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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

**Report on the situation of human rights in the Democratic Republic of
the Congo, submitted by the Special Rapporteur, Ms. Iulia Motoc***

* This document has been transmitted late because of the recent mission by the Special Rapporteur and because additional information had to be incorporated in it.

Summary

The Special Rapporteur undertook three missions to the Democratic Republic of the Congo in 2003. After the fifty-eighth session of the General Assembly, she travelled to the Democratic Republic of the Congo from 26 August to 6 September 2003 (when she visited the towns of Kinshasa, Kisangani, Bunia and Bukavu) and from 29 November to 10 December 2003 (when she visited Kinshasa, Kindu and Lubumbashi).

The Special Rapporteur was favourably impressed by the remarkable progress made at the political level in 2003. She nevertheless considers that the process remains fragile and incomplete.

The Special Rapporteur had noted the delay in drafting, considering and adopting important pieces of legislation indispensable to a successful transition and the holding of free, transparent and democratic elections within the deadlines established by the Global and All-Inclusive Agreement.

The Special Rapporteur is concerned about the fate of institutions responsible for promoting human rights.

The year 2003 was marked in the Democratic Republic of the Congo by massive human rights violations. In her report to the General Assembly (A/58/534), the Special Rapporteur described them as international crimes. Between September and December 2003, however, following intervention by the International Emergency Multilateral Forces (IEMF) and the reinforced mandate of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the scale of the violations was substantially reduced.

One of the most important questions that has confronted Congolese society is that of impunity and reconciliation. A just solution to this issue might bring lasting peace to the Democratic Republic of the Congo.

The lack of security of the civilian population is one of the obstacles to ensuring human rights in the Democratic Republic of the Congo. Civilians suffer violence from the military and police, often for financial reasons; most such offences go unpunished. A wide-ranging judicial reform of the administration of justice is needed.

The Congolese people have suffered terribly during long years of armed conflict. Entire populations find themselves extremely vulnerable. The country is facing a calamitous humanitarian situation.

Today there are 3.4 million displaced persons in the Democratic Republic of the Congo, making it the country with the second largest number of displaced persons in the world.

The Special Rapporteur considers it absolutely essential to envisage reparation for victims which will include indemnification, satisfaction of their claims and assurance that their sufferings will not recur. Full reparation for the victims of massive human rights violations is a means of reintegrating them into society.

Half of hospital patients in the Democratic Republic of the Congo have AIDS; the number of HIV/AIDS sufferers is estimated today at approximately 1.3 million. More than 60 per cent of Congolese between the ages of 15 and 39 are liable to contract AIDS by 2010.

One of the chronic paradoxes of the Democratic Republic of the Congo, one of the world's richest countries in natural resources, is the ingrained poverty of the population; 17 million people suffer from malnutrition.

Conclusions and recommendations

The Special Rapporteur asks all the parties in conflict in the Democratic Republic of the Congo to end all military activity and comply with the obligations arising from the Transitional Constitution.

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Introduction

1. In its resolution 2003/15 of 17 April 2003, the Commission on Human Rights decided to request the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo to submit an interim report to the General Assembly at its fifty-eighth session and to report to the Commission at its sixtieth session on the situation of human rights in the Democratic Republic of the Congo.
2. The Special Rapporteur attended the annual meeting of rapporteurs, special representatives, independent experts and chairpersons of working groups from 23 to 27 June 2003. On 30 June 2003, she attended the meeting organized for the special rapporteurs by the Office of the United Nations High Commissioner for Human Rights and UNAIDS. In its resolution 2003/47, the Commission requested the special rapporteurs to take into consideration in their reports violations of human rights in relation to persons suffering from HIV/AIDS. Part of the report is therefore devoted to this issue.
3. During her two stays in Kinshasa, the Special Rapporteur met the highest State officials, among them the Vice-President in charge of the Political Commission, the Presidents of the Parliament and the Senate, the Minister for Foreign Affairs, the Minister of Justice, the Minister for Human Rights, the Minister for Women and the Family and the military prosecutor of the Congolese Armed Forces (FAC). She met the Special Representative of the Secretary-General and his deputy, the members of the diplomatic corps and the heads of various United Nations agencies. She met representatives of Kinshasa civil society. She also met the representatives of political parties. She visited the Kinshasa Penal and Rehabilitation Centre. During her fourth visit she also met the President of the Congolese Human Rights Monitoring Centre, the members of the Truth and Reconciliation Commission, the President of the Independent Union of Magistrates of the Democratic Republic of the Congo and the 315 rehabilitated magistrates. She held meetings with European experts in charge of the organizational audit of the judicial system of the Democratic Republic of the Congo.
4. The Special Rapporteur also visited Kisangani, Bunia and Bukavu. In Kisangani, she met the provincial authorities of the Rassemblement congolais pour la démocratie (RCD), the senior prosecutor and garrison prosecutor, representatives of United Nations agencies, and representatives of international NGOs and human rights associations. In Bunia, she met the acting administrative authorities of Ituri, the resident administrator in Fataki, representatives of United Nations agencies and representatives of human rights NGOs. She interviewed female victims of sexual violence and members of the Prevention and Verification Commission. She visited the transit centre for child soldiers, the displaced persons' camp at the airport, the Doctors Without Borders hospital, the courthouse and the prison.
5. In Bukavu, the Special Rapporteur met the Governor and Vice Governors of South Kivu province, representatives of the human rights section of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the President of the Press Union of the Congo, representatives of the press, of civil society, of human rights NGOs, NGOs working on issues related to rape and sexual violence, the child protection section of MONUC, the United Nations Children's Fund (UNICEF) and NGOs working to protect child soldiers and

child sorcerers. She interviewed the representative of the Office for the Coordination of Humanitarian Affairs (OCHA) on the issue of displaced persons. Lastly, the Special Rapporteur held individual talks with victims of human rights violations and visited the Centre Olame.

6. During her fourth visit, the Special Rapporteur went to Kindu and Lubumbashi, where she met the provincial authorities, representatives of civil society and the judicial authorities. In Kindu, she met representatives of United Nations agencies, international NGOs, victims of sexual violence and demobilized child soldiers. She visited Kindu central prison and Buluo high security prison. A security incident took place during this visit. When the delegation left the prison's central building, some 60 detainees came out with their bags and blocked the exit. Demanding immediate release, they prevented the delegation from leaving the prison for nearly three hours, and declared that they were being held illegally. The Special Rapporteur made it clear that the protection of human rights should always be sought by legal means and that no right could be obtained by force. The Government apologized to the Special Rapporteur and mentioned the lack of means for ensuring security in the prisons. The Special Rapporteur remarks once again that human rights defenders and representatives of the United Nations work in difficult conditions throughout the world, the Democratic Republic of the Congo included.

7. Pursuant to Commission resolution 2003/15, the Special Rapporteur submitted an interim report to the General Assembly at its fifty-eighth session on the information she had received up to 4 October 2003 (A/58/534). The present report to the Commission should therefore be read together with the interim report. In view of the prevailing situation in the Democratic Republic of the Congo, the Special Rapporteur's conclusions and recommendations in her interim report remain valid.

8. On 12 November 2003, the Special Rapporteur attended a meeting organized by the Office of the United Nations High Commissioner for Human Rights and UNICEF on the situation of children in armed conflict. She spoke about the situation of the children associated with armed groups in the Democratic Republic of the Congo.

9. Before visiting the Democratic Republic of the Congo, the Special Rapporteur held consultations in Geneva on 20 and 21 November 2003. She met members of the diplomatic corps, representatives of NGOs and officials of the Office of the High Commissioner for Human Rights.

10. The Special Rapporteur visited The Hague on 12 December 2003 where she met the Prosecutor of the International Criminal Court (ICC) and his colleagues. In New York she held interviews with members of the Security Council, the Deputy Director of the Office for the Coordination of Humanitarian Affairs, senior United Nations officials, members of the diplomatic corps and the Director of the United Nations Development Fund for Women (UNIFEM). She attended several meetings of the Security Council on the situation in the Democratic Republic of the Congo.

11. The Special Rapporteur has, in conjunction with other special procedures, sent the Congolese Government 18 requests for emergency intervention. Replies have been received to three of these communications. She has drafted eight press releases on human rights violations in the Democratic Republic of the Congo.

12. In this report, the Special Rapporteur continues to address issues relating to massive human rights violations, impunity and reconciliation, the administration of justice, refugees and displaced persons within the country, the protection of vulnerable groups (children, women, indigenous peoples, AIDS sufferers and the poor). She also addresses the following topics: transitional institutions, the lack of security for the civilian population, and the exploitation of natural resources.

I. POLITICAL DEVELOPMENTS

13. Remarkable progress was registered at the political level in the Democratic Republic of the Congo in 2003. Following the signature of the Final Act of the inter-Congolese dialogue at Sun City (South Africa) on 2 April 2003, the Transitional Constitution was promulgated on 4 April 2003. The Memorandum on the constitution of an integrated army was the last major stage prior to the formation of the Transitional Government on 30 June 2003. Under the timetable established during the inter-Congolese dialogue, elections should take place in two years.

14. The achievements at the political level are impressive. The process, however, remains fragile and incomplete, particularly as regards some of the factors that will determine the success of the peace process, such as disarmament, demobilization, the return to ordinary society of former combatants, integration, the effective restructuring of the armed forces of the former Congolese warring parties, the establishment of a supreme defence council and the creation of an integrated national police force.

15. The Special Rapporteur notes that very considerable progress has been made as regards the disarmament and demobilization of foreign combatants as a result of efforts by MONUC. More than 6,000 foreign combatants have been demobilized. The first group of Burundian ex-combatants was repatriated by MONUC on 29 December 2003 to the Gatumba refugee centre in Burundi. They were members of the Front pour la défense de la démocratie (FDD) and the Front national de libération (FNL). It is estimated that 2,000 Burundian combatants have been repatriated voluntarily.

16. In deciding unanimously that the demilitarization of the Democratic Republic of the Congo would not affect the country's established armed forces, the Security Council enabled the first brigade of the national army to be set up in January 2004. The first integrated, unified brigade in Kisangani would be a step towards the drafting and implementing of an overall training programme for the restructured, integrated Congolese national army. A first contingent of Belgian soldiers arrived in Kinshasa in late January 2004 as part of a deployment of 200 military instructors over six months to assist in training the new, integrated Congolese army.

17. The Special Rapporteur stresses that these political developments have secured the international community's commitment to the Democratic Republic of the Congo, which last year obtained US\$ 50 million in aid from the World Bank to restart its economy. The European Union's contribution amounted to 40 million euros. Donors have promised the Congolese Government US\$ 3.9 billion over the next three years.

II. TRANSITIONAL INSTITUTIONS AND HUMAN RIGHTS

18. This period of transition is fundamental for the Democratic Republic of the Congo. The spectacular positive developments of the past year must continue so that elections can be held in 2005. The Special Rapporteur considers that deeds must replace words.

19. The Special Rapporteur notes the delay in drafting, considering and adopting important pieces of legislation indispensable to a successful transition and the holding of free, transparent and democratic elections within the deadlines established by the Global and All-Inclusive Agreement. While drafting her report, the Special Rapporteur was informed that Parliament had been convened in extraordinary session at the end of the ordinary sessions. Strong fears were expressed during the session about the two-year deadline established by the Constitution for holding elections, which would be missed if Parliament continues to function at its present rate. The Special Rapporteur invites the Government and Parliament to collaborate over the adoption of the legislative programme, which is fundamental if elections are to be held within the scheduled deadlines.

20. The Special Rapporteur has expressed deep concern about the current situation of the five pro-democracy institutions; more than six months after the start of the transition, they are still not operational. It is these institutions that must support and steer the country into general elections. Dialogue between the transitional institutions and the Government is fundamental. The Special Rapporteur recommends encouraging institutions such as the High Authority for the Media which has requested, through its President, Modeste Mutinga, that the members of the Transitional Government should abstain from electoral campaigning when they are on official mission.

21. The Special Rapporteur is concerned about the fate of the transitional human rights institutions. During her last visit to Kinshasa, she interviewed the president of the Congolese Human Rights Monitoring Centre and members of the Truth and Reconciliation Commission. The representatives of these institutions expressed grave concern at the delay in adopting laws for their establishment.

22. The Congolese Human Rights Monitoring Centre bill is in satisfactory accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134, dated 20 November 1993, in particular as regards the following principles: a constitutional or legislative founding text, as broad a mandate as possible, independent appointment procedures, the duration of the mandate established in an official act, a pluralist and representative membership, regular and effective operation, independence of the Government and adequate financing. The Truth and Reconciliation Commission bill does not seem to meet the conditions necessary to ensure the Commission's efficient and independent operation (see chapter IV).

III. MASSIVE VIOLATIONS OF HUMAN RIGHTS

23. The year 2003 saw massive violations of human rights in the Democratic Republic of the Congo, which the Special Rapporteur described in her report to the General Assembly (A/58/534) as international crimes. Security in Bunia was largely restored by the action of the International Emergency Multilateral Force. The renewed MONUC mandate, pursuant to

Security Council resolution 1493 (2003), permitted intervention using all necessary means, which considerably improved the security situation in Ituri. The Special Rapporteur observes that there was a considerable decrease in massive human rights violations in the period September-December 2003.

24. The Special Rapporteur considers that, if international crimes are genuinely to be eradicated in the Democratic Republic of the Congo, the deep-seated causes of the continued conflict - economic in nature - must be taken into consideration. The report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2003/1027) has once again shown that the illegal exploitation of natural resources remains one of the main sources of funding for groups involved in perpetuating the conflict. It has been recommended that the flow of illegal arms to the Democratic Republic of the Congo should be stemmed and, if possible, halted.

25. The Special Rapporteur notes that while massive human rights violations on a much smaller scale have continued in Ituri and in North and South Kivu, they have often been restricted to reprisals against groups accused of collaborating with the enemy.

26. In Ituri, Lendu militias attacked the locality of Katchele and four neighbouring localities on 6 October 2003, killing 65 persons and wounding 24; the victims included 42 children. The militiamen used knives, sticks, clubs and firearms.

27. On 15 January 2004 more than five boats are said to have been attacked by armed individuals, identified as members of the Front de nationalistes intégrationnistes (FNI), at Dgegu, in the territory of Mahagi, then diverted and brought to Gobu, in the territory of Djugu. The attackers separated the men, women and children and then shot the men in groups of 4, 5 or 10. All the men appear to have been killed and their possessions carried off by the attackers. According to the information provided by NGOs to the Special Rapporteur, the same group allegedly abducted civilians in localities near Lake Albert on 3 and 7 January 2004.

28. MONUC troops were attacked on several occasions in January 2003 by Thomas Lubanga's Union des patriotes congolais (UPC). After liberating several people held by UPC men in underground dungeons near Mabanga, on 12 January 2004, MONUC was again attacked in the village of Lopa. The same group appears to have been at the origin of another attack targeting the MONUC helicopter in Drodro where the Mission was conducting an inspection. UPC members have time and again been implicated in attacks on individuals, property and collective security.

29. In Orientale province, the situation around Punia has proved difficult because of fighting between soldiers of the former Armée nationale du Congo (ANC) and Mai-Mai combatants. On 5 October, the Mai-Mai attacked Matumba and abducted 18 civilians, of whom 15 managed to escape. Three are reported missing. Several people in localities around Punia have been forced to work in the coltan mines.

30. The Mai-Mai perpetrated various acts of vandalism, looting and raping in the territory of Malema Nikula, North Katanga, in September 2003.

31. On 6 October 2003, FDD troops attacked the civilian population of Sangi and Rusabaki, 35 km from Uvira. MONUC investigations reveal that 16 people were killed. Rusabaki and Kaberagula have frequently been the scene of clashes between FDD, FNL, the Interahamwe and various Mai-Mai groups. The local population was accused of complicity with RCD. The victims, mostly women, were massacred with axes, machetes, clubs, knives and other such weapons. Two survivors are currently in Uvira hospital and four persons are still reported missing.
32. Clashes in November 2003 between a Mai-Mai militia and a Rwandan rebel group in Mwenga in South Kivu, a province in the east of the country, displaced between 2,000 and 4,000 people.
33. The Special Rapporteur has been informed that attacks and counter-attacks by ex-FAR/Interahamwe and ex-ANC forces constantly occur in North Kivu province, particularly in the territories of Rutshuru, Walikale, Masisi, Lubero and Kanyabayonga. To the north of Lubero, the Interahamwe attacked Masili and Karambi early in January 2004. In the Kanyabayonga area, ANC soldiers engaged in looting and in sexual violence against the civilian population.
34. According to information from NGOs, former rebel groups have kept their military weapons in case the transition process fails. The presence of Rwandan soldiers on Congolese soil has been interpreted as one of the reasons why officers of the former RCD/Goma army refused MONUC observers access to some of their cantonment areas.
35. According to information transmitted to the Special Rapporteur by Katangan NGOs, massive human rights violations have been committed by the "Makabe" Mai-Mai of Kabale. The "Makabe" militia terrorized Haut-Katanga, in particular the district of Haut-Lomami, from March 2002 to September 2003 and displaced more than 100,000 people. They engaged in large-scale looting and burning, killings and cannibalism. In September 2003 they looted and burned houses in Mangi, Pungwe, Nkana and Kadia.
36. Events in the Democratic Republic of the Congo in recent years reveal the need for urgent adoption by the international community of international instruments to prevent international crimes. The Special Rapporteur considers it necessary to adopt a human rights approach to the prevention of international crimes by assigning responsibility to the State and the international community.

IV. IMPUNITY AND RECONCILIATION

37. Impunity and reconciliation are major issues confronting Congolese society. A just solution to these questions might bring lasting peace to the Democratic Republic of the Congo.
38. The Special Rapporteur considers that the Congolese need to be aware that reconciliation is a long and hard process requiring much sacrifice. It is important to bear in mind at all times that the essential principle of reconciliation is the central place accorded to the victims. The reconciliation process should be envisaged at three levels: national, community and individual.

39. In her report to the General Assembly, the Special Rapporteur expressed her confidence in local reconciliation positions and solutions. She is encouraged by the signs of reconciliation between the Hema and the Lendu at the 2003 end-of-year celebrations in Ituri, and particularly in Bunia and Zumbe. The ceremonies of reconciliation between two communities separated by ethnic conflict were preceded by meetings between Hema and Lendu notables, in Mudzipela on 29 September 2003, in Nizi on 23 October and in Djugu on 21 November, which enabled other meetings to be held on 22 and 23 November in Basa, Pimbo, Kalo, Djugu and Dodjo.

40. In national terms, reconciliation is coming up against difficulties related to the passage of the Truth and Reconciliation Commission bill. No consultations on this bill have been held with civil society, nor does it fulfil the conditions of independence, fairness and transparency. Under the Sun City agreements, the Truth and Reconciliation Commission is supposed to review political, economic and social crimes committed between 1960 and 2003 in order to establish the truth and help individuals and communities to become reconciled. The members of the Commission are representatives of the political parties, and some, according to members of civil society, carry little credibility. During her last mission, the Special Rapporteur invited members of the Truth and Reconciliation Commission to be above all suspicion as regards human rights violations.

41. It is important for the Truth and Reconciliation Commission to take into consideration earlier experience in other countries, while bearing in mind the particular nature of the Democratic Republic of the Congo. The Special Rapporteur considers that the Commission must pay particular attention to the widespread sexual violence committed throughout the country.

42. The Special Rapporteur repeats the proposal she made in the interim report, namely, that the period of transition should be considered as a period for consultation and preparation for the establishment of a Commission that would fulfil the criteria of independence and equity. The matter of financial resources is important for the operation of the Commission, and donors will only contribute if it has credibility.

43. The Special Rapporteur notes with concern the lack of progress in combating impunity. The first thing to do is to pass the necessary changes in legislation.

44. The Special Rapporteur notes that the Military Code does not comply with international norms and the Congolese Criminal Code makes no provision for international crimes. Such crimes are defined in the bill to give effect to the Rome Statute of the International Criminal Court, the adoption of which is absolutely vital in efforts to combat impunity. The bill sets out what constitutes the right to a fair trial. The Special Rapporteur welcomes the fact that the bill contains a recommendation from her previous report to the Commission (E/CN.4/2003/43) on the competence of the civilian courts to try cases of massive human rights violations perpetrated by military personnel.

45. The Special Rapporteur welcomed the decision by the Prosecutor of the International Criminal Court to make the Democratic Republic of the Congo the first State to be the subject of his investigations and has said that the decision would ensure that justice was done in the most murderous international conflict since the Second World War. She considers it is in the interest

of the Congolese State, in keeping with successive commitments by its leaders to the notion of international criminal justice, that the Government should refer to the ICC Prosecutor any crimes coming within the jurisdiction of the Court, in accordance with article 14 of the Rome Statute.

46. The Special Rapporteur remains convinced that an efficient judicial mechanism should be set up to cover crimes committed during the period before July 2002. In her previous report to the Commission she clearly stated that the international community must support the Congolese justice system in judging these crimes.

47. The Commission, in resolution 1997/58, requested the Special Rapporteurs on the situation of human rights in Zaire and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out a joint mission to investigate allegations of massacres in Zaire. Such a mission has been requested by the Commission every year except for 1998. It has not taken place because of the security situation in the east of the country. Late in 2001, following her appointment, the Special Rapporteur contacted the other two bodies involved. The mission could not take place, partly because the safety situation in the east of the country did not permit and partly because the Office of the High Commissioner did not have sufficient financial resources.

48. This was the reason for the Special Rapporteur's proposal in her report to the General Assembly of the commission of inquiry or experts suggested by the late High Commissioner, Sergio de Mello and several NGOs and endorsed by the Commission on Human Rights at its fifty-ninth session. The General Assembly, bearing this proposal in mind, also reverted to the proposal for a joint mission.

49. The Special Rapporteur's opinion is that there needs to be better coordination among the international bodies concerned with the question of impunity in the Democratic Republic of the Congo. She hopes logistical and material conditions in 2004 will enable the joint mission proposed by the General Assembly to be undertaken. The three mechanisms could function as a commission of experts, provided that the commission is given the means to achieve its mission. Such a mission is the first step towards a judicial mechanism to deal with crimes committed before 2002.

V. INSECURITY OF THE CIVILIAN POPULATION

50. The lack of security for the civilian population is one of the impediments to the realization of human rights in the Democratic Republic of the Congo. The civilian population is subject to violence by the military and police, often for financial reasons; most such offences go unpunished. Since bribery is ubiquitous, the guilty parties can buy off the justice system and the police, and justice officials often help victims and perpetrators to make deals in exchange for part of the compensation paid.

51. In Ituri, the divisions within UPC between the movement favourable to Thomas Lubanga and the movement led by Kisembo have exposed the population to the risk of frequent clashes such as that in Mabanga on 1 January 2004. In the Hema-dominated districts of Bunia, UPC militiamen continue to collect \$0.1 per week and per plot by proffering threats of death by night or else by threatening to loot property.

52. Two armed groups of the Forces armées du peuple congolais (FAPC) and FNI have been disputing control of the customs post of Mahagi for some months and their rivalry is a constant threat to peace in this territory. There are regular acts of intimidation and extortion and arbitrary arrests of civilians.

53. In Aru, the FAPC headquarters, civilians frequently suffer abuse of all kinds from militia members. Chief Jérôme constantly resorts to terror by means of summary and public executions; his troops are accused of abuse of the civilian population.

54. Since the army and police are not paid and justice personnel do not receive proper wages, the civilian population lives a near-permanent state of insecurity.

55. The Special Rapporteur notes the positive effects of the changes in the military hierarchy on the security of the general public. According to reports received, the population of Kisangani was greatly pleased at the appointment of General Padiri as head of the military command in the region. In Kindu, the arrival of General Widi and his deputy had positive effects: all military barriers and positions near spots where massive human rights violations have occurred have been dismantled. Similarly, the various provinces continue to function independently under their former political and military leaders, who are for the most part in the Government and other transitional institutions.

56. Several NGOs in Beni have sent the Special Rapporteur reports of the lack of confidence in the judicial system. Civilian population groups call on the military to resolve their conflicts. Nevertheless, the number of cases of torture and detention is constantly on the increase.

57. In recent months abuse of the civilian population by soldiers of the former RCD-N rebel movement and the police in Isiro reached dramatic proportions. Early in November 2003, with logistical assistance from MONUC, military judges in Kisangani sentenced two policemen and a soldier to heavy prison terms.

58. The Special Rapporteur notes that troop movements often lead to human rights violations, in particular harassment and extortion of property by soldiers. Hundreds of Mai-Mai combatants have come out of the forests in the east of the country to join the unified army. Musters take place 15 km from Kindu, the principal town in the province of Maniema. Early in January 2004, over 1,500 Mai-Mai combatants were awaiting incorporation into the army in Kindu. A large number of combatants have come out of the forests although the quotas governing participation by former warring parties in the new army have not yet been decided.

59. Besides establishing a unified army in the principal towns of territories and communities, police must be deployed and the courts reinstated so that an end can be put to this situation. The many human rights violations can be explained by the fact that the Mai-Mai and the military are not subject to a single authority in the province. To improve the human rights situation, combatants will have to be paid their earnings and the various armed groups will have to be physically identified and assigned to quarters.

60. The proliferation of taxes introduced by the administrative authorities is another source of insecurity for the civilian population because of the resulting abuses. Directives from Kinshasa concerning the suspension of certain taxes are not being implemented by some local administrative authorities.

61. The lack of security continues to be a problem for human rights defenders. Loyombo Willy, a member of the Lotus Group from Opala in Orientale province, was arrested and threatened with death by agents of the RCD-Goma Security and Information Unit for reporting abuses by the authorities. The President of the Commission for the Popularization of Human Rights was allegedly threatened with arrest by the Governor of Katanga for publishing a report decrying massacres and acts of cannibalism upon civilian population groups in parts of Katanga province by militias said to be financed by the provincial authorities. Also in Katanga and in Lubumbashi, nine human rights defenders of the Judicial Association for the Defence of Human Rights were arrested for two days for staging a peaceful protest march when teachers were seized by students' parents.

62. In Bafwasende, meetings of NGO platforms require authorization from the Administrator of the territory and the heads of the security services. As a result of these constraints, some NGO platforms do not meet. In Walikale, NGO representatives have been subjected to intimidation. The President of the Civil Society organization was arrested after meeting representatives of MONUC.

VI. REFUGEES AND INTERNALLY DISPLACED PERSONS

63. There are 3.4 million internally displaced persons; their number swelled by 700,000 in 2003, largely because of the situation in Ituri.

64. Persons who are forcibly displaced have to contend with security problems and live in precarious conditions typified by a lack of sufficient water, sanitation and educational and health infrastructure. They have very limited employment opportunities; the vast majority live with families that are vulnerable because they are poor, and are an extra burden on the host families.

65. The improvement in the security situation has brought about the return of some displaced persons: in Maniema, 25,000 persons went back to their homes at the end of November 2003. The return of displaced persons is hampered by the fact that, in most cases, their homes and belongings have been destroyed during the conflict. The aid provided by non-governmental organizations and the United Nations is far from adequate and, in spite of recent efforts, it has not yet reached the inhabitants of remote regions and enclaves.

66. The Special Rapporteur notes that there is no national plan for the return of internally displaced persons. She believes there is a pressing need to adopt a strategy for displaced persons and refugees, with the support of the international community. She welcomes the creation of a Ministry for Solidarity and Humanitarian Affairs and the fact that the Government takes account of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

VII. ADMINISTRATION OF JUSTICE

A. Rehabilitation of the justice systems

67. The existence of an independent judiciary is a prerequisite for the realization of the human rights recognized in national legislation and international norms. It is a guarantee for the foreign investment that the Democratic Republic of the Congo will need in the coming years. Wide-ranging reform of the judiciary is needed. In that regard, the Special Rapporteur draws the Government's attention to the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) adopted at the Round Table Meeting of Chief Justices held in The Hague on 25 and 26 November 2002.

68. As emphasized by the Special Rapporteur in her previous reports, the Congolese justice system is far from meeting the minimum required standards. In the words of the memorandum sent by the Independent Union of Judges of the Democratic Republic of the Congo to the Special Rapporteur: "Judges in the Democratic Republic of the Congo are not immune to the many ills that are eroding Congolese society at large: i.e. corruption, carelessness, lack of accountability and discipline, not to mention human and general moral values. Congolese society needs to be rapidly and thoroughly overhauled in order to win back the confidence of the people."

69. There have been a number of positive developments over the last few months to which attention should be drawn. These include the adoption of decree No. 3/0337 of 25 November 2003, on the organization of the judiciary, pursuant to Inter-Congolese Dialogue resolution No. DIC/CPJ/07, and following decree No. 144 of 6 November 1998, removing 315 judges from office, which was signed by the President of the Republic. The representatives for the 315 judges that the Special Rapporteur met said that the judges' removal from office had led to their disappearance from civil life. They have demanded compensation for the injury sustained.

70. In that regard, the Special Rapporteur underscores the importance of the Supreme Council of the Judiciary, which exists to guarantee the independence of the judiciary and is the only organ competent to discipline judges. It is crucial that the Council's independence and authority be safeguarded.

71. In her interim report, the Special Rapporteur described the state of the justice system in Ituri, which was in disarray. Thanks to the efforts of the European Union, the Assistance Fund for French Cooperation and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the judicial system in Ituri is now operational. Bunia prison has begun working again, thanks to support from the Assistance Fund for French Cooperation. In January 2004, judges appointed by the transitional Government were installed in Bunia. The Ituri police force has 70 officers who have been given training by MONUC. These are positive signs that the system of justice in the region is beginning to work. It is worth recalling that the collapse of the justice system was one of the reasons for the eruption of inter-ethnic conflict in 1999. The number of courts in Ituri is likely to increase in the future, since it is difficult for one court to cater for the legal needs of an entire district with a surface area of 64,345 km² and a population of around 3 million.

72. A strike by Congolese judges took place between October and the end of December 2003. Representatives of the strikers told the Special Rapporteur that they were striking in favour of real independence for the judiciary. They believe that such independence is not possible without absolute security of office, an effective Council of the Judiciary and higher salaries for judges (currently in the \$12-\$40 range).

73. The Government is sure to face wage claims from civil servants. Experience in other countries shows that priority must be given to judges. In addition to higher salaries for judges, a subject currently being discussed by a parliamentary committee, a law on the status of judges must be enacted as a matter of urgency. Reform of the justice system also implies better trained judges. The National Administration and Law School, which operated for a short while during the 1960s, should be reopened.

74. The Special Rapporteur appreciates the support that the international community has lent to reform of the judiciary. The European Union initiative of dispatching a delegation of national and international experts to conduct an organizational audit of the judiciary in the Democratic Republic of the Congo is a welcome move.

75. Since the highest authorities in the State acknowledge that corruption is a deep-rooted problem in Congolese society, the Special Rapporteur encourages the Congolese Government to prepare the ground for the country's accession to the United Nations Convention against Corruption.

B. Situation in prisons and detention centres

76. Crime generally goes unpunished in the Democratic Republic of the Congo and arbitrary detention is practised on a wide scale. Since the State is unable to administer justice, there is a growing tendency for the parties concerned to take justice into their own hands (see also chapter V). When applied to the administration of justice, this tendency is reflected in the continued use of unlawful places of detention.

77. According to the information supplied to the Special Rapporteur by the sub-office of the Office of the High Commissioner for Human Rights at Goma, there are still punishment cells (*cachots*) in the Kivus. In North Kivu, punishment cells (*cachots*) have been discovered at Macha, (Sake) Mushaki, Masisi Centre, Ufamandu and Rutchuru; in Goma, they have been found at Mount Goma Jomba; and in South Kivu, in the areas of Numbi, Shanye Kahanga Shagala, Sanzi Kalehe, Beni and Butembo, close to the Congolese News Agency. The Mai-Mai in the North are said to use underground punishment cells (*cachots*) as places of detention.

78. These punishment cells (*cachots*) are normally gunners' dugouts that are used as arms caches. They are between 80 and 150 cm deep, 200 cm long and 50 to 150 cm wide. Even though they are intended for the military, civilians are often detained in them. In the cells (*cachots*), detention conditions are inhuman and torture is practised.

79. Most prisons date from the colonial period and are in a very advanced state of decay. The State is unable to guarantee food for prisoners. Most of them are fed by their families or by humanitarian NGOs. At Kindu, the prisoners told the Special Rapporteur that they were forced to eat rats. Buluo prison had no running water.

80. Given the state of the prisons, the standard minimum rules on the separation of male and female, minor and adult, and petty and serious offenders are not respected and, owing to the shortage of resources, detainees who are taken ill and need specialized care are not transferred to hospital in time. As a result, several detainees have died from a lack of proper medical care. Established norms, particularly rules 22 and 26 of the Standard Minimum Rules for the Treatment of Prisoners and principle 24 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment adopted by the General Assembly by its resolution 43/173 of 9 December 1988, are not respected.

81. Special attention needs to be paid to the situation of women in prisons. At Bafwasende, two rapes at a police station have been reported. Two male detainees raped a 14-year-old girl who had been put in the same cell.

82. The perimeters surrounding most prisons are not sound enough to make them secure. Escapes are commonplace. All the detainees convicted in the trial following the events in Kisangani in May 2002 have escaped from prison. On 24 December 2003, there was a mass breakout from Buluo prison. According to reports sent to the Special Rapporteur, more than 100 prisoners escaped while an army battalion was on guard outside the prison.

83. It was in this context that President Kabila signed a decree on 15 April 2003 granting an amnesty to all detainees. As the Special Rapporteur hinted in her interim report, implementation of the decree has been somewhat slow. Some people still in prison, notably at the Kinshasa Penitentiary and Correctional Centre, were convicted by the Military Court, which did not meet the conditions required to guarantee the right to a fair trial and did not meet international standards. In spite of intervention by Sergio Vieira de Mello, the late High Commissioner for Human Rights, and the Special Rapporteur, the 66 detainees that the Military Court convicted in January 2003 of assassinating the late President Kabila are still in prison. Charles Alamba, the attorney who prosecuted them, has been cited for human rights violations in many reports produced by human rights NGOs, and he is the subject of some grave allegations.

VIII. SITUATION OF VULNERABLE GROUPS

84. The Congolese people have suffered terribly in years of armed conflict. Entire population groups are at risk. United Nations agencies and international NGOs have announced that, to protect and to supply the needs of the population, by the end of 2003, they would need \$187 million, of which some \$84 million would go on food for vulnerable groups.

A. Children

85. In her interim report, the Special Rapporteur drew attention to the dramatic situation of children in the Democratic Republic of the Congo. In the present report, she returns to the question of children associated with armed groups.

86. Progress in legislation was mentioned in the Special Rapporteur's interim report to the General Assembly. During her visit, the Special Rapporteur was able to take stock of what little progress has been made towards the effective implementation of legislative measures.

87. Some NGOs told the Special Rapporteur that recruitment of child soldiers was continuing. A large number of child soldiers are stationed at the military camp close to Isiro/Matari airport, where child soldiers are still being recruited.

88. The interviews the Special Rapporteur had with child soldiers in Bunia and Kindu showed that most had suffered ill-treatment and torture. The majority of girls had been subjected to sexual violence. The children's accounts of warfare are terrifying: placed on the front lines of the fighting, they were forced to kill, rape and pillage. They saw and often took part in scenes of terrible savagery, such as cannibalism. The children that the Special Rapporteur met at Kindu, who had been recruited by the Mai-Mai, had been initiated into war using fetishist rituals that involved cannibalism. To force them into such conduct, children were subjected to severe corporal punishment, by their superiors. Adults and children were often under the influence of drugs and alcohol.

89. The war stripped these children, who were already traumatized by their experiences, of their childhood. Girls became mothers to children born of their sexual enslavement; some have contracted AIDS. All the children that the Special Rapporteur met said that they wanted to go to school in an area other than the one in which they had fought.

90. The Special Rapporteur believes that the Government must act quickly to implement a demobilization strategy for child soldiers. There are projects financed by the United Nations Development Programme for that purpose. It is not easy for child soldiers to go back to a normal life; many have lost their parents and some risk being rejected by their communities. Special measures are therefore needed to make it easier for child soldiers to attend school. It is worth noting that the Democratic Republic of the Congo is among the 25 countries that the United Nations has rated as having the lowest rates of school enrolment (more than 4.5 million children do not attend school).

91. The Special Rapporteur appreciates the support the international community has lent to the creation of programmes for the rehabilitation of child soldiers, including, in particular, the programme launched by the United States Department of Labor in December 2003. According to the International Labour Organization (ILO) Convention (No. 182) concerning the Worst Forms of Child Labour, members are called upon to assist one another in eliminating forced labour, the worst form of which is association with armed groups.

B. Women

92. Several women's associations, in Lubumbashi and elsewhere, have told the Special Rapporteur about the difficulties they face when they try to take part in political life through a political party, and have expressed the desire to become involved in political life through

community organizations. The Special Rapporteur regards it as absolutely vital to implement the terms of the Pretoria Agreement, which quotes a figure of 30 per cent for representation of women in transitional institutions. Efforts should be made to ensure that such representation takes the form that women themselves would like to see.

93. During her three separate stays in the Democratic Republic of the Congo in 2003, the Special Rapporteur was able to meet a number of female victims of sexual violence. As mentioned in her previous reports, women have been subjected to great cruelty during rapes. Most raped women are physically mutilated. On 4 November 2003, at Kindu, a 13-year-old girl was raped by three Mai-Mai in turn and was whipped by a fourth. Those acts of brutality caused severe infections in and around the buttocks and vagina. The victim's parents wish to take legal proceedings against those responsible for this vicious attack, who claimed that they could even have killed the girl, since nothing would happen to them. In Maniema, an enclave with neither water nor electricity, the Special Rapporteur was told that there had been 1,524 cases of sexual violence between August 2001 and July 2003. The Special Rapporteur notes a strong reluctance on the part of judges to put rapists on trial and punish them.

94. The Special Rapporteur met several women who had been repeatedly raped after being abducted by various armed groups. Most have serious illnesses and are rejected by their families, often as a result of pressure from their communities. The Special Rapporteur considers it absolutely vital for the victims to receive reparation that includes compensation, satisfaction and guarantees of non-recurrence. Full reparation for harm suffered by victims of massive human rights violations is the only way to guarantee their reintegration into society.

95. The Special Rapporteur is pleased that the programme on sexual violence against women and children in the Democratic Republic of the Congo, an initiative designed to prevent violence and to respond to victims' needs, is nearing fruition. She hopes that the programme budget, which is estimated at \$30.3 million, will be made available soon, given the need to get the programme up and running.

C. Indigenous peoples

96. The Special Rapporteur notes that the Batwa pygmies are not represented in political life or civil society but are the targets of human rights violations. In Maniema, she was able to meet representatives of pygmies living in the Kabambare, Kailo, Kasongo and Kibombo areas and was told of the grave human rights violations committed against them. She also received reports from pygmies living in Kinshasa.

97. Minority indigenous peoples continue to be subjected to large-scale acts of discrimination of all kinds by the population. They are among the first victims of massive human rights violations. The events in Mambasa have been mentioned in previous reports. Pygmy women are raped by the Bantu, often in the presence of their own husbands. Pygmy women employed by the Bantu are treated like slaves. The Batwa are also discriminated against, indeed marginalized, by the population and have no access to education, health or housing. According to the

information the Special Rapporteur received, the lack of civil registration records and the non-registration of children born to pygmies are not due to the effects of the war or to administrative incompetence, but rather to the treatment meted out to the pygmies.

98. The Special Rapporteur believes that the Government should act swiftly to ratify ILO Convention (No. 169) concerning Indigenous and Tribal Peoples and that it should take action in the areas of health, housing, education and employment to improve the lives of pygmies, while as far as possible preserving their traditional way of life and culture.

D. Persons with HIV/AIDS

99. Half of the patients in hospital in the Democratic Republic of the Congo have AIDS; the number of people with AIDS is currently estimated at more than 1.3 million. In some regions, the HIV-positive rate is estimated at between 17 and 24 per cent, but no detailed study on HIV prevalence has been carried out in the east of the country. The doctors who treat female victims of sexual violence believe that if the women agreed to be tested, the recorded HIV-positive rate would rise sharply.

100. According to the director of the national AIDS control programme, more than 60 per cent of Congolese in the 15-39 age group risk contracting the disease by 2010; infection occurs at a very early age, around 10, 11, 13 or 14 years, and the prevalence of the pandemic among persons in the 15-40 age group is 15 to 19 per cent higher than in other countries.

101. The Special Rapporteur welcomes the adoption of the national multisector programme to combat HIV/AIDS, together with the formation, inside the armed forces and the national police force, of sectoral HIV/AIDS control committees. The programme seeks to increase awareness of the disease and to improve blood transfusion safety, diagnosis and treatment of sexually transmitted diseases. An estimated \$130 million is needed each year for AIDS sufferers.

102. The fact that Médecins sans frontières has begun to treat patients is a welcome step. This NGO has launched a free treatment programme, using anti-retroviral drugs, for HIV/AIDS sufferers in Bukavu, an environment that is not yet stable.

103. Taking anti-retroviral drugs is a real challenge for sufferers. Given the social stigma surrounding HIV/AIDS, few sufferers are willing to fight the disease. Several individuals told the Special Rapporteur that it is difficult for a person with AIDS to lead a normal life in the Democratic Republic of the Congo.

104. The Special Rapporteur is particularly concerned by the fate of women who become infected with HIV or develop AIDS after being subjected to sexual violence. Because of their illness, they risk being punished or harassed. They are continuously discriminated against and stigmatized.

105. The Special Rapporteur recommends that the international community and the Government give serious consideration to the question of discrimination against persons with HIV/AIDS. She recommends that the Government implement the guidelines adopted at the

Second International Consultation meeting on HIV/AIDS and Human Rights, which was held at Geneva from 23 to 25 September 1996 and jointly organized by the Office of the High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

E. The poor

106. One of the paradoxes about the Democratic Republic of the Congo is that, although it is one of the world's richest countries in natural resources, its population suffers from ingrained poverty.

107. The years of conflict have left a profound mark on the country and destroyed its agricultural infrastructure. The total number of people suffering from malnutrition is 17 million, i.e. two thirds of the population. Thirty per cent suffer from severe malnutrition. The worst affected are those living in the east of the country, especially women and children. According to a survey conducted in 2003 in the equatorial zone, people there are living on less than \$0.10 per person per day, 85 per cent of the population do not have access to proper food, and 80 per cent have no access to medical care. The lack of vaccination coverage is responsible for a resurgence in epidemics, while 95 per cent of the population have no access to the media.

108. The Congolese people are entitled to benefit from their country's natural resources, which have been plundered. The Special Rapporteur therefore recommends that the Government implement the recommendations of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, with a view to increasing civil society's share of public revenue and establishing a fund for the fair distribution to the Congolese people of income from the illegal exploitation of natural resources.

IX. CONCLUSIONS AND RECOMMENDATIONS

109. **The Special Rapporteur recommends that all parties to the conflict in the Democratic Republic of the Congo should:**

- (a) Put an end to all military activities, including support for the armed groups which are their allies;**
- (b) Respect the obligations relating to the implementation of the Transitional Constitution;**
- (c) Implement the Bujumbura agreements of June 2003;**
- (d) Respect the rights of women and take special measures to protect women and children who are victims of sexual violence;**
- (e) Immediately cease recruiting and using children in violation of international law and provide information on the measures taken to put an end to such practices;**

(f) Take account, during the post-conflict phase, of the specific needs of women and girl children, particularly those forced to participate in abuses by armed groups;

(g) Prevent a situation arising which might create movements of refugees and displaced persons, and take all necessary measures to create conditions for the voluntary return of all refugees and displaced persons;

(h) Allow free access to all areas to verify allegations of massive violations of human rights and of humanitarian law and cooperate with mechanisms for the protection of human rights;

(i) Ensure the security and freedom of movement of the staff of the United Nations and guarantee unhindered access by humanitarian personnel and by the entire population.

110. The Government of the Democratic Republic of the Congo should:

(a) Implement the Constitution and create the necessary conditions for a real democratic process, including by adopting the laws necessary for a successful transition;

(b) Comply with all the obligations incumbent on it under the international instruments relating to human rights and, to that end, continue to cooperate with the mechanisms for the protection of human rights;

(c) Take all necessary measures to eliminate the climate of impunity, in particular by pursuing the reform of justice in order to make it effective and by putting an end to the insecurity among the civil population;

(d) Cooperate with the International Criminal Court and with the International Criminal Tribunal for Rwanda;

(e) Take the necessary measures to ensure the effective application of the amnesty decree of 15 April 2003, except with regard to the crime of genocide, war crimes and crimes against humanity;

(f) Continue to reform military justice, and take steps to abolish the War Council and review the cases tried by that Council and by the Military Court, including the trials of persons accused of being involved in the assassination of the former President of the Democratic Republic of the Congo;

(g) Close unauthorized detention centres;

(h) Reinststate the moratorium on the death penalty and gradually abolish capital punishment;

- (i) Take all necessary measures to protect children;**
- (j) Take all necessary measures to prevent discrimination against persons affected by HIV and those with AIDS;**
- (k) Put an end to all forms of discrimination against the Batwa indigenous people.**

111. The international community should:

- (a) Continue to provide assistance for the transition in the Democratic Republic of the Congo;**
- (b) Take a more active part in the question of impunity as it relates to the massive violations of human rights committed prior to 2002;**
- (c) Help the Government to devise effective strategies for the protection of refugees, displaced persons and other vulnerable groups;**
- (d) Continue to consider the question of the illegal exploitation of natural resources with a view to creating an effective redistribution mechanism that will benefit deprived Congolese population groups.**
