detention of persons affiliated with the MCL were reported. Most of these are being held at the PNC headquarters in Kinshasa, known as Kin Mazière, to which the UNJHRO has been denied access despite MONUC's mandate. In late December 2008, 46 of the prisoners were transferred to the CPRK. The majority of them were allegedly tortured and submitted to cruel, inhumane and degrading treatment.

27. Several persons who were arrested due to their ethnicity or perceived affiliation to the CNDP are also detained in Kinshasa. Between 9 December 2007 and 11 January 2008, 79 persons, including 75 civilians - of whom 31 were minors - commonly referred to as "les Rwandais", i.e. "the Rwandans", were arrested by Military Intelligence in Goma and transferred to Military Intelligence and Agence nationale de renseignements (ANR) facilities in Kinshasa. The UNJHRO was not granted access to those of the detainees who were kept at Kin Mazière. The minors were released in April 2008 following sustained efforts by MONUC.

28. These political detainees added to the backlog of hundreds of political detainees including several groups arrested towards the end of the second Congolese war (2004) and after the March 2007 events in Kinshasa. Finally on 25 July 2008, a governmental commission comprising the Minister of Justice, the Deputy Minister for Human Rights, military and public prosecutors, and the penitentiary administration of the CPRK began a process of releasing more than 200 detainees belonging to the two above-mentioned categories that had been held illegally or in pre-trial detention at the CPRK.

29. Besides opposition members or supporters, others have also been subjected to threats and ill-treatment. Human rights activists and journalists regularly face death threats, intimidation and harassment, cruel, inhuman and degrading treatment, arbitrary arrests and detention and violations of their rights to freedom of movement, speech and association. Since mid-2007, the UNJHRO has documented 149 cases of human rights violations committed against human rights activists and journalists, in particular those who are actively involved in the fight against impunity. The main perpetrators were political and administrative authorities, especially in remote areas, elements of the FARDC, the Republican Guard, the PNC, ANR and other security forces.

30. The most emblematic case in this context is that of the murder, on 17 June 2007 of Radio Okapi journalist Serge Maheshe by unidentified gunmen in Bukavu, South Kivu. On 18 June 2007 the police arrested two FARDC soldiers suspected of carrying out the killing, and the Bukavu Military Tribunal held a public hearing at which these suspects appeared alongside 10 civilians. Two weeks later, however, two friends of the victim, who had been considered the only eyewitnesses to the crime, were arrested as the main suspects in the case, along with two other civilians who had allegedly confessed to the crime. On 28 August 2007, the Bukavu Military Tribunal convicted and sentenced the four civilians to death and acquitted the two FARDC suspects originally accused of the crime. The defense appealed the decision. On 8 September 2007, the two accused who had confessed to having committed the crime retracting their statements, accusing two magistrates from the Office of the Military Prosecutor of Bukavu of having pressured them into making false statements.

31. On 17 September 2007, MONUC addressed a letter to the authorities calling for a thorough investigation into the allegations brought against the magistrates, but no such investigation was conducted. MONUC prepared a detailed report on the trial which was transmitted to the Congolese authorities. The report concluded that the Bukavu Military Tribunal did not conduct an impartial trial in accordance with national and international due process standards. The report documented the lack of an in-depth investigation, important contradictions in the declarations of the accused who confessed to the crime, the persistent refusal of the tribunal to investigate other credible leads and to proceed with ballistic and medico-legal verifications which MONUC offered to facilitate.

32. The appeal trial, which began on 6 February 2008, was characterized by similar irregularities. No further investigations were conducted by the Court and no ballistic evidence was presented. Defense lawyers were frequently interrupted or prevented from speaking to the Court or to their clients, and were systematically censored when trying to question the Court's partiality. The trial was conducted in a climate of intimidation; several independent observers from local and international NGOs, as well as three lawyers for the defense, received death threats. On 21 May 2008, the Court upheld the convictions and death penalties handed down to the two civilians accused of carrying out the murder, and acquitted the two eyewitnesses to the crime. Bizarrely, a third civilian, who had been acquitted in the original trial, was also sentenced to death for criminal conspiracy. On 22 May 2008, the High Commissioner for Human Rights and the Special Representative of the Secretary-General in the Democratic Republic of the Congo issued a joint communiqué welcoming the release of Maheshe's two friends, but criticizing the death sentences handed down to the three civilians. They also denounced irregularities in the trial, stating that the Court had refused to explore credible leads in the case and to ask for ballistic expertise.

33. While the Maheshe trial is the most emblematic recent example of the dangers facing journalists and human rights defenders, journalists have also been targeted in other actions by state agents. On 3 November 2007, a female journalist with Radio Okapi was briefly arrested and subjected to ill-treatment by Republican Guard soldiers in Kinshasa. The soldiers ordered her to lie down; one of them held her by her hair, kicked her and verbally abused her.

34. Events such as the above are not limited to Kinshasa. In Kasaï Oriental province, for instance, the UNJHRO has documented numerous cases of journalists who were threatened by PNC agents for their presumed collaboration with the UNJHRO. Two cases involved journalists who were arbitrarily arrested by the PNC after they had criticized the state security services, including the PNC. Another case concerned two journalists with Radio Okapi as well as one journalist from a local radio station who were threatened after they had made comments on air about sensitive issues such as the theft and embezzlement of state funds.

35. A similar pattern of repression exists with regard to human rights defenders. Whether activists operate locally or at the national level, authorities often react aggressively to their activities, carrying out arbitrary arrests or using disproportionate force. On 1 April 2008, an airplane transporting four members of a human rights NGO from Lubumbashi, Katanga to the site of a massacre was not authorized to take off by local authorities, thus preventing the members of the NGO from seeking additional evidence for use in a trial against the Anvil Mining company taking place in Australia. Human rights defenders are also targeted by the authorities in other areas. Here again, the situation in Kasaï Orientale stands out. One recent example is that of a local human rights defender who was arrested on 7 November 2008 by ANR agents in Bulongo, 280 kilometres from Kananga, after conducting a seminar on the rights of detainees. Neither his family nor the UNJHRO have been able to obtain information on his whereabouts.

C. Sexual violence

36. Sexual violence remains widespread in the Democratic Republic of the Congo. Far from being limited to the context of armed conflict, it occurs throughout the country, both as a result of unbalanced power relations between state agents and civilians, and within the civilian population itself. Despite the enactment of laws which provide for harsher punishments for crimes of sexual violence and the increased coverage given to sexual violence in eastern Congo by the international media, members of the FARDC, the PNC and armed groups make up a large proportion of the perpetrators. Few perpetrators of sexual violence are arrested, and many are subsequently released through the intervention of local authorities or by corrupt police officers. Victims' families are often encouraged to engage in out-of-court settlements known as "arrangements à l'amiable". In other cases, military and police commanders refuse to hand over subordinates to the military justice system.

37. On more than one occasion during the reporting period, PNC officers have committed acts of sexual violence during what could be described as punitive actions against civilians. This problem is recurrent in Equateur province, where several such incidents appear to have deliberately targeted the civilian population. One of these was the incident in Ngele village on 13 May 2008. Two PNC officers had severely beaten two young men for walking shirtless in public. In reaction, the population threw stones at the policemen, who in turn fired warning

shots. A few days later, 28 police officers, led by the local PNC Deputy Commander, conducted a raid on the village. The PNC officers raped 19 women, including six children, and looted homes in the village.

38. There have, however, been some encouraging developments, in the form of the numerous public commitments made by the authorities, beginning in November 2007, to fight impunity for sexual violence. In addition, on 18 February 2008, in Lifumba Waka, Equateur province, the Mbandaka Military Tribunal convicted six police officers for mass rape and other crimes committed in the area between 17 and 19 March 2006. While some progress has thus been noted in the prosecution of junior officials suspected of having committed acts of sexual violence, fighting impunity at higher levels of the police and military hierarchy remains a challenge.

D. Arbitrary arrests, torture and appalling detention conditions

39. Arbitrary arrests are frequent occurrences in the Democratic Republic of the Congo. The FARDC continues to arrest people without the legal power to do so. Likewise, PNC officers arrest and detain persons for civil matters such as non-payment of debts and property disputes, in disregard of Article 11 of the International Covenant on Civil and Political Rights, to which DRC is a party, which stipulates that no one shall be arrested solely for their inability to carry out a contractual obligation. When unable to locate the alleged perpetrator of a criminal offence, the PNC regularly arrests family members or others who are not involved in, or entirely unaware of, the affair in question. Conversely, a large percentage of the relatively few perpetrators of sexual violence who are arrested are released through the intervention of local authorities or by corrupt police officers who encourage the families of victims to engage in out-of-court settlements, which are expressly forbidden by the new laws governing cases of sexual violence.

40. Upon their arrest, detainees are commonly denied the guarantees to which they are entitled under Congolese law. Firstly, they are generally not properly registered: record-keeping is often incomplete or outdated. There is a reluctance to uphold the new Procès-verbal de saisie des prévenus (PVSP), a document issued by the Prosecutor General stipulating that detainees should be informed of their rights and of the charges imputed to them. In addition, detainees are commonly denied the right to be brought before a judge within the 48-hour time period stipulated by the Congolese constitution, which has led to the proliferation of *hébergés*, inmates who are detained solely on the basis of the PVSP. This is true both for detentions carried out by both the PNC and the ANR. In the case of the ANR, very few cases are transferred to the offices of the Public or Military Prosecutor, and most detainees are released after paying fines that are not officially recorded.

41. Under these circumstances, it is unsurprising that there are many more remand inmates than convicts in Congolese prisons. It is estimated that more than 80% of inmates are on remand or awaiting trial. According to figures obtained in June 2008, approximately 75% of the 4,000 inmates at the CPRK (built to accommodate 1,000 inmates) are in pre-trial detention. Long-term pre-trial detention undermines the rule of law and the protection of fundamental human rights, including the rights of the victim to seek redress and the right to presumption of innocence enshrined in the Congolese constitution and in the International Covenant on Civil and Political Rights. This situation is attributable to the dysfunctional state of the criminal justice system and is also a contributing factor in recurring disturbances and escapes.

42. Due to the high number of arbitrary detentions without subsequent review by judicial authorities and the lack of funding for the building of new detention centers, Congolese prisons are generally overcrowded, compounding the appalling conditions already prevailing within them. Reports also indicate that suspects in custody are routinely subjected to violations of their physical integrity, including rape, torture and other forms of cruel, inhuman and degrading treatment.

43. Torture and ill-treatment in ANR and Republican Guard detention facilities are all the more worrisome in that these entities remain almost inaccessible to outside observers. In relation to ANR facilities, judicial authorities are barred from carrying out inspections, in clear contradiction with the laws of the Democratic Republic of the Congo. This state of affairs is compounded by ANR agents' consistent refusal to allow the UNJHRO access to their facilities in several parts of the country, particularly Kinshasa, South Kivu, Bas-Congo, North Kivu and Oriental Province, despite MONUC's mandate and the existence of a directive from President Joseph Kabila dated 5 July 2005 ordering all security forces, intelligence services and judicial authorities to provide unhindered access to UNJHRO staff. Likewise, access to detention facilities operated by the Republican Guard continued to be denied to judicial authorities and civil society organizations as well as to UNJHRO staff.

44. In addition to the cases of torture and ill-treatment described above, confinement in a Congolese prison in itself often amounts to cruel, inhuman or degrading treatment. Regular visits by UNJHRO field offices to state-run prisons throughout the country indicate that dilapidated cells, the lack of food and medical supplies, overcrowding, corruption, unqualified prison staff and a lack of rehabilitation programs for inmates remain the norm. During the reporting period, at least 65 inmates have died due to severe overcrowding, malnutrition, lack of health care and cruel, inhuman or degrading treatment.

III. ACTIVITIES OF THE UNITED NATIONS JOINT HUMAN RIGHTS OFFICE IN THE DEMOCRATIC REPUBLIC OF THE CONGO

45. The United Nations Joint Human Rights Office in the Democratic Republic of the Congo (UNJHRO) comprises the Human Rights Division of MONUC and the Office of the United Nations High Commissioner for Human Rights. The two offices have been fully integrated and the UNJHRO functions in accordance with their two mandates.

46. The Human Rights Division of MONUC is mandated by United Nations Security Council resolutions 1756 of 15 May 2007 and 1794 of 21 December 2007 as well as 1856 of 22 December 2008 to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations with a view to putting an end to impunity, assist in the development and implementation of a transitional justice strategy, and cooperate in national and international efforts to bring to justice perpetrators of grave violations of human rights and international humanitarian law. The Human Rights Division is also mandated to assist the Government to establish a vetting process within the security forces to ensure that members who have committed serious violations of human rights and international human rights law are not given key posts but are suspended, replaced and brought to justice. The Human Rights Division also trains members of the security forces, members of parliament and civil society organizations in human rights standards.

47. The Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo, established in 1996 following the signing of an agreement between the United Nations High Commissioner for Human Rights and the Government of the Democratic Republic of the Congo is mandated, inter alia, to monitor the human rights situation in the country and to strengthen the capacity of national institutions working on human rights issues in order to ensure that the Democratic Republic of the Congo is able to fully comply with provisions of international and regional treaties to which it is party.

48. During the reporting period, the UNJHRO has taken both responsive and proactive measures to address human rights violations occurring in areas of armed conflict as well as challenges of a more structural nature that are hindering the enjoyment of rights. In this light, the UNJHRO has strengthened both its monitoring and advocacy activities. In areas of armed conflict, human rights officers have been deployed in special joint protection teams established by MONUC to enhance its capacity to protect civilians under imminent threat of physical violence.

49. In order to assist the Government with judicial and disciplinary follow-up of serious human rights violations, follow-up committees have been established by the Ministries of Defense and Interior at the national and provincial level with the participation of the FARDC, the PNC and the judiciary. One of the major activities carried out by the UNJHRO was to actively follow up on human rights violations committed by state agents on a case-by-case basis, in particular through participation in these committees. For other state institutions, similar committees have not been established, making collaboration more difficult. This is particularly the case for the ANR and the Republican Guard.

50. Both within the follow-up committees and through activities targeting the broader public, special attention is devoted to cases relating to sexual violence. The UNJHRO has also intensified efforts to fight impunity in the area of sexual violence by continuing its trial monitoring activities.

51. In late 2008 the Senior United Nations Advisor and Coordinator for Sexual Violence in the Democratic Republic of the Congo, in consultation with relevant United Nations agencies and MONUC, finalized a comprehensive strategy to combat sexual violence in the Democratic Republic of the Congo. The strategy consists of a plan of action for each of four priority components, one of which, related to combating impunity, is led by the UNJHRO: The three main objectives of this component are (1) the development of an effective penal policy specifically targeting sexual violence and adopting a victim-centered approach, (2) the improvement of access to justice for victims; and (3) the removal of existing obstacles to the implementation of the sexual violence law passed by the Congolese parliament in 2006.

52. Two initiatives related to UNJHRO-led component are currently being implemented: 1) advocacy for the prosecution of alleged perpetrators of sexual violence crimes; 2) follow-up with the Ministry of Justice on the implementation of a “Roadmap against impunity for sexual violence”. This document, developed in March 2008, consists of a six-point programme proposing quick-impact measures to advance judicial responses to crimes of sexual violence: 1) enactment of a Presidential decree exempting victims of sexual violence from paying court costs; 2) adoption of a standardized medical certificate for victims of sexual

violence; 3) increased recruitment and promotion of female judicial personnel; 4) provision of compensation for victims of the 2003 mass rape in Songo Mboyo, Equateur province, who despite a court ruling in 2006 have yet to receive reparations; 5) adoption of a circular addressed to Congolese judicial staff clarifying certain provisions of the aforementioned law on sexual violence, in particular with respect to the maximum procedural delay for completion of sexual violence trials; and 6) creation of a specialized judicial body to investigate and try sexual offences.

53. Also within the framework of the recently finalised comprehensive United Nations strategy on sexual violence for the Democratic Republic of the Congo, the UNJHRO is responsible for implementing the legal components of joint UNFPA-UNICEF-OHCHR projects that aim to reduce impunity for perpetrators of sexual violence by providing legal assistance to victims of rape and other forms of sexual violence through the provision of legal aid clinics in several provinces of the Democratic Republic of the Congo.

54. In addition to measures taken in response to human rights violations, the UNJHRO has continued its efforts to promote human rights in the Democratic Republic of the Congo by carrying out a broad range of activities with relevant stakeholders. The UNJHRO has conducted round tables, training sessions and workshops, and distributed national and international human rights texts to a wide range of actors, including lawyers, military and police personnel, and members of parliament and civil society.

55. During the reporting period, technical cooperation activities and advocacy work have increasingly focused on specific thematic issues. Amongst these activities were a series of seminars aimed at advocating for the establishment of a national human rights institution in compliance with the Paris Principles.[2] A draft law on the establishment of a national human rights commission was adopted by the Senate on 6 June 2008 and submitted to the National Assembly. The UNJHRO is seeking to ensure that the Paris Principles are fully reflected in the draft law. A project carried out in partnership with UNAIDS has aimed to enhance the protection of persons living with or affected by HIV/AIDS. In the context of this project, the UNJHRO carried out awareness-raising activities with members of parliament in order to facilitate the adoption of a law on the rights of persons living with or affected by HIV/AIDS. The law was passed on 24 June 2008, and the UNJHRO has since engaged in further activities to raise awareness of the new law amongst relevant stakeholders.

56. The UNJHRO has assisted the establishment of a national network of human rights NGOs specialized in the field of protection and has provided training for its members. NGOs have organized themselves in protection networks in all provinces of the Democratic Republic of the Congo, save Bas-Congo and Bandundu. Victims and witnesses in cases implicating members of the PNC and ANR were amongst those to benefit from this new network. In such cases, victims were relocated and provided with medical, psycho-social, socio-economic and legal assistance.

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[2] UN Human Rights Commission, *Paris Principles on National Institutions for the Promotion and Protection of Human Rights*, Res. 1992/54 of 3 March 1992.

The work also included the protection of victims and witnesses in several sensitive cases such as the trial of former Mayi-Mayi leader Kyungu Mutanga, known as Gédéon, in Katanga; the trial for the assassination of Serge Maheshe in South Kivu, and during the judicial investigations into a mass rape which occurred in Lieke Lesole, Oriental Province, between 21 July and 6 August 2008.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

57. **The successful conclusion of the electoral process in the Democratic Republic of the Congo in 2007 raised hopes that this vast war-torn country could enter a period of stability. However, in eastern Congo, in particular in North Kivu and in Oriental Province, where armed groups have remained active, mass-scale killings and other serious violations of human rights and international humanitarian law have continued to be perpetrated in impunity. In order to better prevent atrocities in the short term, the utmost priority should be given by the FARDC and MONUC to enhancing the protection of civilians by anticipating potential attacks on the basis of lessons learnt from past atrocities. Moreover, ongoing peace negotiations should aim at addressing the root causes of conflict such as illegal exploitation of natural resources and integrating mechanisms that take into account records of abuses committed by individual commanders in past conflicts. This could, inter alia take the form of a realistic vetting mechanism which effectively sanctions those with particularly worrying human rights records, better funding and training of FARDC personnel in order to create a more professional army that fulfils its constitutional role of providing security for the Congolese population, and increased efforts to combat impunity, including at the higher levels of the military hierarchy.**

58. **In light of the lack of progress made in the fight against impunity, the aforementioned OHCHR-led Mapping Exercise will be of critical importance to addressing the issue of accountability. The Mapping Exercise's recommendations on transitional justice will need full political backing. The international community as a whole must employ all its leverage to ensure that justice and accountability underpin the quest for durable peace in the Democratic Republic of the Congo.**

59. **Even in regions relatively free of conflict, serious human rights violations continue to be committed frequently by state agents. Many of these violations derive from the current and previous Congolese Government's lack of progress in efficiently and transparently collecting and redistributing the country's vast natural resources wealth, which in turn has led to practices that have become structurally embedded in many state agencies. After decades of underfunded public services, state agents such as the FARDC and the PNC regularly abuse their power to extract financial and other benefits from the civilian population. Most worrying is the climate of increasing political repression affecting the democratic space that had begun to emerge in the Democratic Republic of the Congo.**

60. **Peace, development and the emergence of democracy in the Democratic Republic of the Congo will remain difficult to achieve unless the challenges outlined in this report are tackled as a matter of priority. Crucially, new impetus must be given to efforts to address**

the issue of impunity. The Congolese Government, with the active assistance of the international community, must be prepared to deal with this issue in a forceful manner to discourage those who would resort to violence to gain or keep political and economic influence. Following the successful holding of a series of free and fair elections in the country in the recent past, Congolese citizens held high expectations that their lives would noticeably improve. These expectations must not be let down.

B. Recommendations

61. **The High Commissioner for Human Rights recommends that:**

(a) The Government of the Democratic Republic of the Congo:

(i) Enhance the efficiency of, and increase transparency over, the collection of state resources and prioritize the allocation of these resources to further the realization of human rights;

(ii) Increase financial means for the professionalization of state services, in particular through training and awareness-raising on the constitutional mandate of army officials in the context of the Disarmament, Demobilization and Reintegration process and of police officers in the context of the Security Sector Reform process;

(iii) Further implement the circulars issued by the Minister of Defense and the Minister of Interior on the establishment of follow-up committees for human rights violations committed by members of the FARDC and PNC, in particular in those provinces where the committees are not yet fully operational; encourage a constructive dialogue between all members of these committees; and take measures to enable a better follow-up for cases of violations involving senior officers;

(iv) Give priority to enacting legislation establishing a credible and independent national human rights commission;

(v) Enable the judiciary to fulfill its constitutional role in full independence, inter alia through the strengthening of the Conseil Supérieur de la Magistrature and the payment of adequate salaries for magistrates;

(vi) Ensure that the UNJHRO has access to all prisons and detention centers in accordance with MONUC's mandate and with the presidential directive dated 5 July 2005 instructing all security forces, intelligence services and judicial authorities to provide MONUC human rights officers with unhindered access to detention facilities throughout the country, including those administered by the ANR and the Republican Guard;

(vii) Further the fight against impunity for international crimes in cooperation with the ICC by taking all necessary measures to execute arrest warrants

issued by the International Criminal Court and by combating impunity domestically, inter alia through the adoption of legislation implementing the Rome Statute of the International Criminal Court and by giving positive injunction for priority to be given to the prosecution of alleged perpetrators of war crimes and crimes against humanity regardless of their hierarchical rank;

(viii) Allocate adequate resources to the penitentiary system, inter alia to guarantee food and health care supplies and their equal distribution among prisoners and detainees and to enable prison officials to maintain rigorous records of the charges pending against individual detainees and the sentences to be carried out by prisoners;

(ix) Clarify charges against persons held in pre-trial detention; release those who are detained solely for their opinions, for their belonging to opposition parties or for civil matters beyond the scope of national and international criminal law; provide expeditious judicial review for all others;

(x) Encourage and enable public dialogue and scrutiny in order to ensure the sustainability and advancement of the democratic process;

(xi) Increase efforts to combat sexual violence in the Democratic Republic of the Congo, inter alia through the recently adopted Comprehensive Strategy to Combat Sexual Violence in the Democratic Republic of the Congo.

(b) The international community:

(i) Strengthen its efforts to assist the Government o f the Democratic Republic of the Congo in carrying out comprehensive and sustainable reforms of the justice and security sectors, including through the implementation of a transitional justice strategy based on the recommendations of the OHCHR-led Mapping Exercise of human rights violations;

(ii) Encourage and assist the Congolese authorities in controlling resources derived from the extractive industry and other business activities, inter alia by refraining from participation in the illegal exploitation of Congolese natural resources and by holding accountable state and non-state actors involved in such illegal exploitation and trade;

(iii) Avoid implication in military operations likely to have a detrimental effect on the human rights situation in conflict zones, inter alia by encouraging a reorientation of peacekeeping activities towards the protection of the civilian population on the basis of lessons learnt from past atrocities;

(iv) Actively engage with the Congolese authorities and armed groups in efforts to reach a sustainable peace agreement that includes comprehensive mechanisms to deal with past human rights violations and that will enable more rigorous scrutiny of any future abuses;

(v) Ensure that adequate resources be allocated in order to implement the recently adopted Comprehensive Strategy to Combat Sexual Violence in the Democratic Republic of the Congo.
