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**ADVISORY SERVICES AND TECHNICAL COOPERATION
IN THE FIELD OF HUMAN RIGHTS**

**Report submitted by the independent expert on the situation
of human rights in the Democratic Republic of the Congo,
Mr. Titinga Frédéric Pacéré***

* This report is being transmitted late because the independent expert was waiting for important information, relating in particular to the constitutional referendum held on 18 and 19 December 2005, which he wished to incorporate.

Summary

The mandate of the independent expert, appointed on 26 July 2004 by the Chairperson of the Commission on Human Rights, was renewed on 21 April 2005 by Commission resolution 2005/85. The independent expert undertook two missions to the Democratic Republic of the Congo in 2004, the first from 22 August to 2 September, prior to submitting his oral report to the General Assembly at its fifty-ninth session, and the second from 9 to 18 November, when he travelled to the eastern part of the country, visiting Bukavu and Goma, in South Kivu and North Kivu respectively. The independent expert returned to the Democratic Republic of the Congo from 16 to 27 August 2005, visiting, in addition to Kinshasa, the sensitive region of Ituri. The independent expert had intended to pay a further visit to the country in late 2005, but the schedules of the relevant authorities - who were all immersed in the process leading up to the constitutional referendum held on 18 and 19 December 2005 and its consequences - eventually prevented him from travelling.

In the light of his meetings in situ, the information he has received and the analyses he has made, the independent expert has arrived at the following assessment.

The human rights situation continues to be a matter of concern throughout the Democratic Republic of the Congo, especially in the eastern regions (Ituri, North Kivu and South Kivu) and in northern Katanga, where militias and other armed groups, both Congolese and foreign, as well as the Armed Forces of the Democratic Republic of the Congo (FARDC) and the Mai-Mai, are committing atrocities and other massive human rights violations with impunity. Massacres of civilians, pillage, mass rape of women and girls and summary executions have, among other things, seriously undermined the Transitional Government's efforts to improve the situation.

The precarious circumstances of unpaid or underpaid civil servants and public officials, the climate of impunity, and the threats, harassment and killings to which journalists and human rights defenders are exposed foment unrest and jeopardize the prospects for the restoration of peace.

The main sources of concern include the lack of consensus on joint management of the transitional period and the steady deterioration of law and order in Ituri (Orientale province) following repeated attacks by the armed militias. The lack of an independent judiciary and the control exercised by the executive branch over the judiciary and judicial decisions are also regrettable. Other problems include insecurity, the situation of women and children, the trafficking and illegal exploitation of natural resources and other violations of fundamental rights.

To remedy the situation, the following action needs to be taken:

- Speed up the disarmament of the Forces démocratiques de libération du Rwanda (FDLR), the Interahamwe, the “Rastas” and their Mai-Mai allies, and their unconditional departure from Congolese territory;

- In the case of the Ministry of the Interior and the Independent Electoral Commission, adopt all necessary measures to permit the active involvement of all shades of political opinion in the democratic process as a contribution to social peace;
- Appeal to law enforcement agencies to stop the practice noted in 2005 of suppressing rallies and other demonstrations;
- Respect civil liberties throughout the electoral process and during future elections; establish mechanisms to combat the culture of impunity and to ensure the effective functioning of the Joint Commission on Good Governance, so as to counter and eradicate corruption and embezzlement of the salaries of public officials and the pay of soldiers and police officers;
- In the case of the Government, promote an independent judiciary and ensure the independence of the judicial system, chiefly by revising the Law on the Status of Judges and the Law on the Organization and Functioning of the Higher Council of the Judiciary, and by endowing the judicial system with a budget that will guarantee its financial independence;
- In the case of the Minister of Social Affairs, the Minister of Human Rights and the Minister of the Interior, in collaboration with the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR), speed up the return of internally displaced persons and refugees.

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Introduction

1. In paragraph 7 of 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 in the Democratic Republic of the Congo and to verify that its obligations in that field were being fulfilled.
2. On 21 April 2005, the independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/120).
3. In its resolution 2005/282, the Economic and Social Council approved the Commission's decision: (a) to extend the mandate of the independent expert for one year and request the Secretary-General to provide all necessary assistance to enable him to fulfil his mandate; (b) to request the independent expert to submit a progress report to the General Assembly at its sixtieth session and to report to the Commission at its sixty-second session; and (c) to renew its request to the Secretary-General that he should provide advisory services to the Democratic Republic of the Congo in the field of human rights.
4. The independent expert submitted his progress report to the General Assembly at its sixtieth session.
5. The present report, submitted to the Commission at its sixty-second session, is based on the above-mentioned resolutions, on information transmitted regularly to the independent expert by the Office of the United Nations High Commissioner for Human Rights, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and representatives of institutions, churches, non-governmental organizations (NGOs), political parties and associations, and on information gathered during his recent mission to the country in August 2005. The report reflects information received up to 10 January 2006.
6. On a third trip to the Democratic Republic of the Congo from 16 to 27 August 2005, the independent expert visited Kinshasa and Bunia (Ituri region).
7. In Kinshasa, the independent expert had talks with the country's authorities, particularly members of the Government and Parliament, the civilian and military judicial authorities, the Special Representative of the Secretary-General for the Democratic Republic of the Congo, members of the diplomatic corps, heads of agencies of the United Nations system, representatives of international NGOs, leaders of political parties, religious leaders and members of national NGOs working in the area of human rights.
8. In Bunia, the independent expert had talks with representatives of the Government and MONUC, heads of local offices of agencies of the United Nations system, representatives of international NGOs, civilian and military judges, commanders of the armed forces and police chiefs, and members of civil society. He also visited the central prison and the holding cell at the police station.

9. It emerged from these meetings and discussions that while the electoral process is being given special attention, insecurity, impunity and serious human rights violations continue to give cause for concern.

10. The independent expert has decided to deal with the following matters in this report:

- (a) The constitutional referendum;
- (b) Insecurity;
- (c) Massive human rights violations;
- (d) Impunity and justice.

11. The independent expert also carried out other activities related to his mandate: he expressed opinions to the Government and replied to human rights communications dealing with matters such as insecurity, the disarming and reintegration of militias, justice, the fight against impunity and ratification of international treaties. Following the massacres perpetrated during the night of 9/10 July 2005 in the village of Ntulumamba in Kivu, the independent expert issued a joint appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women to the government authorities and MONUC. With regard to the electoral process, the independent expert took the opportunity during his mission to offer suggestions and make proposals to the Minister of the Interior and members of the so-called “radical” opposition.

12. As part of the technical and legal assistance component of his mandate, the independent expert sent a memorandum on 11 January 2006 to the Government of the Democratic Republic of the Congo containing analyses of the human rights situation in the country and recommendations. He focused on 21 points in the areas addressed, including the massacres and human rights violations perpetrated in May 2005 in South Kivu and the suppression of the demonstrations of 30 June 2005, cases of murder and assassination, illegal exploitation of resources, the situation of children, insecurity, the elections, population displacement, the management of public demonstrations, the administration of justice, the case of children associated with the armed forces and armed groups, intercommunal strife, international justice, etc.

I. STAGE REACHED IN THE TRANSITION

A. Institutional and political developments

13. During the session of Parliament that adjourned on 4 July 2005, a number of laws were approved, in particular:

- (a) The draft Constitution, formally adopted on 16 May 2005 and officially handed over by the President of the National Assembly, Mr. Olivier Kamitatu, to President Joseph Kabila in the presence of the sponsor of the Global and All-Inclusive Agreement on the Transition, the President of the Republic of South Africa, Mr. Thabo Mbeki;

(b) A six-month extension of the transitional period, approved on 17 June 2005 by the National Assembly and the Senate;

(c) The Referendum Act, promulgated by President Kabila on 23 June 2005.

14. More generally, a number of major institutional developments occurred.

15. On 12 October 2005, the Democratic Republic of the Congo signed the Chemical Weapons Convention.

16. On 15 October 2005, the public information campaign on the draft Constitution was officially launched by the Independent Electoral Commission.

17. On 17 October 2005, the teachers who had been on strike since 5 September officially suspended their action following negotiations, the results of which have fallen short of expectations; the Government was given until 31 December to act on the platform of demands put forward by the teachers' unions. In the meantime, the Government has awarded every teacher a bonus of 6,000 Congolese francs (13 United States dollars).

18. On 20 October 2005, the Government adopted emergency measures in the Council of Ministers on the security of persons and property in order to address escalating insecurity and urban banditry in Kinshasa.

19. On 31 October 2005, the Independent Electoral Commission published statistics showing that 19,262,541 persons had already registered, while identification and registration operations were still under way in the provinces of Bandundu and Équateur.

20. Changes were made among the top officials of several local administrations; President Joseph Kabila appointed a representative of the opposition to the office of Governor of South Kivu, the previous incumbent having been suspended since 25 April 2005 for alleged mismanagement; in mid-November, the Minister of Higher Education was appointed Governor of Orientale province, and a representative of the Parti du peuple pour la reconstruction et la démocratie (PPRD) was appointed Governor of the city of Kinshasa.

21. Following the identification of numerous shortcomings in certain ministries, a technical restructuring operation was carried out on 18 November 2005.

22. Reacting to the reshuffle on 21 November 2005, the President of the Lower House of Parliament, Mr. Olivier Kamitatu, expressed indignation at the fact that no further action had been taken regarding the nine ministers questioned by the National Assembly about their management.

23. This technical reorganization of the Transitional Government was met with indifference by the general public, which, like the President of the National Assembly, deplored the fact that the "components and entities" system had once again prevailed.

24. In December 2005, at the request of the Independent Electoral Commission, the two Chambers of Parliament responded favourably to the latter's request for a second extension of the transitional period; as a result of this extension, the transition now runs from 1 January to 30 June 2006.
25. The anti-corruption operation "Clean hands" launched by the Presidency in October 2005 led to the arrest of several high-ranking revenue service officials on charges of embezzlement.
26. With regard to the current legislative agenda, it should be noted that Parliament has before it two pieces of legislation of great importance for the country's future and for the forthcoming elections: the Electoral Bill and the Bill on the Organization and Functioning of the Higher Council of the Judiciary (Conseil supérieur de la magistrature).
27. On 19 December 2005, President Joseph Kabila promulgated the Amnesty Law for acts of war, political offences and crimes of opinion adopted by the National Assembly on 29 November, which amnesties "all Congolese" for "acts of war, political offences and crimes of opinion" committed between August 1996 and June 2003; this legislation, which is important for the country's political and social future, provoked considerable public debate, given the implication that it might prove favourable to persons sentenced to death and others tried in connection with the assassination of President Laurent Désiré Kabila.
28. The Supreme Court, responding to a request by the Head of State for an advisory opinion, held that the murder of a Head of State is a crime under ordinary law and not a political offence; it followed that the provisions of the Amnesty Law were not applicable to those convicted of the murder of the deceased Head of State.
29. The President of the Union pour la démocratie et le progrès social (UDPS), Mr. Etienne Tshisekedi, announced on 2 January 2006 that his party intended to take part in the parliamentary and presidential elections scheduled for 2006; this statement was confirmed on 3 January in a request to the Independent Electoral Commission for the reopening of the identification and registration offices so that UDPS members could register to vote.
30. It may be recalled that this party did not take part in the electoral process and that its President called for a boycott of the constitutional referendum in a message to the Congolese people on 14 December 2005.

B. Constitutional referendum

31. An event of major importance in 2005 was the holding of a referendum on the draft Constitution to govern the life of the nation and its adoption by an overwhelming majority of voters (18 and 19 December).
32. It may be noted that in the 45 years since independence the Democratic Republic of the Congo has held two constitutional referenda (1964 and 1967), four presidential elections (1960, 1970, 1977 and 1984), five general parliamentary elections (1960, 1965, 1977, 1982 and 1987), two provincial parliamentary elections (1960 and 1965) and several district and local elections (1963, 1964, 1965, etc.).

33. The political regimes running these electoral processes were defined as pluralist from 1960 to 1965, when a number of political parties and pressure groups existed in the country, and monist and/or dictatorial from 1965 to 1997, when all political activity was controlled by a single ruling party, the Mouvement populaire de la révolution (MPR).
34. The situation was affected by a lack of reliable census data and of expertise in handling consultation systems coupled with a lack of infrastructure and proper equipment, not to mention qualified human resources.
35. During the current electoral process, the President of the Independent Electoral Commission, Father Malu-Malu, has held press briefings throughout the process to keep people informed of developments.
36. Voter registration and identification operations were launched on 20 June 2005. In insecure areas, particularly in the provinces of North Kivu, South Kivu and Maniema, they were delayed until 21 August, with many observers reporting considerable electoral interest despite some hitches, such as shortages of registration kits, lack of electric power and the remoteness of the identification centres in some areas.
37. During the month of October 2005, the Commission ran up against a number of security-related and logistical difficulties; on 22 October, for instance, four officials at the Voter Identification and Registration Centre in Kitovo (North Kivu) were abducted; two Commission officials were injured and six others arrested in Bunia on 23 October; the Commission's office in Kalemie (Katanga) was ransacked on 26 October.
38. Delays were due to a variety of factors: in the provinces of Équateur and Bandundu, for example, there were serious logistical problems such as a lack of electric power, no communication routes for the transport of electoral materials, shortages of voter cards, to which should be added the huge areas involved.
39. The President of the Commission confirmed at a press briefing on 14 December 2005 that the constitutional referendum would be held on 18 December from 6 a.m. to 5 p.m., with the possibility of an extension of polling the following day, 19 December, if extreme circumstances and extraordinary grounds so required.
40. By 17 December 2005, almost 25 million Congolese - out of an electorate estimated at between 22 and 30 million - were registered on the electoral rolls.
41. With regard to funding, pledges by donors amounted to US\$ 270 million of the electoral budget administered by the United Nations Development Programme (UNDP). However, according to the twentieth report by the Secretary-General of MONUC, the funds actually received amounted to only US\$ 184.4 million.
42. On 18 December 2005, the Congolese turned up at the country's polling stations to vote for or against the draft Constitution submitted for their approval. The polling stations were staffed by a five-member team consisting of a presiding officer, a secretary and three returning officers.

43. At a press briefing on the referendum, the Commission reported a high turnout of at least 60 per cent in 8 of the country's 11 provinces. It was generally agreed by observers and the international community that the polling had passed off peacefully.

44. However, some weaknesses and shortcomings were noted, in particular:

- The late opening of a number of polling stations, in many cases on security grounds. According to several sources, only 35,000 of the 40,000 polling stations could actually be opened for polling on 18 and 19 December;
- The regrettable death toll of some 10 persons, including a pregnant woman and a 4-month-old baby, in jostling incidents at Rutshuru, in North Kivu, within the precinct of the polling station;
- The attack on a polling station official at Mbuji-Mayi in Kasai-Oriental;
- The death of a baby being carried on its mother's back owing to crowd movements in Bukavu, South Kivu;
- The lack of observers at the polling stations in Tshela, Bas-Congo;
- The arrest in Goma on 18 December 2005 of a woman with a forged ballot paper;
- Non-participation of voters on account of lack of security in the polling in three villages in Buthue, North Kivu.

45. On 11 January 2006, the Commission published the final results of the constitutional referendum: 61.97 per cent of the 25,021,703 registered voters took part in the referendum; 83.31 per cent of the votes cast were in favour and only 15.69 per cent were against.

46. Apart from the incidents reported, the referendum passed off peacefully according to a number of observers. The European Union expressed satisfaction through its Commissioner for Development and Humanitarian Aid, Mr. Louis Michel, at the mobilization and participation of the population in the constitutional referendum. It should be noted that more than 80,000 soldiers and over 70 per cent of MONUC's military personnel were mobilized for the occasion.

C. Dialogue among political actors involved in the transition

47. During the transition process, political actors have adopted divergent and at times even conflicting positions.

48. No agreements were reached between the Parti du peuple pour la reconstruction et la démocratie (PPRD), the UDPS and the Parti lumumbiste unifié (PALU) on the question of appointing some of their leaders to high-ranking posts in the Administration.

49. The decision to extend the transitional period beyond 30 June 2005 has had the effect of hardening opposing positions, approaches and attitudes.

50. To preserve the fragile, hard-won peace, the political actors should opt for dialogue in order to prevent the situation from deteriorating.

D. Rights of the Democratic Republic of the Congo and international justice

51. On 19 December 2005, the International Court of Justice (ICJ) handed down its Judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*.

52. The operative provisions of the Judgment, which has the status of *res judicata*, state in particular that the Court:

53. “*Finds* that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter’s territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention;

54. *Finds* that the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law;

55. *Finds* that the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law;

56. *Finds* that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused;”.

57. Mr. Okello Oryem, the Ugandan Minister of State for Foreign Affairs in charge of International Affairs, announced that a team had been set up to negotiate with the Congolese authorities the terms of the financial compensation payable by his country to the Democratic Republic of the Congo pursuant to the ICJ Judgment of 19 December 2005.

E. Disarmament and reintegration

58. Considerable progress has been made in the disarmament and community reintegration programme: 15,607 combatants belonging to a variety of armed forces and groups, including 4,395 children, have been registered and 6,300 weapons confiscated. Coordination between by State authorities, political and judicial action and MONUC has improved.

59. A “Bicycles for Weapons” campaign conducted in Katanga from April to June 2005 by a Congolese NGO called “Paix et Réconciliation” (PAREC) resulted in the recovery of 3,601 combat weapons, which were handed over to the military authorities on 7 July.

60. On 14 October 2005 an agreement was signed between the United States Agency for International Development (USAID) and the Commission nationale de désarmement, de démobilisation et de réinsertion (CONADER) on the reintegration into the economy of 11,200 demobilized combatants from Ituri, an operation costing US\$ 6,436,693 and involving infrastructure repairs, vocational training and revenue-generating activities.

61. In October 2005, 8,000 combatants in Malemba-Nkulu, northern Katanga, including many child soldiers, voluntarily laid down their arms, saying they wished to return to civilian life.

62. According to the CONADER Coordinator, 481 former combatants seeking demobilization left the Bokala counselling centre on 8 November 2005.

63. On 9 November 2005, the commander of the MONUC forces welcomed 188 Mai-Mai militia members as candidates for integration into the army at the Rumangabo centre in North Kivu.

64. On 17 October 2005, around a hundred combatants from the Union des patriotes congolais (UPC) militia handed over their weapons to South African United Nations soldiers in Gina, 25 kilometres north of Bunia. The militia had been operating in the vicinity of the Mongwalu goldmines; the handover was motivated by fear of the deployment of the Armed Forces of the Democratic Republic of the Congo (FARDC).

65. As part of its campaign to disarm and reintegrate former combatants, the Congolese army intercepted and confiscated 400 weapons in Isiro (Orientale province), and some 50 weapons were recovered through the Kisangani army integration centre (Orientale province).

66. CONADER issued its first annual report on 9 November 2005. According to the report, CONADER succeeded in demobilizing 27,717 persons, compared with a target figure of 150,000, with a budget of US\$ 200,000, and created 6 of the planned 18 integrated brigades.

F. Assertion of the authority of the State and the judicial system

67. The eastern part of the country - especially Ituri, but also other areas known to be rich in ore deposits and precious metals - used to be beyond State control; recently, however, the pockets remaining outside the State’s authority have been steadily diminishing.

68. On his visit to Bunia in Ituri on 22 August 2005, the independent expert noticed this change when he left the city to visit a voter identification and registration centre. The presence of the FARDC forces and their joint operations with MONUC provide clear evidence of the existence of State authority, a fact borne out by the presence, at the administrative and political level, of the District Commissioner, whom the independent expert visited.

69. The independent expert found evidence of the State's presence and the exercise of its prerogatives in Ituri on 23 August 2005 when he attended trials of warlords. He attended the investigation hearing in the case brought by the Office of the Public Prosecutor against the individual known as "Chief Kawa", an armed militia leader notorious in particular for an incident in 2002, when he seized the then Minister for Human Rights, Professor Ntumba Luaba, and his delegation and held them hostage for several days.

70. These prosecutions are to be welcomed, since they restore public confidence in the fight against serious crime and impunity.

71. The root of the problem of impunity enjoyed by major perpetrators lies essentially at the political level. The actions of human rights defenders require determination and strong convictions in view of the real risks involved. At the national level, the joint efforts of the Ministry of Human Rights, the Human Rights Monitoring Centre (ONDH), and human rights institutions and NGOs - generally operating on a shoestring - are clearly to be welcomed and encouraged.

II. MASSIVE HUMAN RIGHTS VIOLATIONS

72. The independent expert noted massive human rights violations at different levels but also efforts to stamp them out.

73. Many observers of the situation in the country deplore the lack of discipline and respect for the authority; they criticize the conduct of low-ranking officials, who act unilaterally and without instructions, assume responsibility and inevitably make mistakes. The competent authorities should take charge, act firmly and ensure that orders are strictly obeyed, while respecting the rule of law.

A. Humanitarian situation

74. A number of events attest to the deteriorating security situation. An attack by the FARDC forces against the Mai-Mai leader "Commander Gédéon" triggered the flight and displacement of more than 160,000 people in northern Katanga; these people, who are now severely undernourished and suffering from mental trauma, have no access to humanitarian assistance.

75. On 27 December 2005, the Office for the Coordination of Humanitarian Affairs (BCAH/OCHA) in the Democratic Republic of the Congo reported the displacement of more than 10,000 civilians fleeing acts of plunder and violence during the joint FARDC-MONUC operations against the ADF (Allied Democratic Forces) rebels in North Kivu; according to the BCAH/OCHA spokesperson, 2,800 displaced households were registered, including 600 in Eringeti, 516 in Kokola, 337 in Mayi Moya, 88 in Mukoko and 358 in Oicha.

76. The World Food Programme (WFP) in Zambia has reported that more than 82,000 Congolese and Angolan refugees living in Zambia are threatened with famine in 2006; according to the WFP Director for Zambia, the Programme has received no donor contribution towards the sum of US\$ 8.5 million needed to pay for relief deliveries to these refugees during 2006.

B. Insecurity

77. Insecurity continues to provide the backdrop to human rights violations in the Democratic Republic of the Congo.

78. There is major and growing insecurity in Kinshasa and throughout the country; not a day goes by without reports of murders, burglaries, hold-ups, armed robberies or rapes of women and girls.

79. During the course of 2005, OHCHR and MONUC's Human Rights Division gathered a large amount of data on massive human rights violations perpetrated throughout the Democratic Republic of the Congo, including several violations of the right to life, such as the murder of three minors in Kahungwe (South Kivu) and a shopkeeper in Zumbe (Ituri), and the death of a woman killed by a policeman in Kananga (Kasaï-Occidental), etc.

80. According to the authorities in the territory of Walungu, 50 kilometres south-west of Bukavu, in South Kivu province, 2,500 persons were killed and 1,500 women raped during the first six months of 2005.

81. On 9 October 2005, 25 persons were killed and many injured in the village of Kanyola in attacks attributed to the "Rasta" group.

82. On 10 October 2005, Mr. Éric Balume, who lived in Géomètre Avenue in Goma, was killed by a policeman, who also murdered his supervisor, in the same circumstances, at the identification and registration centre in Goma's town hall.

83. On 14 October 2005, attacks on the Kasuo military camp, 90 kilometres south-west of Butembo (North Kivu), reportedly by combatants of Rwandan origin, resulted in three deaths and the displacement of 10,000 civilians, who fled to Kitsomboiro.

84. On Monday, 17 October 2005, in the territory of Masisi, Osso-Banyungu sector (North Kivu), 27-year-old Bulere Tikito, married with two children, was strangled by soldiers of the 86th brigade under the command of Colonel Bakuwe Muhima; his body was thrown into the River Lwashi. The soldiers who committed this crime have apparently been taken into custody.

85. On 20 October 2005, Lieutenant Dominique Mubabingwa died in Rutshuru (North Kivu), killed by soldiers assigned to guard the Administrator of the territory.

86. Also on 20 October, an attack by armed soldiers on a bus carrying a number of passengers left two dead and four wounded.

87. On 25 October 2005, in the territory of Masisi (North Kivu), Ms. Kenga was shot dead at around 8 p.m. by armed soldiers; on the same day, a demobilized soldier known as Zirimwabagabo murdered three members of his family (his father, wife and brother).

88. On the night of 2/3 November 2005, at about 1 a.m., the journalist François Kangundu Ngyke of the daily *La Référence Plus* newspaper published in Kinshasa, and his wife, Hélène Paka, were murdered in their home in the Mombele district, Limete commune, in Kinshasa.

89. On the night of 4/5 November 2005, Mr. Alexandre Mbuyi Tshibambe, adviser to the President of the Union pour la démocratie et le progrès social (UDPS), was murdered by unknown persons; his body was found in the back of his car, which was parked on Lumumba Boulevard in Kinshasa.

90. On 4 November 2005, three civilians were killed and seven houses burned down in Bingi, a village north of Goma.

91. On 15 November 2005, the charred bodies of Father François Kikudji and one of his parishioners, who had disappeared a month previously, were found during an extensive operation conducted by FARDC forces against the Mai-Mai militias in Dubie (northern Katanga); it should be noted that the priest had tried to persuade the Mai-Mai militia leader "Commander Gédéon", held responsible for many crimes against civilians, to lay down his arms.

92. On 7 December 2005, a World Food Programme employee was killed in Goma (North Kivu).

93. On 8 December 2005, the body of a murdered woman was found in Kasumbalesa in the province of Katanga.

94. On 11 December 2005, 10 FDLR militiamen were killed in clashes with FARDC forces in the villages of Ramba and Viralo in South Kivu; the Congolese army confiscated nine combat weapons.

95. On 17 December 2005, a 60-year-old man was summarily executed by FARDC personnel in Ituri. They mutilated the victim's body, cutting off his arms and testicles before executing him; the corpse was burned.

96. On 18 December 2005, a fire destroyed 17 homes in the Dipa district of Mbuji-Mayi, in Kasai-Oriental province; 2 women lost their lives and 110 people were made homeless.

97. On 27 December 2005, after a four-day offensive, the Congolese army announced the fall of the last ADF rebel base at Mwalika, in the Ruwenzori region (North Kivu); 86 Ugandan rebels, including the 2 leaders Parada and Amosi, were reportedly killed and 4 others taken prisoner. The FARDC forces lost 6 combatants and reported 16 wounded; 42 assault rifles, 2 machine guns and 1 anti-aircraft gun were seized. Extensive search operations have been launched to lay the basis for long-term security in the area.

98. Four persons out of six stopped by an angry crowd in connection with an investigation into the murder of a Protestant minister were massacred on 30 December 2005 in Kiwandja (North Kivu province); the lives of the other two persons were saved by the arrival of the police.

99. On 2 January 2006 the residence of Colonel Akilimali in Goma was attacked by some 30 armed men, who exchanged heavy fire for two hours with the Colonel's security guards before being driven away.

100. On 7 January 2006, in the village of Rukari, the convoy of Colonel Kasikila, commander of the 5th integrated brigade based in the territory of Rutshuru, was attacked by armed men. Several persons were wounded, including the Colonel's wife, 10 members of the brigade and several attackers. Two of the attackers lost their lives.

C. Sexual violence

101. Sexual harassment and violence continue throughout the Democratic Republic of the Congo, above all in the eastern parts of the country, where there is tension. A number of MONUC and OHCHR reports published in 2005 refer to several cases of rape, sexual abuse and harassment, for which often soldiers are responsible.

102. At the beginning of October 2005, in the region of Masisi (North Kivu), a 17-year-old girl was reported raped and subjected to genital mutilation by gunshot by two men in uniform.

103. On 13 October 2005, in Goma, a 17-year-old student in her third year of secondary school was raped by three soldiers who were guarding the municipal police holding cell.

104. A 30-year-old woman, the victim of sexual violence, was found on the banks of the Luena River (Bas-Congo) with her throat slit by her torturers.

105. On 11 October 2005, a 14-year-old girl was the victim of mass rape by seven street children from the Livulu district in the municipality of Lemba, Kinshasha.

106. On 19 October 2005, MONUC reported numerous cases of rape by Congolese soldiers, some of them committed against women and girls held in pretrial detention. A case in point is that of a 14-year-old girl, who, on 11 October 2005, was raped by three policemen in Kananga (Kasaï-Occidental). She is currently in hospital in Mbuji-Mayi (Kasaï-Oriental).

107. Other cases of rape were reported in Goma (North Kivu), Mbandaka (Equateur), Bukavu (South Kivu) and Kalemie (northern Katanga), where on 15 November 2005, a pregnant woman was raped by a soldier while she was being held in detention in a cell at the town hall, and another woman was raped by a lieutenant of a naval brigade stationed near Kalemie.

108. In Bokala (Equateur), on 6 November 2005, 12 women and 2 girls, aged 14 and 15 years, were raped by a group of FARDC soldiers at the CONADER centre.

109. In Yahisuli (Orientale province), on 29 October 2005, 10 girls were raped by 14 policemen and 2 former soldiers.

110. In Mbuji-Mayi (Kasaï-Oriental), on 24 November 2005, a woman was raped by a policeman in her home and in front of her husband. She was subsequently rejected by her husband, which had the effect of punishing the victim and giving the perpetrator of the offence the benefit of impunity.

111. On 16 December 2005, two women were raped by two members of the first integrated FARDC brigade in Yma (Orientale province).

112. On 31 December 2005, in Mbuji-Mayi (Kasaï-Oriental), a woman was raped by armed men. MONUC reported three other cases of rape in the same region. On the night of 29 and 30 December, two women from Luamwela, 22 km from Mbuji-Mayi, were kidnapped and then subjected to mass rape: the first woman was raped by three men and the second by eight others. In the latter case, the attackers inserted weapons into the woman's genitalia, ears and mouth, while beating her and threatening her.

113. It must be recognized that some effort has been made to prosecute the persons responsible for such antisocial conduct and to provide reparation for the victims.

114. For instance, under its programme to combat impunity and the joint programme of prevention and handling of sexual violence against women and children, financed by Belgian Cooperation, OHCHR supports a group of lawyers from Equateur province, who have been providing legal assistance to 49 victims of sexual violence committed in December 2003, in Songo-Mboyo, located in the north of Equateur province. These legal proceedings, which have been under way in the Mbandaka military court since 4 November 2005, are the first as regards the prosecution of international crimes.

115. Also in Equateur province, the same lawyers are assisting some 30 victims of sexual violence committed during the uprisings that took place on 3 and 4 July in Mbandaka.

116. Efforts have also been made in this area by OHCHR, in cooperation with the NGOs Global Rights and Réseau Action Femmes, to harmonize Congolese legislation relating to sexual violence. Draft laws resulting from a national workshop organized in March 2005 and amending certain provisions of the Congolese Criminal Code are currently before the National Assembly for adoption.

D. Situation of children

117. The situation of children is a cause of major concern.

118. In October 2005, police in Kananga (Kasaï-Occidental) arrested and detained 30 street children on the pretext of vagrancy. This move gave rise to several protests by the public and by NGOs, based on the view that the problem of street children cannot be resolved by depriving them of their liberty.

119. A father burned alive his five children in Moanda (Bas-Congo), only one of whom escaped death. He justified his conduct with a prophesy from his church according to which his children were sorcerers. Vigorous action must be taken against such manifestations of "spirituality", and against men who commit criminal acts against children, innocence and human rights.

120. On 31 December 2005, the mayor of Lubumbashi (Katanga province) issued an order prohibiting children from working in mines and established a monitoring brigade to protect children against all forms of abuse.

121. According to MONUC, on 28 December 2005, at least 677 children under the age of 18 were withdrawn from FARDC units and armed groups, including the Mai-Mai, in Ituri, North Kivu and South Kivu, Kasai-Oriental and Katanga.

122. There would seem to be no end to the tragic situation of children in the Democratic Republic of the Congo, which needs to be looked at from several angles, since children may be used in armed conflicts, abandoned on the streets, massacred, or accused of sorcery and of bringing their families bad luck.

123. There is an urgent need to raise awareness at the national level and to seek the assistance of the international community in protecting children, who are the future of the country and the whole world.

E. Refugees and internally displaced persons

124. According to the UNHCR office in Kinshasa, the Democratic Republic of the Congo ranks third in the world among countries of origin of refugees, with Congolese refugees totalling 462,000, just behind Sudan (730,600) and Afghanistan (2,084,900). According to UNHCR, there are still 150,000 Congolese refugees in the United Republic of Tanzania.

125. The problem of internally displaced persons is of great concern. For instance, the July 2005 figure for Ituri was 208,705 such persons. On 20 May 2005, more than 2,500 war-displaced persons were returned to their communities of origin on board the naval vessel M/B *Inga*, using the Congo River route from Kinshasa to Kisangani, via Mbandaka, Bumba and Lisala (Equateur).

126. On 12 October 2005, 152,000 Congolese refugees who had been in Tanzania for more than six years were repatriated on the joint initiative of UNHCR and the Democratic Republic of the Congo. October 2005 saw the launch of the operation for the voluntary repatriation of 6,100 Angolan refugees from Kahemba (Bandunu province). On 3 October 2005, almost 5,000 civilians returned home after fleeing hostilities between the FARDC forces and local armed groups in the Ituri district.

F. The prison situation

127. On 23 August 2005, the independent expert visited the police detention facility in Bunia, designed for around 30 detainees, but holding 130 people of all ages and condition (minors and adults, civilians and police) and at all stages of the judicial process (from police custody, to pretrial detention).

128. The prison situation throughout the Democratic Republic of the Congo is deplorable and inhumane, and conditions of detention are appalling. The Standard Minimum Rules for the Treatment of Prisoners are hardly observed: there is no decent food, no health care, no separation of categories of detainees or cells and a complete lack of hygiene. Despite the laudable efforts of NGOs such as Prison Fellowship International, resources are sorely lacking.

III. JUSTICE, IMPUNITY AND POSSIBLE SOLUTIONS

A. The internal justice system and impunity

129. Any evaluation of the functioning of justice must analyse the working conditions and resources of the Congolese judicial system.

130. The funds allocated to justice in the 2004 and 2005 budgets were negligible given the multitude of problems facing this crucial national sector, including dilapidated buildings, a shortage of magistrates and judges and unbearable working conditions.

131. The ratio of judicial personnel to the total population is very low. If the number of strictly judicial personnel is divided by the number of inhabitants, the result is a ratio of 0.000027, which is extremely low. Likewise, if the number of judicial personnel actually assigned to the courts is divided by the country's surface area (estimated at 2,344,885 km²), the result is 0.0005 magistrates or judges for 1,000 inhabitants per square kilometre.

132. Judges' and magistrates' salaries range from US\$ 13 for a local magistrate to US\$ 30 for senior Supreme Court judges.

133. It should nevertheless be noted that substantial monthly bonuses ranging from US\$ 350 to US\$ 500 are paid to all judges and magistrates. These bonuses are 15 to 20 times higher than the salaries of some judicial officials. An equally important distinction must be drawn between impoverished rural magistrates working in extremely difficult conditions and judges in urban areas who are guaranteed a minimum salary (see annex II).

134. The independent expert noted that clerks of the court also act as bailiffs in the Democratic Republic of the Congo.

135. Judges and magistrates have complained about their meagre salaries; some have waited four or five years to receive a small advance. Such working conditions, leave them at the mercy of those appearing in court. The independent expert was told that, in some regions, judges and magistrates are driven to the court by defendants.

136. The financial independence of the judiciary is obviously vital for the proper functioning of the judicial system.

137. On 25 August 2005, the independent expert visited the High Military Court, the country's highest military court in Kinshasa, accompanied by the First President of the Court. The courtroom is simply a tent exposed to the elements.

138. Obviously in such conditions there is no "counterweight" to crime. Judges cannot assert themselves, still less pass independent, fair and equitable judgements. Nor can they be guaranteed protection if they ever question, arrest, try, convict or imprison a criminal or a warlord.

139. In the current climate, judges and magistrates are not free to take decisions and cannot escape political or other pressures.

140. The existence of an independent and impartial judiciary and an independent bar is an essential prerequisite for ensuring the protection of human rights and guaranteeing that there is no discrimination in the administration of justice.

141. The internal justice system is helpless and lacks resources. The solution currently indicated for functioning courts of law would be the International Criminal Court (ICC).

B. The International Criminal Court: severe limitations on combating impunity

142. The Office of the Prosecutor of the International Criminal Court (ICC) declared its intention to investigate the many crimes within its jurisdiction committed in the Democratic Republic of the Congo since 1 July 2002. A field office of the Prosecutor's Office has now been set up in Kinshasa and has begun its preliminary investigations.

143. It is clear from the foregoing that ICC alone cannot satisfy the need to try all the crimes and serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, its jurisdiction being limited to acts committed since the entry into force of the Rome Statute.

144. What is needed, therefore, is a mechanism that would guarantee not only the effective suppression of war crimes and crimes against humanity, but also the administration of justice and the fight against impunity in general.

C. Establishment of a special international criminal tribunal or mixed criminal chambers

145. In order to combat impunity, which is essential if peace is to be restored in the country and further crimes are to be prevented, the independent expert recommends the establishment of a special international tribunal or, failing that, mixed criminal chambers to try crimes committed since 1994, the year specified in United Nations resolutions for serious violations of humanitarian law.

146. Certain measures could be taken to reduce the costs of a special tribunal: it could sit within the country, somewhere near its centre, in order to keep down the costs of transporting defendants and witnesses.

147. The host State could be asked to consider providing premises and defraying certain costs: at least half the judges and three quarters of the judicial personnel would be nationals of the Democratic Republic of the Congo; and the host State could be responsible for appointing defence lawyers. Such matters would have to be settled under bilateral agreements.

148. Should it prove impossible to establish an international tribunal, in view of the fact that combating impunity and extremely serious crimes is unavoidable, consideration could be given to establishing mixed criminal chambers attached to the appeal courts, with the right of appeal (first appeal and cassation) before a competent chamber placed under the authority of the Supreme Court:

- (a) Chambers of first instance could be attached to five appeal courts, one in Kinshasa and the other four strategically located throughout the country;
- (b) Chambers of first instance could be composed of three judges (two national and one non-national, or vice versa);
- (c) Courts of appeal or cassation could be composed of three judges (two non-national and one national, or vice versa);
- (d) The Public Prosecutor's Office would also be organized and function according to the same criteria.

149. The institution, which could be known as the "Mixed Criminal Chamber", would be responsible for trying persons accused of acts of genocide or other serious violations of human rights and international humanitarian law committed on the territory of the Democratic Republic of the Congo, as well as citizens of the Democratic Republic of the Congo accused of committing such acts or violations on the territory of neighbouring States.

150. Such an institution would be more flexible and less costly should the establishment of a special international criminal tribunal prove unfeasible. It should nevertheless receive full support from the international community, given the country's current destitution.

151. The new mixed criminal chambers should also help to restore the country's judicial system (in terms of staff, training, equipment and living and working conditions).

IV. RECOMMENDATIONS

152. **The independent expert recommends to all the Congolese parties, whether or not signatories to the Global and All-Inclusive Agreement, that they should:**

- **Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration, national unity and patriotism; persuade the population to work for national construction, to reject discrimination in all its forms, and to combat defeatism, fatalism and despair;**
- **Recognize the need for all political actors to foster the culture of dialogue, and to reject violence or incitement to violence and ethnic hatred.**

153. **The independent expert recommends to the Government of National Unity and Transition that it should:**

- **Take all necessary measures to affirm and consolidate the State's authority throughout the country;**

- **Ensure the effective integration, reunification, reinforcement and equipment of the army and police;**
- **Improve the currently precarious and inadequate physical and intellectual conditions and equipment of institutions and employees of the State, especially the judiciary, so that they can respond effectively to the requirements of justice and the fight against impunity;**
- **Combat the trafficking and illegal exploitation of natural resources;**
- **Combat all the crimes that continue to be committed, particularly rape and sexual violence against women and children used as a weapon of war and arson of homes and property;**
- **Oppose the continuing use of children in armed conflicts; combat and disarm militias and privately-armed groups;**
- **Combat impunity which engenders crime;**
- **Work to enhance the status of women, protect them and help them to fulfil their potential;**
- **Dismiss from the Government and institutions all suspected perpetrators of crimes against humanity and serious human rights violations.**

154. **At the international level, the independent expert recommends that:**

(a) The international community should:

- **Support the transition in order to permit the establishment of the rule of law and a culture of lasting peace;**
- **Support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police;**
- **Increase support (in terms of staff, financial resources and equipment) for MONUC in order to enable it to support the Congolese armed forces and to meet the various challenges posed by the constant crime and unrest within the country and on its borders;**
- **Assist the field office of the Office of the High Commissioner for Human Rights in the Democratic Republic of the Congo in implementing its programmes and activities;**
- **Provide all necessary assistance to enable the independent expert to fulfil his mandate, in view of the vastness of the country and the many human rights areas covered by his mandate.**

(b) The Commission on Human Rights, the General Assembly, the Security Council and the Economic and Social Council should:

- Given the destitute state of the judicial system in the Democratic Republic of the Congo and the scale of the crimes perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, consider the establishment of mixed criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002.**

Annex I

JUDICIAL STAFF (AUDIT)*

Number of judges, prosecutors, magistrates, clerks of the court and other staff

A.	Judges and magistrates	375
B.	Prosecutors	<u>1 575</u>
		1 950
C.	Clerks and bailiffs	
	Kinshasa	453
	Interior	<u>576</u>
		1 029
D.	Prosecution clerks	
	Kinshasa	496
	Interior	<u>336</u>
		832
E.	Criminal investigation officers	
	Kinshasa	289
	Interior	<u>161</u>
		450
F.	Prison staff	
	Kinshasa	209
	Interior	<u>150</u>
		359
G.	Defence lawyers (City of Kinshasa)	
	Kinshasa-Gombe bar	620
	Kinshasa-Matete bar	<u>135</u>
		755

* Annex to the report on Congolese justice, coordinated by Professor Pierre Akele Adau, in connection with a preparatory support mission requested by UNDP in 1999, p. 39.

Annex II**MONTHLY SALARIES OF CONGOLESE JUDGES, PROSECUTORS AND
MAGISTRATES AS AT 15 MAY 2003***

	Congolese francs	United States dollars
Supreme Court of Justice First President	12 600	30
Office of the Attorney-General of the Republic Attorney-General	13 425	32
Court of Appeal First President	9 265	22
State Prosecution Service State Prosecutor	9 265	22
Court of major jurisdiction President	7 475	17.75
Prosecution service of major jurisdiction Public Prosecutor	12 175	29
Magistrates' courts Magistrates	5 990	14.26

* Report of Professor Joseph Mvioki, prepared as part of the Save the Children mission (May 2003), cited in the report of the organizational audit of the judiciary, conducted by the European Union, May 2004.

ANNEX III

Individuals and/or institutions that the independent expert met in August 2005

Kinshasa

The Minister for Human Rights

The Minister for Social Affairs

The Minister of the Interior

The Deputy Minister for Foreign Affairs

The President of the National Assembly

The President of the Senate

The Chairman of the National Human Rights Monitoring Centre

The Chairman of the Independent Electoral Commission

The Chairman of the Media Authority

The Chairman of the Truth and Reconciliation Commission

The Chairman of the Ethics and Anti-Corruption Commission

The Chairman of the Standing Committee on the Reform of Congolese Law (three meetings with the Minister of Justice were cancelled at the Ministry's request)

The First President of the Supreme Court

The First President of the High Military Court

The Attorney-General of the Republic

The Auditor-General of the Congolese armed forces

The Special Representative of the Secretary-General for the Democratic Republic of the Congo, Mr. William Swing, Chief of MONUC

The Director of the field office of the Office of the High Commissioner for Human Rights (several meetings with the office)

Ambassadors

Representatives responsible for technical cooperation and donors

The Director of the Human Rights Section (MONUC)

The Head of the Child Protection Section (MONUC)

Heads of the United Nations agencies

International organizations

The Executive Secretary of the Parti du peuple pour la reconstruction et la démocratie

The Executive Secretary of the Union pour la démocratie et le progrès social

The President of the Parti lumumbiste unifié

The Vice-President of the Forces novatrices pour l'union et la solidarité (FONUS)

The Head of the Catholic Church

The Head of the Protestant Church

The spiritual leader of the Kimbanguist Church

National organizations for the promotion and protection of human rights

Bunia (Ituri)

The District Commissioner

The President of the Court of Major Jurisdiction and the Public Prosecutor

The President of the Military Court and the Military Auditor

The Commander of the Congolese armed forces

The Commander of the Congolese National Police

The Commander of the Ituri Brigade (MONUC)

The Director of MONUC

The Human Rights and Child Protection Sections of MONUC

Non-governmental human rights organizations

Officers of defence lawyers' associations

Persons visited in the central prison and the police station holding cell
