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**TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

**Report of the independent expert on the situation of human rights in the  
Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré<sup>1</sup>**

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<sup>1</sup> This report is being transmitted late because the independent expert wished to include information on the Conference on Peace, Security and Development in the Provinces of North and South Kivu held from 6 to 24 January 2008 in Goma, North Kivu (Democratic Republic of the Congo).

## Summary

By its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights and to verify that obligations in that field were being fulfilled. The independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session.<sup>2</sup> He then presented a report to the General Assembly at its sixtieth, sixty-first and sixty-second sessions.<sup>3</sup> He had also prepared a report for the Commission on Human Rights at its sixty-second session, which was to be examined by the Human Rights Council.<sup>4</sup> Like the special procedures and thematic mandates of the Commission on Human Rights, the mandate of the independent expert on the situation of human rights in the Democratic Republic of the Congo was extended by decision 1/102, adopted by the Human Rights Council on 30 June 2006. His report to the Human Rights Council at its fourth session<sup>5</sup> and this report were drawn up pursuant to that decision.

During his visits to both Geneva and New York, the expert held meetings about the situation of human rights in the Democratic Republic of the Congo and his mandate.

The expert also visited the Democratic Republic of the Congo between 28 November and 5 December 2007.

In the light of the information that he gathered during 2007 and at the very beginning of 2008, the independent expert is in a position to make relevant observations and recommendations on the human rights situation in the Democratic Republic of the Congo. The situation continues to give concern: the lack of security remains worrying, especially in the regions in the east of the country, where militias and armed groups, as well as the Armed Forces of the Democratic Republic of the Congo (FARDC) commit serious human rights violations with impunity, and in Bas-Congo. The weakness of the judiciary and its lack of independence vis-à-vis the executive, which has control over judicial decisions, are also deplorable.

The independent expert therefore recommends, inter alia, that:

(a) The “Acte d’engagement” signed in Goma on 23 January 2008 should be implemented;

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<sup>2</sup> E/CN.4/2005/120.

<sup>3</sup> A/60/395, A/61/475 and A/62/313.

<sup>4</sup> E/CN.4/2006/113.

<sup>5</sup> A/HRC/4/7.

(b) An effective policy should be implemented on the elimination of human rights violations and the prosecution and punishment of those responsible for human rights violations, as well as of any political and military actors guilty of interference in, or obstruction of, the administration of justice;

(c) The practice whereby military courts exercise jurisdiction over civilians should be ended and military criminal law should be amended to bring it into line with the Constitution and applicable international norms;

(d) Judicial independence should be promoted and the judiciary should be provided with the infrastructure and human resources needed to guarantee the sound administration of justice;

(e) The “Mapping Team” of the Office of the United Nations High Commissioner of Human Rights (OHCHR) should be supported in its efforts to draw up a map of the serious human rights violations committed between 1993 and 2003;

(f) Efforts to facilitate the taking of evidence in cases of sexual violence should be made by supporting the adoption and distribution of a standard medical certificate that could serve as evidence in trial proceedings.

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## Introduction

1. By its resolution 2004/84, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights and to verify that obligations in that field were being fulfilled. The independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session.<sup>6</sup> He then presented a report to the General Assembly at its sixtieth, sixty-first and sixty-second sessions.<sup>7</sup> He had also prepared a report for the Commission on Human Rights at its sixty-second session, which was to be examined by the Human Rights Council (“the Council”).<sup>8</sup> Like the special procedures and thematic mandates of the Commission on Human Rights, the mandate of the independent expert on the situation of human rights in the Democratic Republic of the Congo was extended by decision 1/102, adopted by the Human Rights Council on 30 June 2006. His report to the Human Rights Council at its fourth session<sup>9</sup> and this report were drawn up pursuant to that decision.

2. In preparation for the submission of his report to the Council at its seventh session, the independent expert on the situation of human rights in the Democratic Republic of the Congo, Titinga Frédéric Pacéré, carried out a fourth fact-finding and working visit to the Democratic Republic of the Congo over an eight-day period from 28 November to 5 December 2007.

3. The independent expert went to Kinshasa and to Bukavu in South Kivu. In Kinshasa, he held frank discussions with the Speaker of the National Assembly and the Speaker of the Senate, the Chief Justice of the Military High Court, the Chief Military Prosecutor, the ministers for justice, human rights, women, defence and humanitarian affairs and the deputy ministers for foreign affairs and human rights. He also met with representatives of: the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC); the United Nations system in the Democratic Republic of the Congo; the diplomatic corps in the Democratic Republic of the Congo; human rights organizations; members of the initiative to combat sexual violence; and civil society. In Bukavu, South Kivu, he met with the governor of the province, members of the Provincial Assembly, and the judicial, civil and military authorities. The expert also exchanged views with local MONUC officials, representatives of human rights NGOs and local civil society.

4. This report analyses the situation of human rights in the Democratic Republic of the Congo from June to December 2007, with updates on important developments at the Conference on Peace, Security and Development in the Provinces of North and South Kivu, held from 6

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<sup>6</sup> E/CN.4/2005/120.

<sup>7</sup> A/60/395, A/61/475 and A/62/313.

<sup>8</sup> E/CN.4/2006/113.

<sup>9</sup> A/HRC/4/7.

to 24 January 2008 in Goma, North Kivu. A series of recommendations are made at the end of the report with a view to improving the human rights situation in the country. These recommendations are based on the information transmitted regularly to the independent expert by the United Nations Human Rights Integrated Office in the Democratic Republic of the Congo, consisting of the OHCHR office in the country, MONUC and representatives of public institutions of the Democratic Republic of the Congo, NGOs, political parties and associations.

## **I. IMPUNITY AND THE ADMINISTRATION OF JUSTICE**

5. Despite the undertaking by President Joseph Kabila and the Congolese Government to prioritize efforts to combat impunity following the elections, little progress has been made to date with regard to the administration of justice and the fight against impunity, and thus it seems that a climate of virtually generalized impunity persists throughout the Democratic Republic of the Congo. The manner in which several of the important investigations and trials mentioned below have (or have not) evolved over this period is particularly worrying.

6. The appointment or promotion of individuals who are suspected of serious human rights violations to senior ranks and positions in the Armed Forces of the Democratic Republic of the Congo (FARDC) remains problematic because no vetting mechanism has been put in place by the Congolese authorities whereby officers suspected of involvement in such acts can be suspended with immediate effect, pending an in-depth investigation.

### **A. Tentative progress in the fight against impunity**

7. The fact that the convictions handed down in the trials for the Bavi massacre and the murder of two MONUC military observers were upheld constitutes the main progress in the fight against impunity during the reporting period.

8. On 28 July 2007, the Kisangani Military Court of Appeal, in a circuit hearing held in Bunia, Ituri, returned its verdict on the Bavi case. The Court of Appeal upheld the verdict handed down by the court of first instance against the main defendant, a captain of the FARDC, who was sentenced to life imprisonment for war crimes, rape and pillage. Another captain was sentenced to 10 years' imprisonment and the seven other defendants were sentenced to 15 years' imprisonment for murder. On 19 February 2007, the Bunia garrison military court had sentenced nine defendants, all members of the 1st integrated brigade, to life imprisonment for participating in the arbitrary execution of at least 32 civilians in Bavi (32 kilometres south of Bunia) between August and November 2006. The military court also awarded a large amount in damages to the families of the victims.

9. In the case of the murder of two MONUC soldiers, the appeal lodged by three of the five defendants was time-barred, the court rejected it and upheld the sentence of life imprisonment handed down at first instance. Furthermore, on 12 November 2007, the Bunia garrison military court upheld the life sentence handed down in absentia on 19 February 2007 to Ufoyuru, alias Kwisha, a former militiaman of the *Front des nationalistes et intégrationnistes* (Nationalist and Integrationist Front) (FNI), for participating in the murder of two MONUC military observers in Mongbwalu in May 2003. Kwisha escaped from Bunia prison on 13 January 2007 and, after his capture on 6 October 2007, his lawyer obtained a retrial.

10. Another step forward for international justice was the transfer of Germain Katanga, the militia leader of *Force de résistance patriotique en Ituri* (Patriotic Resistance Front in Ituri) (FRPI), to the International Criminal Court (ICC) on the night of 16-17 October 2007, with the assistance of the Congolese authorities. Germain Katanga is accused of committing crimes against humanity and war crimes in Ituri in 2002 and 2003, including in Nyakunde in September 2002, when at least 1,200 civilians were massacred on his orders. Germain Katanga is suspected of having orchestrated many other massacres, including those in Bunia, Komanda and Bogoro, where thousands of civilians were tortured, enslaved and killed.

11. Lastly, the imminent deployment of the team of the United Nations Office of the High Commissioner for Human Rights responsible for mapping the serious violations of human rights and international humanitarian law between 1993 and 2003 should make it possible to develop appropriate mechanisms to obtain justice for the victims of past crimes.

12. Notwithstanding the aforementioned examples, impunity remains flagrant. The persistence of impunity has resulted in a failure to initiate judicial investigations into serious human rights violations, lack of progress on cases that have been opened (in particular when there is interference by political and military authorities - see paragraphs 13 and 14 below), or even sham trials.

#### **B. Failure to initiate investigations: the flagrant example of North Kivu**

13. There are many cases of human rights violations that have not been investigated, despite the information sent to the judicial authorities by MONUC or local NGOs. Even when judicial cases are opened, investigations are rarely concluded. This phenomenon is particularly flagrant in North Kivu, where no trials have been held for cases of serious human rights violations. There is no shortage of cases, however; MONUC and several international and local NGOs regularly send information to the judicial authorities. MONUC has furthermore facilitated joint inquiry missions of the United Nations Human Rights Integrated Office and the military prosecutor's office. In its public report of September 2007, the United Nations Human Rights Integrated Office, following a joint inquiry with members of the Goma military prosecutor's office, confirmed allegations about three mass graves located at the former headquarters of the 2nd battalion of the FARDC Bravo Brigade in Rubare, in Rutshuru territory, 65 kilometres north of Goma. Joint verification missions were carried out by MONUC and the Congolese judicial authorities in Rubare, as well as in Katwiguru and Kiseguru, where other mass graves were discovered. The judicial investigation does not seem to have progressed since then.

14. As regards the Buramba massacre committed during the night of 9-10 March 2007, the military prosecutor's office sent a special investigation team to the scene in March 2007, but the case has not been followed up.

#### **C. Stalling of many cases and trials**

15. At present, many important cases are making no progress through the judicial system and remain stalled. A case in point is that of the Ituri warlords arrested in March 2005, whose detention continues to be extended without any trial proceedings in sight. The trial of the former Mai-Mai chief Tshindja Tshindja (the "throat-cutter"), who has been in detention in Kinshasa

since February 2005, has yet to begin, even though the case has been referred to the Kamina military prosecutor in Katanga. The above-mentioned cases of Buramba and the mass graves in North Kivu are also among the many stalled cases.

16. There is a worrying tendency for military courts systematically to exercise jurisdiction over civilians, a practice which is contrary to the Constitution (art. 152), but which is still common.

**D. The Kilwa and Serge Maheshe cases: sham trials which have provoked international condemnation**

17. During the reporting period, two landmark trials in the fight against impunity in the Democratic Republic of the Congo provoked strong reactions from the international community and Congolese civil society and disappointment among the population. Fundamental fair trial guarantees were not afforded, there were instances of political and military interference and the judgements handed down were strongly criticized.

18. On 28 June 2007, the Katanga Military Court pronounced its verdict in the Kilwa massacre case. None of the defendants was convicted of war crimes. Colonel Adémar and another defendant were convicted of murder. The other FARDC soldiers were either given light sentences or acquitted, and the three expatriate employees of the Anvil Mining multinational company were also acquitted. In its judgement, the Military Court concluded that no massacre had taken place, and that the deaths of the 73 victims had been an accidental consequence of the fighting. In a statement issued on 4 July 2007, the United Nations High Commissioner for Human Rights expressed her concern about the “court’s conclusions that the events in Kilwa were the accidental results of fighting, despite the presence at the trial of substantial eyewitness testimony and material evidence pointing to the commission of serious and deliberate human rights violations”.

19. The High Commissioner urged the court of appeal “to fully and fairly weigh all the evidence before it reaches the appropriate conclusions that justice and the rights of the victims demand”. The appeal proceedings began on 6 December 2007 before the Military High Court, in a circuit court hearing held in Lubumbashi. However, from the very outset of the proceedings, there were protests at the scope of the appeal and the impartiality of the judges was called into question.

20. In the case of the murder of journalist Serge Maheshe, the Bukavu garrison military court sentenced four civilians to death on 28 August 2007, including two friends of the victim who were the only eyewitnesses to the murder. At the trial, which began on the evening of 14 June - less than 24 hours after the murder - the court neglected to follow up several important leads and relied almost exclusively on the statements of two civilians who claimed to have been hired by the victim’s friends to murder him.

21. When the trial started, two navy servicemen had been arrested and had been considered the main suspects until the announcement was made about the new suspects and their “confessions”, obtained in unexplained circumstances. Despite many inconsistencies in the statements of the two civilian suspects (taken by the court itself) and the other unanswered questions in the case, the court sentenced the four civilians to death without even considering the responsibility of the



two military suspects, who were acquitted. MONUC and several local and international human rights organizations denounced the serious irregularities in the proceedings and the court's refusal to investigate the events properly, as illustrated in particular by its refusal to order an autopsy on the victim and a ballistic analysis of the murder weapon. After they had been convicted, the two civilians who had made the confessions retracted their statements implicating the two eyewitnesses to the murder.

22. In a letter dated 8 September addressed to MONUC, they accused two members of the Bukavu military prosecutor's office of having forced them to make false statements. Although MONUC reacted by urging the highest military justice authorities to investigate the allegations thoroughly and fully and to expedite the appeals process, no measures were taken and the four convicted civilians remain in detention in Bukavu prison.

#### **E. Frequent obstructions of justice linked to interference by the political and military hierarchy**

23. The Congolese judiciary is still subject to corruption and frequent obstructions of justice which are linked to political and military interference. Its independence, and its capacity, are seriously undermined by the failure of the Congolese State to provide it with sufficient financial resources to allow it to function and by a worrying use of the Constitution to reassert the executive's control over the judiciary.

24. Interference by the political and military authorities with the administration of justice was frequently denounced in most of the above-mentioned trials for serious human rights violations, as well as in other cases, as illustrated in the two examples below.

25. On 28 July 2007, the Kisangani Military Court acquitted the Ituri militia chief, Chief Kahwa, after quashing the verdict handed down by the Bunia garrison military court on 21 August 2006 sentencing him to 20 years' imprisonment for crimes against humanity and war crimes. This decision was not based on any valid legal argument and completely disregarded, for no good reason, the solid case which had been made at first instance, suggesting interference at the highest level to secure Kahwa's acquittal. The prosecution filed an appeal with the Military High Court, but no ruling has been delivered as yet. Chief Kahwa was also sentenced to life imprisonment for murder by the Bunia regional court on 19 January 2006; here too, the Kisangani court of appeal has yet to pronounce its verdict. The developments in this case therefore remain a serious cause of concern.

26. On 30 September 2007, judge advocates serving at the Kisangani military prosecutor's office, in Orientale Province, were subjected to cruel, inhuman and degrading treatment by soldiers of the Armed Forces of the Democratic Republic of the Congo (FARDC), acting on the orders of the commander of the 9th military region. The judge advocates were arrested at their homes and subjected to grave acts of ill-treatment on several occasions during their detention. Most civil and military judges, first in Kisangani and then throughout the country, reacted by going on strike. In a memorandum dated 2 October 2007 addressed to the President of the Republic, they condemned repeated interference by high-ranking officials in the administration of justice. They also condemned the actions of the commander of the 9th military region and demanded that he be suspended and that legal proceedings be brought against him. MONUC also

recommended that the commander of the 9th military region and his subordinates be suspended with immediate effect and brought to justice, and it urged the competent authorities to take all necessary measures to guarantee the independence of the judiciary in the Democratic Republic of the Congo.

#### **F. Underfunding of the judiciary**

27. In order to ensure the smooth administration of justice in the Democratic Republic of the Congo, the judiciary must receive adequate funding from the Government. Underfunding and lack of job security among all judicial staff play no small part in undermining the independence of the judiciary. The share of the budget allocated to the Congolese justice sector in 2007 was only 0.75 per cent of total public spending, a slight increase from 0.6 per cent in 2005 and 2006 (in most countries this figure ranges between 2 per cent and 6 per cent). Only US\$ 5,000 was made available for legal aid and about the same sum for compensation for damages caused by the State. This amount is far too small, considering that awards of damages against the Congolese State since January 2005 add up to US\$ 1,300,000. Given the lack of financial resources of the Democratic Republic of the Congo, the Government could establish an expert group to devise an appropriate timetable for payment of the sums owed and to find creative compensation solutions, whether symbolic, collective or low-cost (exemption from school enrolment fees, support for income-generating activities, etc.).

#### **G. A worrying use of the Constitution that threatens the independence of the judiciary**

28. According to the information provided in June 2007 by the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, the President of the Republic dismissed the Chief Justice of the Military High Court and the First Advocate-General of the military prosecutor's office and replaced them with new judicial officers. Under the new Constitution, however, the President of the Republic may only dismiss and appoint members of the national legal service on the recommendation of the Supreme Council of the Judiciary (CSM), a body which guarantees the independence of the judicial system. In this case, as the Council had not yet been set up, the unilateral dismissal and appointment of judicial officers by the President of the Republic was a violation of the Constitution and compromised the independence of the country's judiciary.

29. More worrying still, a petition was submitted recently to the Bureau of the National Assembly seeking a revision of the constitutional provisions on the composition of the Supreme Council of the Judiciary. The 310 signatories petitioned for the inclusion of the President of the Republic and the Minister of Justice in the Council, in flagrant violation of the principle of the independence of the judiciary enshrined in the Congolese Constitution. Nevertheless, the Act on the Supreme Council of the Judiciary was eventually adopted without amendment by the National Assembly at its extraordinary session from 17 to 24 December 2007. The framework laws on the three new high courts (the Constitutional Court, the State Council and the Court of Cassation) have not yet been considered, however.

30. Despite some small progress between June and December 2007, the persistence of impunity in the Democratic Republic of the Congo is particularly worrying, given the lack of progress on, and the obstruction of, many cases involving serious human rights violations where

suspects are often identified, but not apprehended. These persons therefore continue to act with impunity, sometimes at the highest levels of the political and military hierarchy, thus perpetuating the cycle of impunity.

## **H. The International Criminal Court**

31. There are two cases awaiting trial before the International Criminal Court that have a bearing on the Democratic Republic of the Congo. Thomas Lubanga, a former militia leader who allegedly committed atrocities in the Ituri district resulting in the death of at least 6,000 persons since 1999 and the displacement of several hundred thousand others, has been charged with recruiting and enrolling child soldiers into his militias. The trial is due to begin on 31 March 2008. The second case concerns Germain Katanga, former leader of the *Force de résistance patriotique en Ituri* (Patriotic Resistance Front in Ituri) (FRPI). The case is at the preliminary stage, awaiting confirmation of the charges.

32. It is clear that the International Criminal Court alone cannot try the thousands of crimes and serious violations of international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, especially because its jurisdiction is limited to acts committed since the entry into force of the Rome Statute (1 July 2002).

33. What is needed, therefore, is a mechanism that would guarantee not only the effective punishment of crimes covered by the Rome Statute which were committed prior to 1 July 2002, but also the administration of justice and an all-out campaign against impunity.

## **I. Establishment of a special international criminal tribunal or joint criminal chambers for the Democratic Republic of the Congo**

34. In order to combat impunity, which must be done if peace is to be restored to the country and further crimes are to be prevented, the independent expert recommends the creation of a special international tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers to try crimes committed since 1993, the year when serious violations of humanitarian law are first taken up in United Nations resolutions.

35. Certain measures could be taken to reduce the costs of a special tribunal. It could sit in the country, somewhere near the centre, in order to keep down transport costs incurred for defendants and witnesses. The host State could provide premises and defray certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the Democratic Republic of the Congo; and the host State could be responsible for the assignment of counsel.

36. Should it prove impossible to create an international tribunal, then, bearing in mind that it is essential to combat impunity and extremely serious crimes, consideration could be given to setting up joint criminal chambers in the appeal courts and establishing a right of appeal (preliminary and final appeal) before a chamber that would be competent in this matter but would be subject to the jurisdiction of the Supreme Court:

(a) Chambers of first instance could be set up in five appeal courts, one in Kinshasa and the other four strategically located throughout the country, taking into account the size of the country and distances;

(b) Chambers of first instance could be composed of three judges (two national and one non-national, or vice versa);

(c) The preliminary or final appeal court could be composed of three judges (two non-national and one national, or vice versa);

(d) The public prosecutor's office would be organized and would function according to the same criteria.

37. The name of the institution could be the "Joint Criminal Chamber" and it would be responsible for trying persons accused of acts of genocide or other serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo, as well as citizens of the Democratic Republic of the Congo accused of committing such acts or violations in neighbouring States.

38. Such an institution would be more flexible and less costly, should the creation of a special international criminal tribunal prove unfeasible. The new joint criminal chambers could also contribute to restoring the country's judicial system in terms of staff, training, equipment and living and working conditions.

## **II. THE SITUATION OF WOMEN AND CHILDREN**

### **A. Sexual violence and impunity: the crucial role of the judiciary in combating sexual violence**

39. The incidence of acts of sexual violence continues to increase at an alarming rate in the Democratic Republic of the Congo, with almost total impunity. Pregnant women, persons in detention, minors and even babies are victims of individual or gang rapes, committed, to a worrying extent, by members of the Congolese national police and FARDC. On 14 September 2007, members of the Congolese national police in Yanonge (Orientale Province), acting on orders from their commanding officer, allegedly raped eight women, including three minors aged from 11 to 14 years and one pregnant woman.<sup>10</sup>

40. In the absence of a functioning judicial system, many out-of-court settlements are concluded on the initiative or under the authority of traditional chiefs or local administrative officials, sometimes even the police, in breach of the legislation of July 2006 increasing the penalties for sexual violence and reaffirming the prohibition on such out-of-court settlements. On 9 October 2007, the commanding officer at the police substation in the village of Thedeja (Orientale Province) allegedly received a fee of US\$ 58 from a rape suspect to thank him for mediating in settling the matter out of court. The commanding officer reportedly persuaded the victim's family not to press charges and to accept a cow by way of compensation.

41. The underrepresentation of women among judicial personnel, the predominantly patriarchal culture and the tendency for acts of violence against women to become commonplace

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<sup>10</sup> This incident and the others that follow were reported by personnel of the United Nations Human Rights Integrated Office in the Democratic Republic of the Congo (UNHRO).

contribute to the proliferation of these “mediations” in the Democratic Republic of the Congo, to the detriment of the victims’ basic rights. The practice is often accompanied by acts of intimidation and, sometimes, even punishment of the victim. On 4 September 2007, a young female rape victim was detained for three days at the police station in the village of Kalima (Maniema Province) for refusing to accept such an arrangement. Fearing that she would press charges, the rape suspect, a local trader, used his influence with the police to have the young girl arrested and charged with defamation. The victim was released only after giving US\$ 20 to the police officers.

42. This police meddling goes hand in hand with the growing interference of the political and military authorities in judicial proceedings in such cases. On 19 September 2007, in Kampemba commune (Katanga Province), two rape suspects, a sergeant major of the Republican Guard and a member of the Congolese national police evaded custody as a result of manoeuvring by their father, who threatened the military investigator in charge of the case, who was of a lower rank than him, and thus obtained their release. On 12 September 2007, in response to a report about a rape, a judge at the Lubumbashi garrison military prosecutor’s office issued an arrest warrant for the suspect, a captain of the Republican Guard. The suspect’s commanding officer reportedly continues to obstruct the investigation by refusing to make the arrest.

43. That refusal is a violation not only of the Military Criminal Code but also of the acts of 2006 making sexual violence a statutory crime and relieving the prosecutor of the need to inform a suspect’s hierarchical superior of his subordinate’s arrest. The judicial authorities likewise often disregard the law. The Bukavu regional court (province of South Kivu) recently bailed a suspect accused of rape on the grounds that the parents of the parties had reportedly agreed to give the victim to the accused in marriage. Such an arrangement is not one of the criteria for granting bail and could, furthermore, be considered tantamount to the crime of forced marriage. On 23 August 2007, in two separate cases, the Bandundu regional court sentenced two individuals accused of rape and sexual assault to only four months in prison, citing significant mitigating circumstances without however stating what those circumstances were; the prosecutor chose not to appeal.

44. The attitude of the courts in the province of South Kivu towards sexual violence shows the degree of impunity that perpetrators of sexual violence continue to enjoy, and proves that the new law is not being properly applied, because judicial personnel are either unwilling to do so or are simply unfamiliar with its provisions. Between 2005 and 2007, when 14,200 rapes were reportedly recorded by health-care establishments in the province in 2005 alone, only 287 cases, or less than 1 per cent of the total, led to the filing of a complaint with the local judicial authorities. Of those complaints, 56 per cent were still at the preliminary investigation stage after a year, whereas due process would require that the prosecutor take the case to court within five months. Of the 60 cases for which the investigation has been completed, more than 80 per cent have been awaiting trial for more than two years. Lastly, although 58 guilty verdicts have been pronounced by the courts, in criminal and civil proceedings, no victim has yet received the damages awarded. In order to guarantee due legal process, some countries have established specialized bodies for certain aspects of criminal procedure, in particular prosecutions and investigations. In that regard, it might be worth considering the idea of appointing, in each prosecutor’s office in the Democratic Republic of the Congo, an investigating judge who would specialize in cases of sexual violence.

45. The high cost of legal proceedings relative to the average income of Congolese citizens and the lack of any clear procedure guaranteeing complainants exemption from costs in case of indigence, largely explain the low rate of execution of compensation payments for victims who sue for damages in criminal proceedings and the low number of rapes reported to the prosecuting authorities. Another factor that must be taken into account is the payment of compensation for damages caused by agents of the State; in 2007 the Government of the Democratic Republic of the Congo set aside only 3 million Congolese francs, the equivalent of US\$ 5,357, for that purpose. That money in fact was never disbursed, and in any case is less than the average award granted by the courts in a single case. For example, in the landmark case of the gang rapes committed in Songo Mboyo in December 2003, the State was ordered to pay 165,370 dollars to the victims; no payment was ever made.

46. The Government has however made welcome progress in regard to the taking of forensic evidence. In response to a suggestion from the United Nations Human Rights Integrated Office in the Democratic Republic of the Congo, the Government launched a process providing for the adoption of a standard medical certificate for use in doctors' examinations and the establishment of a minimum protocol for adequately documenting the physical and/or psychological effects of sexual violence on victims.<sup>11</sup> Given the difficulty that many victims face in proving that they have been attacked, it is to be hoped that the Ministry of Health and the Ministry of Justice will urgently promote the systematic adoption and free issuance of the new model certificate, which will spare victims from having to apply first to a judicial officer for a doctor's requisition.

47. Although strict time limits are laid down in the legislation for the conduct of proceedings in cases of sexual violence, in practice they are rarely respected. In South Kivu, for example, nearly 80 per cent of rape cases have been under investigation for more than two years. With regard to coercive measures against accused persons, it is a source of concern that perpetrators of sexual violence are almost always left at large, even when there is strong evidence of their guilt and they pose a threat to the security of victims and witnesses. When the perpetrator is released on bail, very few conditions are imposed: in South Kivu 80 per cent of persons accused have not appeared before the investigating judge or a court since charges were laid.

48. One positive development in the context of the fight against sexual violence was the declaration signed on 23 November 2007 in Bukavu, in which the provincial authorities and members of the South Kivu Provincial Assembly affirmed their determination to combat impunity for those responsible for sexual violence. The declaration was formally presented to Ms. Olive Kabila, the first lady of the Democratic Republic of the Congo, to the Speaker of the National Assembly and to the ministers present in Bukavu on the occasion of the International Day for the Elimination of Violence against Women. The Speaker of the National Assembly expressed his support for the initiative and called on the members of the National Assembly to make a similar commitment. In Mbuji-Mayi, in Kasai, Orientale Province, similar declarations

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<sup>11</sup> The model certificate was developed with the assistance of the Integrated Office, following wide consultations with Congolese organizations and institutions. It was formally approved in June 2007 by the joint initiative to combat sexual violence, an umbrella group of all local and international partners involved in the fight against sexual violence in the Democratic Republic of the Congo.

were signed on 29 November 2007 by the Speaker of the provincial assembly and the provincial chief inspector of the Congolese national police. The latter undertook to ensure that the men and women under his command would abide by and implement the declaration.

**B. Influence-peddling, abuse of authority, harassment, abuse of power and other forms of sexual violence in schools and universities directed against pupils and students**

49. According to reliable sources, many teachers and professors, who have a legal and moral obligation to educate and care for their pupils and students, abuse their authority and award marks, promotion into the next grade or diplomas with honours in exchange for sexual favours. That practice, which is taking on alarming proportions, is the subject of growing criticism on the part of certain NGOs and the media, which refer to it as “sexually-transmitted assessments”. As a result, the image of the school and university system, supposedly a place for the transmission of knowledge, civic education and the spreading of moral values, has been seriously damaged.

**C. Child soldiers and street children**

50. In spite of the commitments made by the parties to various conflicts, minors continue to be enlisted as combatants, in flagrant violation of international conventions and their optional protocols on protection of the rights of children. The reports of the MONUC child protection unit cite many cases of forced recruitment of minors, mostly schoolchildren in the province of North Kivu, in particular the Masisi and Rutshuru regions, in the last four months of 2008. Those mainly responsible are said to be the *Congrès National pour la Defense du Peuple* led by disgraced General Laurent Nkundu, and Mai-Mai groups.

51. The phenomenon of street children, or “*shégués*”, is a logical consequence of the unstable situation and economic decay in the country. When parents are unable to meet their children’s needs, many children choose to live in the streets. There is a growing number of such children, living in abject poverty, with no adult supervision. The consequences in the future could be serious, as these children are often recruited to carry out reprehensible acts.

**III. EXERCISE OF CIVIL AND POLITICAL RIGHTS**

52. The exercise and enjoyment of civil and political rights in the Democratic Republic of the Congo remain a source of great concern. The recent, historic, election should have provided new impetus for change but to date there has been no concrete improvement in the situation of civil and political rights across the country. The post-election period was characterized by a certain degree of political intolerance, manifested in the violent repression of demonstrators and political opponents as well as the harassment, intimidation, physical abuse, arbitrary arrest and illegal detention of journalists, human rights defenders and opposition leaders. The following two examples illustrate that situation.

53. Ms. Marie-Thérèse Nlandu, a lawyer and former candidate in the most recent presidential election, was arrested along with nine others, on 21 November 2006 by the “Special Services” Police at the Kin-Mazière police station. They were all charged with organizing and participating in an insurrection, as well as illegal possession of weapons and war materials. The accused were subsequently acquitted by the Kinshasa military tribunal. Nevertheless, on 20 June 2007, 50 days

after the acquittal, the chief military prosecutor of Kinshasa appealed the decision. Such a manoeuvre, which is a total violation of judicial principles, suffices to show the inherent difficulties associated with the full enjoyment and exercise of civil and political rights in the Democratic Republic of the Congo.

54. According to a report published in January 2008 by the United Nations Human Rights Integrated Office on its special investigation into the events of March 2007 (armed clashes in Kinshasa between FARDC and the members of the close protection team of former Vice-President Jean-Pierre Bemba, on 22 and 23 March 2007), approximately 300 people were killed during and following the clashes, including, as a result of summary executions, mainly by the Republican Guard. The report cites credible testimony relating to at least 40 summary executions, and 18 other cases were confirmed by visits to the scene of the executions and by corroborating testimony.

55. The investigation also documented more than 200 cases of arbitrary arrest and numerous incidences of intimidation and threats against individuals considered to be linked to Jean-Pierre Bemba or individuals from Equateur Province. The members of the security forces involved in these incidents have yet to be investigated or prosecuted, in spite of calls from MONUC for such action to be taken.

#### **IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

56. The socio-economic situation in the Democratic Republic of the Congo remains unstable, and is further exacerbated by the continued fighting in the east of the country between the State security forces and rebel groups. For most citizens, the exercise and enjoyment of economic, social and cultural rights remain a distant dream. The 2008 budget, of US\$ 3.6 billion, 19.6 per cent of which is allocated for servicing the country's external debt, limits the Government's ability to implement its programme in the five priority areas of employment, education, health, water and electricity and infrastructure. Many observers believe that the budget does not clearly account for revenue from the mining and oil sectors, the management of which lacks transparency. Civil society as a whole has called for a review of all mining contracts, a number of which are viewed as one-sided. Poor management of these sectors deprives the country of significant income which could otherwise be used to improve the social conditions of rightful claimants.

57. Although the right to a basic education is guaranteed by the Constitution, many children still do not have access to education. The hopes raised when the Government proposed to take full responsibility for paying the salaries of teachers, thus making primary and secondary education free of charge, vanished with the allocation of only 5 per cent of the 2008 budget to the education sector. As a result, many children of school age will continue to be denied an education for a long time to come, jeopardizing their and the country's future.

58. To the average Congolese, the right to housing, food, a decent standard of living, indeed the full gamut of economic, social and cultural rights, are still a distant reality. At the first national forum on employment held in Kinshasa on 18-22 September 2007, it was revealed that less than 20 per cent of the working age population, estimated at 22 million, worked in the formal sector and that there was no real social security system. The protracted strikes by public



employees, including teachers, nurses, doctors and civil servants, which dragged on through most of 2007, testify to the precariousness of pay conditions, which, coupled with the lack of any credit or housing policy, deny almost 80 per cent of the population any hope of decent housing. That insecurity also explains the general climate of corruption and the poor functioning of public services.

## **V. THE SITUATION OF INTERNALLY DISPLACED PERSONS**

59. According to a study on the humanitarian situation in the Democratic Republic of the Congo which was published in July 2007 by the Ministry of Humanitarian Affairs, there are currently approximately 6 million internally displaced persons, mostly from vulnerable groups such as children, women, and older persons, throughout the country. In the region of Petit Nord alone (Goma, Masisi, Rutshuru, Lubero and Kalehe), between December 2006 and December 2007, a total of 437,796 internally displaced persons from 93,384 households were identified. Those figures were provided by the Commission on Population Movements in North Kivu, the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the United Nations Children's Fund (UNICEF), Solidarités, Caritas and the United Nations Office for the Coordination of Humanitarian Affairs.

60. The situation is particularly alarming in the east of the country where clashes between FARDC and armed groups have led to massive new movements of populations living without resources and in complete insecurity (lacking medicine, health care, shelter, drinking water and food assistance). The number of internally displaced persons continues to grow because of the climate of insecurity in the provinces of North and South Kivu.

## **VI. THE GOMA CONFERENCE**

61. A conference on peace, security and development in the provinces of North and South Kivu, sponsored by President Joseph Kabila, was held in Goma, the capital of North Kivu Province from 6 to 24 January 2008. The overall objectives of the conference were to put an end to war and insecurity in the provinces of North and South Kivu and to lay the foundations for a lasting peace and the full development of North and South Kivu. More than 1,000 individuals participated in the conference, including representatives from all the communities in those provinces, representatives of armed groups, members of the national and provincial parliaments who come from the two provinces and representatives of civil society and the international community.

62. On 23 January 2008, following two weeks of discussions, all the armed groups operating in the two provinces signed a peace agreement in the presence of the Head of State. The agreement provides for: a full and immediate cessation of hostilities throughout North and South Kivu; disengagement of the soldiers of the armed groups; the creation of demilitarized zones for the Armed Forces of the Democratic Republic of the Congo (FARDC); "brassage"\*; integration; and the implementation of the national programme for disarmament, demobilization

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\* Reintegration and retraining of ex-combatants into one new national army.

and reintegration; strict observance of the rules of international humanitarian law and human rights; return of refugees and internally displaced persons; and political and judicial guarantees, including the submission to Parliament by the Government of a draft amnesty law for acts of war and insurrection, and the establishment, by presidential decree, of a technical commission to finalize the disengagement plan and issues relating to ranks, integration and training of demobilized soldiers.

63. The independent expert commends the Government of the Democratic Republic of the Congo for that initiative and expects strict implementation of the commitments undertaken by all the signatories. The independent expert hopes that the conference will have helped lay the foundations for a lasting peace in that region of the country.

## **VII. RECOMMENDATIONS**

64. **With regard to the consolidation of peace, the independent expert recommends that all stakeholders in the national and political life of the Democratic Republic of the Congo should:**

**(a) Implement the peace agreement signed in Goma following the Conference on Peace, Security and Development in the Provinces of North and South Kivu;**

**(b) Take fair and transparent measures to impose and consolidate the State's authority over the entire territory and foster rapprochement among the political actors;**

**(c) Continue to promote among the population a culture of peace, tolerance, reconciliation, forgiveness, fraternity, peaceful coexistence, integration and national unity;**

**(d) Recognize the need for all political actors and the media to foster a culture of dialogue, to reject violence and ethnic hatred, to accept democracy and the verdict of the ballot box, and to seek remedies, when necessary, through the law.**

65. **With regard to the administration of justice and the fight against impunity, the independent expert reiterates his recommendations that the Government should:**

**(a) Implement an effective policy for the elimination of human rights violations and for the systematic prosecution and punishment of those responsible for human rights violations as well as of any political and military actors guilty of interference in, or obstruction of, the administration of justice;**

**(b) Ensure an exemplary and successful conclusion, as soon as possible, to outstanding cases and proceedings before the trial or appeal courts, with full respect for international due process norms;**

**(c) Support the "Mapping Team" of the Office of the United Nations High Commissioner for Human Rights in its work of drawing up an objective map of the serious human rights violations committed between 1993 and 2003;**

**(d) Implement a vetting procedure for the security forces with a view to ensuring that senior officers accused of having committed serious human rights violations are immediately suspended from their duties and replaced;**

**(e) Put an end to the practice whereby military courts exercise jurisdiction over civilians and amend military criminal law to bring it into line with the Constitution and applicable international norms;**

**(f) Respect in practice and in all circumstances the independence of the judiciary, in particular by refraining from making amendments to the Constitution that tend to blur the dividing line between the powers of the executive and the judiciary;**

**(g) Increase substantially the allocations in the State budget for the justice sector;**

**(h) Take all necessary measures to guarantee the effective protection of victims, witnesses, human rights defenders and representatives of the media, who play an essential role in combating impunity;**

**(i) Establish an expert group to devise an appropriate timetable for the disbursement of unpaid compensation and to develop creative solutions, whether symbolic, collective or low-cost, to compensate victims (exemption from school enrolment fees, support for income-generating activities, etc.);**

**(j) Expedite the adoption of laws essential for the administration of justice, in particular the framework law on the three new high courts, a law implementing the Rome Statute and a law establishing a national human rights commission.**

**66. With regard to sexual violence, the independent expert reiterates his recommendation that the Government should:**

**(a) Remind all judicial personnel of the provisions of the acts of 2006, for example by circulating a memorandum on that subject;**

**(b) Facilitate the taking of evidence in cases of sexual violence by supporting the adoption and distribution of a standard medical certificate that could serve as evidence in trials;**

**(c) Increase the number of women and the level of specialization in the judiciary, by training designated specialized teams at each level of the judiciary, the police and the courts;**

**(d) Promote victims' access to justice by exempting victims of sexual violence and, ultimately, all victims of serious offences committed by State agents, from payment of legal costs;**

**(e) Take responsibility for sexual violence committed by State agents by giving priority to compensation for victims who sued for damages in major trials such as the Songo Mboyo trial and by providing substantial funding for compensation of victims in the next budget law;**

**(f) Promote nationwide, in cooperation with Parliament, the signing of agreements similar to those signed in South Kivu and Kasai, Orientale Province, as evidence of a commitment to combating impunity for the perpetrators of sexual violence;**

**(g) Consider appointing investigating judges in each prosecutor's office in the Democratic Republic of the Congo specializing in cases of sexual violence.**

**67. With regard to measures to improve conditions of detention and ensure better respect for minimum rules on the treatment of detainees, the independent expert reiterates that the Government should:**

**(a) Adopt urgent measures to build and/or refurbish prisons and other places of detention, strengthen security and improve conditions of detention;**

**(b) Adopt any emergency measures needed to address the problem of malnutrition in prisons, including by giving priority to the allocation and proper management of funds for food for prisoners;**

**(c) Reinstate in prisons the activities of livestock breeding, crop growing and cultivation of fresh produce with a view to increasing food self-sufficiency, in particular by implementing long-term projects, such as prison farms;**

**(d) Reduce prison overcrowding and thus the number of inmates to feed, by such measures as reducing the use and length of remand in custody and greater use of parole;**

**(e) Build or renovate, following an audit of the condition of existing infrastructure and a needs analysis, certain central and district prisons;**

**(f) Renovate at least two military prisons in order to reduce overcrowding in other prisons, and separate civilian and military detainees.**

**68. The independent expert recommends that Parliament should:**

**(a) Adopt laws essential for the administration of justice and for other areas of national life, including:**

**(i) A law providing for the application of the Rome Statute of the International Criminal Court;**

**(ii) A framework law on the organization and functioning of the new national human rights institution;**

**(iii) A framework law on the organization and functioning of the national police;**

**(iv) A law criminalizing torture;**

**(v) A law reforming prison administration;**

**(vi) A law on the integration of the army and reform of the security forces;**

(b) Promote nationwide, in cooperation with the Government, the signing of agreements similar to those signed in South Kivu and Kasai, Orientale Province, as evidence of a commitment to combat impunity for the perpetrators of sexual crimes.

69. The independent expert recommends that the international community should:

(a) Continue to support the institutions of the Democratic Republic of the Congo in order to permit the establishment of the rule of law, a culture of peace and a lasting democracy;

(b) Continue to support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police;

(c) Continue to support efforts to achieve economic recovery in the country, in particular the Government's economic programme aimed at bringing the Heavily Indebted Poor Countries (HIPC) Debt Initiative to a successful conclusion, reforming the mining sector and attracting needed capital for the social sectors, including education and health;

(d) Continue to support the United Nations Human Rights Integrated Office in the Democratic Republic of the Congo, consisting of the Office of the United Nations High Commissioner for Human Rights and the Human Rights Division of MONUC, in the implementation of its programmes and activities for the promotion and protection of human rights;

(e) Support the efforts of MONUC to provide greater mentoring and support to the Government, the army and the police, so that they may meet the various challenges posed by the crime and unrest within the country and on its eastern borders;

(f) Provide all necessary assistance to enable the independent expert to fulfil his complex mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate;

(g) Support the establishment of an international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within existing Congolese courts, to hear cases involving crimes committed before 1 July 2002 and/or other serious crimes.

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