Unofficial translation from French original

DEMOCRATIC REPUBLIC OF THE CONGO, 1993–2003

Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003

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Foreword

This report is the result of interviews with several hundred interlocutors, both Congolese and foreign, who witnessed atrocities in the country: it substantiates their accounts and reflects their aspirations for justice. No report however, can adequately describe the horrors experienced by the civilian population in Zaire, now the Democratic Republic of the Congo (DRC), where almost every single individual has an experience to narrate of suffering and loss. In some cases, victims became perpetrators, while perpetrators were themselves sometimes subjected to serious violations of human rights and international humanitarian law, in a cycle of violence that has not yet abated. The report is intended to be representative of the grave acts of violence that affected – directly or indirectly – a vast number of people living in the DRC. While it neither aims to establish individual responsibility, nor lay blame, the report – in full candour – reproduces the often shocking accounts by victims and witnesses of the tragedies they experienced. The report is intended as a first step towards the sometimes painful but nonetheless essential process of truth-telling after violent conflict.

This report makes an assessment of the justice system in the DRC, based on insights from various stakeholders in the justice sector, including those who were victims of its shortcomings. It presents a number of options to be considered by both Congolese and international actors in the difficult task of reforming the justice system, which faces multiple challenges. It calls for renewed Government commitment to ensure that justice becomes one of the fundamental pillars of Congolese democracy. Lastly, it looks to the future by identifying a number of paths that could be pursued by Congolese society to come to terms with its past, to fight impunity, and to face its contemporary challenges in a manner that prevents the re-occurrence of such atrocities.

Through their testimonies in this report, the Congolese people have demonstrated their commitment to truth and to justice. The ultimate impact of this project will depend on follow-up actions by the Government and the people of the DRC. While the primary responsibility to define and implement an approach to transitional justice lies with the Government and the people of the DRC, they deserve the support of the international community in this endeavour. The Office of the United Nations High Commissioner for Human Rights will remain a committed partner of the Democratic Republic of the Congo in the important quest for truly sustainable peace.

Navanethem Pillay
United Nations High Commissioner for Human Rights

EXECUTIVE SUMMARY

Background and mandate

1. The discovery by the United Nations Mission in the Democratic Republic of the Congo (MONUC) in late 2005 of three mass graves in North Kivu was a painful reminder that past gross human rights violations committed in the Democratic Republic of the Congo (DRC) had remained largely un-investigated and that those responsible had not been held accountable. Following a number of consultations within the UN Secretariat, an initial idea to "reactivate" the Secretary-General's 1997–1998 investigative Team[1] was abandoned in favour of a project with a broader mandate. Consultations between the Department of Peacekeeping Operations (DPKO), MONUC, the Office of the High Commissioner for Human Rights (OHCHR), the Department of Political Affairs (DPA), the Office of Legal Affairs (OLA) and the Office of the Secretary-General's Special Adviser on the Prevention of Genocide led to an agreement aimed at providing the Congolese authorities with tools needed to break the cycle of impunity. It was recommended that a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC[2] between March 1993 and June 2003[3] be conducted and, on the basis of the findings of the exercise, that an assessment be carried out of the existing capacities of the Congolese national justice system to address these violations and a series of options formulated for appropriate transitional justice mechanisms that would assist in combating the prevailing impunity in the DRC.

2. In his report of 13 June 2006 to the Security Council on the situation in the DRC, the Secretary-General indicated his intention to "dispatch a human rights team to the Democratic Republic of the Congo to conduct a mapping of the serious violations committed between 1993 and 2003".[4] This intention was reaffirmed in the two following reports of the Secretary-General of 21 September 2006 and 20 March 2007.[5] On 8 May 2007, the Secretary-General approved the Terms of Reference (ToR) of the Mapping Exercise, setting out the following three objectives:

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[1] *Report of the Secretary-General's Investigative Team on serious violations of human rights and international humanitarian law in the DRC* (S/1998/581).

[2] As the DRC was formerly known as "Zaire", this name may appear in this report for the period ending May 1997.

[3] March 1993 was chosen as the start date for the mapping exercise's remit because of the Ntoto market massacre in North Kivu, which triggered wider ethnic conflict in the province. June 2003 corresponds to the establishment of a transitional government of "national unity", made up of a Presidency and four Vice-Presidents representing the various political groupings, following the inter-Congolese talks at Sun City (South Africa) between the government, rebel groups, civil society and the different political parties.

[4] *Twenty-first report of the Secretary-General on MONUC* (S/2006/390), para. 54.

[5] *Twenty-second and twenty-third reports of the Secretary-General on MONUC* (S/2006/759 and S/2007/156 and Corr.1).

- Conduct a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.

- Assess the existing capacities within the national justice system to deal appropriately with such human rights violations that may be uncovered.

- Formulate a series of options aimed at assisting the Government of the DRC in identifying appropriate transitional justice mechanisms to deal with the legacy of these violations, in terms of truth, justice, reparation and reform, taking into account ongoing efforts by the DRC authorities, as well as the support of the international community.[6]

3. The Mapping Exercise was presented to President Joseph Kabila during the visit of the UN High Commissioner for Human Rights to the DRC in May 2007, and was well received. In its Resolution 1794 (2007) of December 2007, the UN Security Council requested the full support of the Congolese authorities for the OHCHR-initiated Mapping Exercise. On 30 June 2008, a letter was sent by High Commissioner Louise Arbour to President Kabila announcing the imminent arrival of the Mapping Team. The Mapping Exercise began officially on 17 July 2008 with the arrival of the Chief of the Mapping Team in Kinshasa. More than twenty human rights officers were deployed across the DRC between October 2008 and May 2009 to gather documents and information from witnesses to meet the three objectives defined in the ToR. The Congolese Government has expressed its support for the Mapping Exercise on a number of occasions, notably in the statement delivered by the Minister for Human Rights at the Special session of the Human Rights Council on the human rights situation in the East of the DRC in November 2008 and in various meetings between the Chief of the Mapping Exercise and the Justice and Human Rights Ministers.

Mapping Exercise

4. Mapping is based on a number of methodological premises.[7] A mapping exercise itself should be concerned not only with the violations themselves but also with the context(s) in which they were committed, either in a given region or across an entire country, as is the case here. Such an exercise requires various activities to be carried out, including the collection, analysis and assessment of information contained in multiple reports and documents from different sources, meetings and witness interviews, as well as consultation with field experts and consultants. However, a mapping exercise is not an end in itself. It remains a preliminary exercise leading to the formulation of transitional

[6] Article 1, ToR.

[7] The French translations of "mapping" – *cartographie*, *inventaire* or *état des lieux* (inventory) – fail to reflect accurately the scope of the mapping exercise's mandate, and it was decided by the team to retain the generic English term to designate this exercise in French.

justice mechanisms, be they judicial or not. It represents a fundamental step in enabling the identification of challenges, the assessment of needs and better targeting of interventions.

5. The ToR for this Mapping Exercise required the Team[8] to "start and complete this exercise as soon as possible […] to assist the new government with the tools to manage post-conflict processes".[9] The six-month deployment timeframe set by the Secretary-General for the Mapping Team, with the mandate of compiling an inventory of the most serious violations committed within the territory of the DRC over a ten-year period, imposed certain constraints in terms of the methodology to be used. It did not provide for in-depth investigations or gathering of evidence admissible in court, but rather "the basis for the formulation of initial hypotheses of investigation by giving a sense of the scale of violations, detecting patterns and identifying potential leads or sources of evidence".[10] Consequently, with regard to violations of human rights and international humanitarian law, the Mapping Exercise provides a description of the violation(s) and their location in time and space, the nature of the violation(s), the victims and their approximate number and the – often armed – group(s) to which the alleged perpetrators belong(ed). The exercise was carried out "chronologically and province by province".[11]

6. Given the scale of the violations committed in the ten years of conflict in the DRC, it was necessary to select from the most serious of these crimes. A gravity threshold[12] with a set of criteria enabling the Team to identify incidents of sufficient severity to be included in the final report was used for incident selection. These criteria fell into four categories: 1) nature of the crimes and violations linked to a given incident, 2) scale (number) of crimes and violations linked to an incident, and number of victims, 3) how the crimes and violations were committed and 4) impact of crimes and violations on communities, regions or the course of events.

7. Since the primary objective of the Mapping Exercise was to "gather basic information on incidents uncovered", the level of evidence required was naturally lesser than would be expected from a case brought before a criminal court. The question was therefore not one of being satisfied beyond reasonable doubt that a violation was committed, but rather of reasonably suspecting that the incident did occur. Reasonable suspicion is defined as "necessitating a reliable body of material consistent with other

[8] "Team" is used to designate the body of human rights specialists who led the Mapping Exercise investigations across the DRC. These specialists may also be designated "Mapping Exercise Teams" or "Mapping Teams".
[9] Article 2.3, ToR.
[10] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Rule-of-Law tools for post-conflict states: Prosecution initiatives*, United Nations, New York and Geneva, 2008, p.6.
[11] Article 4.2, ToR: "It should be carried out province by province, and in chronological order of events. It should gather basic information and not replace in-depth investigations into the incidents uncovered."
[12] The gravity threshold was developed by the International Criminal Court to identify "the most serious crimes for investigation". See, for example, Article 17(d)(1): Issues of admissibility under the Rome Statute of the International Criminal Court.

verified circumstances tending to show that an incident or event did happen.[13] Assessing the reliability of the information obtained was a two-stage process involving evaluation of the reliability and credibility of the source,[14] and then the validity and veracity of the information itself.[15]

8. Unlike some commissions of inquiry with a specific mandate to identify the perpetrators of violations and make them accountable for their actions, the objective of the Mapping Exercise was not to establish or to try to establish individual criminal responsibility of given actors, but rather to expose in a transparent way the seriousness of the violations committed, with the aim of encouraging an approach aimed at breaking the cycle of impunity and contributing to this. This decision is further explained by the fact that, in light of the methodology adopted and the level of evidence used in this Exercise, it would have been imprudent, and unjust, to seek to ascribe personal criminal responsibility to any given individual, which is first and foremost a matter for legal proceedings based on the appropriate level of evidence. The report does, however, identify the armed group(s) to which the alleged perpetrator(s) belong(ed), since it was essential to identify the groups allegedly involved in order to suggest proper legal characterizations for the conduct in question. Consequently, information on the identity of the alleged perpetrators of some of the crimes listed does not appear in this report but is held in the confidential project database submitted to the UN High Commissioner for Human Rights.[16] However, the identities of alleged perpetrators under warrant of arrest and those already sentenced for crimes listed in the report have been disclosed. It should also be noted that where political officials have assumed public positions encouraging or provoking the violations listed, their names have been cited in the sections relating to the political context.

9. Conducting a mapping exercise of the most serious violations of human rights and international humanitarian law committed in the DRC during the period under examination presented a number of challenges. In spite of the scale of extreme violence that characterises the violations in some of the country's regions, it was also necessary to take into consideration less serious violations in seemingly less affected regions in order to provide an overview of the entire country. With this in mind, the gravity threshold was adapted to each region. Investigating violations that occurred over ten years earlier was sometimes difficult due to the displacement of witnesses and victims and the passing of

[13] Another formulation would be reliable and consistent indications tending to show that the incident did happen.

[14] Reliability of the source was determined using several factors, including the nature, objectivity and professional standing of the source providing the information, the methodology used and the quality of prior information obtained from that source.

[15] The validity and authenticity of the information were evaluated through comparison with other data on the same incidents to ensure cohesion with other verified elements and circumstances.

[16] Article 4.3, ToR: "Sensitive information gathered during the mapping exercise should be stored and utilised according to the strictest standards of confidentiality. The team should develop a database for the purposes of the mapping exercise, access to which should be determined by the High Commissioner for Human Rights."

time. In some cases, violations that initially appeared to be isolated crimes turned out to be an integral part of waves of violence occurring in a given geographical location or within a given timeframe. It cannot be denied that *vis-à-vis* the frightening number of violations committed between 1993 and 2003, the sheer size of the country and difficulties accessing a number of sites, the Mapping Exercise remains necessarily incomplete and can in no case reconstruct the complexity of each situation or obtain justice for the victims. We state this with utmost regret.

10. The Mapping Exercise report contains descriptions of over 600 violent incidents having occurred within the territory of the DRC between March 1993 and June 2003. Each of these incidents points to the possible commission of gross violations of human rights and/or international humanitarian law. Each of the incidents listed is backed up by at least two independent sources identified in the report. As serious as they may be, uncorroborated incidents claimed by one single source are not included in this report. Over 1,500 documents relating to human rights violations committed during this period were gathered and analysed with a view to establishing an initial chronology by region of the main violent incidents reported. Only incidents meeting the gravity threshold in accordance with the methodology set out were considered. The in-field Mapping Teams then met with over 1,280 witnesses to corroborate or invalidate the violations listed in the chronology. During these interviews, information was also collected on previously undocumented crimes.

Implementation of the Mapping Exercise

11. Throughout the implementation of the Mapping Exercise, contacts were established with Congolese non-governmental organisations (NGOs) in order to obtain information, documents and reports on serious violations of human rights and international humanitarian law that occurred in the DRC during the period covered by the ToR. To this end, meetings were held with over 200 NGO representatives to present the Mapping Exercise and request their collaboration. Thanks to this collaboration, the Mapping Team had access to critical information, witnesses and reports pertaining to the violations committed between 1993 and 2003. Without the courageous and outstanding work of the Congolese NGOs during these ten years, documenting the many violations committed would have been incredibly difficult.

12. Meetings were also held with the Congolese authorities, in particular with the civilian and military judicial authorities across the country, government representatives, in particular the Ministers for Justice and Human Rights, and the government agencies responsible for judicial system reform.

13. Consultations were also held with the main partners of the Mapping Exercise [MONUC, United Nations Development Programme (UNDP)], diplomatic missions as well as actors involved in human rights and the fight against impunity in the DRC (notably UN organisations, international NGOs, religious groups and trade unions) to

explain the exercise and seek their collaboration. The project was warmly received by all and the collaboration fruitful.

14. The Mapping Exercise was rolled out in three successive phases:

- Phase one began with the arrival of the Chief of the Mapping Team in July 2008, and was dedicated to the recruitment of teams and to the collection, analysis and use of documents, both confidential and in the public domain, from existing information sources on the violations committed during the period under examination. Over 1,500 documents on this subject, some of them confidential, were obtained from many sources, including the United Nations, the Congolese Government, Congolese human rights organisations, major international human rights organisations, the national and international media and various NGOs (notably unions, religious groups, aid agencies and victims' associations). In addition, different national and international experts were consulted in order to open up new avenues of research, corroborate some of the information obtained and streamline the overall analysis of the situation.

- Phase two began on 17 October 2008 with the deployment of the field Teams to carry out the mandate in all provinces of the DRC from five field offices,[17] including all investigations, consultations and analyses necessary both to prepare the inventory of the most serious violations and also to assess the existing capacities of the Congolese judicial system to deal with this and formulate options for transitional justice mechanisms that could contribute to the fight against impunity. During this phase previously obtained information was verified in order to corroborate or invalidate that information with the aid of independent sources, while also obtaining new information on previously undocumented violations.

- Phase three began with the closure of the field offices on 15 May 2009 and was aimed at compiling all the information gathered and drafting the final report. During this period, regional consultations regarding transitional justice were held with civil society representatives in Bunia, Bukavu, Goma and Kinshasa. The final report was submitted to OHCHR on 15 June 2009 for review, comments and finalisation.

[17] The five field offices were at Bukavu (South Kivu), Goma (North Kivu), Kisangani (Orientale), Kalemie (Katanga) and Kinshasa. The Kisangani team moved to Bunia to cover the Ituri region. The Kalemie-based team covered the provinces of Maniema, Kasai Oriental and Kasai Occidental. The Kinshasa-based team covered the provinces of Kinshasa, Bas-Congo, Bandundu and Équateur.

I. Inventory of the most serious violations of human rights and international humanitarian law committed on the territory of the DRC between March 1993 and June 2003

15. The period covered by this report is probably one of the most tragic chapters in the recent history of the DRC. Indeed, this decade was marked by a string of major political crises, wars and multiple ethnic and regional conflicts that brought about the deaths of hundreds of thousands, if not millions, of people. Very few Congolese and foreign civilians living on the territory of the DRC managed to escape the violence, and were victims of murder, mutilation, rape, forced displacement, pillage, destruction of property or economic and social rights violations. Aside from its historical contribution to documenting these serious violations and fact-finding during this period, the ultimate purpose of this inventory is to provide the Congolese authorities with the elements they need to help them decide on the best approach to adopt to achieve justice for the many victims and fight widespread impunity for these crimes.

16. The Mapping Exercise report is presented chronologically, reflecting four key periods in the recent history of the DRC, each preceded by an introduction explaining the political and historical background in which the violations were committed. Each period is organised by provinces and sometimes subdivided into groups of victims and presents a description of the violations committed, the groups allegedly involved and the approximate number of victims.

A. March 1993–June 1996: Failure of the democratisation processes and regional crisis

17. The first period covers violations committed in the final years of the regime of President Mobutu and is marked by the failure of the democratisation process and the devastating consequences of the Rwandan genocide on the declining Zairian state, in particular in the provinces of North Kivu and South Kivu. During this period, 40 incidents were listed. The most serious violations of human rights and international humanitarian law documented, were concentrated for the most part in Katanga, North Kivu and in the city-province of Kinshasa.

B. July 1996–July 1998: First Congo War and the Alliance des forces démocratiques pour la libération du Congo-Zaire (AFDL) regime

18. The second period concerns violations allegedly committed during the First Congo War and the first year of the regime established by President Laurent-Désiré Kabila. With 238 listed incidents, this period has the greatest number of incidents in the whole of the decade under examination. The information available today points to the significant role of other countries in the First Congo War and their direct implication in

the war, which led to the overthrow of the Mobutu regime.[18] At the start of the period, serious violations were committed against Tutsi and Banyamulenge civilians,[19] principally in South Kivu. This period was then characterised by the apparently relentless pursuit and mass killing (104 reported incidents) of Hutu refugees, members of the former Armed Forces of Rwanda (later "ex-FAR") and militias implicated in the genocide of 1994 (Interahamwe), allegedly by the *Alliance des forces démocratiques pour la libération du Congo-Zaïre* (AFDL). A proportion of the AFDL's troops, arms and logistics were apparently supplied by the *Armée patriotique rwandaise* (APR), the Uganda People's Defence Force (UPDF) and by the *Forces armées burundaises* (FAB) throughout the Congolese territory. Hutu refugees, who it appears were often rounded up and used by the ex-FAR/Interahamwe as human shields during their flight, began a long trek across the country from east to west towards Angola, the Central African Republic or the Republic of the Congo. This period was also marked by serious attacks on other civilian populations in all provinces without exception, in particular allegedly by the *Forces armées zaïroises* (FAZ) retreating towards Kinshasa, the ex-FAR/Interahamwe driven back by the AFDL/APR and the Mayi-Mayi.[20]

C. August 1998–January 2000: Second Congo War

19. The third period concerns the inventory of violations committed between the start of the Second Congo War in August 1998, and the death of President Laurent-Désiré Kabila. This period includes 200 incidents and is characterised by the intervention on the territory of the DRC of the government armed forces of several countries, fighting alongside the *Forces armées congolaises* (FAC) (Zimbabwe, Angola and Namibia) or

[18] In an interview with *Washington Post* on 9 July 1997, Rwandan president Paul Kagame (then Defence Minister) recognised that Rwandan troops had played a key role in the ADFL campaign. According to President Kagame, the campaign strategy comprised three elements: *a* destroy the refugee camps, *b* destroy ex-FAR and Interahamwe structures based in and around the camps and *c* overthrow the Mobutu regime. According to the article, Rwanda had planned the rebellion and had participated in it by supplying arms, munitions and training facilities for Congolese rebel forces. According to Kagame, operations – in particular key operations – were directed by Rwandan mid-level commanders. "Rwandans Led Revolt in Congo", Washington Post, 9 July 1997. See also the interview with General James Kabarebe, the Rwandan chief military strategist of the ADFL, in the *Observatoire de l'Afrique Centrale*: "Kigali, Rwanda. Plus jamais le Congo", Vol. 6, No. 10, 3–9 March 2003. See also the televised interviews with the Ugandan and Rwandan presidents and General James Kabarebe explaining in detail their respective roles in the First Congo War, in "L'Afrique en morceaux", a documentary by Jihan El Tahri, Peter Chappell and Herve Chabalier, 100 minutes, produced by Canal Horizon, 2000.

[19] The term "Banyamulenge" came into popular use in the late 1960s to distinguish ethnic Tutsis historically based in South Kivu, the Banyamulenge, from those arriving from the 1960s onwards as refugees or economic migrants. Banyamulenge means "people of Malenge" and takes its name from a city in the Uvira territory with a very large Tutsi population. Over time, however, the use of the term Banyamulenge has become increasingly more generalised and has been used to designate all Zairian, Congolese and occasionally Rwandan Tutsis.

[20] In the DRC, the term Mayi-Mayi is used to designate groups of armed combatants resorting to specific magic rituals such as water ablutions ("Mayi" in Swahili) and carrying amulets prepared by witchdoctors, believed to make them invulnerable and protect them from ill fate. Present mainly in South Kivu and North Kivu, but also in other provinces, the various Mayi-Mayi groups included armed forces led by warlords, traditional tribal elders, village heads and local political leaders. The Mayi-Mayi lacked cohesion and the different groups allied themselves with various government groups and armed forces at different times.

against them, and also the involvement of multiple militia groups and the creation of a coalition under the banner of a new political and military movement, the *Rassemblement congolais pour la démocratie* (RCD), which would later split on several occasions. During this period the DRC was racked by numerous armed conflicts: "Some […] international, others internal and […] national conflicts that became internationalised. Participants in these conflicts include at least eight national armies and 21 irregular armed groups".[21] In spite of the signing of the Lusaka Ceasefire Agreement on 10 July 1999[22] by all the parties,[23] which called for the respect of international humanitarian law by all parties and the definitive withdrawal of all foreign forces from the national territory of the DRC, the fighting continued, as did the serious violations of human rights and international humanitarian law allegedly by all parties to the conflict. On 16 June 2000, the UN Security Council, in its Resolution 1304 (2000), called for all parties to cease hostilities and demanded that Rwanda and Uganda withdraw from the territory of the DRC. It was not until the signing of two new agreements with Rwanda (Pretoria Agreement) and Uganda (Luanda Agreement) in 2002, that these foreign forces began to withdraw from the country.[24]

20. This period was marked by attacks on civilians believed to be Tutsi, in particular in Kinshasa, Katanga, Orientale Province, East and Kasai Occidental, Maniema and North Kivu. Within the context of the war and the conflicts across the whole of the territory, civilian populations were broadly speaking the victims of serious violations of human rights and international humanitarian law allegedly by all parties in the conflicts and throughout the territory, but especially in North Kivu and South Kivu, Orientale Province (in particular in Ituri), Katanga, Équateur and also Bas-Congo.

D. January 2001–June 2003: Towards transition

21. Lastly, the final period lists 139 incidents describing the violations committed in spite of the gradual establishment of a ceasefire along the front line and the speeding up of peace negotiations in preparation for the start of the transition period on 30 June 2003. During this period, fighting that had shaken the province of Ituri, in particular the ethnic conflicts between the Lendu and the Hema, reached an unprecedented peak. The period was marked by clashes between the Forces armées congolaises (FAC) and the Mayi-Mayi forces in Katanga province. As in previous periods, the main victims of the parties involved in the conflict were civilian populations throughout the territory, particularly in Orientale Province, North Kivu, South Kivu, Maniema and Kasai Oriental provinces.

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[21] *Report of the Special Rapporteur on the situation of human rights in the DRC* (A/55/403), para. 15.

[22] S/1999/815, Annex.

[23] The following were party to the Agreement: Angola, Namibia, Uganda, Rwanda, the DRC and Zimbabwe. The Rassemblement congolais pour la démocratie (RDC) and the Mouvement de libération du Congo (MLC) rebel groups signed at a later date.

[24] *Pretoria Agreement of 31 July 2002 between the DRC and Rwanda*, Article 8, para. 3 (S/2002/914, Annex); *Luanda Agreement of 6 September 2002 between the DRC and Uganda,* Article 1 (available at www.droitcongolais.info/files/0426_accord of_6_September_2002_rdc-ouganda_r.pdf).

E. Legal classification of acts of violence committed in the DRC between March 1993 and June 2003

22. It must be stated that the vast majority of the 617 most serious incidents described in this report could, if investigated and proven in a judicial process, point to the commission of multiple violations of human rights but above all of international humanitarian law. It did not appear either appropriate or essential to classify in law each of the hundreds of violent incidents listed. It was therefore decided instead to identify the legal framework applicable to the main waves of violence and to point to the possible general legal classification of the incidents or groups of incidents reported.

War crimes

23. This term is generally used to refer to any serious breaches of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict, for which the perpetrators may be held criminally liable on an individual basis. Such crimes are derived primarily from the Geneva Conventions of 12 August 1949 and their Additional Protocols I and II of 1977, and the Hague Conventions of 1899 and 1907. Their most recent codification can be found in article 8 of the Rome Statute[25] of the International Criminal Court (ICC) of 1998.

24. The vast majority of incidents listed in this report could, if investigated and proven in a judicial process, point to the commission of prohibited acts such as murder, willfully causing great suffering, or serious injury to body or health, rape, intentional attacks on the civilian population, pillage, and unlawful and arbitrary destruction of civilian goods, including some which were essential to the survival of the civilian population. The vast majority of these acts were committed against protected persons, as defined in the Geneva Conventions, primarily people who did not take part in the hostilities, particularly civilian populations and those put out of combat. This applies in particular to people living in refugee camps, who constitute a civilian population that is not participating in the hostilities, in spite of the presence of military personnel among them in some cases. Finally, there is no doubt that the violent incidents listed in this report almost all fall within the scope of armed conflict, whether international in nature or not. The duration and intensity of the violent incidents described, and the apparent level of organisation of the groups involved, could lead to the conclusion that, with few exceptions, that this was an internal conflict and not simply domestic disturbances or tensions or criminal acts. In conclusion, the vast majority of violent incidents listed in this

[25] *Official documents of the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final documents* (United Nations publication, sales number: F.02.I.5), sect. A.

report are the result of armed conflict and if proven in a judicial process, point to the commission of war crimes as serious breaches of international humanitarian law.

Crimes against humanity

25. The definition of this term was codified in paragraph 1 of article 7 of the Rome Statute of the ICC. The notion encompasses crimes such as murder, extermination, rape, persecution and all other inhumane acts of a similar character (wilfully causing great suffering, or serious injury to body or to mental or physical health), committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", they constitute crimes against humanity.

26. This report shows that the vast majority of incidents listed, if investigated and proven in a judicial process, fall within the scope of widespread or systematic attacks, depicting multiple acts of large-scale violence, apparently carried out in an organised fashion and resulting in numerous victims. Most of these attacks were directed against non-combatant civilian populations consisting primarily of women and children. As a consequence, the vast majority of acts of violence perpetrated during these years, which formed part of various waves of reprisals and campaigns of persecution and pursuit of refugees, became collectively, a series of widespread and systematic attacks against civilian populations and could be found by a competent court to constitute crimes against humanity.

Crime of genocide

27. Since it was initially formulated in 1948, in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, the definition of the crime has remained substantially the same. It can be found in article 6 of the Rome Statute, which defines the crime of genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". The definition is followed by a series of acts representing serious violations of the right to life and the physical or mental integrity of the members of the group. The Convention also provides that not only the acts themselves are punishable, but also conspiracy to commit genocide, direct and public incitement to commit genocide, the attempt to commit genocide and complicity in genocide.[26] It is the specific intention to destroy an identified group either in whole or in part that distinguishes the crime of genocide from a crime against humanity.

28. The question of whether the numerous serious acts of violence committed against the Hutus (refugees and others) constitute crimes of genocide has attracted a significant degree of comment and to date remains unresolved. In practice, this question can only be decided by a court decision on the basis of evidence beyond all reasonable doubt. Two

[26] *Convention on the prevention and punishment of the crime of genocide*, art. 3.

separate reports by the United Nations, in 1997 and 1998, examined whether or not crimes of genocide had been committed against Hutu and other refugees in Zaire, subsequently the DRC. In both cases, the reports concluded that there were elements that might indicate that genocide had been committed but, in light of the shortage of information, the investigative Teams were not in a position to answer the question and requested that a more detailed investigation be carried out.[27] The Mapping Exercise also addressed this question in accordance with its ToR and made the following observations.

29. At the time of the incidents covered by this report, the Hutu population in Zaire, including refugees from Rwanda, constituted an ethnic group as defined in the aforementioned Convention. Several of the incidents listed suggest that multiple attacks targeted members of the Hutu ethnic group as such, and not only the persons responsible for the genocide committed in 1994 against the Tutsis in Rwanda and that no effort was allegedly made by the AFDL/APR to distinguish between Hutu members of the ex-FAR/Interahamwe and Hutu civilians, whether or not they were refugees.

30. The intention to destroy a group in part is sufficient to constitute a crime of genocide and the international courts have confirmed that the destruction of a group can be limited to a particular geographical area.[28] According to relevant jurisprudence, even if only a part of the Hutu population in Zaire was targeted and destroyed, it could nonetheless constitute a crime of genocide if this was the intention of the perpetrators.

31. Several incidents listed in this report, if investigated and judicially proven, point to circumstances and facts from which a court could infer the intention to destroy the Hutu ethnic group in the DRC in part, if these were established beyond all reasonable doubt.[29]The scale of the crimes and the large number of victims, probably several tens of thousands, all nationalities combined, are illustrated by the numerous incidents listed in the report (104 in all). The extensive use of edged weapons (primarily hammers) and the apparently systematic nature of the massacres of survivors after the camps had been taken suggests that the numerous deaths cannot be attributed to the hazards of war or seen as

[27] See the *Report from the joint mission tasked with investigating allegations of massacre and other violations of human rights in eastern Zaire* (currently the DRC) from September 1996 (A/51/942), par. 80, and the *Report of the Investigative Team of the Secretary General on serious violations of human rights and international humanitarian law in the DRC* (S/1998/581), par. 4.

[28] *Brdjanin*, ICTY (International Criminal Tribunal for the former Yugoslavia), Trial chamber, 1 September 2004, par. 703, *Krstić*, ICTY, Trial chamber, 2 August 2001, par. 590 and *Krstić*, Appeal chamber, 19 April 2004), par. 13; *Jelisić*, ICTY, Trial chamber, 14 December 1999, par. 8, which accepts that a geographical area can be limited "to a region or municipality".

[29] Among the factors, facts and circumstances used by the international courts to infer or deduce a genocidal intention are: the general context, the perpetration of other reprehensible acts systematically directed against the same group, the scale and number of atrocities committed, the fact of targeting certain victims systematically because of their membership of a particular group, the fact that the victims were massacred without regard to their age or gender, the consistent and methodological nature of the commission of acts, the existence of a genocidal plan or policy and the recurrence of destructive and discriminatory acts.

equating to collateral damage.[30] The majority of the victims were children, women, elderly people and the sick, who were often undernourished and posed no threat to the attacking forces.[31] Numerous serious attacks on the physical or mental integrity of members of the group were also committed, with a very high number of Hutus shot, raped, burnt or beaten. If proven, the incidents' revelation of what appears to be the systematic, methodological and premeditated nature of the attacks listed against the Hutus is also marked: these attacks took place in each location where refugees had allegedly been screened by the AFDL/APR over a vast area of the country.[32] The pursuit lasted for months, and on occasion, the humanitarian assistance intended for them was allegedly deliberately blocked, particularly in the Orientale province, thus depriving them of resources essential to their survival.[33] Thus the apparent systematic and widespread attacks described in this report reveal a number of inculpatory elements that, if proven before a competent court, could be characterized as crimes of genocide.

32. There are however a number of countervailaing factors that could lead a court to find that the requisite intent was lacking, and hence that the crime of genocide was not committed. First, it must be proven that the intent of the alleged perpetrators was to destroy a part of the Hutu ethnic group 'as such'. It does not suffice to prove that members of the group were targeted because they belonged to the group, or that there were deliberate killings of members of the group. Second, in the absence of direct evidence of intent to destroy the group, such intent can only be inferred from circumstantial facts and evidence, that is, from the conduct of the alleged perpetrator, if it is the only reasonable inference possible. Where an alternative inference can be drawn from the conduct of the alleged perpetrator, the clear 'intent to destroy' required is difficult to establish. A number of alternative explanations or inferences could be drawn from the conduct of the RPA/AFDL in attacking the camps in Zaire in 1996 to 1997. The intent underlying the killings could be deemed as collective retribution against Hutu civilians in Zaire suspected of involvement with the ex-FAR/Interahamwe, reinforced by

[30] See, for example, the cases of Lubarika and Muturule (20 October 1996), Kashusha (2 November 1996), Shanje (21 November 1996), the massive massacre on the Ulindi Bridge (5 February 1997), Osso (November 1996), Biriko (December 1996 – there were no armed elements at this location at the time of the attack).

[31] This emerges particularly in the incidents reported in the province of North Kivu in Kibumba (October 1996), Mugunga and Osso (November 1996), Hombo and Biriko (December 1996), Kashusha and Shanje (November 1996), in the province of South Kivu, in the province of Maniema in Tingi-Tingi and Lubutu (March 1997) and in the province of Équateur in Boende (April 1997).

[32] Such cases were confirmed in the province of North Kivu in Musekera, Rutshuru and Kiringa (October 1996), Mugogo and Kabaraza (November 1996), Hombo, Katoyi, Kausa, Kifuruka, Kinigi, Musenge, Mutiko and Nyakariba (December 1996) and Kibumba and Kabizo (April 1997), in Mushangwe (around August 1997), in South Kivu in Rushima and Luberizi (October 1996), Bwegera and Chimanga (November 1996), Mpwe (February 1997) and on the Shabunda-Kigulube road (February-April 1997), in the province of Orientale in Kisangani and Bengamisa (May and June 1997), in Maniema in Kalima (March 1997) and in Équateur in Boende (April 1997).

[33] The Investigative Team of the Secretary General concluded that the blockage of humanitarian assistance was systematic in nature and constituted a crime against humanity: see the *Report of the Investigative Team of the Secretary General on serious violations of human rights and international humanitarian law in the DRC* (S/1998/581), par. 95.

the RPA/AFDL's conviction that upon destroying the camps, all Hutu remaining in Zaire were in sympathy with the perpetrators of the 1994 genocide in Rwanda. Finally, facts which tend to show that the RPA/AFDL spared the lives, and in fact facilitated the return to Rwanda of very large numbers of Hutu militate against proving a clear intent to destroy the group. Additionally, whilst in general the killings did not spare women and children, it should be noted that in some places, particularly at the beginning of the first war in 1996, Hutu women and children were apparently separated from the men, and allegedly only the men were subsequently killed.[34]

33. In light of the competing considerations reviewed above, a full judicial investigation into the events that occurred in Zaire in 1996 to 1997 will be necessary, in order to permit a competent court to decide on the matter.

II. Inventory of specific acts of violence committed during the conflicts in the DRC

34. Given that the methodology used for the first section of the report would not enable full justice to be done to the numerous victims of specific acts of violence such as sexual violence and violence against children, nor adequately reflect the scale of the violence allegedly practised by all armed groups in the DRC, nor enable an analysis of the causes of some of the conflicts, it was decided at the beginning of the Exercise to devote a part of it to these subjects. This approach has helped to highlight the recurrent, widespread and systematic nature of these types of violation and enabled a brief analysis to be produced.

A. Inventory of acts of violence committed against women and sexual violence

35. This section highlights the fact that women and girls paid a particularly heavy price during the decade 1993-2003, primarily as a result of their socio-economic and cultural vulnerability, which fostered the forms of extreme violence to which they were subjected. Violence in the DRC was, in fact, accompanied by the apparent systematic use of rape and sexual assault allegedly by all combatant forces. This report highlights the apparently recurrent, widespread and systematic nature of these phenomena and concludes that the majority of the incidents of sexual violence reported, could if judicially proven, constitute offences and violations under domestic law, international human rights law, and international humanitarian law. Furthermore, the Mapping Team was able to report allegations of massive incidents of sexual violence that had only been documented to a limited extent or not documented at all, particularly the rape of Hutu refugee women and children in 1996 and 1997.

[34] This was confirmed in Mugunga (November 1996), in the province of North Kivu, and Kisangani (March 1997), in the province of Orientale.

36. This chapter emphasises the fact that the scale and gravity of sexual violence were primarily the result of the victims' lack of access to justice and the impunity that has reigned in recent decades, which has made women even more vulnerable than they already were. The phenomenon of sexual violence continues today as a result of this near-total impunity, even in areas where the fighting has ended; it has increased in those areas where fighting is still ongoing.

B. Inventory of acts of violence committed against children

37. This chapter shows that children did not escape the successive waves of violence that swept over the DRC, quite to the contrary: they were often its first victims. In fact, children are always affected when crimes under international law are committed against civilians, partly because they are particularly fragile and partly because violence takes away their first line of defence, namely their parents. Even when children are not direct victims themselves, the fact of seeing their parents killed or raped, their property pillaged and their homes set on fire leaves them deeply traumatised. Being displaced makes them more vulnerable to malnutrition and diseases. Their young age makes them the target of contemptible beliefs and superstitions, which claim, for example, that sexual relationships with children can treat certain diseases or make rapists invincible. Lastly, war generally deprives them of their right to education and thus often compromises their long-term future.[35]

38. The decade 1993-2003 was also marked by the widespread use by all those involved in the conflicts[36] of children associated with armed groups and forces ("child soldiers"), making the DRC one of the countries in the world where this phenomenon is most common. In the military camps, these children suffered indescribable violence, including murder, rape, torture, and cruel, inhuman and degrading treatment, and were deprived of all their rights. The report highlights the fact that child soldiers were sometimes also forced to commit very serious violations themselves but that in terms of justice, it is essential first to pursue the political and military leaders responsible for the crimes committed by the child soldiers placed under their command, based on the principle of hierarchical superiority and the person with most responsibility, as well as investigating to establish to what extent the children were forced to act or influenced by their adult superiors.

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[35] According to the World Bank, in 2003 the DRC was one of the five countries in the world with the largest number of children not in school. Figure cited in: Watch List, *The Impact of Armed Conflict on Children in the DRC*, 2003. See also the *Report of the Committee on the Rights of the Child, 50th session, final observations: DRC* (CRC/C/COD/CO/2).

[36] See in particular the *Report of the Secretary General on children and armed conflict* (A/58/546–S/2003/1053 and Corr.1 and 2), which cites 12 parties to the conflict: the Forces armées congolaises (FAC), the Rassemblement congolais pour la démocratie–Goma (RCD-G), the Mouvement national de libération du Congo (MLC), the Rassemblement congolais pour la démocratie/Kisangani–Mouvement de libération (RCD-K/ML), the Rassemblement congolais pour la démocratie–National (RCD-N), the Hema militia [Union des patriotes congolais (UPC) and Parti pour l'unité et la sauvegarde du Congo (PUSIC)], the Lendu/Ngiti militia [Front nationaliste and intégrationniste (FNI) and Forces de résistance patriotique en Ituri (FPRI)], the Forces armées populaires congolaises (FAPC), the Mayi-Mayi, the Mudundu-40, the Forces de Masunzu and the ex-Forces armées rwandaises and Interahamwe (ex-FAR /Interahamwe).

39. The chapter notes that the recruitment and use of child soldiers is ongoing,[37] and emphasises the fact that the FAC (now FARDC) have been cited since 2002 in every report of the Secretary General on children and armed conflict for having recruited and used child soldiers.[38]

C. Inventory of acts of violence linked to the exploitation of natural resources

40. Finally, based on the view that it was not possible to draw up an inventory of the most serious violations committed in the DRC between 1993 and 2003 without examining, if only briefly, the role played by the exploitation of natural resources in the commission of these crimes, chapter III shows that, in a significant number of events, the struggle between different armed groups for control of the DRC's natural assets served as a backdrop for numerous violations directed against civilian populations.

41. In this chapter, the link between the exploitation of natural resources and alleged violations of human rights and international humanitarian law has been analysed from three different points of view: firstly, alleged violations of human rights and international humanitarian law committed by those involved in the conflict as part of the fight to gain access to and control the richest areas; secondly, the alleged violations committed by armed groups during their long-term occupation of an economically rich area; and thirdly, the huge profits generated from the exploitation of natural resources, which have apparently driven and helped fund the conflict and which are themselves a source and cause of the most serious violations.

42. The report concludes that the abundance of natural resources in the DRC and the absence of regulation and responsibility in this sector has created a particular dynamic that has clearly contributed directly to widespread violations and to their perpetuation and that both domestic and foreign state-owned or private companies could bear some responsibility for these crimes having been committed.

III. Assessment of the capacity of the national justice system to deal with the serious violations identified

43. One important aspect of the ToR for the Mapping Exercise was the assessment of the resources available to the Congolese justice system to deal with the numerous crimes committed, particularly during the decade 1993-2003, but also afterwards. This involved analysing the extent to which the national justice system could deal adequately with the serious crimes described in the inventory in order to begin to combat the problem of

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[37] Press statement by Mr Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, Mission in the DRC from 5 to 15 October 2009.

[38] *Report of the Secretary General on children and armed conflict* (S/2002/1299, A/58/546-S/2003/1053 and Corr.1 and 2, A/59/695-S/2005/72, A/61/529-S/2006/826 and Corr.1, A/62/609-S/2007/757 and A/63/785-S/2009/158 and Corr.1).

impunity. To do this, an analysis was carried out of the domestic and international law applicable in this area, as well as the courts with jurisdiction to prosecute and try the alleged perpetrators of the serious violations of human rights and international humanitarian law committed in the DRC. A study of Congolese case law on crimes under international law was also carried out to examine domestic judicial practice in relation to war crimes and crimes against humanity. This study helped to gain a better understanding of the legal, logistical, structural and political challenges and obstacles that characterise criminal proceedings in relation to crimes under international law in the DRC.

44. Around 200 actors in the judicial system, academics and national experts in criminal and international law were interviewed by the Mapping Team.[39] Hundreds of documents from different sources were obtained and analysed, in particular laws, judicial decisions and various reports dealing with the justice system.

45**.** The analysis of the legal framework applicable in the DRC to deal with the most serious violations of human rights and international humanitarian law committed between March 1993 and June 2003 shows that there is a significant body of legal norms and provisions both in international law and domestic law, which is sufficient to begin to tackle impunity in respect of the crimes documented in this report. The DRC is bound by the major conventions in respect of human rights and international humanitarian law and has been party to the majority of them since well before the conflicts of the 1990s.[40] Whilst the lack of jurisdiction of the civilian courts for crimes under international law may be regrettable, it should be noted that the military courts have jurisdiction to try anyone responsible for crimes under international law committed within the DRC between 1993 and 2003. Finally, the Constitution of February 2006 contains strong provisions that protect human rights and fundamental judicial guarantees, and incorporates the main international standards in this area.

46. Whilst the legal framework appears adequate, the review of Congolese case law identified only about a dozen cases since 2003 where the Congolese courts had dealt with incidents classified as war crimes or crimes against humanity. Furthermore, only two of these cases concerned incidents covered by this report, namely the Ankoro case,[41] a

[39] Primarily meetings with the civilian and military judicial authorities in various public prosecutor's offices, Government representatives and national bodies tasked with the reform of the judicial system.

[40] With the exception of Additional Protocol II (1977) to the Geneva Conventions of 1949, ratified in 2002, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 1996 (Resolution 39/46 of the General Assembly, appendix), and of course the Rome Statute of the ICC, signed in 2000 and ratified in 2002.

[41] In the Ankoro case, the investigations carried out by MONUC revealed that violent confrontations between the FAC and the Mayi-Mayi, in November 2002, had caused the deaths of at least 70 people. Thousands of homes were set on fire and destroyed, and hundreds of public and private buildings including hospitals, schools and churches were pillaged. In December 2002, 28 FAC soldiers were arrested and handed over to the military judicial authorities. Seven of them were charged with crimes against humanity. The trial was delayed for many months to enable the creation of a commission of enquiry of officers able to judge a lieutenant-colonel; in the end, the court acquitted six of the defendants and sentenced the seventh to 20 months' imprisonment for murder. The Public Prosecutor's Office, having been satisfied by the arrest, did not lodge an appeal (RMP 004/03/MMV/NMB–RP 01/2003, RMP 0046/04/NMB–RP 02/2004).

judgment of 20 December 2004 on the incidents that took place in Katanga in 2002, and the Milobs case,[42] a judgment of 19 February 2007 on the incidents that occurred in Ituri in May 2003.

47. It is undeniable that some Judges of the Congolese military justice system, inspired by the DRC's ratification of the Rome Statute of the ICC in 2002 and supported by the international community, rendered a small number of courageous decisions in relation to crimes under international law.[43] Although they braved physical and psychological barriers as well as apparent political pressure to do so, all the cases studied nonetheless illustrate the significant operational limitations of the military justice system. Botched and dubious investigations, poorly drafted or inadequately substantiated court documents, irrational decisions, violations of due process and various instances of interference by the civilian and military authorities in the judicial process, are apparent defects that characterised some of these cases, particularly those pertaining to Ankoro, Kahwa Mandro, Kilwa and Katamisi.

48. The lack of political will to prosecute serious violations of international humanitarian law committed in the DRC is also confirmed by the fact that the vast majority of decisions handed down came about as the result of constant pressure from MONUC and NGOs.

49. This apparent lack of dynamism in the Congolese justice system in handling war crimes and crimes against humanity, particularly in respect of those primarily responsible for them, can only encourage the commission of new serious violations of human rights and international humanitarian law, which continue to this day.

Inability of the Congolese justice system to deal adequately with crimes under international law committed on its territory

50. The problem in the DRC is less one of inadequate provisions in the criminal law than a failure to apply them. Although, as the Report on the current state of the justice sector in the DRC confirms, the Congolese judicial system enjoys "a solid legal tradition inherited from colonisation, as still evidenced by the quality of certain senior judges",[44] it

[42] In the Milobs case, in May 2003, members of the Front nationaliste et intégrationniste (FNI), a militia that was running wild in Ituri, tortured and killed two soldiers on a peace monitoring mission for MONUC. Seven members of the militia were charged with war crimes over three years after the incidents. On 19 February 2007, the court at the military garrison in Bunia sentenced six of the defendants to life imprisonment for war crimes under the Congolese Military Penal Code and article 8 of the Rome Statute of the ICC (RP 103/2006).

[43] This applied in the Songo Mboyo (2006), Milobs (2007), Gety and Bavi (2007), Lifumba Waka (2008), Gédéon Kyungu (2009) and Walikale (2009) cases**.**

[44] The mission tasked with analysing the judicial system was the result of an initiative of the European Commission acting jointly with Belgium, France, the United Kingdom of Great Britain and Northern Ireland, MONUC, the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR). See *Status report*, Organisational audit of the Justice System in the DRC, May 2004, p. 7.

has been widely noted that the Congolese judicial system faces acute and overwhelming problems.[45] Having been significantly weakened under the Mobutu regime, it suffered severely as a result of the various conflicts that ravaged the DRC for over ten years.

51. The research and analyses carried out by the Mapping Team, and the working sessions and consultation with key figures in the Congolese judicial system, both at an institutional level and within civil society, confirmed that there are significant structural and chronic shortcomings in all parts of the Congolese justice system. Even successful criminal prosecutions are inadequate if the State does not take the necessary steps to ensure that prisoners do not escape.[46] The fact that the military courts and tribunals have exclusive jurisdiction over crimes under international law also poses a problem with regard to the punishment of serious violations of human rights and international humanitarian law.[47] Their lack of capacity and lack of independence are illustrated by the extremely low number of cases they have tried and the way they have handled such cases.

52. The allegedly high level of involvement of foreign nationals in serious violations of international humanitarian law committed in the DRC also causes a problem for the Congolese courts. Although they have jurisdiction in respect of any person, whether or not they are Congolese, they have limited means of ensuring that suspects residing outside the country appear in court. Cooperation on extradition from certain States remains unlikely, given the limited ability of Congolese military courts to guarantee fair and impartial trials and respect the fundamental rights of defendants, in particular since the death penalty is still in effect in Congolese law.

53. To sum up, the following elements lead to the conclusion that the capacity of the Congolese justice system to bring an end to impunity for crimes under international law are severely limited: (i) the limited engagement of the Congolese authorities in strengthening the justice sector, (ii) the very limited resources allocated to the judicial system for tackling impunity, (iii) the acceptance and tolerance of multiple incidents of interference by the political and military authorities in court cases that confirm the system's lack of independence, (iv) the inadequacy of the military justice system, which has sole jurisdiction for dealing with the numerous crimes under international law often

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[45] See in particular the *Report from the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, addendum, Mission in the DRC*, (A/HRC/8/4/Add.2) (hereinafter referred to as the "Despouy report").

[46] "The disastrous state of the prison system, perhaps the weakest link in the judicial chain, means that it is easy for suspects and convicted prisoners to escape; this includes some very influential figures, who "sometimes "escape" with the connivance of the authorities." *Combined report of seven thematic special procedures on Technical Assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (A/HRC/10/59), par. 63. According to figures from MONUC, during the second half of 2006 only, at least 429 prisoners, including some who had been convicted for serious violations of human rights, escaped from prisons throughout the DRC. See *Despouy report* (A/HRC/8/4/Add.2), par. 55.

[47] Military justice should "be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalised criminal court". Commission on Human Rights (E/CN.4/2005/102/Add.1), Principle 29.

committed by the security forces, (v) inadequate judicial practice and jurisprudence in this area, (vi) and non-compliance with international principles in relation to minors and the inadequacy of the judicial system for cases of rape. Given the multitude of possible crimes under international law committed, the effectiveness and independence of the judicial system is crucial in light of the large number of senior figures in the armed groups involved in various alleged violations of human rights and international humanitarian law.

IV. Formulation of options in the field of transitional justice mechanisms that could help to combat impunity in the DRC.

54. The transitional justice mandate with which the Mapping Team has been entrusted consists of providing various options in order to help the Government of the DRC to deal with the many serious human rights and international humanitarian law violations committed on its territory, with a view to achieving "truth, justice, reparation and reform".[48] This mandate also echoes the demands that Congolese society has made of its leaders, initially at the Inter-Congolese Dialogue which resulted in the global and inclusive Agreement concerning transition in the Democratic Republic of the Congo in Sun City (South Africa) in 2002[49] and, subsequently, at the Conference on Peace, Security and Development which was held in January 2008 in North Kivu and South Kivu. This mandate has also received firm support from the Security Council, which has asked MONUC "to help [the Government] to create and apply a transitional justice strategy".[50]

55. In order to carry out this mission, the Mapping Team has examined recent experience in DRC in terms of transitional justice and has identified existing issues in this area, particularly in the light of the conclusions of the evaluation of the judicial system that are presented in this report. The experience of the Truth and Reconciliation Commission (TRC) that operated in the DRC during the transition, and current reforms of the justice and security sectors have also been reviewed. In addition, there were consultations with Congolese experts, particularly judicial authorities and representatives from the Ministries of Justice and Human Rights, international experts in this field, local and international human rights and criminal law specialists and victims' associations. As there was a convincing need for national approval of transitional justice measures if these were to be effective, several round-table meetings were also organised, in order to gather views and opinions from civil society on this subject.[51]

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[48] Article 1.3 of the ToR.

[49] Available at the following address: http://home.hccnet.nl/docu.congo/Frans/OudSysteem/accordglobal.html [in French]

[50] Mandate repeated by the Security Council in several of its resolutions, in particular Resolution 1794 (2000) dated 21 December, para. 16, and Resolution 1856 (2008) dated 22 December 2008, para. 4.

[51] Round-table meetings concerning the combat against impunity and transitional justice were organised by the Mapping Exercise in Bunia, Goma, Bukavu and Kinshasa in May 2009.

56. The options for transitional justice that are put forward in this report broadly take into account the diverse points of view expressed by the Congolese and international stakeholders who were consulted, and these options are also informed by other studies of victim expectations in terms of transitional justice and data from grassroots work, reported by members of the Team. Finally, these transitional justice options are part of current efforts to reform the judicial system, to reform Congolese law and to create new institutions that would promote greater respect in the DRC for its international obligations concerning justice and the fight against impunity.

57. Because of the many challenges that arise when seeking justice for the crimes committed in the DRC, it is crucial that a holistic policy of transitional justice be adopted, which will depend on the creation of diverse and complementary mechanisms, both judicial and non-judicial. The process requires a strategy based on a global view of known violations, the timeframe in which they occurred, and the main categories into which the victims fall. With this in mind, this report may help to form the basis of a process of reflection for civil society and the Congolese Government as well as their international partners. This strategy must involve complementarity between various mechanisms, both existing and to be created, each serving a specific function in truth-seeking, justice, reparation and rehabilitation of victims, in reform of judicial and security institutions (including methods for vetting security forces and the army) and in reconciliation. These mechanisms complement each other and are not exclusive. Most of the many countries that have looked to a past marked by dictatorship, armed conflict and large-scale serious crime have used several types of transitional justice measures, implemented simultaneously or gradually in order to restore rights and dignity to victims, to ensure that human rights violations are not repeated, to consolidate democracy and sustainable peace and to lay the foundations for national reconciliation.

Judicial mechanisms:

58. The Government of the DRC must abide by its obligations under international law, namely to prosecute crimes under international law committed on its territory. It must also respond to the many Congolese victims who are seeking justice for the harm they have suffered. The decision as to which judicial mechanism would be most appropriate for dealing with these possible crimes is the exclusive responsibility of the Congolese Government, and this decision should take into account the demands of Congolese civil society. In order to achieve this, a consultation process must be put in place by the Government, with the support of the international community, and this process must be as broad as possible.

59. The violations that could constitute crimes under international law were committed on a huge scale over more than ten years of conflict and allegedly by various Congolese and foreign armed groups. These violations are potentially so numerous that no judicial system, even functioning at the peak of its abilities, can deal with so many cases. There were tens of thousands of serious crimes and perpetrators, and hundreds of thousands of victims. In such cases, it is important to establish priorities when embarking on criminal prosecutions, and to concentrate efforts on "those who bear the greatest

responsibility". However, prosecution of "those who bear the greatest responsibility" requires an independent justice system which is capable of resisting political and other types of intervention. This is definitely not the case for the current Congolese judicial system, whose independence is seriously undermined and under constant threat.

60. The apparently generalised and systematic nature of the crimes that have been committed poses a challenge in itself. Such crimes require complex investigations, and these cannot be carried out without significant material and human resources. In some cases, specific expertise may be essential, both for investigators and judicial staff. However, the lack of resources available to Congolese courts means that they are not capable of discharging their functions as pertains to crimes under international law. Reinforcement and restoration of the internal judicial system is also of primary importance.

61. Based on these observations, the report concludes that a mixed judicial mechanism[52] - made up of national and international personnel - would be the most appropriate way to provide justice for the victims of serious violations. Whether national or international, the exact form and function of such a jurisdiction should be decided upon in detail jointly by stakeholders involved, particularly concerning their participation in the process, in order to provide credibility and legitimacy for the adopted mechanism. In addition, before international resources and stakeholders are deployed, a rigorous planning process is required, as well a precise assessment of the material and human resources available within the national judicial system.

62. Adherence to some principles is essential for such a judicial mechanism to be effective, and address the potential problems of lack of technical capacity, independence, and credibility. These principles should include:

- Significant financial involvement and clear commitment from the Government of DRC;

- Guarantees of independence and impartiality. The best way to achieve these objectives is to entrust international stakeholders (judges, magistrates, prosecutors and those in charge of the investigation) with key roles in the various components of the mechanism;

- Paying special attention, particularly in terms of procedure, to specific types of violence, notably sexual violence against women and children.

[52] There are several forms of mixed judicial mechanisms: a court that is independent of the national judicial system or special mixed chambers within the national judicial system.

63. Such a mechanism should also:[53]

- apply principles of international criminal law, including the responsibility of superiors for acts committed by their subordinates;

- not recognize any amnesty granted for crimes under international law does not apply in the context of this mechanism;

- ensure that military courts do not have jurisdiction over such crimes;

- have jurisdiction over all persons accused of these crimes, whether nationals or foreigners, civilians or military personnel, and who at the time the crimes were committed were aged 18 years or above;

- ensure that all legal guarantees for a fair trial are respected, particularly the fundamental rights of the accused;

- plan to provide legal assistance to the accused and to victims;

- plan for protection measures for witnesses and, if required, legal personnel who risk being threatened or intimidated;

- not include the death penalty among its sentences, in compliance with international principles;

- secure the co-operation of third-party States, the United Nations and NGOs that would be capable of supporting the court's activities, particularly with the provision of defence.

64. A hybrid court in itself will not solve the problem of the alleged participation of foreign armies and armed groups in the waves of violence across the country. In many of the recorded incidents, there are multiple allegations that armed forces and groups from countries other than the DRC were involved. However, it is impossible to establish the extent to which foreign military commanders, backers, and those who gave orders are responsible, without the assistance of the Governments of the respective countries. In this respect, since 2001 the Security Council has reminded States in the region that were involved in armed conflict of their obligations under international law "to bring to justice those responsible, and [...] ensure accountability for violations of international humanitarian law".[54] The alleged perpetrators can thus be prosecuted by third-party

[53] Some of these criteria were established by the Secretary General in his report on the re-establishment of the rule of law and administration of justice during the transition period in societies that are in conflict or that are emerging from a period of conflict. See S/2004/616, chapter XIX, Sect. A., para. 64, conclusions and recommendations.

[54] See, for example, resolution 1291 (2000) dated 24 February 2000, para. 15.

States for crimes committed in the DRC, whether in the same region or not, on the basis of universal jurisdiction. This facility has been used previously, though not often enough.[55] Such possibilities should be encouraged.

Truth and Reconciliation Commission (TRC):

65. The scale and the systematic and generalised manner in which the crimes were allegedly committed against vulnerable people, women, children and defenceless refugees requires an investigation into the reasons behind this cycle of violence, and into the existence of deliberate policies or plans to attack certain categories of persons for ethnic, political or nationality reasons. The systematic use of sexual violence, which continues today, must be given special attention. Economic factors, linked to access to land and illegal exploitation of natural resources among other issues, must also be considered. Such questions will not be answered satisfactorily only through a judicial process, whose primary objective will be to determine the individual criminal responsibility of the alleged perpetrators, and not to understand the conflict as a whole, its origins, and its deep-rooted, underlying causes. A judicial mechanism, in and of itself, can only look in a limited and fragmented way at such violence, can only deal with a limited number of cases, and cannot take into account the needs of the majority of victims or their urgent need for the truth.

66. Despite the fact that victims were very disappointed with the failure of the DRC's first TRC, there is still a very strong desire for a new truth commission and for truth-seeking. In his closing speech at the Goma Conference in February 2008, President Joseph Kabila positively welcomed calls for the creation of a new TRC.[56]

67. To this end, and to avoid the errors of the past, a serious and wide-ranging consultation process must be embarked upon, in a non-politicised atmosphere, so that the work of the TRC will be based on a credible foundation and mandate which is necessary for it is to establish the truth, propose reparation measures and institutional reforms. In this regard, it is important that efforts be made to help victims to organise themselves so that they can be better prepared to contribute to the consultation process and the creation of a truth-seeking mechanism.

68. Although there is no ready-made model or template for a truth-seeking mechanism, it is possible, in the light of the experience of the first TRC in DRC and the

[55] In three cases, third-party States have exercised universal jurisdiction over crimes under international law committed in DRC between 1993 and 2003. See: Arrest warrant under international law, issued by examining magistrate Vandermeersch (Belgium) against Mr. Abdulaye Yerodia Ndombasi, dated 11 April 2000; Judgement of Rotterdam District Court (Netherlands), 07 April 2004 against Colonel Sébastien Nzapali, and Spanish arrest warrants against 40 officers in the Rwandan army, "Juzgado Nacional de Instruccion n. 4, Audiencia Nacional, Madrid", 06 February 2008.

[56] Speech by President Kabila closing the peace, security and development conference in North Kivu and South Kivu, Goma, 22 February 2008, p. 5.

Congolese context, to propose some basic principles to help overcome hurdles faced by the previous TRC:

- **Need for broad consultation:** This was absent in the process for creating the previous TRC, and is also not envisaged in the new proposals submitted to Parliament. A consultative process involving victims and representatives from civil society appears to be indispensable to define the parameters of a future TRC, to ensure good public understanding of its functioning, and to secure its credibility and legitimacy with the Congolese population;

- **A realistic and precise mandate:** Given the numerous conflicts that have plagued the DRC, the mandate should be limited to the periods in history during which the most serious violations of human rights and of international humanitarian law occurred. Particular attention should be paid to certain groups that have been particularly badly affected by violence in the DRC, namely women, children, ethnic minorities, and persons targeted on account of their belonging to specific ethnic, political, or national groups;

- **Circumscription of its mandate:** The variety of different mandates entrusted to the previous TRC in DRC contributed to its failure. A TRC cannot act as a substitute for a mediation facility or a reparation mechanism[57], although it can, of course, provide useful recommendations in these areas;

- **Membership of the TRC:** The process for selecting members of any new truth-seeking mechanism in the DRC, and their credibility, independence and competence, will to a large extent determine the legitimacy of such a mechanism, the support it will receive and, ultimately, whether it succeeds or fails.[58] The possibility of appointing international members to the commission should also be explored, given the mistrust that persists in the DRC (among the civilian population, and between various groups in conflict and the authorities);

- **Powers of the Commission:** It is of primary importance that the truth-seeking mechanism that is created should have the powers, *inter alia*, to cross-examine witnesses, compel their appearance before the Commission, to protect them, and guarantee that their testimony will not be used against them in judicial proceedings. It should also be able to obtain the full co-operation of Government authorities. Any prerogatives allowing amnesties to be granted to penitent perpetrators must be compatible with principles of international law in this area,

[57] "...truth commissions are not well placed to implement an extensive reparations programme themselves", Truth commissions, OHCHR, p. 35.

[58] "To be successful, they must enjoy meaningful independence and have credible commissioner selection criteria and processes." See the *Report on the re-establishment of rule of law and transitional justice in conflict and post-conflict societies* (S/2004/616), para. 51.

and must not be applicable in cases of war crimes, crimes against humanity, genocide and other serious human rights violations.

- **Content of final report:** A truth-seeking mechanism must be able at least to make recommendations concerning measures for reparation and compensation for victims. It should be able to recommend institutional reforms, particularly in the legal system and security forces, so that such violations may be avoided in future and, if necessary, it should be able to recommend sanctions.

69. The success of any new truth-seeking mechanism remains highly dependent on a strong commitment from the Government to confront the past and on its being convinced that establishing the truth is essential if there is to be a peaceful transition to a State where the rule of law is respected. Any efforts by civil society and the international community will be in vain without such a commitment from the Government.

Reparation

70. Many human rights treaties contain references to the rights of victims of serious human rights violations to reparation.[59] This is linked to the right to remedy that provides all victims with the entitlement to an easily accessible process for obtaining relief including through criminal, civil, administrative or disciplinary processes. Hundreds of thousands of victims have suffered psychological and physical damage as a result of the terrible violence they experienced. They have the right to reparations. The right to reparation must account for all injury suffered by the victim and this can take several possible forms: restitution, compensation, rehabilitation, and guarantees that violence will not be repeated, through the adoption of appropriate measures of reform.

71. A comprehensive and creative approach to the issue of reparations is clearly required. Although collective reparations may appear easier to implement, individual reparation must be considered in some cases, particularly those in which the consequences of the violations continue to have a major impact on the lives of victims.

72. The Congolese Government should be the first contributor to a reparations programme. This contribution must be proportional to the State's budgetary capacity, but a suitable investment will demonstrate that the State recognises this legal and moral obligation, will provide a clear political signal of its willingness to help victims, and will serve as a catalyst for contributions from other international partners in the programme. Foreign countries that bear State responsibility for serious violations of human rights and

[59] See the *Universal Declaration of Human Rights* (article 8), *the International Covenant on Civil and Political Rights* (article 2.3), *the International Convention on the Elimination of all forms of Racial Discrimination* (article 6), *the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (article 14), *the Convention on the Rights of the Child* (article 39) as well as the *Rome Statute of the International Criminal Court* (articles 19 and 68).

of international humanitarian law also have the obligation to pay reparations to the State on whose territory these acts were committed and harm suffered, as in the case of Uganda.[60] This obligation, which arises from customary international law, exists independently of any judgement from the International Court of Justice (ICJ). This obligation must be respected. Any assets seized from perpetrators of crimes under international law committed in the DRC, whatever their nationality and regardless of which judicial authority effected the seizure, could also be directed towards such reparation mechanisms. It may even be possible to consider prosecution of some private or State-owned companies, both Congolese and foreign, which may have benefited illegally from natural resources and may have contributed to violations in the DRC, with a view to obtaining compensation that would be channelled to the reparation mechanism.

73. The most important issue to resolve when creating any reparation mechanism is that of how to determine the beneficiaries of such a programme. Several criteria can be used to delimit the scope of a programme in order to reach those who suffered most and have the greatest need of assistance, without minimizing the suffering of other victims. The seriousness of the violation, its consequences for the physical or mental health of the victims, stigmas attached, any repetition of violations over time, and the current socio-economic situation of victims are all valid criteria that could be used to target the reparations program.

74. An exclusively judicial approach that is focussed on establishing the responsibility of alleged perpetrators will never give full satisfaction to victims. Given the limitations of the judicial system vis-à-vis the number of crimes committed and the number of victims, alternatives to judicial proceedings must be explored, such as the Victims' Fund run by the ICC, which is active in the DRC and which has developed new ways to approach reparation.

75. The report concludes that a national agency, a reparations commission or a compensation fund, which would have as its exclusive task the creation and implementation of a programme of compensation for the victims of conflict in the DRC, would be the most appropriate mechanism to address the issue of reparations. This body must have sufficient independence and prerogatives in order to define and identify the categories of victims entitled to different forms of reparation of an individual or collective nature. It should establish relatively simple administrative procedures that are free of charge to access and appropriate for victims, in order to facilitate access and provide effective solutions, which is often lacking in purely judicial settings.

[60] International Court of Justice, *Armed Activities on the Territory of the Congo (DRC* v. *Uganda*), 19 December 2005, para. 259 – 260.

Reforms

76. One of the objectives of a transitional justice policy is to establish guarantees that serious human rights and international law violations committed in the past will not be repeated. If this aim is to be achieved, it is often of primary importance to reform institutions that were responsible for such violations and that failed to perform their institutional role. Such reforms are clearly highly relevant in the DRC. This report has highlighted several instances in which the Zaire (later Congolese) security forces were allegedly directly or indirectly responsible for serious violations of international human rights law and international humanitarian law that were committed between 1993 and 2003 and which still persist in the DRC. Although all transitional justice mechanisms are important, it should nonetheless be emphasised that institutional reform is clearly the measure that will have the greatest long-term impact in achieving peace and stability in the country and which will offer citizens the best protection against a repetition of violations.

77. The most crucial and urgent of the reforms that aim to prevent repetition of these crimes are those pertaining to improvements to the judicial system, adoption of a law to implement the Rome Statute, and the vetting of the security services. Several reforms of the judicial system are underway and deserve support. These aim to improve in the capacity of the judicial system, particularly by reforming criminal legislation, to re-deploy the justice system throughout the country, and to retrain judges and judicial staff.

78. With a view to preventing and punishing crimes under international law, the DRC has undertaken, by ratifying the Rome Statute, to prosecute the perpetrators of crimes proscribed by the Statute and to provide for all forms of co-operation with the Court in its national legislation. The DRC's draft legislation on the Rome Statute, which is fully compliant with the DRC's international obligations, is of paramount importance and should be enacted by the Parliament without further delay.

Vetting

79. The process of reforming the security forces, particularly the police and the army, was begun at the start of the transition period, along with the reform of the justice sector. However, it is to be regretted that transitional justice imperatives were not taken into account during this process. Vetting is a significant transitional justice mechanism in the area of institutional reform, which ensures that "government workers who are personally responsible for flagrant human rights violations, particularly personnel in the army, the security services, the police, the intelligence services and the judicial system, must be prevented from working in government institutions".[61] Vetting is particularly important

[61] See *Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1), principle 36.

and relevant in the DRC, as many persons who were allegedly responsible for serious human rights violations were granted positions in Government institutions following the signing of peace agreements to end the conflict. The presence of such persons within State institutions, and especially in the army, could give them the ability to block or hold back any transitional justice measures by threatening or simply discouraging potential witnesses and victims. In view of this, a vetting process is not just essential in itself, but would seem to be a prerequisite for any other credible transitional justice measures.

80. The Security Council has noted that such a measure is necessary in order to break the cycle of impunity that has always surrounded the DRC's security forces, and that true reform of the security sector will only achieve sustainable results if vetting takes place.[62]

International Criminal Court

81. The contribution of the ICC to criminal justice in the DRC is very important. For the time being it is the only judicial mechanism that has the capacity, the integrity and the independence required to prosecute those who bear the greatest responsibility for the crimes under international law committed on DRC territory. Three ICC cases concerning the situation in Ituri have been opened by the Prosecutor.[63] In doing so, the ICC has served and continues to serve a very important function in combating impunity in the DRC, and is likely to bolster the work of Congolese courts, tribunals and other mechanisms to be set up in future. The Court has also inspired some within the Congolese judicial system, who have drawn from the provisions of the ICC Rome Statute to supplement and clarify Congolese law in this area, as explained in section III of the report.

82. However, the high expectations raised by the ICC have led to disappointment among the Congolese population and international actors with an interest in victims' rights, who have complained about the slow pace of proceedings and the limited scope of the charges that were brought. They argue that the charges filed and the proceedings neither do justice to the hundreds or even thousands of victims, nor reflect the true scale of the criminal activities of the accused, documented in numerous prior inquiries.[64]

83. Given the lack of progress in the fight against impunity in the DRC, it would seem to be of primary importance that the ICC maintain and indeed increase its commitment. The ICC must address in particular the most serious crimes, which could be difficult to prosecute in the DRC because of their complexity, for example networks that

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[62] See Resolution 1794 (2007) dated 21 December 2007, para. 15; contents repeated in subsequent resolutions that extended MONUC's mandate.

[63] Case *The Prosecutor* v. *Thomas Lubanga Dyilo* (ICC-01/04-01/06); Case *The Prosecutor* v. *Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07); Case *The Prosecutor* v. *Bosco Ntaganda* (ICC-01/04-02/06)

[64] See "FIDH and its Congolese member organisations disappointed by the limited scope of the International Criminal Court's investigations", (under "Fourth ICC Arrest Warrant in DRC Situation"), available at www.fidh.org.

fund and arm the groups involved in these crimes. Persons allegedly involved in these activities appear to benefit from political, military and economic support and are sometimes outside the DRC and hence beyond the reach of national justice. It would therefore appear important that the ICC's Prosecutor pay particular attention to these cases, in order that they be brought to justice.

84. Conversely, the fact that the ICC has no jurisdiction over the many crimes committed before July 2002, and the fact that it is not able to deal with a large number of cases, limits its direct role in the fight against impunity and confirms the importance and need to create new mechanisms which would enable prosecution of the main alleged perpetrators of the most serious crimes that are covered in this report.

Conclusion

85. Drawing up an inventory of the most serious violations of human rights and international humanitarian law that were committed on DRC territory between March 1993 and June 2003, the report concludes that the vast majority of the 617 listed incidents could constitute crimes under international law, given full judicial investigation and prosecution. These include war crimes committed during armed conflict, either internal or international, or crimes against humanity committed in the context of a generalised or systematic attack against a civilian population, or in many cases both. The issue of whether the many serious acts of violence committed against Hutus in 1996 and 1997 constitute crimes of genocide can only be decided by a competent court.

86. In terms of justice, the response of the Congolese authorities in the face of the overwhelming number of serious crimes committed within the territory of the DRC has been very limited or even non-existent. The lack of political will on the part of the Congolese authorities to prosecute those who are allegedly responsible for serious violations of human rights and of international humanitarian law committed in the DRC has only encouraged further serious violations, which continue to this day. The report notes that, because of the multiple dimensions of seeking justice for the possible crimes committed in the DRC, it is crucial that a holistic policy of transitional justice be implemented, which will involve the creation of diverse and complementary mechanisms, both judicial and non-judicial. While the report is careful not to give any recommendations or directives as such, it does, however, examine the advantages and drawbacks of various transitional justice options in terms of truth, justice, reparation for and rehabilitation of victims, and reform of judicial and security institutions (including vetting measures), in the current Congolese context. These options, which must be examined by the Government of the DRC and civil society, include: a) the creation of a hybrid judicial mechanism; b) creation of a new Truth and Reconciliation Commission; c) reparation programmes; and d) reforms of both the legal sector and the security forces. In order to ensure that the Congolese people are fully involved in assessing needs, establishing priorities and finding solutions – in short, to ensure that they assume ownership of these new mechanisms and understand their function and scope – it is

essential that the authorities carry out national consultations on transitional justice. Such prior consultations will be important to ensure the credibility and legitimacy of any undertakings in this area.

INTRODUCTION

87. The discovery by the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) in late 2005 of three mass graves in North Kivu was a painful reminder that past gross human rights violations committed in the Democratic Republic of the Congo (DRC) had remained largely uninvestigated and that those responsible had not been held accountable. Following a number of consultations within the UN system, an initial idea to "reactivate" the Secretary-General's 1997–1998 investigative Team was abandoned in favour of a plan with a broader mandate aimed at providing the Congolese authorities with the tools needed to break the cycle of impunity. Consultations between the Department of Peacekeeping Operations (DPKO), MONUC, the Office of the High Commissioner for Human Rights (OHCHR), the Department of Political Affairs (DPA), the Office of Legal Affairs (OLA) and the Office of the Secretary-General's Special Adviser on the Prevention of Genocide led to an agreement recommending the conduct of a mapping exercise covering the period March 1993 to June 2003. The agreed purpose was to gather, analyse and publish *prima facie* evidence of human rights and international humanitarian law violations and, on the basis of the findings of the exercise, to carry out an assessment of the existing capacities within the national justice system in the DRC to address such violations as might be uncovered. It was agreed that the initiative should also result in the formulation of options on appropriate transitional justice mechanisms to adequately address the legacy of these violations. Lastly, it was decided that MONUC's human rights mandate, approved by the Security Council in 2003 (Resolution 1493 (2003)),[65] would provide the basis for the proposed "Mapping Exercise".

88. The so-called Mapping Exercise was aimed at providing a key advocacy tool *vis-à-vis* the Government and Parliament, as well as the international community regarding the establishment of appropriate transitional justice mechanisms and to encourage concerted efforts to combat impunity in the DRC. In his report of 13 June 2006 to the Security Council on the situation in the DRC, the Secretary-General indicated his intention to "dispatch a human rights team to the Democratic Republic of the Congo to conduct a mapping of the serious violations committed between 1993 and 2003".[66] This intention was reaffirmed in the two following reports of the Secretary-General of

[65] In paragraph 11 of Resolution 1493 (2003), the Security Council "encourages the Secretary-General, through his Special Representative, and the United Nations High Commissioner for Human Rights to coordinate their efforts in particular to assist the transitional authorities of the DRC in order to put an end to impunity". In paragraph 5, subparagraph *g* of Resolution 1565 (2004), the Security Council "decides that MONUC will also have the mandate, in support of the Government of National Unity and Transition: (…) to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations to put an end to impunity, and continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations."

[66] *Twenty-first report of the Secretary-General on MONUC* (S/2006/390), paragraph 54.

21 September 2006 and 20 March 2007.[67] On 8 May 2007, the Secretary-General approved the Terms of Reference of the Mapping Exercise. The Mapping Exercise was subsequently presented to the Congolese authorities, notably to President Joseph Kabila, by whom it was well received, and to some of his cabinet ministers, by the UN High Commissioner for Human Rights during her visit to the DRC in May 2007. In Resolution 1794 (2007) of 21 December 2007, the Security Council requested the full support of the Congolese authorities for the OHCHR-initiated Mapping Exercise. On 30 June 2008, a letter was sent by the High Commissioner to President Kabila announcing the imminent arrival of the Mapping Exercise Team. The Mapping Exercise began officially on 17 July 2008 with the arrival of the Chief of the Mapping Team in Kinshasa. Around twenty human rights officers were deployed over the entire territory of the DRC between October 2008 and May 2009 to gather documents and information from witnesses to meet the three objectives defined in the Terms of Reference. The Congolese Government has expressed its support for the Mapping Exercise on several occasions, notably in the statement delivered by the Minister of Human Rights at the Special session of the Human Rights Council on the human rights situation in the East of the DRC in November 2008 and in various meetings between the Chief of the Mapping Exercise, the Minister of Justice and the Minister of Human Rights.

TERMS OF REFERENCE

89. On 8 May 2007, the Secretary-General approved the ToR of the Mapping Exercise, delineating the following three objectives:

- Conduct a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.
- Assess the existing capacities within the national justice system to deal appropriately with such human rights violations that may be uncovered.
- Formulate a series of options aimed at assisting the Government of the DRC in identifying appropriate transitional justice mechanisms to deal with the legacy of these violations, in terms of truth, justice, reparation and reform, taking into account ongoing efforts by the DRC authorities, as well as the support of the international community.[68]

90. It was decided that OHCHR would lead the Mapping Exercise and the project was funded by the voluntary contributions of ten interested partners.[69] The UNDP Country Office in the DRC was responsible for the financial administration of the Mapping

[67] *Twenty-second* and *twenty-third reports of the Secretary-General on MONUC* (S/2006/759 and S/2007/156 and Corr.1).
[68] Article 1, ToR.
[69] Austria, Belgium, Canada, Germany, the Netherlands, the Republic of Korea, the United Kingdom, Sweden, Switzerland and the MacArthur Foundation.

Exercise and MONUC provided logistical support. The three parties signed an agreement defining their respective rights and obligations.[70] The continued and overwhelming support of these three bodies for the Mapping Exercise should be mentioned at this juncture.

91. In the words of the High Commissioner in office at the time, the Mapping Exercise report was "expected to be the first and only comprehensive United Nations report documenting major human rights violations committed within the territory of the DRC between 1993 and 2003. In this regard, the report should be of fundamental importance in the context of efforts devoted to protecting human rights and combating impunity." By contributing significantly to the documentation on the most serious violations of human rights and international humanitarian law committed in the DRC during this time of conflict,[71] this report aims to assist the Congolese authorities and civil society in defining and implementing a strategy that will enable the many victims to obtain justice and thereby fight the widespread impunity. This should also enable the mobilisation of other international resources to address the principal challenges faced by the DRC with regard to justice and reconciliation.

92. The ToR required the Mapping Exercise Team[72] to "start and complete this exercise as soon as possible (…) to assist the new Government with the tools to manage post-conflict processes".[73] It was expected to take at least two months for the Team to be recruited, deployed and become fully operational, followed by an additional period of six months to carry out the Mapping Exercise, extendable should the circumstances require it. Although many considered the timeframe for the Mapping Exercise to be too short for the scale of the task at hand, it was nonetheless necessary given the urgent need to bring the operation – the launch of which had been reported on many occasions – to a speedy conclusion so that the Congolese people could start benefiting from it right away. In the end, the Mapping Exercise would last just over ten months in total, from the arrival of the Chief of the Mapping Exercise in late July 2008 to the submission of the final report to the United Nations High Commissioner for Human Rights in mid-June 2009.

93. In line with the ToR the report was submitted to the Government of the Democratic Republic of the Congo requesting its observations and comments related to factual inaccuracies for consideration in the final version of this report. The report was also shared with the Governments of other countries named in the report for feedback. The High Commissioner for Human Rights committed to make public any comments

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[70] Memorandum of understanding between UNDP, MONUC and OHCHR relating to the implementation of the Mapping Exercise on serious violations of human rights and international humanitarian law committed in the DRC between 1993 and 2003, signed in December 2007.

[71] As the DRC was formerly known as "Zaire", this name will appear in this report for the period ending May 1997.

[72] "Team" is used to designate the body of human rights specialists who led the Mapping Exercise investigations across the DRC. These specialists may also be designated "Mapping Exercise Teams" or "Mapping Teams".

[73] Article 2.3, ToR.

received by these Governments, with their agreement, at the same time as the release of the report.

METHODOLOGY

94. A "mapping exercise" is based on a number of methodological premises.[74] A mapping exercise itself should be concerned not only with the violations themselves but also with the context(s) in which they were committed, either in a given region or across an entire country, as is the case here. Such an exercise may include various activities, such as the collection, analysis and assessment of information, surveys and witness interviews, and consultation with field experts and consultants, among others. This type of project is not a new concept. It has much in common with international commissions of inquiry, commissions of experts and fact-finding commissions. It functions perfectly as a preliminary step prior to the formulation of transitional justice mechanisms, whether they be judicial or not, to enable the identification of challenges, the assessment of needs and better targeting of interventions. It can also be found in international and hybrid jurisdictions, where it is used to better and devise global investigation and prosecution strategies. Among the recent examples of mapping exercises, some have been based solely on documents in the public domain (Afghanistan) and others on interviews with thousands of witnesses (Sierra Leone).

95. One of the major premises is that mapping remains a preliminary exercise that does not seek to gather evidence that would be admissible in court, but rather to "provide the basis for the formulation of initial hypotheses of investigation by giving a sense of the scale of violations, detecting patterns and identifying potential leads or sources of evidence".[75] With regard to human rights and international humanitarian law violations, the Mapping Exercise should provide a description of the violation(s), their nature and location in time and space, the victim(s) and their approximate number and the – often armed – group(s) to which the perpetrators belong(ed), among others. As a result, the findings of such an operation should be very useful for all transitional justice mechanisms, whether they be judicial or not.

95. The six-month deployment timeframe set by the Secretary-General for the Mapping Exercise, with the mandate of covering the most serious violations of human rights and international humanitarian law committed across the whole territory of the DRC over a ten-year period, imposed certain constraints in terms of the methodology to be used. It did not foresee in-depth investigations, but rather the gathering of basic

[74] As a point of interest, the French translations of "mapping" – *cartographie*, *inventaire* or *état des lieux* (inventory) – fail to reflect accurately the potential scope of a mapping exercise, and it was decided by the team to retain the generic English term to designate this exercise in French.
[75] OHCHR, *Rule-of-Law tools for post-conflict states: Prosecution initiatives*, United Nations, New York and Geneva, 2008, p.6.

information on the most serious incidents, chronologically and province by province.[76] The collection, analysis and use of any existing information sources on the violations committed during the period under examination was also established as a starting point for the Exercise, in particular "the outcome of past United Nations missions to the country".[77] The subsequent six-month deployment of five in-field mobile Teams allowed for this information to be verified and either corroborated or invalidated in accordance with the standards set out herein with the aid of independent sources, while also enabling the reporting of previously undocumented violations.

97. A document outlining the methodology to be followed by the Mapping Team was drafted on the basis of United Nations-developed tools, in particular those of OHCHR. These methodological tools covered the following areas in particular: a gravity threshold for the selection of serious violations, standard of evidence required, identity of perpetrators and groups, confidentiality, witness protection, witness interviewing guidelines with a standardised *fiche d'entretien*, and physical evidence guidelines (including mass graves), among others. It was important that the methodology adopted for the Mapping Exercise catered for the requirements and constraints of the ToR, in particular the necessity to cover the entire Congolese territory as well as the period from 1993 to 2003, to report only the "most serious" violations of human rights and international humanitarian law and to ensure that the security of witnesses was not compromised and that information was kept confidential.

- Gravity threshold

98. The expression "serious violations of human rights and international humanitarian law", used by the Secretary-General to define the first objective of the Mapping Exercise, is non-specific and open to interpretation. Generally speaking, it is intended to apply to violations of the right to life and the right to physical integrity. It may also cover violations of other fundamental human rights, in particular where such violations are systematic and motivated by forms of discrimination forbidden under international law. In international humanitarian law, violations are considered serious when they endanger protected persons and property, or when they violate important values.

99. Given the scale of the violations committed in the ten years of conflict over a very vast territory, it was necessary to select from the most serious crimes. Each recorded incident demonstrates the commission of one or several serious violations of human rights and international humanitarian law localised to a given date and location. Occasionally, a wave of individual violations (e.g. arbitrary arrests and detentions, summary executions, etc.) is considered as one incident.

[76] Article 4.2, ToR: "It should be carried out province by province, and in chronological order of events. It should gather basic information and not replace in-depth investigations into the incidents uncovered."
[77] Article 4.1, ToR.

100. To identify the most serious incidents (those describing the commission of the most serious violations) a gravity threshold similar to that used in international criminal law to identify the most serious situations and crimes for investigation and prosecution was used. The gravity threshold provides a set of criteria enabling the identification of incidents *of sufficient gravity* to be included in the final report. These criteria function as a whole. No one criterion alone can be the decisive factor and all may be used to justify the decision to class an incident as serious. The criteria used to select the incidents listed in this report fall into four categories:

- **Nature of the crimes and violations linked to a given incident:** Each recorded incident points to the commission of one or more crimes under international law, be they war crimes, crimes against humanity, genocide or other crimes constituting serious human rights violations. All of these crimes can be classified on the basis of the objective gravity threshold, where violations of the right to life are considered most serious (murder, massacre, summary execution, etc.), followed by violations of the right to physical and mental integrity (sexual violence, torture, mutilation, injury to body, etc.), the right to liberty and security of person (arbitrary arrest and detention, forced displacement, slavery, recruitment and use of child soldiers, etc.), the right to equality before the law and equal protection of the law without any discrimination (persecution) and, lastly, violations relating to the right to own property (destruction of civilian property, pillage, etc.).

- **Scale (number) of crimes and violations linked to an incident:** Each recorded incident points to the commission of numerous crimes resulting in many victims. The number of crimes committed and the number of victims is taken into consideration when establishing the gravity of an incident.

- **How the crimes and violations were committed:** Crimes and violations of a widespread and systematic nature, crimes targeting a specific group (vulnerable groups, ethnic groups, political groups, etc.), and indiscriminate/disproportionate attacks with many civilian victims are all elements that will contribute to raising the gravity level of an incident.

- **Impact of the crimes and violations committed:** Aside from the number of victims of the crimes revealed, some incidents may have a devastating impact in the context, either by triggering conflict, threatening existing peace efforts, or preventing humanitarian relief efforts and the return of refugees or displaced persons, etc. The regional impact of an incident or its legacy for a specific community, and its particular significance for certain ethnic, political, religious or other groups may also contribute to raising its gravity level.

➢ Standard of evidence

101. Since the primary objective of the Mapping Exercise is to "gather basic information on incidents uncovered", the level of evidence required is naturally lesser than would normally be expected in a case brought before a criminal court. It is not a

question, therefore, of being satisfied beyond all reasonable doubt that a crime was committed, but rather having reasonable suspicion that the incident did occur; a level of evidence decidedly lower than that required to secure a criminal conviction. Reasonable suspicion is defined as "**a reliable body of material consistent with other verified circumstances tending to show that an incident or event did happen**".[78] In cases where such reliable bodies of material were gathered by the Mapping Team, it was decided that incidents would be described using the past tense.

- Assessing the reliability of information

102. Assessing the reliability of the information obtained was a two-stage process involving evaluation of the reliability and credibility of the source, and then the pertinence and truth of the information itself. This method is known as the *admiralty scale*. Reliability of the source is determined using several factors, including the nature, objectivity and professionalism of the organisation providing the information, the methodology used and the quality of prior information obtained from the same source. The validity and authenticity of the information is assessed by comparing it to other available data relating to the same incidents to ensure that it tallies with already verified elements and circumstances. In other words, the process involves cross-checking the originally obtained information by ensuring that the corroborating elements do in fact come from a different source than the primary source that provided the information in the first place. Such corroboration will generally be obtained from evidence gathered in the Mapping Exercise, but may also come from other reports and documents. However, different reports on the same incident and based on the same primary source would not constitute corroboration by a separate source.

- Identification of individual and group perpetrators

103. Unlike some commissions of inquiry with a specific mandate to "identify the perpetrators of violations and make them accountable for their actions",[79] the objective of the Mapping Exercise is limited to compiling an inventory of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.[80] The objective of the Mapping Exercise was therefore not to establish or to try to establish individual criminal responsibility of given actors.

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[78] Another possible formulation would be "reliable and consistent indications tending to show that the incident did happen".

[79] See *Report of the International Commission of Inquiry on Darfur to the Secretary-General (S/2005/60); see also Security Council Resolution 1564* (2004) of 18 September 2004.

[80] The mandate of the Mapping Exercise is closer to that of the Commission of Experts reviewing the prosecution of serious violations of human rights committed in Timor-Leste (then East Timor) in 1999 (S/2005/458), whose mandate was to "gather and compile systematically information on (…) violations of human rights and acts which may constitute breaches of international humanitarian law committed in East Timor (…) and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions"; see Commission on Human Rights Resolution 1999/S-4/1.

104. The only reference to this matter in the ToR for the Mapping Exercise can be found in the Methodology section, in which it states that the Exercise "should gather basic information (e.g. establishing the locations, timings and backgrounds of major incidents, the approximate numbers of victims, the alleged perpetrators, etc.) and not replace in-depth investigations into the incidents uncovered". Although the primary objective of the Mapping Exercise is not to identify the alleged perpetrators or people who should be held accountable for their actions, it was nevertheless necessary to gather basic information relating to the identity of alleged individual or group perpetrators. Given the level of evidence used in this Exercise, however, it would be imprudent, and unjust, to seek to ascribe criminal responsibility to certain individuals. Such a conclusion should be dependent on legal proceedings pursued on the basis of an appropriate level of evidence. However, it seems essential to identify the groups involved in order to classify these serious violations of international humanitarian law. Finally, the identities of the alleged perpetrators of some of the crimes listed will not appear in this report but are held in the confidential project database submitted to the United Nations High Commissioner for Human Rights, who will determine the conditions for its access.[81] However, the identities of perpetrators under warrant of arrest and those already sentenced for crimes listed in the report have been disclosed. It should also be noted that where political officials have assumed public positions encouraging or provoking the violations listed, their names have been cited in the sections relating to the political context.

- Other aspects accounted for in the methodology

105. Beyond the methodological tools presented above, certain constraints particular to the Mapping Exercise, the prevailing situation in the DRC and the accessibility of certain sites have been taken into consideration during investigations to verify previously identified incidents. For example, the capacity of the Mapping Exercise to investigate certain incidents has at times been limited due to difficulties in accessing some remote regions of the country, or due to security issues that prevent their access. The choice of priority areas for investigation and the main incidents for verification was also influenced by the short timeframe – six months – allocated to the implementation of the Mapping Exercise itself. Investigations that would take too long to achieve the anticipated findings that would feature in the final report were not included. To an even greater extent, acknowledgement of the global mandate of the Mapping Exercise – to cover the entire Congolese territory for the entire period from March 1993 to June 2003 so as to present a detailed and well-balanced report of the many violations of human rights and international humanitarian law committed at that time – for the most part dictated the choice of the main incidents reported.

[81] Article 4.3, ToR: "Sensitive information gathered during the Mapping Exercise should be stored and utilised according to the strictest standards of confidentiality. The Team should develop a database for the purposes of the Mapping Exercise, access to which should be determined by the High Commissioner for Human Rights."

106. In this report, each incident verified in accordance with this methodology is reported in a separate paragraph, indented and preceded by a bullet point. Each of these paragraphs includes a brief description of the incident identifying the nature of the violations and crimes committed, their location in time and space, a description of the individual or group perpetrators involved and details of the victims and their approximate number. In the reported incidents, figures relating to the number of victims have been provided as a means of assessing the scale of violations and are in no way intended to be definitive. As a general rule, the Mapping Exercise has used the lowest and most realistic assessment of victim numbers indicated by the various sources and has sometimes resorted to estimates. In light of its mandate, it was not the responsibility of the Mapping Exercise to ascertain the total number of victims of violations of human rights and international humanitarian law in the DRC during the period in question, given that precise victim counts are not essential to determining the legal classification of violations. Each paragraph describing an incident is followed by a footnote identifying the primary and secondary sources of the information reported. Incidents not corroborated by a second independent source have not been included in this report, even in cases where the information came from a reliable source. Such incidents are, however, recorded in the database.

IMPLEMENTATION OF THE MAPPING EXERCISE

107. The Mapping Exercise was rolled out in three successive phases. Phase one, known as the "Pre-Deployment Phase", began with the arrival of the Chief of the Mapping Exercise on 17 July 2008 and ended with the deployment of the in-field Teams from 17 October 2008 onwards. Phase two covers the deployment of the Teams across the country to cover all provinces of the DRC from five regional field offices. The deployment phase lasted seven months and ended on 15 May 2009 with the closure of the field offices. In the final, post-deployment phase, all the data were compiled and final verifications made with a view to completing the draft of the final report, which was submitted to the United Nations High Commissioner for Human Rights on 15 June 2009.

108. Phase one (17 July 2008 to 17 October 2008) was essentially aimed at ensuring the successful start-up of the Mapping Exercise, obtaining logistical support and developing the necessary methodological and legal tools for the Mapping Team to carry out the mandate.

109. Meetings were also held with the main partners of the Mapping Exercise (MONUC and UNDP), diplomatic missions as well as actors involved in human rights and the fight against impunity in the DRC (UN organisations, international NGOs, religious groups and trade unions, among others) to explain the Exercise and seek their collaboration.

110. Phase two (17 October 2008 to 15 May 2009) was dedicated to carrying out the mandate itself, including all analyses, investigations and consultations necessary both to prepare the inventory of the most serious violations of human rights and international humanitarian law and also to assess the existing capacities of the Congolese judicial

system to deal with this, including options relating to transitional justice mechanisms that could contribute to the fight against impunity.

111. Phase three (15 May 2009 to 15 June 2009) saw the closing down of the Mapping Exercise with the compilation of data, final updating of the database, the organisation, digitisation and classification of all the archives and the drafting of the final version of the report. Regional consultations regarding transitional justice were held in this last phase in the form of round-table meetings with civil society representatives in Bunia, Bukavu, Goma and Kinshasa.

ACTIVITIES OF THE MAPPING EXERCISE

➢ Official meetings

112. The Chief of the Mapping Exercise attended official meetings with nearly one hundred actors, partners and individuals involved in matters of justice and the fight against impunity in the DRC to explain the objectives of the Exercise and seek their support. Among these, the following should be noted:

- DRC government authorities, i.e. the Minister of Justice (on two occasions) and the Minister of Human Rights (also on two occasions). Both Ministers assured the Chief of the Mapping Exercise of their collaboration and support for this exercise.
- Donors, who were met at the start, mid-point and end of the Exercise, and to whom a progress report was submitted on each occasion. Meetings were held with the following: the Ambassadors of Belgium, Canada, Germany, the Netherlands, Sweden and the United Kingdom, and representatives of the Republic of Korea and Switzerland.
- Representatives of United States, French and European Union diplomatic missions.
- Heads of United Nations organisations: UNDP, UNICEF, UNHCR, UNFPA/UNIFEM.
- MONUC leaders: Special Representative of the Secretary-General, Alan Doss, and his deputies, Ross Mountain and Leila Zerrougui; and representatives of the various MONUC offices, including Human Rights, Child Protection, Rule of Law and the Gender Office.
- Francis Deng, Special Adviser for the Prevention of Genocide; Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons.

- Head of the International Committee of the Red Cross (ICRC) delegation; representatives in the DRC of OXFAM, Save the Children, Global Rights, *Médecins Sans Frontières* (France and Belgium), International Center for Transitional Justice (ICTJ), *Avocats Sans Frontières* (Belgium) and a representative of the International Criminal Court (ICC).
- A number of local NGOs involved in human rights and justice in the DRC.

➢ Professional contacts

113. A number of contacts were established with Congolese non-governmental organisations (NGOs) in order to obtain information, documents and reports on the serious violations of human rights and international humanitarian law that occurred in the DRC during the period covered by the ToR. To this end, meetings were held with over two hundred NGO representatives during the course of the mandate, both to present the Mapping Exercise and request their collaboration. Thanks to this collaboration, the Mapping Team has had access to critical information, witnesses and reports relating to the violations committed between 1993 and 2003. Without the courageous and outstanding work of the Congolese NGOs during these ten years, documenting the many violations in such a short period of time would have been incredibly difficult.

114. Contacts were also established with international organisations and NGOs to obtain information, reports and documents relating to the Mapping Exercise mandate.[82] Almost all responded positively to this request.[83] Research and documentation centres also contributed to the success of the Exercise by allowing Team members to consult their archives and meet with researchers.[84] Several DRC experts also visited the Mapping Exercise on trips to Kinshasa to speak to the Team.[85]

[82] The main organisations contacted were the following: Human Rights Watch, Amnesty International, International Center for Transitional Justice, Global Rights, Global Witness, Open Society (Justice Initiative), Rights & Accountability in Development, International Crisis Group, International Federation for Human Rights, Coalition to Stop the Use of Child Soldiers, Minority Rights Group International, Rights & Democracy, Médecins Sans Frontières and the International Committee of the Red Cross.

[83] Two organisations, Rights & Democracy and Global Witness, were also important contributors and prepared special reports on the issues of sexual violence and human rights violations relating to the illegal exploitation of natural resources respectively.

[84] Groupe Jérémie/RODHECIC (Kinshasa-based network of Christian organisations working to promote human rights and education), Centre d'information et de solidarité avec l'Afrique (France), IPRA's (International Peace Research Association) Congo Peace Project, Centre for Peace Research and Strategic Studies, Institute for International and European Policy, Faculty of Social Sciences, Catholic University of Leuven (Belgium), Entraide Missionnaire (Canada) and the University of Pittsburgh (USA).

[85] Suliman Baldo (ICTJ – International Center for Transitional Justice), Anneke Van Woudenberg (HRW – Human Rights Watch), Filip Reintjens (University of Antwerp), Peter Rosenblum (Columbia Law School), Jason Stearns (UN Group of Experts on the DRC) and Arthur Kepel (ICG – International Crisis Group).

- Collection and analysis of information

115. The main activity of the Mapping Exercise consisted in collecting and analysing as much information as possible on the serious violations of human rights and international humanitarian law committed during the period covered by the ToR. The Mapping Teams obtained over **1,500 documents**. The documents come from many sources, including the United Nations and its agencies, the Congolese government, major international human rights organisations, Congolese human rights organisations, the national and international media and various NGOs (unions, religious groups, aid agencies, victims' associations, etc.). Among the documents, over three hundred are confidential, notably the archives of the Secretary-General's 1998 investigative Team, and some internal NGO reports. The Mapping Teams also consulted a large number of articles in the national and international press, as well as monographs on topics related to the mandate. Lastly, various sources, individuals and experts, national and international, were also consulted in order to open up new avenues of research, corroborate some of the information obtained and streamline the overall analysis of the situation.

116. Analysis of all these documents enabled the Team to establish a chronology by region of the main incidents revealing serious violations of human rights and international humanitarian law committed on the territory of the DRC between March 1993 and June 2003. The analysis resulted in the initial identification of over 660 major incidents for verification. Only incidents meeting the gravity threshold developed in the methodology were considered. Subsequently, investigative work in the different provinces revealed the existence of new and unreported serious incidents which were added to the original chronology as and when they were found, bringing the number of major incidents in the database to **782 major incidents**.

- In-field verification investigations

117. On the basis of the chronology, five in-field mobile Teams had the task of verifying, corroborating or invalidating information relating to the occurrence of key incidents revealing the commission of serious violations of human rights and international humanitarian law. Each Team comprised two international human rights officers, supported by a Congolese human rights associate. The work of these Teams consisted essentially of meeting with witnesses to corroborate or invalidate the occurrence of the most serious violations reported in the chronology. To this end, each reported incident had to be corroborated by at least one independent source in addition to the primary source in order to confirm its authenticity. Every incident investigated by the Teams was then recorded in the Mapping Exercise database.

118. Over **one thousand witnesses** were interviewed by the Mapping Exercise Teams about major incidents identified in the chronology. Of the **782 open incidents and cases in the database,** the Teams were able to close **563 (71%) cases** in the verification process. **Although some cases were invalidated, the majority of them were confirmed** in accordance with the mapping methodology**.** It was not possible, however, to verify the

219 remaining cases (29%), either due to lack of time or access to the regions in question or the witnesses of incidents, or due to the lack of an independent source to confirm the information obtained from an initial source. Some cases include several incidents, meaning, for example, that a large-scale attack could encompass different types of violations or target different groups. Consequently, the report contains 617 incidents confirmed in accordance with the mapping methodology.

119. All the relevant information relating to the **782 open incidents and cases** can be found in the Mapping Exercise database, which was submitted to the UN High Commissioner for Human Rights in Geneva. The following entries can be found in the database for each incident or case: the source(s) of the original information, *fiche(s) d'entretien* with witnesses to the incident, the nature of the violations committed, a description of the violations and their location in time and space, preliminary classification of crimes revealed by the incident, the approximate number of victims, the armed group(s) involved and the identities of some of the victims and the alleged perpetrators.

- Investigation and analysis of specific acts of violence against women and children, and acts of violence linked to the illegal exploitation of natural resources

120. Given that the methodology used for the first part of the report would not allow for full justice to be done to the numerous victims of specific acts of violence such as sexual violence and violence against children, nor adequately reflect the scale of the violence practised by all armed groups in the DRC, nor enable an analysis of the causes of some of the conflicts, it was decided at the beginning of the Exercise to devote a part of it to these subjects, based partly on the investigations of the Mapping Team but also to a large extent on specific documents supporting these violations. Although these specific acts of violence are mentioned in several incidents recorded in the first part of the report, this more global approach enabled the Team to better illustrate in Part II the scale of the phenomena of rape, recruitment of child soldiers and violations of human rights linked to the illegal exploitation of natural resources. This has helped to highlight the recurrent, widespread and systematic use of these specific violations by all parties in the various conflicts and enabled a brief analysis to be produced.

- Assessment of the resources available to the national justice system to deal with the serious violations identified

121. One important aspect of the ToR for the Mapping Exercise is the assessment of the resources available to the Congolese justice system to deal with the numerous crimes committed. A "Justice Team" was created within the Mapping Exercise to address these matters. **Around 200 actors in the judicial system as well as national experts in domestic criminal law and international law** were interviewed by the Justice Team in Kinshasa and in the provinces, notably the civilian and military judicial authorities, government representatives and the government agencies responsible for the reform of the Congolese judicial system.

122. The Justice Team began by carrying out an analysis of the domestic and international law applicable in this area, as well as the courts with jurisdiction to prosecute and judge the alleged perpetrators of the serious violations of human rights and international law committed between March 1993 and June 2003. A study of Congolese case law on crimes under international law was also carried out to illustrate domestic judicial practice in this area. The Team then assessed the capacities of the national justice system with regard to fighting impunity. The Team integrated the points of view and the needs expressed by judicial system actors met in Kinshasa, Orientale Province, Ituri, South Kivu and North Kivu, as well as in audit reports for the Congolese justice system created by the Congolese authorities (Plan of Action for Justice Reform) and by international agencies and some donors involved in the reform of the Congolese justice system.

- Formulation of options in the field of transitional justice mechanisms that could help to combat impunity in the DRC

123. To formulate options for transitional justice mechanisms that were compatible with efforts already underway and with the international obligations of the DRC concerning the fight against impunity, consultations were held in Goma, Bukavu and Kinshasa with professors of criminal law, human rights NGOs, victims' associations, civil society experts working in the fight against impunity and representatives of bar societies and judges' associations. Regional consultations regarding various areas of transitional justice were organised in the form of round-table meetings with civil society representatives in Bunia, Bukavu, Goma and Kinshasa. In all, these round-table meetings attracted more than one hundred representatives of victims' associations and human rights organisations involved in matters of justice and the fight against impunity.

124. In particular, the Team assessed the extent to which current reforms of the justice system and the security sector address the imperative to prevent further violations of human rights, combat impunity and meet the needs of the many victims in terms of truth and reparation. Finally, the Team was in a position to formulate several transitional justice options as part of the current efforts in the country to reform the judicial system, to reform Congolese law and to create new institutions that would promote greater respect in the DRC for its international obligations concerning justice and the fight against impunity.

CONCLUSION

125. Drawing up an inventory of the most serious violations of human rights and international humanitarian law that were committed on DRC territory between March 1993 and June 2003, the report concludes that the vast majority of the 617 listed incidents constitute crimes under international law, if judicially investigated and proven. These were war crimes committed during armed conflict, either internal or international, or crimes against humanity committed in the context of a generalised or systematic attack against a civilian population, or in many cases both. The issue of whether the many

serious acts of violence committed against Hutus in 1996 and 1997 constitute crimes of genocide can only be decided by a competent court.

126. In terms of justice, the response of the Congolese authorities in the face of the overwhelming number of serious crimes committed within the territory of the DRC has been negligible or even non-existent. The lack of political will on the part of the Congolese authorities to prosecute those who are responsible for serious violations of human rights and of international humanitarian law committed in the DRC has only encouraged further serious violations, which continue to this day. The report notes that, because of the many issues that arise when seeking justice for the crimes committed in the DRC, it is crucial that a holistic policy of transitional justice be implemented, which will depend on the creation of diverse and complementary mechanisms, both judicial and non-judicial. While the report is careful not to give any recommendations or directives in the strict sense of the word, it does, however, examine the advantages and drawbacks of various transitional justice options in terms of truth, justice, reparation for and rehabilitation of victims, and reform of judicial and security institutions (including vetting measures), in the current Congolese context. These options, which must be examined by the Government of the DRC and civil society, include: a) the creation of a mixed jurisdiction; b) creation of a new Truth and Reconciliation Commission; c) reparation programmes; and d) reforms of both the legal sector and the security forces. In order to ensure that the Congolese people are intimately involved in assessing needs, establishing priorities and finding solutions – in short, to ensure that they adopt these new mechanisms and understand their function and scope – it is essential that the authorities carry out national consultations on transitional justice beforehand to assure the credibility and legitimacy of any approaches carried out in this domain.

SECTION I. INVENTORY OF THE MOST SERIOUS VIOLATIONS OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW COMMITTED WITHIN THE TERRITORY OF THE DRC BETWEEN MARCH 1993 AND JUNE 2003

127. The period examined by this report is probably one of the most tragic chapters in the recent history of the Democratic Republic of the Congo (DRC), if not the whole of Africa. Indeed, the decade was marked by a string of major political crises, wars and multiple ethnic and religious conflicts that brought about the deaths of hundreds of thousands, if not millions, of people.[86] Very few Congolese and foreign civilians living on the territory of the DRC managed to escape the violence, and were victims of murder, maiming, rape, forced displacement, pillage, destruction of property or economic and social rights violations.

128. Compiling an inventory of the most serious violations of human rights and international humanitarian law committed in the DRC during this period presents a number of challenges. In spite of the scale and the extreme nature of the violence that characterises the violations in some of the country's provinces, it has been necessary to take into consideration less serious violations as well as seemingly less affected regions. Confirming violations that occurred over ten years ago can sometimes prove impossible on account of the displacement of witnesses and victims. In some cases, violations appear to be isolated crimes and it is difficult to account for them. They can only be integrated in the waves of violence occurring in a given geographical location or within a given timeframe. *Vis-à-vis* the frightening number of violations committed, the sheer size of the country and difficulties accessing many sites, the Mapping Exercise is therefore necessarily incomplete and cannot reconstruct the complexity of each situation or obtain justice for all of the victims.

129. The inventory that follows, therefore, aims solely to present the most serious violations committed during the period under examination. The inventory endeavours nonetheless to cover the entire Congolese territory. It will be presented in chronological order, in relation to four key successive periods in the recent history of Zaire/Congo. The first period, from March 1993 to June 1996, describes violations committed in the final years of the regime of President Joseph-Désiré Mobutu, marked by the failure of the democratisation process and the devastating consequences of the Rwandan genocide, in particular in the provinces of North Kivu and South Kivu. The second period, from July 1996 to July 1998, covers violations committed during the First Congo War and the first

[86]The International Rescue Committee (IRC) conducted four mortality surveys in the DRC between 1998 and 2004. According to the IRC, from the start of the Second Congo War in August 1998 to the end of April 2004 around 3.8 million people were thought to have died as the direct or indirect victims of the War and the armed conflict. It should be noted, however, that the methodology used by the IRC to determine the number of indirect deaths is based on epidemiological studies and population growth estimates that have been disputed. In light of its mandate, it was not the responsibility of the Mapping Exercise to ascertain the total number of deaths attributable to the situation in the DRC during the period in question.

fourteen months of the regime established by President Laurent-Désiré Kabila. The third period concerns the inventory of violations committed between the start of the Second Congo War in August 1998 and the death of President Kabila in January 2001. Lastly, the final period lists violations committed against a background of increasing observation of the ceasefire along the front line and the speeding up of peace negotiations in preparation for the start of the transition period on 30 June 2003.

CHAPTER I. MARCH 1993 – JUNE 1996: FAILURE OF THE DEMOCRATISATION PROCESS AND REGIONAL CRISIS

130. In the early 1990s, under pressure from the people and donors, President Mobutu was compelled to re-establish a multiparty system and convene a national conference. As the months went by, however, Mobutu managed to off-balance his opponents and remain in power through the use of violence and corruption, and by using tribal and regional antagonisms to his advantage. This strategy had particularly serious consequences for Zaire, including the destruction of key infrastructures, economic meltdown, the forced deportation of civilians in Katanga, ethnic violence in North Kivu and increased tribalism. Violations of human rights also became commonplace across the entire country.

131. In 1994, after months of institutional paralysis, supporters and opponents of President Mobutu eventually came to an agreement on the appointment by consensus of a prime minister and the establishment of a transition parliament. However, the agreement did not succeed in solving the political crisis, curbing the criminalisation of security forces or setting the country on the road towards elections. From July 1994 onwards, the influx of 1.2 million Rwandan Hutu refugees following the Tutsi genocide in Rwanda further destabilised the province of North Kivu and made the situation in South Kivu still more delicate. Due to the presence among the refugees of members of the former *Forces armées rwandaises* (later "ex-FAR"), as well as militias responsible for the genocide (the Interahamwe), and given the alliance that had existed for some years between the former Rwandan regime and President Mobutu, this humanitarian crisis quickly degenerated into a diplomatic and security crisis between Zaire and the new Rwandan authorities.

132. Faced with the use by the ex-FAR and the Interahamwe of refugee camps as a base from which to lead their incursions into Rwanda, in 1995 the new Rwandan authorities opted for a military solution to the crisis. With the aid of Uganda and Tutsis from North and South Kivu who had been denied Zairian citizenship by the transition parliament in Kinshasa, they organised a rebellion to counter the ex-FAR and Interahamwe and bring about a change of regime in Kinshasa.

133. During this period, the most serious violations of human rights and international humanitarian law were concentrated for the most part in Katanga, North Kivu and in the city-province of Kinshasa.

A. Shaba (Katanga)

134. For over a century, a sizeable community from the Kasai provinces had settled in Katanga[87] to construct the railway at the request of the Belgian colonial authorities and

[87] The province of Katanga was called Shaba from 1971 to 1997.

work in the mines. With the exception of the secession period (1960-1963), the natives of Katanga[88] and the natives of the Kasai provinces[89] had always lived in harmony. Under the regime of President Mobutu, however, the Katangese felt politically marginalised and criticised the Kasaians for taking up too many jobs and management positions, in particular in the largest mining firm, Gécamines.[90] After the political liberalisation of the regime, most Kasaian and Katangese delegates to the National Sovereign Conference (CNS) united under the opposition front known as the "Sacred Union" to overthrow President Mobutu. In November 1991, however, President Mobutu managed to get Katangese delegates from the Union of Federalists and Independent Republicans (UFERI) to split with the Sacred Union's main party, the Union for Democracy and Social Progress (UDPS) led by Étienne Tshisekedi.

135. Following this change of alliance, the president of UFERI, Nguz Karl-i-Bond, became Prime Minister; the party's provincial president, Kyungu wa Kumwanza, was appointed Governor of Shaba and relations between the Kasaians and the Katangese began to seriously deteriorate. While in Kinshasa, Étienne Tshisekedi and Nguz Karl-i-Bond were fighting for control of the CNS, in Shaba, Governor Kyungu wa Kumwanza had begun to demonise UDPS and its supporters. As UDPS was very popular among the Kasaians in Shaba and Étienne Tshisekedi himself hailed from Kasai Oriental, the political conflict between UFERI and UDPS took on a tribal dimension. For months, Kyungu wa Kumwanza accused the Kasaians of opposing Nguz Karl-i-Bond's Government so they could continue dominating the Katangese. Blaming them for the majority of the province's problems, he called on the Katangese to expel them. At his instigation, many young Katangese enlisted in UFERI's youth wing, JUFERI,[91] where they received paramilitary training inspired by Mayi-Mayi rites.[92]

136. The first attacks on Kasaian civilians by members of the JUFERI militia took place in late 1991 and early 1992 in the towns of Luena, Bukama, Pweto, Kasenga, Fungurume and Kapolowe. In the first half of 1992, Kyungu wa Kumwanza dismissed many Kasaians from the courts, the education sector, hospitals, state-owned companies, sports associations, state media and the administration. In several towns, Kasaian traders could no longer access public markets and, in many areas, JUFERI prohibited them from

[88] In the text that follows, the natives of Katanga are designated "Katangese".

[89] In the text that follows, the natives of the Kasai provinces are designated "Kasaians".

[90] La Générale des Carrières et des Mines (state-owned mining company).

[91] JUFERI was run as a full-blown militia. It comprised several branches, including the Division spéciale Pononai (DSPO), responsible for eliminating the movement's enemies, the Division spéciale PUMINA, responsible for attacks on the Kasaians (torture, beatings, torching homes, etc.) and the Ninja group, which practised martial arts and was responsible for ensuring the protection of UFERI leaders.

[92] In the DRC, the term Mayi-Mayi is used to designate groups of armed combatants resorting to specific magic rituals such as water ablutions ("Mayi" in Swahili) and carrying amulets prepared by witchdoctors, believed to make them invulnerable and protect them from ill fate. Present mainly in South Kivu and North Kivu, but also in other provinces, the various Mayi-Mayi groups included armed forces led by warlords, traditional tribal elders, village heads and local political officers. The Mayi-Mayi lacked cohesion and the different groups allied themselves with various government groups and armed forces at different times.

farming the land. After the election of Étienne Tshisekedi by the CNS to the post of prime minister on 15 August 1992, the tension mounted. At Lubumbashi, JUFERI youths looted Kasaian homes before being overpowered by the army, the FAZ (Forces armées zaïroises), in bloody clashes. In the days that followed, Kyungu wa Kumwanza and Nguz Karl-i-Bond accused the Kasaians of insulting the Katangese at gatherings held to celebrate the election of the UDPS leader to the Premiership. Likening the Kasaians to insects ("Bilulu" in Swahili), they called on the Katangese people to eliminate them.

137. Starting in August 1992, JUFERI members attacked Kasaians at Luena, Kamina, Kolwezi, Sandoa and Likasi. From September to November 1992, JUFERI carried out a campaign of persecution and forced displacement against the Kasaians in Likasi, in collusion with the local and provincial authorities. The violence resulted in dozens of civilian victims and saw hundreds of dwellings looted and many buildings destroyed, including places of worship. In a few months, almost 60,000 civilians – almost half the Kasaian population of Likasi – had taken refuge in the train station and in high schools waiting for peace to be restored or for a train to take them away from the town. In the same period, JUFERI carried out similar yet smaller-scale attacks on Kasaians living in the mining town of Kipushi.

138. On 20 February 1993, at a meeting held in the Place de la Poste at Kolwezi, Governor Kyungu wa Kumwanza urged the Katangese to drive the Kasaians out of Gécamines and take over the management positions in the firm. Beginning on 20 March 1993, members of the JUFERI militia organised a campaign of persecution and forced displacement against the Kasaians of Kolwezi, with the support of the *gendarmerie* and in collaboration with the municipal and provincial authorities. In this context, the Mapping Team documented the following alleged incidents:

- Having forbidden Kasaian workers from entering Gécamines sites across the town on 23 March, JUFERI units began by killing an unknown number of Kasaian civilians in the outlying districts of Kolwezi, forcing Kasaians to gather in schools and places of worship under the protection of the FAZ. In the Musonoie district, three kilometres from Kolwezi in the direction of Kapata, members of the FAZ from the 14th Brigade, Kamanyola Division, attacked JUFERI youths, who fled. On 24 March, JUFERI received reinforcements from the surrounding villages and imposed a curfew in several districts of the town.[93]

- On the morning of 25 March, JUFERI units armed mainly with machetes, knives and fuel cans burst into the homes of Kasaians in different districts of the town of Kolwezi and ordered them to leave immediately or they would be killed and their houses torched. Over the course of that day, JUFERI went on a targeted killing spree aimed at terrorising Kasaians and forcing them to leave Kolwezi. Over

[93] Interviews with the Mapping Team, Katanga, January 2009; Kasai Oriental and Kasai Occidental, March–April 2009; *La Voix du Centre des droits de l'homme et du droit humanitaire* (CDH), No.1, January–February–March 1994.

50,000 Kasaian civilians fled into the town to take refuge at the train station, the post office, the Hotel Impala, the high school and the convent schools of the Notre-Dame de Lumière cathedral. In the days that followed, JUFERI killed an unknown number of Kasaian civilians at identity checks carried out at roadblocks erected in the town. At least two people were killed by JUFERI with spears or arrows. There was also mention of Kasaian women killed near the Mutshinsenge river.[94]

139. From April onwards, a certain degree of calm was restored. Tensions remained, however, between the FAZ[95] and the "Mobiles"[96] on the one hand and JUFERI and the *gendarmerie* on the other.[97]

- On 2 May and 4 May, JUFERI units reportedly attacked the camp of Kasaian *refoulés*[98] at the train station in Kolwezi, killing three civilians belonging to the Mobiles group. On 5 May, the Mobiles allegedly retaliated by killing a Katangese civilian who had wandered into the tunnel near the train station.[99]

140. In late June 1993, Governor Kyungu wa Kumwanza and the commander of the military region, General Sumaili, pressured the *refoulés* to leave Kolwezi before 1 July.

- On 30 June 1993, a high-ranking FAZ officer reportedly set fire to the shelters and tents of the Kasaian *refoulés* in the train station at Kolwezi. Unable to leave the site fast enough, at least one elderly person and an unknown number of disabled people were burned alive.[100]

141. The total number of victims of JUFERI's campaign of persecution in Kolwezi is hard to determine. According to statistics from the Comité des refoulés de Kolwezi, between 24 March 1993 and 14 January 1994 direct clashes between JUFERI and the Kasaians are thought to have resulted in 371 victims.

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[94] Interviews with the Mapping Team, Katanga, January 2009, Kasai Oriental and Kasai Occidental, March–April 2009; Association zaïroise pour la défense des droits de l'homme (AZADHO), *Périodique des droits de l'homme*, No.5, May–June 1993; Human Rights Watch Africa, *Zaire: inciting hatred*, June 1993; *La Voix du Centre des droits de l'homme et du droit humanitaire* (CDH), No.1, January–February–March 1994; Donatien Dibwe Dia Mwembu and Marcel Ngandu Mutombo, *Vivre ensemble au Katanga*, L'Harmattan, 2005, pp. 378–379.

[95] The Katanga-based FAZ included many citizens from other provinces in Zaire and were hostile to JUFERI's ideology.

[96] The "Mobiles" were self-defence groups responsible for protecting expelled Kasaians (French: *refoulés*).

[97] The *gendarmerie* was predominately Katangese and operated in collaboration with JUFERI.

[98] The term *refoulés*, meaning "displaced people", is used by Kasaians driven out of Shaba.

[99] Interviews with the Mapping Team, Katanga, January 2009 and Kasai Oriental and Kasai Occidental, March–April 2009.

[100] Interviews with the Mapping Team, Katanga, January 2009 and Kasai Oriental and Kasai Occidental, March–April 2009.

142. According to all the witness accounts gathered, most of the deaths resulting from the campaign of persecution and forced displacement were not so much attributable to direct attacks by JUFERI as the inhumane living conditions imposed by the authorities. According to the Comité des refoulés de Kolwezi, between 24 March 1993 and January 1994 a total of 1,540 Kasaian *refoulés* died due to lack of food and medicine or as a result of diseases contracted in *refoulement* sites or on trains transporting them to the Kasai provinces.

- In the days that followed the attacks of 25 March 1993, dozens of *refoulés* in a state of shock died for lack of humanitarian aid at their refuge sites. Witnesses gave figures ranging from 7 to 20 deaths each day. Many died as the result of a cholera epidemic. Thanks to aid provided by Médecins Sans Frontières (MSF), the International Committee of the Red Cross (ICRC) and Katangese friends, living conditions at *refoulement* sites improved gradually but infant mortality remained very high.[101]

143. Some *refoulés* managed to leave Kolwezi by road or on foot, but most, for fear of coming up against JUFERI roadblocks, remained near the train station, waiting for a train for the Kasai provinces. After several passenger trains were laid on by Gécamines and religious sisters in April and May 1993, the *refoulés* had no option but to take goods trains. In October 1993, many sick people and people unfit for travel were airlifted thanks to planes chartered by the Salvatorian Fathers. By 14 January 1994, fewer than 5,000 Kasaians remained in Kolwezi.

- During their interminable journey to Mwene Ditu, Mbuji-Mayi and Kananga, the *refoulés* travelled in freight cars, packed in groups of eighty. Several surviving witnesses have likened these trains to "coffins on rails". Mortality, in particular child mortality, was especially high on these trains. According to the Kolwezi Comité des refoulés, 94 Kasaian civilians are thought to have died on the journey from accidents caused by poor transport conditions. Most of the deaths, however, are thought to have been attributable to overcrowding, stress caused by JUFERI train attacks, disease, lack of water and despair caused by persecutions and the loss of family members and friends. In spite of the presence of the FAZ, who escorted many of the convoys, JUFERI attacked the trains during their journey. As soon as they left Kolwezi, the attackers cut the air supply to the cars or threw petrol bombs on to the trains. At stations where trains were due to stop, in particular at Luena and Kamina, JUFERI members prevented *refoulés* from getting off to buy food, get treatment or bury those who had died on the journey. A large number of *refoulés* died during the journey and had to be hastily buried along the railway track. One survivor described it as "the world's longest graveyard". Upon their arrival in Mwene Ditu, Kananga and other towns and

[101] Interviews with the Mapping Team, Katanga, January 2009; Kasai Oriental and Kasai Occidental, March–April 2009; AZADHO, *Périodique des droits de l'homme*, No.5, May–June 1993.

communities in the Kasai provinces, the *refoulés* received MSF aid and were taken in charge by CARITAS and OXFAM UK.[102]

144. Ultimately, according to the statistics put forward by the *Comité des refoulés de Kolwezi*, over 130,000 Kasaian civilians were expelled, including over 80,000 children. The campaign of persecution and expulsion at Kolwezi is thought to have caused the deaths of over 300 children. Those who remained were reportedly the target of various acts of persecution and discrimination until at least 1995.

145. JUFERI's persecution of civilians of Kasaian origin that began in September 1992 continued into 1993 and 1994 in Likasi.

- At Likasi, between January and August 1993, JUFERI allegedly resumed its campaign of persecution to force Kasaians still working at Gécamines to leave the town for good. It is hard to determine the total number of deaths resulting from the attacks and diseases contracted at the *refoulement* sites.[103]

146. In 1993, the campaign of persecution carried out by JUFERI against Kasaian civilians since September 1992 continued at Kipushi.

- The anti-Kasaian movement began in Kipushi on 3 May 1993. On 25 June, 500 members of JUFERI reportedly attacked Kasaian civilians working at Gécamines, preventing them from further access to facilities. The same movement was resumed with greater intensity in late September and led to the deaths of at least three civilians, injuring an unknown number of others and causing much material damage.[104]

147. Throughout 1993 and 1994, Governor Kyungu wa Kumwanza stepped up his speeches against Kasaians living in Lubumbashi. In early 1994, he famously declared that having cleaned out the "bedrooms" (Likasi and Kolwezi) he would now see to the "living room", by which he meant Lubumbashi, the capital of the province. The Kasaians of Lubumbashi lived in terror for months, fearing the same fate as the *refoulés* of Likasi and Kolwezi. Many were dismissed by major private enterprises and the various public services simply for being Kasaian.

148. The total number of victims of the campaign of persecution executed by JUFERI and Governor Kyungu wa Kumwanza, in collusion with President Mobutu, is hard to determine. Interviews and documents consulted by the Mapping Team have not been able to confirm the figure of 50,000 deaths put forward by a human rights NGO in 1994.

[102] Interviews with the Mapping Team, Katanga, January 2009 and Kasai Oriental and Kasai Occidental, March–April 2009.
[103] Interviews with the Mapping Team, Katanga, January 2009 and Kasai Oriental and Kasai Occidental, March–April 2009.
[104] Interviews with the Mapping Team, Kasai Oriental, April 2009.

There is no doubt, however, that several thousand Kasaian civilians lost their lives in the course of these events.

149. According to data from the NGO *Association des refoulés pour le développement du Kasaï* (ARKASAI), which worked alongside MSF Belgium and the European Union on *refoulé* reception, over 780,000 Kasaians were expelled to Kasai Oriental between November 1993 and November 1995. In the same period, around 450,000 Kasaians were received in Kasai Occidental, according to statistics provided by a former OXFAM UK officer. The remaining *refoulés* settled mainly in Kinshasa. The consequences of this tragedy are still felt more than fifteen years after the events took place. Most of the *refoulés* live in utter destitution, the Kasaians driven out of Gécamines have never received outstanding pay checks or pensions, the *refoulés* have never received compensation for their loss and no legal action has been brought against those responsible for this persecution.

150. From the second half of 1994, the political situation in Kinshasa evolved in a way that was not advantageous for UFERI. Following the institutional agreement forged between the Political Forces of the Conclave and the Sacred Union, Étienne Tshisekedi and Faustin Birindwa were removed from the Premiership and a member of the presidential majority, Kengo wa Dondo, was appointed prime minister. Having no further need for UFERI and Kyungu wa Kumwanza to weaken Étienne Tshisekedi, President Mobutu gradually withdrew his support for them. Against a backdrop of rivalry for the control of various types of illicit traffic (mainly cobalt and stolen vehicles) in the province, the Zairian security services (the FAZ, the Civil Guard, SNIP)[105] attacked members of the JUFERI militia in several territories of the province. On 27 March 1995, Governor Kyungu wa Kumwanza was arrested for separatist activities. As a reaction, UFERI declared two days of *ville morte* on 30 and 31 March 1995. Kyungu wa Kumwanza was discharged from the governorship on 20 April 1995.

- On 31 March 1995, members of the Civil Guard allegedly opened fire on JUFERI units trying to impose respect of the *ville morte* days, killing two of them and injuring at least seven others. In the months that followed, the Civil Guard and the SNIP reportedly opened fire on and tortured tens of UFERI and JUFERI members at Lubumbashi, Likasi, Kolwezi, Kambove and Luena.[106]

[105] National intelligence and protection service.

[106] See *La Voix du CDH*, No.7, March–April 1995; AZADHO, *Périodique des droits de l'homme*, No.19, *Annual Report 1995*, January 1996; Fédération des droits de l'homme, *Rapport succinct au Rapporteur spécial*, 20 August 1995.

B. North Kivu

151. For decades, the increasing number and economic prosperity of the Banyarwanda[107] had been a source of tension with the other communities of North Kivu (the Hunde, Nyanga, Tembo, Kumu and Nande).[108] Present to a modest extent even before the colonial partitioning of 1885, through successive waves of migration the Banyarwanda had become a sizeable community in the province. Their dynamism and the support of influential members in Kinshasa had enabled them to purchase a lot of land and head of cattle and take control of several major trade networks. This growing hold on the province was often hard for the other communities to come to terms with. They accused the Banyarwanda in particular of stealing their land in collaboration with the central government and violating the ancestral rights of their tribal chiefs. Their discontent was fuelled by the fact that many Banyarwanda had not arrived in Zaire until the early 1930s and were only granted Zairian citizenship by virtue of a law contested on 5 January 1972. Far from clarifying the situation, the repeal of this law by President Mobutu in the early 1980s had created confusion among the people and reopened the polemic. In fact, the Banyarwanda were allowed to keep their Zairian identity cards and their title deeds. Nevertheless, the other communities saw them as refugees and immigrants whose title deeds were worthless in comparison to the ancestral rights held by "nationals".

152. In 1989, the refusal of part of the population to allow the Banyarwanda to participate in local elections had led to violent incidents and forced the Government to postpone the elections in North Kivu. With the liberalisation of political activity in the early 1990s, competition for power in the province had become more intense and the "indigenous" communities[109] had begun to contest the political and land rights of the Banyarwanda more openly. Accusing the provincial authorities dominated by the Nande and Hunde of trying to deny them their political rights, some members of the Hutu-Banyarwanda farmers' mutual association, the MAGRIVI,[110] became more radical and set up small armed groups. In May 1991, armed units of the Hutu Banyarwanda attacked officers overseeing the population census in Masisi territory. At the National Sovereign

[107] The term "Banyarwanda", literally "people from Rwanda", is used to designate both Hutu and Tutsi populations originating from Rwanda and living in North Kivu. Some are the descendants of peoples of Rwandan origin who settled on the Congolese territory before 1885 and whose Zairian nationality has never been seriously contested. Most Banyarwanda, however, arrived in Congo/Zaire during the colonial era or after the country's independence.

[109] In this report, the term "indigenous" refers to people with a particular attachment to the land they traditionally occupy. The term "indigenous" as used in the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention (No.169) of the International Labour Organisation, or the report of the African Commission on Human and Peoples' Rights on indigenous peoples in Africa is broader as it aims to cover communities in a situation of extreme marginalisation and in non-dominant positions in terms of politics and their economy, while still having a particular attachment to the territories they traditionally occupy, representative institutions that are particular to them and a distinct identity from the rest of the population.

[110] Mutuelle des Agriculteurs de Virunga.

Conference (CNS), Nande and Hunde delegates pressed for the Banyarwanda not to be allowed to take part in future elections. At provincial level, Governor Jean-Pierre Kalumbo (of Nande origin) and his party the DCF/Nyamwisi encouraged young indigenous people to enlist in tribal self-defence militias (the Ngilima for the Nande and the Mayi-Mayi for the Hunde and Nyanga) to counterbalance the militiamen from the MAGRIVI. From 1992 onwards, conflicts relating to land ownership and ethno-political murders became more common and every community started to live in fear of attacks by other communities.

153. In 1993, Hunde and Nyanga groups in the Walikale territory believed that an attack by the Hutu Banyarwanda was imminent. In March 1993, Governor Jean-Pierre Kalumbo (of Nande origin) called on the FAZ to help the Ngilima and the Nyanga and Hunde militias to "exterminate the Banyarwanda". On 18 March, Vice-Governor Bamwisho, from the Walikale territory, delivered an inflammatory speech against the Banyarwanda in the village of Ntoto.

- On 20 March 1993, armed units from the Hunde and Nyanga Mayi-Mayi reportedly killed dozens of Hutu-Banyarwanda peasants at the market in Ntoto, a village located at the border between the Walikale and Masisi territories. The Mayi-Mayi attacked the Hutus with rifles, knives, arrows and spears. On 21 March 1993, the same Mayi-Mayi group allegedly killed dozens of Banyarwanda at Buoye, a neighbouring village of Ntoto. The attack took place as the victims were leaving the village's Catholic and Protestant churches. In their attempt to escape their attackers, many Hutu Banyarwanda drowned in the Lowa River.[111]

154. Starting in the Walikale territory, the violence spread quickly to the Masisi and then to the Rutshuru territories. In this context, the Mapping Team documented the following alleged incidents:

- In March and April 1993, armed units from the Hunde Mayi-Mayi killed an unknown number of Hutu civilians in the Kambule district of Katoyi village in the Masisi territory. Before leaving Kambule, the Mayi-Mayi set fire to Hutu dwellings.[112]

[111] Interview with the Mapping Team, North Kivu, April 2009; *Report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC* (S/1998/581); *Mémorandum des communautés hutu et tutsi du Nord-Kivu à la Commission d'enquête sur les massacres de Walikale, Masisi et Bwito en mars et avril 1993*, 25 April 1993; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.34; Human Rights Watch (HRW), *Zaire: Forced to flee: Violence against the Tutsis in Zaire*, 1996.

[112] Interviews with the Mapping Team, North Kivu, December 2008/March 2009.

- In April 1993, Hutu armed units killed at least twelve Hunde civilians, including children, in Mulinde village in the Masisi territory. The victims were killed with blows of machetes, hoes and axes.[113]

- In April 1993, armed Hutu units killed around fifty people, mostly Hunde, in the village of Ngingwe in the Bashali chiefdom, in the north-east of the Masisi territory.[114]

- In April 1993, armed Hutu units set fire to the primary school and the health care centre in the village of Kiusha in the Bashali chiefdom, in the Masisi territory. In the village of Muhongozi, they set fire to the church of the 8th CEPZA (Pentecostal church group, now CEPAC) and killed an unknown number of civilians.[115]

- On 22 July 1993, armed Hutu units supported by the FAZ killed at least 48 people, most of them Hunde but also three Hutus, in the village of Binza and the surrounding area, in the north of the Masisi territory. The victims were shot or killed by blows from machetes or spears. According to one eyewitness, some of the victims were maimed and a pregnant woman was disembowelled. Several other villages in the vicinity of Binza were attacked during this period, including Kalembe on 25 July 1993.[116]

- On 7 September 1993, Hutu militiamen killed at least 38 displaced Hunde, including women and children, in the village of Kibachiro on the Karobe hill. The victims had fled their village and had regrouped at Kibachiro because of the prevailing insecurity in the territory. [117]

155. It is very hard to determine how many people died in the first few months of the conflict. Every community has its own version of the facts and its own estimate of the number of victims. Furthermore, killing sprees often occurred at very heavily dispersed sites that are hard to access even now. Where it is possible to visit these sites, it is rare to find first hand witnesses to the events, because the successive wars that ravaged the province often entailed the displacement of the people in the villages that came under attack. With respect to the Ntoto massacre, the figure most often put forward is 500

[113] Interview with the Mapping Team, North Kivu, November 2008; Léon Batundi Ndasimwa, "Recensement des victimes hunde des massacres et affrontements interethniques de 1993 à nos jours", undated.

[114] Interviews with the Mapping Team, North Kivu, November 2008.

[115] Interviews with the Mapping Team, North Kivu, November 2008, March and April 2009.

[116] Interviews with the Mapping Team, North Kivu, November 2008 and April 2009.

[117] Léon Batundi Ndasimwa, "Recensement des victimes hunde des massacres et affrontements interethniques de 1993 à nos jours", undated; Groupe d'étude et d'action pour le développement (GEAD), Mahano No.24, October-November-December 1993.

deaths.[118] At the provincial level, MSF estimated in 1995 that between 6,000 and 15,000 people had died between March and May 1993, and that the violence had caused the displacement of 250,000 people.[119]

156. In July 1993, President Mobutu travelled to Goma and deployed soldiers from the Special Presidential Division (DSP) to restore order. Thanks to changes in the leadership of the province, in the sense of a more balanced representation of the various communities, and dialogue between the various civil society associations (from November 1993 to February 1994), calm was gradually restored in North Kivu. However, the deep-rooted issues behind the conflict were not settled and the situation remained very delicate when over 700,000 Rwandan Hutu refugees, some ex-FAR staff and a large number of Interahamwe militiamen responsible for the Tutsi genocide arrived in the province of North Kivu between 14 July and 17 July 1994.

157. Their long-term settlement added to the insecurity. Above all, it rekindled the fear of Rwandan domination in the region in communities in conflict with the Banyarwanda. Hutu armed units from MAGRIVI were very quick to join forces with the ex-FAR/Interahamwe and strengthened their position towards the Hunde and Nyanga Mayi-Mayi and the Nande Ngilima. From late 1994, the ethnic war resumed, with a higher degree of violence than in 1993.

158. During this period, the solidarity between Hutu Banyarwanda and Tutsi Banyarwanda was shattered. For a number of years, this solidarity had already been tested, as many Tutsi Banyarwanda had left to fight in the Front patriotique rwandais (FPR), while many Hutu Banyarwanda were working alongside the security forces of Rwandan president Juvénal Habyarimana to stop the FPR from recruiting soldiers in Zaire. After the Tutsi genocide in Rwanda and after the FPR took control in Kigali, the split was confirmed between the two ethnic groups. Between July 1994 and March 1995, over 200,000 Tutsis left the province of North Kivu and returned to Rwanda. Some left of their own volition to benefit from the employment opportunities offered in the army and administration of the new Rwandan regime. Others fled the growing hostility of the Hutu Banyarwanda and ex-FAR/Interahamwe attacks, as well as the resumption of the ethnic war between the Hutu Banyarwanda and the Hunde and Nyanga Mayi-Mayi.

159. For the Tutsis of Goma, the situation became increasingly difficult in the second half of 1994. Tutsis living in North Kivu were the victims of harassment by other groups and, in some cases, by the authorities. They often lost their jobs and became the target of threats, acts of intimidation and extortion, rape and pillage. An unknown number of Tutsis were reportedly abused and killed, or died in this period.

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[118] *Report of the Secretary-General's Investigative Team* (S/1998/581); *Mémorandum des communautés hutu et tutsi du Nord-Kivu à la Commission d'enquête sur les massacres de Walikale, Masisi et Bwito en mars et avril 1993*, 25 April 1993; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.34.

[119] Médecins Sans Frontières (MSF), *Populations in danger 1995*, 1995.

160. In August 1995, in the hope of regaining control over the situation at grassroots level, and probably also satisfying the demands of the Rwandan authorities to a certain extent, the Zairian Government made the decision to expel the Hutu refugees.

- From 19 August to 23 August 1995, FAZ soldiers forcibly repatriated several thousand Rwandan refugees from the Mugunga camp, several kilometres from the town of Goma. The refugees were taken to the border in trucks and handed over to the Rwandan authorities. Zairian troops took advantage of the situation and reportedly looted from refugees and set fire to huts and shops in the camp.[120]

161. Criticised by the entire international community, the operation was a disaster. Indeed, many refugees, convinced that they would be killed on their return to Rwanda, chose to flee the camps and join the Hutu-Banyarwanda people living in the surrounding countryside. Their arrival in these regions went hand in hand with fresh waves of pillaging and caused the inter-community conflict in the Masisi and Rutshuru territories to intensify. In this context, the Mapping Team documented the following alleged incidents:

- On 17 November 1995, Hutu armed units killed around forty Hunde in an attack on the village of Mutobo in the Masisi territory. The tribal chief Bandu Wabo was among the victims.[121]

- On 9 December 1995, Hunde armed units killed between 26 and 30 Hutus and four FAZ soldiers in Bikenge village in the Masisi territory. In doing so, these Mayi-Mayi intended to avenge the death of their tribal chief Bandu Wabo.[122]

162. These attacks brought about massacres and the large-scale displacement of civilian populations, leading to the creation of a number of ethnically homogeneous enclaves in the Masisi and Rutshuru territories. In this climate of increasing lawlessness, the few thousand Tutsis still living in North Kivu became an easy target for the various armed groups. While some Hunde Mayi-Mayi groups formed alliances with them, others attacked them in the same way as the ex-FAR/Interahamwe and the Hutu armed units from the MAGRIVI. Over the course of 1995, the standpoint of the Zairian security forces became more and more ambiguous. While in some cases they protected the Tutsis

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[120] Confidential document submitted to the Secretary-General's 1997/1998 Investigative Team; "Zaire Expels 3,500 Refugees From Rwanda Border Camp" and "Zaire Troops Step Up Expulsion of Rwanda Refugees", *New York Times*, 22 and 23 August 1995.

[121] AZADHO (Association zaïroise de défense des droits de l'homme), "État d'urgence", April 1996; Léon Batundi Ndasimwa, "Recensement des victimes hunde des massacres et affrontements interethniques de 1993 à nos jours", undated.

[122] AZADHO, "État d'urgence", April 1996, p.6; Lutheran Church, *Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo*, May 1997; HRW, "Zaire: Forced to flee: Violence against the Tutsis in Zaire", 1996, p.12; Didier Kamundu Batundi, *Mémoire des crimes impunis*, *la tragédie du Nord-Kivu*, 2006, pp.61–62.

from attacks by armed groups and the civilian population, in other cases they targeted them directly. In this context, the Mapping Team documented the following alleged incidents:

- In the first half of 1996, members of the Zairian security forces forcibly expelled to Rwanda an unknown number of Tutsis living in the town of Goma and in the territories of Rutshuru, Masisi and Lubero. Before their expulsion, members of the security forces and the population often subjected their victims to inhumane and degrading treatments. In the same period, the Zairian security forces pillaged many Tutsi homes and requisitioned their property.[123]

- Around 3 February 1996, armed Hunde Mayi-Mayi elements killed at least 18 Tutsi civilians at Osso farm, around forty kilometres north-west of Goma in the Masisi territory. The Mayi-Mayi also pillaged the cattle and property they found there. The victims were part of a group of several hundred internally displaced Tutsis who had settled on the site in late 1995.[124]

- On 4 March 1996, armed Hutu and ex-FAR/Interahamwe units killed a dozen Tutsi Banyarwanda in the village of Bukombo in the territory of Rutshuru. Some of the victims were burned alive when their houses were set on fire. Others were killed by machete blows. Before they left, the assailants looted and torched several dwellings. Survivors fled to the Birambizu parish, where they were again attacked in the weeks that followed.[125]

- On 12 May 1996, Hutu armed units killed several dozen displaced Hunde and Tutsis in the Mokoto monastery in the north-east of the Masisi territory. In early January 1996, several hundred displaced Hunde and Tutsis fleeing attacks by armed Hutu-Banyarwanda and ex-FAR/Interahamwe units had found refuge in the monastery. In the days that followed, a few hundred survivors left Mokoto to seek refuge in Kitchanga.[126]

- Between 8 June and 11 June 1996, armed Hutu and ex-FAR/Interahamwe elements from the Katale and Mugunga camps killed dozens of Tutsi civilians near Bunagana and Jomba, including the *Chef du poste d'encadrement*

[123] HRW, "Zaire: Forced to flee: Violence against the Tutsis in Zaire", 1996, pp.14–17.

[124] Louis Mugawe Ruganzu, "La tension persiste en zone de Masisi", in Dialogue No.192 August–September 1996, p.73; Sheldon Yett, "Down the Road from Goma: Ethnic Cleansing and Displacement in Eastern Zaire", US Committee for Refugees Issue Brief, June 1996, p.6.

[125] *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2); HRW, "Zaire: Forced to flee: Violence against the Tutsis in Zaire", 1996, p.15.

[126] Interviews with the Mapping Team, North Kivu, December 2008, January and March 2009; *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2); "La guerre de Masisi", in Dialogue No.192 August–September 1996; HRW, "Zaire: Forced to flee: Violence against the Tutsis in Zaire", 1996, p.13; Associated Press (AP), "Refugees Continue to Flee Zaire", 21 May 1996; Voice of America (VOA), "Ethnic Violence in Zaire", 16 May 1996.

administratif at Chengerero, a village 10 kilometres from Bunagana. The massacre is thought to have been carried out in retaliation for the attack by Rwandan and Ugandan soldiers at Bunagana several days earlier, leading to the deaths of at least twenty Hutu-Banyarwanda civilians.[127]

163. In late 1995, faced with the growing insecurity in the territories of Masisi and Rutshuru, the FAZ carried out a number of operations against the various armed groups and militias operating in the province of North Kivu. During these campaigns, the FAZ committed multiple acts of violence against civilian populations.

- On 17 December 1995, FAZ soldiers and Hutu militiamen reportedly killed dozens of civilians, most of them Hunde, in Masisi village and the surrounding villages. The soldiers also looted and torched part of Masisi, destroying many public buildings, including a school. These attacks are thought to have been carried out in retaliation for the deaths of four FAZ members in Bikenge village on 9 December 1995 (see Bikenge incident in paragraph 35).[128]

164. In March 1996, the Zairian Government sent 800 troops from the Special Presidential Division (DSP), members of the Military Action and Intelligence Service (SARM) and Paracommando units from the 312th battalion into the Masisi territory. The operation, code-named "Kimia" ("peace" in Lingala) enabled a somewhat precarious calm to be restored in the territory for several weeks. For want of troops and adequate logistical and financial support, however, the operation did not succeed in disarming a sufficient number of militiamen. Furthermore, rather than fight the armed groups, some units in operation Kimia allegedly turned to pillaging livestock and asked money in exchange for their protection to the Tutsis hoping to be escorted to Goma or Rwanda.[129]

165. In May 1996, the Zairian Government launched Operation "Mbata" ("slap" in Lingala) to disarm the Hunde and Nyanga Mayi-Mayi and the Nande Ngilima militia. However, the operation again failed due to a lack of motivation on the part of the units involved, the hostility of the local people and the resistance of the targeted armed groups. In this context, the Mapping Team documented the following alleged incidents:

- On 10 May 1996, Nande armed units killed at least four Hutu Banyarwanda in the village of Vitshumbi in the territory of Rutshuru. According to some sources, local people called on members of the Ngilima to drive out the FAZ who were

[127] *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2); Amnesty International (AI), "Lawlessness and Insecurity in North and South-Kivu", November 1996, p.10.

[128] Interviews with the Mapping Team, North Kivu, November–December 2008 and January 2009; AZADHO, *Nord-Kivu: État d'urgence*, April 1996, p.6; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.62; AI, "Zaire – Lawlessness and insecurity in North and South-Kivu", 1996, p.8.

[129] HRW, *Zaire: Forced to flee: Violence against the Tutsis in Zaire*, 1996, p.26.

committing acts of violence in the village. The Hutu Banyarwanda are thought to have been targeted due to their alleged collaboration with the FAZ.[130]

- On 19 May 1996, as part of Operation Mbata, FAZ soldiers killed an unknown number of civilians accused of supporting armed units from the Ngilima, including a Pentecostal pastor, in an attack against the village of Vitshumbi. After the recapture of Vitshumbi, soldiers kept the civilian population locked in village churches for two days. They also looted the village.[131]

- On 29 May 1996, FAZ troops massacred over 120 civilians in the village of Kibirizi in the Bwito chiefdom, in the territory of Rutshuru. The FAZ fired at the village using heavy weapons and set fire to several houses.[132]

- In June 1996, FAZ troops massacred over one hundred people in the village of Kanyabayonga in the Lubero territory. Most of the victims were killed when the village was shelled using heavy weapons and hundreds of homes were torched. Kanyabayonga was considered a Ngilima stronghold and most of the victims were Nande armed units or civilians suspected of supporting the group.[133]

166. For reasons mentioned above, the total number of victims of the massacres that occurred in North Kivu between July 1994 and June 1996 is impossible to determine. According to some estimates, the inter-ethnic conflict is thought to have caused close to one thousand deaths in 1995 and led to the displacement of 100,000 people. In June 1996, there were between 100,000 and 250,000 displaced persons in the province. At that time it was estimated that since 1993, between 70,000 and 100,000 people had died as a result of the ethnic war in the province. These figures are impossible to verify in the absence of reliable statistics, but also in the absence of the large number of people who were allegedly the subject of forced "disappearances" that occurred at this time in the province. One case illustrating the very common practice of forced disappearance was confirmed by the Mapping Team and is presented below by way of example.

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[130] Interview with the Mapping Team, North Kivu, April 2009; Action paysanne pour la reconstruction et le développement communautaire intégral (APREDECI), Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu, 1997, pp.7–8.

[131] *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1995/67 and Corr.1), para. 59; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.66; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, pp.7–8.

[132] Interview with the Mapping Team, North Kivu, November 2008; IRIN (Integrated Regional Information Networks), Masisi Report, 23 August 1996; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, pp.8–9.

[133] Interviews with the Mapping Team, North Kivu, November 2008 and February 2009; *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6/Add. 1), para. 59; IRIN, Masisi Report, 23 August 1996; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, pp.9–10.

- On 16 August 1995, two Hunde civilians allegedly disappeared as they were going into the fields near Kitchanga at the crossroads between the Masisi, Walikale and Lubero territories. Their bodies were never found. The people have always suspected Hutu militiamen in the surrounding area to be responsible for their disappearance.[134]

167. During this period, the violence in North Kivu also led to widespread looting. Buildings designated for education, hospitals and dispensaries were frequently targeted, in particular in the Masisi territory. The war did not spare livestock, one of the province's key resources. Over three years, 80 percent of the livestock was reportedly pillaged, mainly by the ex-FAR/Interahamwe and Hutu armed units from the MAGRIVI, in collaboration with some FAZ units.[135]

C. Kinshasa

168. From March 1993 to June 1996, the crackdown on the political opponents of President Mobutu's regime was especially violent, particularly in Kinshasa. Under the direct control of President Mobutu, the security forces reportedly carried out many summary and extrajudicial executions as well as forced disappearances, tortured and raped a great number of civilians.[136] They also committed many acts of pillage. The widespread impunity they enjoyed leads to the supposition that the highest powers of government were providing cover for their actions – even encouraging them – in order to destabilise their opponents.

169. The security force agencies most involved in violations of the right to life were the Special Presidential Division (DSP), the Civil Guard, the FAS (*Forces d'action spéciale*), the FIS (*Forces d'intervention spéciale*) and the National Intelligence and Protection Service (SNIP). The BSRS (Special Research and Surveillance Brigade) and the SARM (Military Action and Intelligence Service) were also heavily involved in serious violations of the right to life. A special unit formed within the DSP, known as *Hibou* ("the owls"), was specifically responsible for spreading fear among the people by carrying out summary executions and kidnapping not only political opponents but soldiers and ordinary citizens too.

170. Opponents were typically detained at the Civil Guard headquarters on the Avenue Victoire in the Kasa-Vubu commune, the Civil Guard/IBTP prison, the 11th military garrison (CIRCO), various SNIP detention centres dotted across the capital, and cells at the Lufungula, Kokolo and Tshatshi military camps. Some were imprisoned at secret detention sites. In the majority of cases, those arrested were tortured. Flogging, electric

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[134] Interviews with the Mapping Team, North Kivu, November 2008.

[135] IRIN, Masisi Report, 23 August 1996.

[136] *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6); AZADHO, *Périodique des droits de l'homme*, May–June 1993; AZADHO, *Périodique des droits de l'homme*, July–August 1993; AZADHO, "L'armée tue", 1994.

shock, suspension by the feet, whipping and sexual abuse were the most frequently used methods of torture. The detention conditions themselves amounted to cruel, inhuman and degrading treatment, and led to a large number of deaths. A great many victims were packed into tiny cells, without ventilation or sanitary facilities, where they received neither food nor medical treatment.

171. Between March 1993 and June 1996, over thirty communications regarding cases in Kinshasa were sent to the Government via mechanisms provided for by the United Nations Commission on Human Rights, including the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention.[137]

172. The alleged serious violations of human rights are too numerous to be listed here in their entirety, and therefore only a few illustrative alleged cases of summary executions and torture are reported below.

- In April 1993, in Kinshasa, elements of the security forces arbitrarily arrested and tortured over 20 civilians, including political opponents, trade unionists and journalists.[138]

- On 4 May 1994, elements of the security forces executed 15 people at the Tshatshi camp. The victims had been kidnapped by the security forces (notably the BSRS) two days previously at a protest march staged by the opposition. A further five individuals who had been kidnapped and transferred to the CIRCO military garrison were released after protests from human rights organisations.[139]

- On 27 May 1994, Civil Guard elements executed six UDPS activists in the Maluku district in Nsele commune. Their bodies were loaded on to a boat and dumped in the middle of the river. The activists had been kidnapped that day by the BSRS and taken to the Civil Guard training centre at Mangengenge. On 27 May, the opposition had called a day of *ville morte* in Kinshasa to demand the return of Étienne Tshisekedi to the Premiership. Between 1993 and 1994, the security forces killed a number of UDPS activists, including minors, during their crackdown on the movement.[140]

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[137] Most of these communications, which concerned hundreds of individuals, were made jointly with the Special Rapporteur on the situation of human rights in Zaire: E/CN.4/1994/7 and Corr. 1 and 2, E/CN.4/1994/31, E/CN.4/1995/31, E/CN.4/1995/61, E/CN.4/1996/4, E/CN.4/1996/35, E/CN.4/1997/7, E/CN.4/1997/7/Add.1, E/CN.4/1997/34, E/CN.4/1998/38, E/CN.4/1998/68/Add.1 and (E/CN.4/1999/63).

[138] AI, "Violence Against Democracy", September 1993; AZADHO, *Périodique des droits de l'homme*, No.4, March–April 1993; AZADHO, *Périodique des droits de l'homme*, No.6, July–August 1993.

[139] Interview with the Mapping Team, Kinshasa, April 2009; AZADHO, *Périodique des droits de l'homme*, May–June 1994.

[140] Interview with the Mapping Team, Kinshasa, April 2009; AZADHO, *Périodique des droits de l'homme*, March–April 1994; AI, "Violence Against Democracy", September 1993.

- On 29 July 1995, units of the Civil Guard and the Gendarmerie killed at least seven PALU (*Parti lumumbiste unifié* – Unified Lumumbist Party) activists at a demonstration against the extension of the transition period. Around twenty people were injured in the operation, some seriously. An unknown number of demonstrators were arrested and transferred to Civil Guard and CIRCO detention sites, and cells at the Kokolo military camp. On the same day, some time around 4am, members of the Civil Guard and the Gendarmerie raped women and beat PALU demonstrators at the residence of the party's leader, Antoine Gizenga, in the Limete commune. On this occasion, the security forces looted and ransacked the residence, which was also PALU's headquarters.[141]

173. In some densely-populated areas, like Kimbanseke, the people reacted to the violence meted out by the security forces by creating self-defence groups. These groups, in turn, allegedly committed summary executions and theft. Although the Mapping Team was unable to confirm these figures, it is estimated that over one thousand people in total were killed in Kinshasa by uniformed and plain-clothes members of the Zairian security forces during this period.[142]

D. Rest of country

174. During this period, some provinces underwent a chaotic democratisation process accompanied by mounting xenophobia, ending in the persecution of *non-originaires*, or outsiders. The constant political arm-wrestling between President Mobutu and Étienne Tshisekedi of the UDPS and the manipulation of regionalist and tribalist sentiment by local political actors gave rise to many instances of abuse and acts of violence against opponents and *non-originaires* in the different provinces.

Bas-Zaire (Bas-Congo)

175. In 1994, the Governor of Bas-Zaire province, Bieya Mbaki, staged a number of public meetings, mainly in September, in which he encouraged the indigenous people of the province to drive out all *non-originaires* holding positions of authority in the region. Using xenophobic slogans that inflamed ethnic hatred, the Governor and the local authorities reportedly expelled several natives of the Kasai provinces and issued an ultimatum to the *non-originaires* to leave the province before 24 November 1994, the anniversary of Mobutu's 1965 coup. The following alleged two incidents are cited as examples of this campaign of persecution.

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[141] Interview with the Mapping Team, Kinshasa, April 2009; AI, "Zaire: Nine demonstrators killed", 1995; HRW, "Uncertain Course: Transition and Human Rights Violations in the Congo", 1997.

[142] *Report of the Secretary-General on the situation of human rights in Zaire* (E/CN.4/1994/49); AZADHO, *Périodique des droits de l'homme*, December 1993; AZADHO, *Périodique des droits de l'homme*, July–August 1994; AZADHO, *Périodique des droits de l'homme*, January 1995; HRW*, Annual Report,* 1994.

- In July 1994, the state-owned maritime transport authority Régie des Voies Maritimes laid off a number of *non-originaire* employees. In the months that followed, the people drove out two *non-originaire* magistrates, including the President of the Tribunal de Paix in Luozi.[143]

- On 15 October 1994, units of the Zairian security forces expelled 14 *non-originaire* families from Bas-Zaire province, including the Baluba (from the Kasai provinces) and the Bangala (from Équateur).[144]

Orientale Province

- In 1995, the Governor and local authorities of Orientale province arbitrarily suspended several magistrates and expelled a local UDPS leader from the province. The victims were all natives of the Kasai provinces, known for their involvement with the political opposition and in civil society.[145]

- Between 1995 and 1996, on several occasions and on the orders of the Governor, units of the security services cordoned off the homes of certain intellectuals and members of the clergy accused of being opposition supporters.[146]

Maniema

176. In this period, changes in the political situation underway in Kinshasa had only a delayed and limited effect on Maniema province. The province remained under the control of Governor Omari Léa Sisi and President Mobutu's party, the MPR (*Mouvement pour la révolution*). In 1994, in response to opposition attempts to organise themselves in the field, the Governor demanded the deployment of a Civil Guard contingent to reinforce the *Gendarmerie Nationale* garrison. Over the course of 1995, the Gendarmerie and the Civil Guard allegedly committed dozens of rapes, inflicted torture and cruel, inhuman and degrading treatment on many civilians and looted many properties. Public reports have mentioned the existence of dozens of serious cases. The following two alleged cases were documented by the Mapping Team and are reported below by way of example.

[143] AZADHO, Annual Report 1994, January 1995.

[144] Toges Noires, "Kongolisation des cadres ou épuration ethnique au Bas-Zaïre?", December 1994.

[145] Interview with the Mapping Team, Orientale Province, March 2009; "Victimes de xénophobie, les Kasaiens souhaitent quitter le Haut-Zaïre", *La Référence Plus*, 7 September 1995; Annual report of AZADHO, 1996; document submitted to the Mapping Team, February 2009.

[146] Interview with the Mapping Team, Orientale Province, March 2009; "Victimes de xénophobie, les Kasaiens souhaitent quitter le Haut-Zaïre", *La Référence Plus*, 7 September 1995; AZADHO Annual Report, 1996; document submitted to the Mapping Team, February 2009.

- On 6 February 1995 at Kampene in the Pangi territory, units of the Civil Guard raped an unknown number of women and looted all the stores in the market. The Civil Guard had been deployed in Kampene to investigate the destruction of the CELPA (Pentecostal Church in Africa) church by members of the Rega community.[147]

- On 7 February 1995, Civil Guard units raped an unknown number of women and pillaged the village of Tchoko in the Kailo territory, near Kindu. The incident occurred after residents beat a member of the Civil Guard who had clashed with a village farmer.[148]

Kasaï Occidental

177. In October 1993, as Zaire sank deeper and deeper into economic crisis, Faustin Birindwa's Government launched a programme of monetary reform and introduced a new currency, the "New Zaire". However, the use of the currency was swiftly opposed by Étienne Tshisekedi and the Catholic Church. In opposition strongholds, such as the two Kasai provinces, the people rallied to reject the monetary reform. In response, President Mobutu sent military reinforcements into the province of Kasai Occidental.

- In the month that followed 29 November 1993, soldiers from the Special Presidential Division (DSP) allegededly killed six civilians in Kananga, including a Catholic priest, and looted a number of Catholic establishments, among them the Procure Saint-Clément, as well as a number of department stores, including Africa Luxe, Ruff Congo and Simis. This deliberate attack, targeted predominately at the Catholic clergy and its property, was committed at a time when President Mobutu was criticising Catholic leaders for campaigning against the use of the "New Zaire".[149]

[147] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu, "Monitoring: cas types des violations des droits de l'homme au Maniema", Annual Report 1995; *Politique Africaine*, No.84, "Le Maniema, de la guerre de l'AFDL à la guerre du RCD", December 2001, pp.64–65.

[148] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu, "Monitoring: cas types des violations des droits de l'homme au Maniema", Annual Report 1995; *Politique Africaine*, No.84, "Le Maniema, de la guerre de l'AFDL à la guerre du RCD", December 2001, pp.64–65.

[149] Interview with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009; AI, "Zaire, Collapsing under Crisis", 1994, pp.5–6.

CHAPTER II. JULY 1996 – JULY 1998: FIRST CONGO WAR AND AFDL REGIME

178. From July 1996, Tutsi/Banyamulenge[150] armed units who had left Zaire to pursue military training in Rwandan army, the APR (*Armée patriotique rwandaise*), in Rwanda, along with APR soldiers, began their operations to infiltrate the province of South Kivu via Burundi and destabilise North Kivu via Uganda. The first serious clashes between the FAZ and the *infiltrés* took place on 31 August 1996 near Uvira in the province of South Kivu. On 18 October, the conflict took a new turn when an armed movement, the AFDL (*Alliance des forces démocratiques pour la libération du Congo*), was officially formed in Kigali, asserting its intention to topple President Mobutu.[151] Under the cover of the AFDL, whose own troops, weapons and logistics were supplied by Rwanda, soldiers from the APR, the UPDF (Uganda People's Defence Force) and the FAB (*Forces armées burundaises*) entered Zaire en masse and set about capturing the provinces of North and South Kivu and the Ituri district.[152]

179. During this lightning offensive, units of the AFDL, APR and FAB attacked and destroyed all the Rwandan and Burundian Hutu refugee camps set up around the towns of Uvira, Bukavu and Goma. Several hundreds of thousands of Rwandan refugees returned to Rwanda, but hundreds of thousands of others, like the ex-FAR/Interahamwe, fled towards the territories of Walikale (North Kivu) and Shabunda (South Kivu). For several months, they were pursued by AFDL/APR soldiers, who went about systematically destroying the makeshift refugee camps and persecuting anyone who came to their aid.

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[150]The term "Banyamulenge" came into popular use in the late 1960s to distinguish ethnic Tutsis historically based in South Kivu, the Banyamulenge, from those arriving from the 1960s onwards as refugees or economic migrants. Banyamulenge means "people of Mulenge" and takes its name from a city in the Uvira territory with a very large Tutsi population. Over time, however, the use of the term Banyamulenge has become increasingly more generalised and has been used to designate all Zairian/Congolese and occasionally Rwandan Tutsis.

[151] From the second half of 1995, the Rwandan authorities, in cooperation with those in Kampala, began their preparations to facilitate a mass military intervention of the Zairian territory by the APR and UPDF, under the guise of a domestic rebellion. To enable the rebellion to surface, Rwandan and Ugandan leaders requested the help of Tutsis in Zaire who had served in the FRP and APR for several years to mass recruit in North Kivu and South Kivu to start a Banyamulenge rebellion. They also made contact with the leaders of small Zairian rebel groups that had been foes of President Mobutu for decades (André Kisase Ngandu's CNRD (Conseil national de résistance pour la démocratie) and Laurent-Désiré Kabila's PRP (Parti de la Révolution Populaire)) to give the rebellion a national dimension. In addition to the CNRD led by André Kisase Ngandu, AFDL President until his assassination in January 1997, and the PRP led by Laurent-Désiré Kabila, the AFDL also included the ADP (Alliance démocratique des peuples), led by Déogratias Bugera, and the MRLZ (Mouvement révolutionnaire pour la libération du Zaïre), led by Anselme Masasu Nindaga.

[152] Given the high numbers of APR soldiers among AFDL troops and at AFDL headquarters – a fact later acknowledged by the Rwandan authorities (see footnote on page 1014) – and the great difficulty experienced by witnesses questioned by the Mapping Team distinguishing between AFDL and APR members in the field, this report will refer to AFDL armed units and APR soldiers engaged in operations in Zaire between October 1996 and June 1997 under the acronym AFDL/APR. In cases where, in certain regions, several sources have confirmed high numbers of Ugandan soldiers (in some districts of Orientale Province, for example) or the Forces armées burundaises (as in some territories in South Kivu) under the cover of the AFDL, the acronyms AFDL/APR/UPDF and AFDL/APR/FAB or AFDL/UPDF and AFDL/FAB may also be used.

180. From December 1996, the Kinshasa Government attempted to launch a counter-offensive from Kisangani and Kindu with the aid of the ex-FAR/Interahamwe. However, it proved impossible to reorganise the ailing Zairian army in such a short space of time. The AFDL/APR/UPDF troops, who were reinforced from February 1997 by anti-Mobutu Katangese soldiers who had served in the Angolan Government army (the ex-Tigers) since the 1970s, and by children involved with armed forces and armed groups (CAAFAG),[153] commonly known as the *Kadogo* ("small ones" in Swahili) and recruited during the conquests, took control of Kisangani on 15 March 1997 and Mbuji Mayi and Lubumbashi in early April. After the fall of Kenge in Bandundu province, the AFDL/APR troops and their allies reached the gates of the capital and President Mobutu had to resign himself to stepping down. On 17 May 1997, AFDL/APR troops entered Kinshasa, and on 25 May, the AFDL president, Laurent-Désiré Kabila, declared himself President of the Republic and renamed the country the Democratic Republic of the Congo (DRC). Within a few months, however, President Kabila's authoritarian measures, his reneging on contracts signed with a number of foreign companies and his refusal to cooperate with the special Team sent by the UN Secretary-General to investigate the massacre of refugees in the East of the DRC lost the new regime its main international allies.

A. Attacks against Tutsi and Banyamulenge civilians

1. South Kivu

181. Since the 1980s, the issue of the nationality of Tutsis living in South Kivu, like that of the Banyarwanda in North Kivu, had been a matter of controversy. Most Tutsis in South Kivu declared themselves to be Zairian Banyamulenge,[154] the descendants of Tutsis from Rwanda and Burundi who had settled on the Hauts Plateaux in the Uvira and Fizi territories before the colonial partitioning of 1885. The other communities, on the other hand, were of the opinion that most Tutsis living in South Kivu were political refugees and, as economic migrants who had arrived in the country in the twentieth century, they could not, therefore, claim Zairian nationality. The decision taken in 1981 by President Mobutu to repeal the law of 1972, by which Zairian nationality had been granted collectively to peoples of Rwandan and Burundian origin present in the Zairian territory before 1 January 1950, strengthened the position of the so-called "indigenous" communities. Since then, there had been widespread suspicion over the true nationality of

[153] Children associated with armed groups and armed forces (CAAFAG) designates children who were enlisted in regular or irregular armed forces or armed groups either of their own free will or by force, regardless of their role.

[154] Gisaro Muhoza, of Tutsi origin, a deputy for the Congolese parliament in the territory of Uvira, popularised this term in the late 1960s to distinguish ethnic Tutsis historically based in South Kivu, the Banyamulenge, from those arriving from the 1960s onwards as refugees or economic migrants. Banyamulenge means "people of Mulenge", and takes its name from a city in the Uvira territory with a very large Tutsi population. It should be noted, however, that most of Mulenge's inhabitants are not Tutsis but Vira. Over time, the term Banyamulenge has become increasingly used to designate all Zairian/Congolese Tutsis.

the Tutsis in South Kivu and no Tutsi members of parliament had been elected in the province. Moreover, as in North Kivu in 1989, controversy over the uncertain nationality of the Tutsis in the province had led to the postponement of elections. Despite all that, in the absence of major conflict over land, and in view of the relatively small size of the Banyamulenge and Tutsi community in the province, in South Kivu the political liberalisation of the regime after 1990 did not result in the same degree of violence and tribalist manipulation of the political debate that was rife in North Kivu.

182. From 1993, however, the arrival in the province of Burundian[155] and Rwandan[156] Hutu refugees and armed groups, and the integration after July 1994 of many Banyamulenge and Tutsis from South Kivu in the army and the administration of the new Rwandan regime,[157] stirred the anti-Banyamulenge and anti-Tutsi sentiment in many South Kivuans. Accused of being agents of the Rwandan and Burundian Governments, many Tutsis, and also some Banyamulenge, lost their jobs and were subject to threats and discrimination. On 28 April 1995, the transition parliament (HCR-PT) in Kinshasa officially rejected all claims of the Banyamulenge to Zairian citizenship and recommended to the Government that they be repatriated to Rwanda or Burundi, on the same basis as the Hutu refugees and Tutsi immigrants. In the months that followed, the provincial administration seized many Banyamulenge properties.

183. In a memorandum released on 19 October 1995, the authorities of the Uvira territory stated that the Banyamulenge ethnic group was unrecognised in Zaire and that, with the exception of a dozen families, all Tutsis living in South Kivu were "foreigners". On 25 November, in Uvira, the signatories of a petition denouncing the persecution of the Banyamulenge by the Zairian authorities were arrested by the security forces. In the Hauts Plateaux and Moyens Plateaux in the Uvira, Fizi and Mwenga territories, the Bembe, long-time foes of the Banyamulenge,[158] took advantage of the situation to set up armed groups and step up their cattle raiding activities and acts of intimidation against the Banyamulenge. In response to this situation, an increasing number of young Tutsis and Banyamulenge left for Rwanda to pursue military training in the APR. Some returned

[155] After the assassination of Hutu president Melchior Ndadaye on 21 October 1993 at Bujumbura, inter-ethnic violence broke out in Burundi between the Hutus and the Tutsis. In response to the crackdown organised by the Tutsi-dominated FAB (Forces armées burundaises), several tens of thousands of Hutus took refuge in South Kivu between 1993 and 1995. In their wake, in 1994, the Burundian Hutu movement CNDD (Centre national pour la défense de la démocratie), led by Léonard Nyangoma, and its armed wing FDD (Forces pour la défense de la démocratie) set up in the territories of Uvira and Fizi. From their bases in South Kivu, they launched a number of attacks against the FAB (Forces armées burundaises). The armed wing of the Burundian Hutu movement PALIPEHUTU (Parti pour la libération du peuple hutu – Party for the Liberation of the Hutu People), the FNL (Forces nationales de libération – National Forces of Liberation), also used South Kivu as a base in its fight against the Burundian army.

[156] The ex-FAR/Interahamwe.

[157] From 1990, many Banyamulenge youths uncertain of their future in Zaire and many young Tutsis wanting to return to Rwanda enlisted in the FPR (Front patriotique rwandais – Rwandese Patriotic Front) to fight the FAR (Forces armées rwandaises – Rwandan Armed Forces).

[158] Between 1963 and 1965, huge numbers of Bembe fought in the ranks of the Mulelist rebellion (the "Simba") against the state army. The Banyamulenge, on the other hand, had sided with the Kinshasa government and then participated in the organised crackdown on the Bembe after the defeat of the Simba.

quickly to Zaire and created a self-defence militia in the Hauts Plateaux and the Moyens Plateaux of the Mitumba mountains. Others remained in Rwanda, where they helped form a Banyamulenge rebellion that would allow the APR to neutralise the ex-FAR/Interahamwe and enable the Tutsis of South Kivu and North Kivu to obtain full and official recognition of their Zairian citizenship by a new regime in Kinshasa.

184. From July 1996 onwards, as Banyamulenge/Tutsi armed units began operations to infiltrate South Kivu, the situation for Banyamulenge and Tutsi civilians in general became extremely precarious. On 31 August 1996, when members of the FAZ intercepted Rwandan soldiers at Kiringye, sixty kilometres north of Uvira, the zone commissioner Shweka Mutabazi called on local youths to enlist in fighting militias and ordered FAZ soldiers to arrest all Banyamulenge and Tutsis[159] living in the Uvira territory. In this context, the Mapping Team documented the following alleged incidents:

- On 9 September, while the people of Uvira mounted a demonstration calling on the Tutsis to leave Zaire, FAZ members arrested an unknown number of Tutsi/Banyamulenge and looted several buildings, including religious institutions and the offices of local Banyamulenge-led NGOs.[160]

- On 17 September 1996, with the aid of FAZ soldiers, Bembe armed units killed an unknown number of Banyamulenge civilians in the village of Kabela in the Fizi territory. Only the men were killed. Although they were spared, most of the women were raped.[161]

- Some time around 21 September 1996, FAZ soldiers killed at least two Banyamulenge civilians, including the president of Uvira's Banyamulenge community, at the Kamanyola border post, ninety kilometres north of Uvira in the Walungu territory. The victims were part of a group of Banyamulenge awaiting deportation to Rwanda. At the border post, while the group was waiting for papers for its departure into Rwanda, FAZ soldiers killed a minor who had asked them for water. The FAZ then looted their goods. When APR units arrived at the Ruzizi River border crossing, however, the FAZ soldiers fled. The President of the

[159] It is not for the Mapping Team to pass comment on the ever-controversial matter of the nationality of Tutsis in South Kivu, or the respective sizes of the Banyamulenge and Tutsi communities living in the province at the time. In some cases, the Mapping Team was able to confirm that victims were members of Tutsi communities settled in the Moyens Plateaux and Hauts Plateaux and has chosen to designate them by "Banyamulenge". In other cases, the Mapping Team was able to establish that the victims were Zairian/Congolese, Rwandan or Burundian Tutsis, and "Tutsi" is used to describe them in the text that follows. In the majority of cases, however, it was not possible to establish the precise origin of Tutsi victims, and therefore they are referred to in this text as Banyamulenge/Tutsi.

[160] Interview with the Mapping Team, South Kivu, February 2009; confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; IRIN, "Weekly Roundup of Main Events in the Great Lakes region", 2–8 September 1996; AI, "Lawlessness and Insecurity in North and South-Kivu", 1996.

[161] Interviews with the Mapping Team, South Kivu, June 2009.

Banyamulenge community was executed soon after at Kamanyola by FAZ soldiers.[162]

- Around 23 September, FAZ soldiers killed at least fifteen Banyamulenge/Tutsis at the Kamanyola border post. The victims were accused of being part of an armed Banyamulenge/Tutsi group infiltrating the Zairian territory.[163]

- Between 22 and 24 September 1996, FAZ units publicly executed two Banyamulenge civilians at the village of Nyamugali, forty-seven kilometres north of Uvira, in the Ruzizi Plain. The victims were accused of being in contact with Banyamulenge/Tutsi infiltrated armed units. The executions took place shortly after a FAZ soldier was killed at the Rwanda border.164

- In September 1996, Bembe armed units killed an unknown number of Banyamulenge at Lubonja village in the Nganja sector of the Fizi territory. The victims were mostly women who had left Nganja for Minembwe. Two pastors were also killed in the same village in similar circumstances.165

185. In Fizi territory, faced with the risk of clashes between the FAZ and Banyamulenge/Tutsi armed units in the Moyens Plateaux and Hauts Plateaux of the Mitumba mountains, several hundred Banyamulenge civilians left the village of Bibokoboko and the surrounding area to seek refuge in Baraka and Lueba. By putting themselves under the protection of the FAZ in this way, these civilians hoped not to be confused with the infiltrated groups. In spite of this, the following alleged incidents were documented by the Mapping Team:

- On 26 September 1996, with the aid of FAZ soldiers, Bembe armed units killed nearly 300 Banyamulenge civilians in the town of Baraka in the Fizi territory. The victims, including women and children, were mostly stabbed to death. Many women, including minors, were gang-raped before they were killed. The killings were carried out in front of the local population, who did not react. The victims came from villages around Bibokoboko in the Hauts Plateaux and Moyens Plateaux. Their bodies were buried in a mass grave at Baraka. In 2005, a high-ranking government official requested that the Mayi-Mayi groups operating in Baraka unearth the victims' remains and dump them in Lake Tanganyika to erase all trace of the massacres.166

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[162] Interviews with the Mapping Team, South Kivu, November 2008, February/April 2009; *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 180, Lutheran Church, *Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo*, May 1997, p.8.

[163] Interview with the Mapping Team, South Kivu, February and April 2009; *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 180.

[164] Interviews with the Mapping Team, South Kivu, April 2009.

[165] Interviews with the Mapping Team, South Kivu, April 2009.

[166] Interviews with the Mapping Team, South Kivu, November 2008 and February 2009.

- On 29 September 1996, with the aid of FAZ soldiers, Bembe armed units killed 152 Banyamulenge civilians, including many women and children, in the village of Lueba, seventy-eight kilometres south of Uvira, in the Fizi territory. Some of the victims were killed by machete blows. Others were burned alive in a house that was set on fire with a grenade. Many women, including minors, were gang-raped.167

- In the night of 29 to 30 September 1996, Bembe armed units killed nearly one hundred Banyamulenge civilians opposite the village of Mboko. The victims were mostly survivors of the Lueba masasacre who had been led away by the militiamen to be deported to Rwanda. The women and children of the group reached Rwanda but the men were bound and dumped in Lake Tanganyika. For a short time, the militiamen spared fifteen men, who were detained in a camp at Mboko. However, the militiamen claimed in front of witnesses that the fifteen men would be burned at a later date. The fifteen men have been reported missing ever since.[168]

- Some time around 2 October 1996, local youths and FAZ units killed fifteen Banyamulenge in the village of Sange in the Uvira territory. Most of the victims were living in the Kinanira and Kajembo districts and had found temporary refuge at the home of the *chef de cité*. The youths and the militiamen came for them at the house of the *chef de cité* under the pretext of escorting them to Rwanda, but killed them en route.169

186. On 6 October 1996, Banyamulenge/Tutsi armed units reportedly killed over thirty people at Lemera in the Uvira territory, including civilians and soldiers who were being treated at the local hospital.[170] In response to the outpouring of emotion that followed this massacre, on 8 October the Vice-Governor of South Kivu, Lwabanji Lwasi, gave the Tutsi/Banyamulenge one week to leave the province for good, or they would be considered and treated as infiltrated armed units. On 10 October, Rwanda encouraged all Banyamulenge men to remain in Zaire and fight for their rights. Meanwhile, the Governor of South Kivu, Pasteur Kyembwa Walumona, called on all the young people of the province to enlist in militias to support the FAZ. In this context, the Mapping Team documented the following alleged incidents:

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[167] Interviews with the Mapping Team, South Kivu, November 2008 and February 2009, *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 191; AI, "Loin des regards de la communauté internationale: violations des droits de l'homme dans l'est du Zaïre", 1996, p.3.

[168] Interviews with the Mapping Team, South Kivu, April 2009; AI, "Loin des regards de la communauté internationale: violations des droits de l'homme dans l'est du Zaïre", 1996, p.3.

[169] Interviews with the Mapping Team, South Kivu, April 2009; Lutheran Church, *Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo*, May 1997, p.8.

[170] See page 119, note 366.

- On 10 October 1996, members of the FAZ killed several hundred Banyamulenge, including women and children, in the town of Bukavu. Most of the killings took place in the Panzi district and at the Zairian railway company (SNCZ) site, currently operating as a port zone. On this occasion, a number of family members of Tutsi soldiers serving in the FAZ and accused of betrayal were executed. The victims were shot or killed with machete blows.171

187. On 11 October 1996, the FAZ Chief of Staff, General Eluki Monga Aundu, officially accused the Banyamulenge of attacking the country with the help of Rwanda, Uganda and Burundi. On 18 October, Banyamulenge/Tutsi armed units launched an attack on Kiliba, for which the AFDL (Alliance des forces démocratiques pour la libération du Congo) immediately claimed responsibility. In this context, the Mapping Team documented the following alleged incidents:

- On 21 October 1996, local people killed a Banyamulenge/Tutsi civilian near the Kabindula district in the town of Uvira. The victim was decapitated and his head paraded on a stick around the town. The perpetrators then hung the victim's testicles on a necklace.172

- In October or November 1996, Burundian Hutu armed units from the FDD (*Forces de défense de la démocratie*) publicly executed between 12 and 20 Banyamulenge/Tutsis in the village of Kamituga in the Mwenga territory. Most of the victims were from the villages of Lugushwa (Shabunda territory), Kitamba, Mero and Luliba (villages around Kamituga in the Mwenga territory), where they worked for the mining firms *Société minière et industrielle du Kivu* (SOMINKI) and Compagnie minière des Grands Lacs (MGL). They had recently left their villages to find refuge in Kamituga. The FDD accused them of collaborating with AFDL/APR soldiers who were advancing towards the village. The local people and the Red Cross buried the victims' bodies in a mass grave located behind the parish.173

- Over the course of November 1996, FDD and FAZ units killed around fifty Tutsi civilians by the Zalya River, a few kilometres from Kamituga-Centre, in the Mwenga territory. The killings most often took place at night. The bodies of the victims were then dumped in the Zalya River.174

188. During this period, mention was made of a number of massacres of Banyamulenge in Minembwe, in the Hauts Plateaux of the Fizi territory. The Mapping Team was not, however, able to document these cases. The members of the

[171] Interviews with the Mapping Team, South Kivu, March 2009.
[172] Interviews with the Mapping Team, South Kivu, February 2009.
[173] Interviews with the Mapping Team, South Kivu, March 2009.
[174] Interviews with the Mapping Team, South Kivu, March 2009.

Banyamulenge community who were consulted claimed not to have accurate information on these events.

2. Kinshasa

189. After war broke out in North and South Kivu, the people of Kinshasa became increasingly hostile towards Rwandans and peoples of Rwandan origin, in particular the Tutsis, whom they systematically accused of being in collusion with the AFDL/APR.

- In late October 1996, during public demonstrations staged by students in protest of the presence of "Rwandans" in Kinshasa, men, women and children of Rwandan nationality or origin, particularly those of Tutsi derivation, were publicly humiliated and beaten. Instead of protecting these people, the security forces reportedly conducted arbitrarily arrests of a number of Rwandans, most of them Tutsis. With the cooperation of the people, they also looted and seized many of their homes. The victims were arrested and detained at various detention sites, including the *Service d'action et de renseignements militaires* (SARM) building in the Ngaliema commune, the *Service national d'intelligence et de protection* (SNIP) building opposite the Primature in the Gombe commune and the Tshatshi camp. The detention conditions themselves led to large numbers of deaths, as detainees received no food or medical care. Many victims were tortured and subjected to cruel, inhuman and degrading treatment. An unknown number of people were allegedly executed by the security forces, particularly in the Tshatshi camp. Still more were reportedly deported to Rwanda and Burundi by the Zairian authorities. Others were forced to flee quickly into other countries.[175]

3. Orientale Province

190. After the start of the First Congo War, and as the AFDL/APR troops advanced across Orientale Province, the Zairian security services and the people of Kisangani adopted an increasingly hostile attitude towards the Rwandans and peoples of Rwandan origin, especially Tutsis, who they systematically accused of being in collusion with AFDL/APR.

- From October 1996, the Zairian security services and civilians arbitrarily arrested several dozen civilians of Rwandan nationality or origin, as well as people resembling them, in the town of Kisangani and the surrounding area. They reportedly killed an unknown number of these people; at least one person was

[175] Interviews with the Mapping Team, Kinshasa, April and May 2009; *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6); AI, "Zaire/Rwanda: Disappearances/Fear for Safety", 1996; AI, "Zaïre-Violentes persécutions perpétrées par l'État et les groupes armés", 1996.

killed in public. Most of the victims were detained until the capture of Kisangani town by AFDL/APR troops, and several of them were allegedly tortured.[176]

B. Attacks against Hutu refugees

191. After moving into North and South Kivu in July 1994, the ex-FAR/Interahamwe used the refugee camps along the Rwanda and Burundi borders as bases and training camps. Using the decades-old strategic alliance with President Mobutu and the widespread corruption within the FAZ to their advantage, the ex-FAR bought back or recovered the military equipment confiscated on their arrival in Zaire and resumed war against the army of the Front patriotique rwandais, which was now the national army of Rwanda, the Armée patriotique rwandaise (APR).

192. In response to the mounting tension between Zaire and Rwanda, several countries suggested moving the refugee camps away from the border. Some also recommended that an international peacekeeping force be deployed and that negotiations be opened in the region. However, due to a lack of adequate funding, political willpower and a suitable strategy for separating combatants from refugees, the camps were not moved and the ex-FAR and Interahamwe units continued to rearm themselves with a view to recapturing Kigali by force. On account of the presence of many *génocidaires* among the ex-FAR, the growing diplomatic isolation of President Mobutu and the refusal of the new Rwandan authorities to open negotiations, no political settlement was reached and ex-FAR/Interahamwe attacks in Rwanda became more common, as did the incursions of the APR into the Zairian territory. From August 1996, Banyamulenge/Tutsi armed units and soldiers from the APR and the FAB infiltrated South Kivu. They attacked the FAZ and the ex-FAR/Interahamwe but also, and above all, the refugee camps, some of which served as bases for the ex-FAR/Interahamwe and for Burundian Hutu armed groups (CNDD-FDD and PALIPEHUTU-FNL).

193. The entire period was characterised by the relentless pursuit of Hutu refugees and the ex-FAR/Interahamwe by the AFDL/APR forces across the entire Congolese territory. The refugees, who were sometimes rounded up and used by the ex-FAR/Interahamwe as human shields during their flight, then began a long trek across the country from east to west towards Angola, the Central African Republic or the Republic of the Congo. During this journey, acts of violence against Zairian civilian populations were also reportedly soemthimes committed by refugees and the ex-FAR/Interahamwe, and there were many instances of looting.

[176] Interviews with the Mapping Team, Orientale Province, February to April 2009, North Kivu, March 2009.

The Flight of Refugees (1996-1997)

1. South Kivu

194. After the massacres that occurred in Burundi in late 1993[177] and after the FPR took power in Rwanda in 1994, several hundred thousand Burundian and Rwandan Hutu refugees, as well as ex-FAR/Interahamwe units and Burundian CNDD-FDD rebels, had found refuge in the province of South Kivu. In late 1994, ex-FAR/Interahamwe units stepped up their (sometimes deadly) incursions into Rwanda to take back the power by force. From 1995 onwards, the Armée patriotique rwandaise (APR) carried out at least two raids in Zaire to neutralise them.

- On 11 April 1995, around fifty APR soldiers attacked Birava camp in the Kabare territory with heavy weapons, allegedly killing around thirty people and seriously injuring an unknown number of others. During the attack, the ex-FAR/Interahamwe and the refugees did not retaliate. After this incident, the camp's refugees were transferred to the Chimanga and Kashusha camps.[178]

195. Another incident took place in April 1996 at the Burundian and Rwandan refugee camp at Runingu in the Uvira territory.

- In April 1996, Banyamulenge/Tutsi armed units from Burundi reportedly killed between eight and ten refugees in the Runingu camp in the Uvira territory. The assailants then continued their journey towards the Hauts Plateaux and the Moyens Plateaux.[179]

Uvira territory

196. In 1996, UNHCR estimated the number of refugees in the territory of Uvira at 219,466; two thirds of them were of Burundian nationality.[180] These refugees were

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[177] As previously indicated, after the assassination on 21 October 1993 at Bujumbura of the Hutu president Melchior Ndadaye, inter-ethnic violence broke out in Burundi between the Hutus and the Tutsis. Faced with the crackdown organised by the Tutsi-dominated Forces armées burundaises (FAB), several tens of thousands of Hutus took refuge in South Kivu between 1993 and 1995. In their wake, during 1994, the Burundian Hutu movement Centre national pour la défense de la démocratie (CNDD), led by Léonard Nyangoma, and its armed wing, the Forces pour la défense de la démocratie (FDD), moved into the territories of Uvira and Fizi.

[178] Interviews with the Mapping Team, North Kivu, December 2008 and South Kivu, January 2009; *Report of the Secretary-General's Investigative Team (*S/1998/581), p.57; Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; Groupe Jérémie, press release "Massacres à Birava", 13 April 1995.

[179] Interviews with the Mapping Team, South Kivu, October 2008 and April 2009; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 198; Witness statement gathered by the Secretary-General's Investigative Team in 1997/1998; Voice of America, "Rwanda Denies Attack in Zaire", 14 October 1997; IRIN, "Weekly Roundup of Main Events in the Great Lakes region", 14–21 October 1996; CNN, "Zaire Refugee Camps Site of New Ethnic Killing", 14 October 1997; *New York Times*, "Refugees Flee Camp In Zaire After Killings", 14 October 1997; *The Independent*, "Hutus flee gun raiders", 14 October 1997.

[180] Office of the Regional Special Envoy of UNHCR, Kigali, Rwanda, Zaire: UNHCR population statistics as of 26 September 1996.

spread over the eleven camps located along the Ruzizi River: Runingu, Rwenena, Lubarika, Kanganiro, Luvungi, Luberizi (between Mutarule and Luberizi), Biriba, Kibogoye, Kajembo, Kagunga and Kahanda. Although in some camps civilian refugees lived alongside ex-FAR/Interahamwe units (in Kanganiro camp, for example) or members of CNDD-FDD (Kibogoye camp), the vast majority of refugees were unarmed civilians.

- In the night of 13 to 14 October 1996, Banyamulenge/Tutsi armed units attacked the Runingu camp with heavy weapons, allegedly killing four refugees and injuring seven others.[181]

197. After the AFDL was officially formed on 18 October 1996, Alliance troops, supported by soldiers from the APR and FAB (Forces armées burundaises) attacked the village of Bwegera. On 20 October, having taken control of the village, the soldiers were divided into two columns, the first leaving northwards towards Luvungi and the second southwards towards Luberizi. As they advanced, AFDL/APR/FAB soldiers reportedly carried out widespread and systematic attacks on the eleven Rwandan and Burundian refugee camps set up in the territory. Many witnesses have confirmed that these attacks took place within a few days of the majority of the ex-FAR/Interahamwe and CNDD-FDD units leaving the area. In this context, the Mapping Team documented the following alleged incidents:

- On 20 October 1996, AFDL/APR/FAB units attacked the Itara I and II refugee camps near Luvungi village, killing at least 100 Burundian and Rwandan refugees. In the neighbouring village of Katala, they captured and killed refugees at point-blank range who were trying to flee. The soldiers then forced local people to bury the bodies in mass graves.[182]

- On 20 October 1996, AFDL/APR/FAB units attacked the Kanganiro camp at Luvungi with heavy weapons, killing an unknown number of refugees, including around twenty in the camp's hospital. On the same day, they also killed an unknown number of refugees who had been hiding in the homes of Zairian

[181] Interviews with the Mapping Team, South Kivu, October 2008 and April 2009; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 198; Confidential document submitted in 1997/1998 to the Secretary-General's Investigative Team; Voice of America, "Rwanda Denies Attack in Zaire", 14 October 1997; IRIN, "Weekly Roundup of Main Events in the Great Lakes region", 14–21 October 1996; CNN, "Zaire Refugee Camps Site of New Ethnic Killing", 14 October 1997; *New York Times*, "Refugees Flee Camp In Zaire After Killings", 14 October 1997; *The Independent*, "Hutus flee gun raiders", 14 October 1997.

[182] Interviews with the Mapping Team, South Kivu, February and April/May 2009; CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997"; Lutheran Church, *Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo*, May 1997, p.9.

civilians at Luvingi. The solders then forced local people to bury the bodies in mass graves.[183]

- On 20 October 1996, when they entered the village of Rubenga, units of the AFDL/APR/FAB killed an unknown number of refugees and Zairian civilians who were fleeing in the direction of Burundi. The victims' bodies were then dumped in the Ruzizi River.[184]

- On 21 October 1996, units of the AFDL/APR/FAB attacked Lubarika camp and village, killing an unknown number of Rwandan and Burundian refugees, as well as Zairian civilians who were trying to flee the village after the departure of the FAZ. The soldiers forced local people to bury the bodies in four large mass graves. On the same day, soldiers also burned thirty refugees alive in a house in the village of Kakumbukumbu, five kilometres from Lubarika camp.[185]

- On 21 October 1996, AFDL/APR/FAB units attacked the Luberizi refugee camp between Luberizi and Mutarule with heavy weapons, killing around 370 refugees. The soldiers threw the bodies of the victims into the latrines. They also killed several dozen people (refugees and Zairians) at the villages of Luberizi and Mutarule. After the killings, the bodies of over 60 victims were found in houses in the two villages.[186]

- On 24 October 1996, AFDL/APR/FAB troops attacked the Kagunga camp, where they killed an unknown number of refugees. One direct witness to the attack confirmed having seen eight bodies. Soldiers also killed an unknown number of refugees trying to escape in the company of Zairians at the village of Hongero, one kilometre from Kagunga.[187]

198. After the capture of the town of Uvira in the night of 24 and 25 October 1996 and the routing of the FAZ over practically all of Uvira territory, the Burundian and Rwandan refugees fled in several directions. Some left for the territory of Fizi, then travelled on to

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[183] Interviews with the Mapping Team, South Kivu, February and April/May 2009; witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998.

[184] Interviews with the Mapping Team, South Kivu, March–April 2009.

[185] Interview with the Mapping Team, South Kivu, February 2009; witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.2.

[186] Interviews with the Mapping Team, South Kivu, April 2009; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 198; Confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; CADDHOM (Collectif d'actions pour le développement des droits de l'homme), "Enquête sur les massacres des réfugiés 1998", p.3.

[187] Interviews with the Mapping Team, South Kivu, April 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581); AI, "Loin des regards de la communauté internationale: violations des droits de l'homme dans l'est du Zaïre", 1996, pp.4–5; Peacelink, "Les violations des droits de l'homme par l'AFDL", p.3.

North Katanga, Tanzania or Zambia. Others tried to escape towards the north, passing through the territories of Kabare and Walungu. Many Burundian refugees fled in the direction of Burundi. Unable to cross the Ruzizi River, they were often apprehended at the Kiliba sugar mill and the villages of Ndunda, Ngendo and Mwaba. In this context, the Mapping Team documented the following alleged incidents:

- On 25 October 1996, AFDL/APR/FAB units killed an unknown number of refugees who were hiding in disused dwellings in sectors 3 and 4 of the Kiliba sugar mill.[188]

- Between 1 and 2 November 1996, AFDL/APR/FAB units carried out the indiscriminate killing of around 250 civilians, including over 200 refugees and around thirty Zairians, in the village of Ndunda, near the Burundian border. The refugees were hiding in the village of Ndunda in the hope of securing the protection of CNDD-FDD militiamen, who had a base nearby. During the attack, a number of refugees drowned in the Ruzizi River as they tried to escape. The soldiers also killed Zairians from the village, accusing them of backing the CNDD-FDD.[189]

- On 24 November 1996, in the village of Mwaba, units of the AFDL/APR/FAB burned 24 Burundian Hutu refugees from the Biriba camp alive. On their arrival in Mwaba, the soldiers arrested those present in the village. After questioning them, they freed the Zairian civilians and imprisoned the Burundian refugees in a house which they then set on fire.[190]

199 AFDL/APR/FAB soldiers set up a number of checkpoints on the Ruzizi Plain around the villages of Bwegera, Sange, Luberizi and Kiliba, at the entrance to Uvira town (Kalundu Port), at Makobola II (Fizi territory) and at the Rushima ravine (Uvira territory). At these checkpoints, soldiers reportedly sorted the people they intercepted according to their nationality, under the pretext of preparing for their return to their country of origin. Individuals identified as Rwandan or Burundian Hutus on the basis of their accent, their morphology or their dress were systematically separated from the other intercepted people and killed in the surrounding area. In this context, the Mapping Team documented the following alleged incidents:

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[188] Interviews with the Mapping Team, South Kivu, May 2009.

[189] Interviews with the Mapping Team, South Kivu, April/May 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581); CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.2.

[190] Interviews with the Mapping Team, South Kivu, October 2008 and April 2009. CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.2.

- On 22 October 1996, in the Rushima ravine between Bwegera and Luberizi, units of the AFDL/APR/FAB killed a group of nearly 550 Rwandan Hutu refugees who had escaped the Luberizi and Rwenena camps a few days before. Soldiers intercepted the victims at the checkpoints set up in the surrounding area. Between 27 October and 1 November 1996, under the pretext of repatriating them to Rwanda, units of the AFDL/APR/FAB led an unknown number of additional refugees into the Rushima ravine and executed them.[191]

- In the days and weeks that followed 25 October 1996, units of the AFDL/APR/FAB killed an unknown number of refugees at a place called Kahororo, in sector 7 of the Kiliba sugar mill. The victims had been apprehended in the surrounding villages.[192]

- On 29 October 1996, units of the AFDL/APR/FAB killed around 220 male refugees near the church of the 8th CEPZA (Pentecostal Community of Zaire), now CEPAC (Community of Pentecostal Churches in Central Africa), in the village of Luberizi. The victims were part of a group of refugees who were told by soldiers that they had to be rounded up for their repatriation to Rwanda. The soldiers separated the men from the rest of the group and shot them or killed them with bayonets. The bodies of the victims were buried in mass graves near the church.[193]

- On 3 November 1996, units of the AFDL/APR/FAB burned 72 Rwandan refugees alive at the COTONCO headquarters, one kilometre from the village of Bwegera. The victims had been captured in neighbouring villages. The AFDL/APR/FAB units had gathered the victims in the COTONCO house under the pretext that they would then be repatriated to Rwanda.[194]

- On 13 November 1996, AFDL/APR/FAB units killed around 100 Burundian refugees in the village of Ngendo, seven kilometres from Sange in the Uvira territory.[195]

- On 8 December 1996, AFDL/APR/FAB soldiers killed 13 male refugees in the village of Rukogero, nine kilometres from Sange in the Uvira territory. The

[191] Interviews with the Mapping Team, South Kivu, April 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581); Lutheran Church, *Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo*, May 1997, p.8.

[192] Interviews with the Mapping Team, South Kivu, April/May 2009.

[193] Interviews with the Mapping Team, South Kivu, April/May 2009; witness account gathered by the Secretary-General's Investigative Team in 1997/1998.

[194] Interview with the Mapping Team, South Kivu, March-April 2009; CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.2; Association contre la malnutrition et pour l'encadrement de la jeunesse (ACMEJ), Report 2009, p.5.

[195] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998.

victims belonged to a group of between 200 and 300 refugees that had fled the Kibogoye camp. After their arrest, the refugees were imprisoned in the church of the 8th CEPZA. The soldiers allowed the women and girls to leave but killed the men and boys. The bodies of the victims were thrown in the latrines beside the church.[196]

- On 12 December 1996, AFDL/APR/FAB units killed fifteen civilians in the village of Ruzia, including refugees who had fled the Luberizi/Mutarule camp and Zairian civilians. The victims were captured during a military combing exercise to flush out refugees hiding among the Zairian population. Some of the victims were burned alive in a house; others were shot. The victims' bodies were then buried in three mass graves.[197]

- On 22 December 1996 at Ruzia, on the banks of the Ruzizi River, AFDL/APR/FAB soldiers killed at least 150 people, most of them refugees who had survived the attack on the Runingu camp. The victims were hiding in the forest when they were spotted by the soldiers. Their bodies were burned by the soldiers two days after the incident. Another source suggested a figure of 600 victims.[198]

Walungu and Kabare territories

200. In 1996, UNHCR estimated that there were 307,499 refugees spread over the 26 camps in the territories of Walungu, Kabare and Kalehe, commonly known as the "Bukavu camps": Kamanyola, Izirangabo, Karabangira, Nyangezi (Mulwa), Nyantende, Muku and Mushweshwe to the south of Bukavu, Bideka, Chimanga (Burhale), Bulonge (non-UNHCR-recognised), Nyamirangwe and Chabarhabe to the west of the town, Panzi, Nyakavogo, Mudaka/Murhala, INERA (Congolese Institute for Agronomic Studies and Research), ADI-Kivu (Action for Integrated Development in Kivu), Kashusha, Katana, Kalehe and Kabira north of Bukavu and Chondo, Chayo, Bugarula, Maugwere and Karama on Idjwi Island.[199]

201. As they advanced towards Bukavu, the AFDL/APR troops destroyed the makeshift camps created by refugee survivors of the massacres committed in the Ruzizi

[196] Interviews with the Mapping Team, South Kivu, April 2009; CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.3.

[197] Interviews with the Mapping Team, South Kivu, October 2008 and April 2009; CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.3.

[198] Interviews with the Mapping Team, South Kivu, October 2008 and April 2009; CARITAS, "Tableau synoptique relevant les cas des massacres et tueries commis par l'AFDL à l'endroit des réfugiés et populations civiles autochtones dans les zones d'Uvira et Fizi du 18 octobre 1996 au 10 avril 1997", p.2.

[199] Office of the Regional Special Envoy of UNHCR, Kigali, Rwanda, Zaire: "UNHCR population statistics as of 26 September 1996".

Plain (in the Uvira territory) and to the west of Bukavu city. When they left Nyantende village, the AFDL/APR troops split into two groups. The first group continued in the direction of Bukavu, passing through Buhanga, Mushweshwe, Comuhini, Chabarhabe, Ciriri and Lwakabirhi. The second group headed towards Walungu-Centre via Muku, Cidaho and Cidodobo. In this context, the Mapping Team documented the following alleged incidents:

- On 20 October 1996, units of the AFDL/APR from Bwegera and the Rwandan town of Bugarama attacked the Kamanyola refugee camp in the Walungu territory, killing an unknown number of refugees and Zairian civilians. The soldiers then dumped the bodies of the victims in the camp's latrines.[200]

- On 21 October 1996, AFDL/APR units killed an unknown number of refugees at Nyarubale in the Kalunga hills, two kilometres from Kamanyola. Having escaped the attack on their camp at Kamanyola, the refugees were trying to reach Bukavu. Some were the victims of surprise attacks while they were resting and others were intercepted by soldiers at checkpoints set up along the roads. Those answering the soldiers' Swahili greetings with a Rwandan or Burundian accent were systematically executed. The victims' bodies were later buried by the local people.[201]

202. From 22 October 1996, in the face of the advancing AFDL/APR troops, refugees from the Nyangezi and Nyantende camps began to flee towards Bukavu. From 26 October 1996 onwards, the soldiers launched attacks on the camps to the south and west of Bukavu city. In most cases, the refugees had already left the camps before the soldiers arrived, fleeing towards the Kashusha, INERA and ADI-Kivu camps (north of Bukavu) and the Chimanga camp (west of Bukavu in the direction of Shabunda). On 26 October, AFDL/APR soldiers set fire to the already abandoned camp of Muku, ten kilometres from Bukavu in the Walungu territory. In this context, the Mapping Team documented the following alleged incidents:

- On 26 October 1996, units of the AFDL/APR killed several hundred refugees who were fleeing along the routes between Nyantende and Walungu-Centre and Nyantende and Bukavu. Most of the victims came from the Uvira territory and the Ruzizi Plain. They were shot, killed by blows from bayonets or hit by shrapnel. The soldiers set fire to most of the sites where refugees were located. Most of the victims were women, children and the elderly. According to the witness

[200] Interviews with the Mapping Team, South Kivu, April 2009; confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; Lutheran Church, "Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo", May 1997, p.8.

[201] Interviews with the Mapping Team, South Kivu, February 2009 and April 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581).

statements gathered, the soldiers killed between 200 and 600 people. The bodies of the victims were buried at the scene by the local people.[202]

- On 28 October 1996, units of the AFDL/APR from Nyangezi killed five refugees in the village of Lwakabiri, thirty kilometres west of Bukavu.[203]

203. After the capture of Bukavu on 29 October 1996, AFDL/APR troops continued their operations against the camps located north of the city. In this context, the Mapping Team documented the following alleged incidents:

- On 2 November 1996, AFDL/APR units attacked the Kashusha/INERA camp in the Kabare territory with heavy weapons, killing hundreds of refugees. Outflanked, FAZ troops from the camp security contingent CZSC (Contingent zaïrois pour la sécurité des camps)[204] fled, followed by some of the refugees. During the attack, AFDL/APR soldiers fired indiscriminately at the FAZ, the ex-FAR/Interahamwe and the refugees.[205]

- Around 22 November 1996, units of the AFDL/APR killed several hundred refugees in the Chimanga camp, seventy-one kilometres west of Bukavu. When they arrived at the camp, the soldiers asked the refugees to assemble for a meeting. The soldiers then promised them that they would slaughter a cow and give them meat so they could build their strength with a view to returning to better conditions in Rwanda. They then began to register the refugees, grouping them according to their prefecture of origin. At a given moment, however, a whistle sounded and the soldiers positioned all around the camp opened fire on the refugees. According to the different sources, between 500 and 800 refugees were killed in this way.[206]

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[202] Interviews with the Mapping Team, South Kivu, December 2008 and March 2009; witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; CADDHOM, "Les atrocités commises en province du Kivu 1996-1998", p.5; Palermo-Bukavu Solidarity Committee, "Les morts de la libération", June 1997, pp.5–6.

[203] Interviews with the Mapping Team, South Kivu, May 2009; list of those killed in the parish of Ciriri from 1996 to 2008 by different armed groups, submitted to the Mapping Team in 2009.

[204] Since 1995, this unit had been financed by UNHCR to guarantee the protection of its facilities.

[205] *Report of the Secretary-General's Investigative Team* (S/1998/581); confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; HRW (HRW), "Zaire: Attacked by All Sides. Civilians and the War in Eastern Zaire", 1997, p.13; CADDHOM, "Les atrocités commises en province du Kivu 1996-1998", p.5; ICHRDD & ASADHO (International Centre for Human Rights and Democratic Development & Association africaine de défense des droits de l'homme), *International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997*, 1998, p.14.

[206] *Report of the Secretary-General's Investigative Team* (S/1998/581); Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; Ospiti/Peacelink, "Les violations des droits de l'homme dans le territoire contrôlé par l'AFDL", undated, p.3.

- In January 1997, AFDL/APR units killed at least thirty Rwandan and Burundian refugees, mostly with knives, on the Bukavu to Walungu road, around sixteen kilometres from the city of Bukavu. The victims had been arrested as part of a combing operation. Before killing the victims, the soldiers often tortured and maimed them.[207]

Kalehe territory

204. After the capture of Bukavu by the AFDL/APR troops and the destruction of the refugee camps north of the town, the survivors fled in the direction of North Kivu. They either passed through Kahuzi-Biega National Park (towards Bunyakiri/Hombo) or Nyabibwe, on the Goma road. However, the refugees who travelled via Nyabibwe were caught between AFDL/APR troops arriving from Goma and Bukavu, and did not reach North Kivu.

- Towards mid-November 1996, ex-FAR/Interahamwe units allegedly killed an unknown number of refugees in Nyabibwe village. Most of the victims were sick, elderly or physically disabled people who no longer had the strength to escape. The ex-FAR/Interahamwe killed them by firing rockets at the house and the containers in which some of them were shut away. Others were burned alive when the vehicles they were in were set on fire. Some of these victims are alleged to have asked to be killed for fear of falling into the hands of the AFDL/APR. However, the Mapping Team was not able to confirm this claim.[208]

205. Most of the refugees who were trapped at Nyabibwe tried to reach Bunyakiri and Hombo via the Hauts Plateaux of Kalehe. One group moved into the makeshift camps at Shanje and Numbi. Pursued by the AFDL/APR soldiers, many refugees were killed in these makeshift camps and at Chebumba and Lumbishi in the Kalehe territory. In this context, the Mapping Team documented the following alleged incidents:

- On 21 November 1996, units of the AFDL/APR killed several hundred refugees and injured hundreds more in their makeshift camp at Shanje and in and around the Rukiga bamboo forest in the Kalehe territory. Some of the victims were shot, or killed by shrapnel or rockets. Others, including many elderly people, the sick and children, were killed along the roadside. This second group of victims were the survivors of the attack on the camp. The soldiers, who had asked them to

[207] Interviews with the Mapping Team, South Kivu, March 2009; *The Guardian*, "Truth buried in Congo's killing fields", 19 July 1997, p.2.

[208] Interviews with the Mapping Team, South Kivu, March–April 2009; *The Guardian*, "Truth buried in Congo's killing fields", 19 July 1997, p.2.

assemble and march as a column towards Rwanda, opened fire on them along the way.[209]

- On 22 November 1996, AFDL/APR units killed an unknown number of refugee survivors from the Shanje camp at Lumbishi.[210]

206. Most of the Shanje survivors fled via the Rukiga bamboo forest. At the village of Hombo, they joined the survivors of the Kashusha/INERA camp, who were trying to reach North Kivu by travelling through the Kahuzi-Biega National Park.

- Around 2 November and 4 November 1996, in the Kahuzi-Biega National Park, AFDL/APR units allegedly killed an unknown number of refugees.

Shabunda territory

207. Many refugee survivors of the Uvira and Bukavu camps tried to escape via the Shabunda territory. These refugees took the old Bukavu to Kindu road, passing through the villages of Chimanga, Kingulube, Katshungu and Shabunda, 71, 181, 285 and 337 kilometres east of Bukavu respectively. Around mid-December 1996, 38,000 refugees were registered in three makeshift camps around Shabunda: Makese I, Makese II and Kabakita (also known as Kabakita I, Kabakita II and Kabakita III). An unknown number of these refugees, often those falling behind, were killed by AFDL/APR soldiers on the Shabunda road. Massacres were reported in the villages of Mukenge, Baliga and Kigulube in January 1997. In the region, there were some sporadic clashes between AFDL/APR soldiers, the FAZ and ex-FAR/Interahamwe soldiers beating their retreat. The victims of the AFDL/APR units were for the most part unarmed civilians.[211]

- On 5 February 1997, AFDL/APR units allegedly killed around 500 refugees at the metal bridge over the Ulindi River at Shabunda, nine kilometres from Shabunda-Centre. Most of the victims were refugees who had fled the Kabakita I, II and III camps when the soldiers approached. After the massacre, villagers were made to dump the bodies in the river and clean the bridge. The soldiers forcefully led

[209] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; Ospiti/Peacelink, "Les violations des droits de l'homme dans le territoire contrôlé par l'AFDL", undated, p.4; *New York Times*, "Refugees Tell of Youths Killed on March Back to Rwanda", 30 November 1996; Benoit Rugumaho, *L'hécatombe des réfugiés rwandais dans l'ex-Zaïre, témoignage d'un survivant*, L'Harmattan, 2004, p.7.

[210] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; ICHRDD & ASADHO, *International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997*, 1998, pp.14–15, 27, 51.

[211] IRIN, "Emergency Update No. 60 on the Great Lakes", 17 December 1996.

away the survivors in the direction of Kabatika and executed them the following day.[212]

208. The refugees who managed to escape in time headed in the direction of Kindu. Others, after hearing that UNHCR had opened a branch at Kigulube, headed towards Bukavu. Several thousand refugees went this way, moving through the forest in small groups of 50 to 100 people. Since January 1997, AFDL/APR soldiers had controlled the zone and had set up many checkpoints along the major routes. Between February and April 1997, AFDL/APR units allegedly carried systematic killings of refugees travelling through the village of Kigulube and the surrounding forest, and on the 156 kilometres of road between Kigulube and the town of Shabunda.

209. When they intercepted refugees at Kigulube, the AFDL/APR soldiers usually asked them to follow them under various pretexts, in particular helping them push their vehicle to Mpwe. Along the way, they reportedly killed them with machete blows or knives. Despite orders given to villagers to recover the bodies of the refugees, international NGOs and local witnesses observed many corpses and skeletons on the roads around Kigulube, as well as personal effects that belonged to the refugees. On several occasions, international NGO personnel witnessed the clean-up operations between Shabunda and Kigulube and observed the presence of mass graves around graveyards in several villages and at several remote sites along the roadside. The total number of victims is hard to ascertain but runs to several hundred, and could even exceed one thousand.[213] In this context, the Mapping Team documented the following alleged incidents:

- In the evening of 13 February 1997, units of the AFDL/APR killed between 70 and 180 refugees with machetes in the town of Mpwe, on the road leading to Kigulube village. After gathering the refugees together, the soldiers told them that they had come to sort out the "problem" that existed between the Hutus and Tutsis in Rwanda. They then suggested to the refugees that they rest and eat to build their strength before continuing their journey to Kigulube. Lastly, they led them in small groups into a house where they killed them. Those who tried to escape

[212] Interviews with the Mapping Team, South Kivu, March 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581); confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; CADDHOM, "Les atrocités commises en province du Kivu 1996-1998", p.8; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.8–10; K. Emizet, "The Massacre of Refugees in Congo: a Case of UN Peacekeeping Failure and International Law", *The Journal of Modern African Studies*, 38, 2, 2000, p.12; ICHRDD & ASADHO, *International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997*, 1998, p.16.

[213] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.8–10.

before they were led into the house were shot dead. The bodies of the victims were for the most part buried in a mass grave behind the house.[214]

- On 15 February 1997, AFDL/APR units killed around 200 refugees at two sites, four and seven kilometres from Kigulube. In one particular incident, a group of around sixty refugees were imprisoned in a house which was then set on fire by the soldiers. The victims' bodies were thrown into mass graves.[215]

- On 30 March 1997 and in the days that followed, AFDL/APR units killed several hundred refugees in the presence of a number of senior APR officials between Katshungu and Shabunda in the towns of Ivela, Balika, Lulingu and Keisha, and at the Ulindi bridge. The victims, including a large number of women and children, were mostly survivors from the Chimanga camp who had found refuge in Katshungu, a town fifty-four kilometres north-west of Shabunda. The massacre zone remained officially inaccessible to aid agencies for a number of days but these organisations were nonetheless able to observe cleanup operations and the presence along the road of human remains and personal effects that belonged to the refugees. [216]

- In the first three months of 1997, many refugees died of exhaustion and hunger during their journey between Kigulube and Shabunda. In danger of being killed at any moment, those in these groups, who were unfamiliar with their surroundings and undernourished, received no humanitarian aid. Having blocked aid agencies from operating outside a 30-kilometre radius of Bukavu, AFDL/APR officials established the condition that AFDL facilitators must accompany all their missions. According to several witnesses, these facilitators took advantage of their presence alongside the aid workers to supply AFDL/APR soldiers with information about the whereabouts and the movements of refugees. In this way, the soldiers were able to kill the refugees before they could be recovered and repatriated. During the same period, AFDL/APR soldiers officially barred Zairian civilians living in the region from giving assistance to refugees. Under this restriction, soldiers killed an unknown number of Zairians who had directly assisted refugees or collaborated with international NGOs and UN organisations to locate them and bring them assistance. The total number of refugees who died

[214] Interviews with the Mapping Team, South Kivu, January and March 2009; confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997, p.2; ICHRDD & ASADHO, "International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997", 1998, p.16.

[215] Interviews with the Mapping Team, North Kivu, December 2008, and South Kivu, January and March 2009; *Report of the Secretary-General's Investigative Team in 1997/1998* (S/1998/581); CADDHOM, "Enquête sur les massacres des réfugiés 1998", p.3; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.8–10; *Sunday Times*, "Kabila's death squads", 22 June 1997.

[216] Interviews with the Mapping Team, South Kivu, March 2009; witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997, p.5; ICHRDD & ASADHO, *International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997*, 1998, p.16.

of hunger, exhaustion or disease in this part of South Kivu is impossible to establish but is probably in the region of several hundred, or even several thousand.[217]

210. The murders and serious violations of human rights carried out against Rwandan and Burundian refugees continued well after the military conquest of the province by the AFDL/APR/FAB troops.

- Between 26 April and 29 April 1997, AFDL/APR units allegedly kidnapped, arbitrarily detained and tortured around fifty Rwandan Hutu minors and nine adult refugees near Kavumu Airport, in the Kabare territory. The victims were kidnapped from the Lwiro processing centre for child refugees on 26 April, between the hours of 4am and 5am. They were tortured and then transported by bus to Kavumu Airport, where they were placed in a container, tortured further and submitted to cruel, inhuman and degrading acts. The soldiers also reportedly beat the medical staff at the Lwiro centre on the grounds that they had agreed to treat refugees. On 29 April, after strong international pressure, the victims were handed over to UNHCR. The victims reported that there were many other containers at the airport and that they were used by soldiers to torture refugees.[218]

2. North Kivu

Attacks against refugees in camps on the Goma to Rutshuru road

211. In October 1996, UNHCR estimated that there were 717,991 Rwandan refugees in the province of North Kivu. Most were living in the five camps located around the city of Goma. The Kibumba (194,986), Katale (202,566) and Kahindo (112,875) camps were located on the Rutshuru road, north of Goma. The Mugunga (156,115) and Lac Vert (49,449) camps were located on the Sake road, less than ten kilometres west of Goma.[219] Although the vast majority of the refugees were unarmed civilians, these camps also functioned as bases from which ex-FAR soldiers (of which there were many in the Lac Vert camp) and Interahamwe militiamen (especially in the Katale camp) could lead frequent incursions into Rwandan territory.[220]

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[217] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.8–10.

[218] *Report of the Secretary-General's Investigative Team* (S/1998/581); witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; IRIN, "Emergency Update No.159 on the Great Lakes", 26–28 April 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, p.10.

[219] Office of the Regional Special Envoy of UNHCR, Kigali, Rwanda, Zaire: "UNHCR population statistics as of 26 September 1996".

[220] Degni-Ségui estimated the number of ex-FAR units in the Zairian camps at 16,000; see *Report on the situation of human rights in Rwanda submitted by René Degni-Ségui, Special Rapporteur of the Commission on Human Rights* (E/CN.4/1995/12).

212. As in South Kivu, infiltrated units from Rwanda attacked the refugee camps on the Rutshuru road on several occasions, even before the hostilities officially began.

- On the evening of 27 June 1996, an infiltrated group from Rwanda allegedly killed three refugees, two soldiers from the CZSC (Contingent zaïrois pour la sécurité des camps)[221] and three Red Cross wardens during an attack on the Kibumba refugee camp in the Nyiragongo territory.[222]

213. From mid-October 1996 onwards, infiltrations from Rwanda intensified and AFDL/APR soldiers began to fire sporadically at the three camps along the Goma to Rutshuru road, with heavy and light weapons.[223] The Kibumba camp, twenty-five kilometres north of Goma, was the first to fall.

- In the night of 25 October to 26 October 1996, AFDL/APR soldiers bombarded the Kibumba camp with heavy weapons, allegedly killing an unknown number of refugees and destroying the camp's hospital. Around 194,000 refugees fled Kibumba and headed towards the Mugunga camp.[224]

214. The Katale camp was also attacked in the night of 25 October to 26 October 1996 by the AFDL/APR, but FAZ/CZSC soldiers and ex-FAR/Interahamwe units drove back the attackers.

- On 26 October 1996, AFDL/APR soldiers attacked the Katale camp with heavy weapons, allegedly killing several dozen refugees and a Zairian soldier from the CZSC (Contingent zaïrois pour la sécurité des camps). They also reportedly killed an unknown number of refugees with cold weapons.[225]

215. After violent clashes with FAZ soldiers and ex-FAR/Interahamwe units from the Katale refugee camp who had come in as reinforcements, the AFDL/APR soldiers took control of the FAZ military camp at Rumangabo, between Goma and Rutshuru, close to the Rwandan border. On 30 October, most of the refugees in the Katale and Kahindo camps, which were close to the military camp, began to leave. As the AFDL/APR troops

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[221] Since 1995, this unit had been financed by UNHCR to guarantee the protection of its facilities.

[222] Witness account gathered by the Secretary-General's Investigative Team in 1997/1998; IRIN, "Weekly roundup of main events in the Great Lakes Region", 23–30 June 1996.

[223] Reuters, "UN: East Zaire Troubles Spread", 21 October 1996.

[224] Interviews with the Mapping Team, North Kivu, November 2008; *Report of the Secretary-General's Investigative Team* (S/1998/581); Organisation interafricaine des juristes (OIJ), "Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996", September 1997, pp.5–6; Reuters, "Human Tide of Refugees on the Move in Zaire", 27 October 1996; Reuters, "Aid Agencies Scramble to Help 500,000 in Zaire", 28 October 1996; Voice of America, "Background Report", 27 October 1996.

[225] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; HRW, "Zaire: Attacked by All Sides. Civilians and the War in Eastern Zaire", 10 March 1997, pp.12–15; OIJ, "Recueil de Témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996", September 1997, pp.11–12; AFP, "Un soldat zaïrois tué et trois blessés dans l'attaque du camp de Katale, selon le HCR", 27 October 1996.

had cut off the road to Goma, some of the refugees headed in the direction of Masisi via Tongo, while others set about reaching the Mugunga camp through the Virunga National Park.[226] Other refugees remained in the camps.

- On 31 October 1996, AFDL/APR soldiers allegedly killed several hundred refugees who were still in the Kahindo and Katale camps. The Special Rapporteur on the question of the violation of human rights in Zaire, Roberto Garretón, who visited the scene several months later, estimated that there were 143 victims at the Katale camp and between 100 and 200 victims at the Kahindo camp.[227]

216. In the first week after the AFDL/APR soldiers' offensive in North Kivu, a small number of refugees decided to return to Rwanda. According to UNHCR, around 900 refugees crossed the border at Mutura between 26 October and 31 October 1996.[228] The physical and psychological pressures to which the refugees were subjected by the ex-FAR/Interahamwe partly explain their reluctance to re-enter Rwanda. However, their refusal to return was also tied to the risks the refugees ran when they volunteered themselves to the AFDL/APR soldiers for their repatriation. Indeed, on several occasions the AFDL/APR soldiers allegedly killed refugees who had requested their help to return to the country.

217. It was impossible to determine the number of refugees killed by AFDL/APR soldiers in the attacks on the camps along the Goma to Rutshuru road. Figures released by the *Équipe d'urgence de la biodiversité* (EUB), a local NGO which assisted in the burial of the victims' bodies to prevent possible epidemics in the region, along with the Association des volontaires du Zaïre (ASVOZA) and the Zairian Red Cross, nonetheless provide an idea of the scale of the killings. In this context, the Mapping Team documented the following alleged incidents:

- From 2 November to 30 November 1996, the people of Kibumba buried 2,087 bodies. Between 30 November 1996 and 26 January 1997, EUB buried 1,919 bodies in and around the Kibumba camp.[229]

- Between 1 December and 25 December 1996, EUB buried 281 bodies in the Kahindo camp. Some of the bodies were found in the public latrines. Many of the victims' hands were bound.[230]

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[226] Reuters, "UN says 115,000 refugees flee camp in Zaire", 31 October 1996.

[227] *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), para. 11; confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998; OIJ, "Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996", September 1997, p.12.

[228] IRIN, "Emergency Update No. 1 on Kivu, Zaire", 30 October 1996.

[229] Équipe d'urgence de la biodiversité (EUB), *Rapport final des activités de ramassage & inhumation de corps*, February 1997.

[230] Ibid.

- Between 1 December 1996 and 18 January 1997, EUB buried 970 bodies in the Katale camp. Many bodies were found in the public latrines.[231]

218. By 1 November 1996, all of the refugee camps between Goma and Rutshuru had been dismantled. The survivors of Kibumba found themselves near the Mugunga camp. The survivors of Kahindo and Katale were scattered across the Virunga National Park. As they tried to escape the AFDL/APR interception teams sent into the Virunga National Park, many refugees wandered into the forest for weeks on end and died of thirst due to the lack of drinking water in the lava field that covered the Park at this point. In this context, the Mapping Team documented the following alleged incidents:

- In November 1996, AFDL/APR soldiers killed an unknown number of survivors from the Kahindo and Katale camps at checkpoints set up between the Mount Nyiragongo volcano and the Mugunga camp. The survivors of Kahindo and Katale who survived this pursuit were the first to report that the AFDL/APR troops sorted the refugees they arrested at the exit of the Park according to their age and their sex and systematically executed the adult males.[232]

- In November and December 1996, AFDL/APR units killed an unknown number of refugees who had resettled in makeshift camps in the Virunga National Park.[233]

219. The killings around the former camps of Katale, Kahindo and Kibumba and in the Virunga National Park continued for several months.[234] In February 1997, one witness recounted how bodies of the recently deceased were found each morning by the local people on the site of the former Kibumba refugee camp.[235]

- On 11 April 1997, AFDL/APR soldiers allegedly killed several hundred refugees at a place called Mwaro, in the forest near the village of Kibumba. The victims, who were trying to return to Rwanda, had been intercepted on 9 April by AFDL/APR soldiers near the village of Kibumba. They were imprisoned in a mosque not far from the Kibumba Institute and in a former farm building, and then killed by the soldiers.[236]

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[231] Ibid.

[232] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; OIJ, "Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996", September 1997, pp.7–8.

[233] Interview with the Mapping Team, North Kivu, February 2009; OIJ, "Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996, September 1997"; HRW, "Zaire: Attacked by All Sides. Civilians and the War in Eastern Zaire", 10 March 1997, pp.12–15.

[234] *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), pp.7 and 8; OIJ, "Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996", September 1997, pp.12–13.

[235] Colette Braeckman, "Ces cadavres dans le sillage des rebelles", Le Soir, 26 February 1997.

[236] Interviews with the Mapping Team, North Kivu, February 2009; confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998.

Attacks against refugees in the Mugunga and Lac Vert camps

220. After the fall of the FAZ military camp in Rumangabo on 29 October, AFDL/APR soldiers launched an attack on Goma and took control of the town on 1 November 1996. For several days, the ex-FAR/Interahamwe from the Mugunga and Lac Vert camps and Mayi-Mayi armed groups from Sake blockaded the AFDL/APR soldiers seven kilometres from the Mugunga camp. Some of the refugees took advantage of this situation to leave the camps and move towards the town of Sake. On 12 November, however, after entering into an alliance with the local Mayi-Mayi, the AFDL/APR soldiers took control of the hills around Sake and surrounded the refugees who were gathered between the Mugunga camp and the town.

- On 14 November 1996, AFDL/APR soldiers fired indiscriminately with heavy weapons at the Mugunga camp and the surrounding area for six hours, allegedly killing an unknown number of refugees.[237]

221. In the afternoon of 14 November, after violent clashes with the Mayi-Mayi at Sake, the ex-FAR/Interahamwe in the Mugunga camp broke through the cordon and fled in the direction of Masisi, taking many refugees with them.

- Around 14 November to 15 November 1996, the AFDL/APR soldiers positioned in the hills around Sake allegedly killed a large number of refugees who were attempting to flee in the direction of Masisi, firing at them indiscriminately with heavy weapons and machine guns. Hundreds of bodies of refugees were buried in a mass grave on the Madimba coffee plantation near Sake.[238]

222. On 15 November 1996, while the Security Council was giving the green light to the deployment of a multinational force in eastern Zaire, AFDL/APR soldiers entered the Mugunga camp and ordered the refugees still present in the camp to return to Rwanda.[239] Between 15 November and 19 November 1996, several hundred thousand refugees left the Mugunga and Lac Vert camps and returned to Rwanda.[240]

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[237] Interviews with the Mapping Team, North Kivu, November 2008; *Report of the Secretary-General's Investigative Team* (S/1998/581); OIJ, "Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996", September 1997, p.6; APREDECI (Action paysanne pour la reconstruction et le développement communautaire intégral), Rapport circonstanciel: novembre 1996 et ses événements, 1996, p.8.

[238] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; APREDECI, Rapport circonstanciel: novembre 1996 et ses événements, 1996, p.8; APREDECI, Groupe des volontaires pour la paix (GVP), Centre de recherche et d'encadrement populaire (CRE), "L'Apocalypse au Nord-Kivu", October 1997, p.23.

[239] See Security Council Resolution 1080 (1996), dated 15 November 1996. With the mass return of Rwandan refugees, the plan to deploy a peacekeeping force in eastern Zaire was no longer considered a priority and the Canadian soldiers left their advanced base in Kampala at the end of December 1996.

[240] The figure of 600,000 repatriates is most commonly cited. However, this figure is an estimate; repatriated refugees were not counted as they crossed the border between 15 November and 19 November 1996. Many observers estimate that between 350,000 and 500,000 refugees crossed the border during this time.

- On 15 November 1996, AFDL/APR units allegedly killed refugees in and around the Mugunga camp. A journalist who entered the camp on 16 November counted 40 victims who were shot dead or killed with cold weapons, including women, children and two babies.[241] An unknown number of refugees were reportedly killed between Mugunga and the town of Sake. On 19 November, volunteers from the Zairian Red Cross in Goma collected and buried 166 bodies found along the road between the town of Sake and the perimeter of the Mugunga camp.[242]

223. Many witnesses reported the existence of a checkpoint between the Mugunga and Lac Vert camps where the AFDL/APR units would sort refugees according to their age and sex. Generally speaking, the soldiers allowed women, children and the elderly to pass through. Men, on the other hand, were very often arrested and executed. In this context, the Mapping Team documented the following alleged incidents:

- Between 15 November and 16 November 1996, AFDL/APR units arrested an unknown number of Rwandan Hutu men from the Lac Vert camp and Mugunga and executed them. Some were bound and then thrown alive into Lac Vert, where they drowned. Others were shot in the head and their bodies dumped in the lake.[243]

- The killings around Mugunga and Lac Vert continued for several weeks. Some survivors have recounted how they were attacked by AFDL/APR soldiers in late November 1996 when they were seeking repatriation to Rwanda. Some of the refugees were rounded up when they came out of the Park and then executed. One source reported the existence of several mass graves inside the park, five kilometres from the Mugunga camp.[244]

Attacks against refugees fleeing across the Masisi and Walikale territories

Masisi territory

224. From 15 November 1996, the AFDL/APR soldiers went in pursuit of the refugee survivors and the ex-FAR/Interahamwe who were escaping across the Masisi towards the town of Walikale. They caught up with the slowest units of the column, who were settled in makeshift camps in the villages of Osso, Kinigi and Katoyi (mainly survivors of Mugunga and Kibumba), Kilolirwe, Ngandjo, Nyamitaba, Miandja, Nyaruba, Kirumbu and Kahira (mainly survivors of Kahindo and Katale). During their operations against the

[241] "Bloodied Corpses Litter Camp – Signs of Massacre Found in Deserted Refugee Camp", *Toronto Star,* 16 November 1996.

[242] AFP, "Les volontaires de la Croix-Rouge chargés du ramassage des cadavres", 19 November 1996.

[243] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998.

[244] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; AZADHO, "Existence des charniers et fosses communes", March 1997.

refugees, the AFDL/APR soldiers often received the backing of local Mayi-Mayi groups, who saw this as an opportunity to take their revenge on the Hutu armed groups with whom they had been at war for over three years and who had been supported by the ex-FAR/Interahamwe from 1994 onwards. In this context, the Mapping Team documented the following alleged incidents:

- On 19 November 1996, Mayi-Mayi combatants siding with the AFDL stormed the village of Ngungu with the support of the AFDL/APR artillery, indiscriminately killing an unknown number of refugees and ex-FAR/Interahamwe. It is hard to ascertain the total number of victims. According to several sources, the figure may run to several hundred.[245]

- In the second half of November 1996, units of the AFDL/APR killed dozens of refugees in the makeshift camp next to Osso farm, in the Masisi territory. First, the AFDL/APR soldiers exchanged fire with the ex-FAR/Interahamwe based in the camp. The ex-FAR/Interahamwe beat a hasty retreat, however, and the AFDL/APR troops entered the camp. Most of the victims were refugees, among them many women and children. Zairian civilians accused by the AFDL/APR troops of having hidden or assisted refugees were also killed. Shortly after the massacre, eyewitnesses confirmed having seen between 20 and 100 bodies in the camp.[246]

- During the week of 9 December 1996, AFDL/APR soldiers killed several hundred Rwandan refugees at the makeshift camp in the village of Mbeshe Mbeshe in the Katoyi chiefdom. Having surrounded the camp at around five o'clock in the morning, the AFDL/APR soldiers indiscriminately opened fire on the camp's occupants, killing an unknown number of refugees. According to one source, internally displaced Zairians in the camp were also killed.[247]

225. Around 8 November 1996, many refugees, most of them survivors from the Kahindo and Katale camps, settled in the Bashali chiefdom in the north-east of the Masisi territory. Towards 18 November 1996, AFDL/APR soldiers attacked their makeshift camp at Rukwi. Over the weeks and months that followed, they attacked and killed an unknown number of survivors from the camp as they tried to flee the territory. In this context, the Mapping Team documented the following alleged incidents:

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[245] Interview with the Mapping Team, North Kivu, March 2009; AZADHO, "Existence des charniers et fosses communes", March 1997; APREDECI, Rapport circonstanciel: novembre 1996 et ses événements, 1996, p.8.

[246] Interviews with the Mapping Team, North Kivu, December 2008; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.85.

[247] Interview with the Mapping Team, North Kivu, April 2009; Peacelink, "Rapport sur la situation qui prévaut actuellement dans les provinces du Nord-Kivu et du Sud-Kivu", 1997; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", October 1997, p.30.

- In late November 1996, AFDL/APR units killed around fifty civilians, including 40 Rwandan refugees and ten Hutu Banyarwanda,[248] in the village of Miandja.[249]

- In April 1997, AFDL/APR units killed a large number of refugees who had settled on a site known as Karunda in the village of Kirumbu and on the Nyabura plantation in the Bashali-Mokoto chiefdom.[250]

- Around 22 April 1997, AFDL/APR units killed 53 refugees in a school in the village of Humule, near the town of Karuba, fifty kilometres from Goma. The victims were trying to reach the UNHCR transit centre in Karuba with a view to being repatriated to Rwanda. According to some witnesses, the women among the group of victims were raped before they were killed.[251]

- On 29 May 1997, AFDL/APR units killed four refugees, including a child and an employee of the international NGO Save the Children, in the village of Karuba. The victims were part of a group of refugees on their way to the Karuba UNHCR transit centre with a view to their repatriation to Rwanda.[252]

Walikale territory

226. The Rwandan refugees arrived in Walikale territory in November 1996 via three different routes. One group, which came from Bukavu, reached Walikale territory via Bunyakiri. A second group, also from Bukavu, travelled through the Kahuzi-Biega forest via Nyabibwe. A final group, which had fled the camps of North Kivu, reached Walikale territory via southern Masisi territory and the towns of Busurungi and Biriko. Pursued by the AFDL/APR soldiers, the slowest refugees, who were often left behind by the armed men, were indiscriminately attacked and killed.

227. The AFDL/APR soldiers from Bukavu arrived at Hombo, a village located on the border between North Kivu and South Kivu, around 7 December 1996. They then split into several groups. Some of the troops continued to head towards Walikale town, while others stayed in the area to hunt down the refugees. A third group left to pursue fleeing refugees in the Walowa-Luanda *groupement*, in the south-east of Walikale territory.

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[248] The term "Banyarwanda" denotes peoples originating from Rwanda and living in the province of North Kivu.

[249] Peacelink, "Rapport sur la situation qui prévaut actuellement dans les provinces du Nord-Kivu et du Sud-Kivu", 1997; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", October 1997, p.32.

[250] Interviews with the Mapping Team, North Kivu, January 2009; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, p.32; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", October 1997, p.36.

[251] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; Peacelink, "Rapport sur la situation qui prévaut actuellement dans les provinces du Nord-Kivu et du Sud-Kivu", 1997.

[252] Witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997, p.6.

228. When they arrived in Walikale territory, the AFDL/APR soldiers held public meetings for the attention of the Zairian people. In these meetings, they accused the Hutu refugees of being collectively responsible for the genocide of the Tutsis in Rwanda. They also claimed that the refugees were planning to commit genocide against Zairian civilians in the region. In their speeches, they frequently likened the refugees to "pigs" running rampage through the fields of the villagers. They also often called on the Zairians to help them flush them out and kill them. According to several sources, the term "pigs" was the code name used by the AFDL/APR troops to refer to the Rwandan Hutu refugees. When the AFDL/APR soldiers blocked the Zairians from accessing some execution sites, they told them that they were "killing the pigs".[253]

229. In this region, massacres were staged on the basis of an almost identical plan, designed to kill as many victims as possible. Every time they spotted a large group of refugees, the AFDL/APR soldiers fired indiscriminately at them with heavy and light weapons. They would then promise to help the survivors return to Rwanda. After herding them up under a variety of pretexts, they most often killed them with hammers or hoes. Those who tried to escape were shot dead. A number of witnesses have claimed that in 1999, APR/ANC[254] soldiers went specifically to the sites of several massacres to dig up the bodies and burn them.[255] In this context, the Mapping Team documented the following alleged incidents:

- From 9 December 1996, AFDL/APR soldiers shot dead several hundred refugees, including a large number of women and children at the Hombo bridge. Over the course of the following days, they burned alive an unknown number of refugees along the road in the town of Kampala, a few kilometres from Hombo. Many women were raped by the soldiers before they were killed. Before killing them, the soldiers had asked the victims to assemble so they could be repatriated to Rwanda.[256]

- Around 9 December, AFDL/APR soldiers intercepted and executed several hundred Rwandan refugees in the vicinity of the village of Chambucha, four kilometres from Hombo. The victims, who included a large number of women and children, were shot dead or killed by blows of hammers and hoes to the head near a bridge over the Lowa River. Before killing them, the AFDL/APR soldiers had promised the refugees that they would repatriate them to Rwanda with the aid of UNHCR. Most of the bodies were then dumped in the Lowa River.[257]

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[253] Interviews with the Mapping Team, North Kivu, December 2008.

[254] Armée nationale congolaise, the armed branch of the Rassemblement congolais pour la démocratie (RCD), a political and military movement formed in August 1998.

[255] Interviews with the Mapping Team, North Kivu, December 2008.

[256] Interview with the Mapping Team, North Kivu, April 2009 and with the Mapping Team, South Kivu, March 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581); confidential documents submitted to the Secretary-General's Investigative Team in 1997/1998.

[257] Interviews with the Mapping Team, North Kivu, November-December 2008 and April 2009; witness accounts gathered by the Secretary-General's Investigative Team in 1997/1998.

230. When the AFDL/APR soldiers took control of the tarmac road between Hombo and Walikale, the Rwandan refugees who had not yet reached the main road between Bukavu and Walikale had to turn back towards Masisi. The majority set up home temporarily in the village of Biriko in the Walowa-Luanda *groupement*.

- Around 17 December 1996, AFDL/APR soldiers from Ziralo (South Kivu), Bunyakiri (South Kivu) and Ngungu (North Kivu) surrounded the makeshift camps at Biriko and allegedly killed hundreds of refugees, including women and children. The soldiers shot the victims dead or killed them with hoes. The people of Biriko buried the bodies in the village. Many bodies were also dumped in the Nyawaranga River.[258]

231. In the days that followed, the AFDL/APR soldiers continued their hunt, attacking refugees in the villages of Kilambo, Busurungi (Bikoyi Koyi hill), Nyamimba and Kifuruka in the Walowa-Luanda *groupement* in the Walikale territory.

- In December 1996, AFDL/APR soldiers allegedly killed several hundred refugees around the town of Kifuruka, ten kilometres from Biriko. The soldiers had rounded up the victims in the village of Kifuruka and then led them to the road, leaving them to believe that they were going to help them return to Rwanda. Once they had left the village, however, the soldiers shot them dead or killed them with machetes.[259]

232. While some units of the AFDL/APR were committing these massacres in the Walowa-Luanda *groupement*, others continued to head towards the administrative centre of the territory, Walikale.

- During the third week of December 1996, AFDL/APR troops allegedly killed hundreds of Rwandan refugees in the Musenge locality, between Hombo and Walikale. The AFDL/APR soldiers had set up several checkpoints along the roads to intercept the refugees. They promised to help the victims return to Rwanda through UNHCR, then led them into houses in Musenge. After a while, the victims were taken from the houses and killed with blows of iron bars in the hills of Ikoyi and Musenge (next to the dispensary).[260]

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[258] Interviews with the Mapping Team, North Kivu, November/December 2008 and April 2009; CADDHOM, "Les atrocités commises en province du Kivu au Congo-Kinshasa (ex-Zaïre) de 1996-1998", July 1998.

[259] Interviews with the Mapping Team, North Kivu, November/December 2008 and April 2009.

[260] Interviews with the Mapping Team, North Kivu, November/December 2008 and February 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581); confidential document submitted to the Secretary-General's Investigative Team in 1997/1998; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", October 1997, p.52; CADDHOM, "Enquête sur les massacres de réfugiés rwandais et burundais", September 1997; Associated Press, "Massacre: Victims Leave Clues Behind", 14 March 1998.

233. An execution system was rolled out around Itebero where, from December 1996, special AFDL/APR units set about systematically hunting down refugees.

- In December 1996, AFDL/APR soldiers allegedly killed several hundred refugees in the Mutiko locality. After being intercepted at checkpoints set up by the soldiers, the victims were transported to the village of Mukito. The soldiers gave them food and asked them to prepare to board UNHCR trucks that were supposedly waiting for them at the edge of the village. The victims were then led out of Mukito on to the road and killed with blows of sticks, hammers and axes to their heads. The soldiers encouraged the indigenous population to participate in the killings. They then forced them to bury the bodies.[261]

234. Around 16 December 1996, the AFDL/APR soldiers arrived in Walikale-Centre.

- Between late 1996 and early 1997, AFDL/APR units allegedly killed an unknown number of refugees in Walikale-Centre. Most of the victims were killed in the Nyarusukula district. The district had been transformed into a military zone after the AFDL/APR troops had moved into the town, and civilians were banned from entering. Most of the victims' bodies were dumped in the Lowa River and its tributaries.[262]

235. Another group of Rwandan refugees from Masisi reached Walikale territory in December 1996 via a forest track linking the villages of Ntoto and Ngora, around fifteen kilometres north of Walikale-Centre. After Walikale was captured by AFDL/APR forces, these refugees and some ex-FAR/Interahamwe tried to hide in the village of Kariki, sheltering in an abandoned fish farm on the winding track between the Ntoto and Ngora villages.

- In early 1997, AFDL/APR soldiers allegedly killed an unknown number of refugees at the makeshift Kariki camp, 13 kilometres from Walikale. The soldiers came from Ngora, where they had forced civilians to follow them and carry their kit and their ammunitions boxes. When they arrived in Kariki, they launched a surprise attack on the ex-FAR/Interahamwe units at the foot of the hill and disarmed them. After having killed the ex-FAR/Interahamwe, they attacked the camp on the other side of the valley. Most of the bodies were not buried and the Mapping Team was able to confirm that remains were still visible as at the date of this report.[263]

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[261] Interviews with the Mapping Team, North Kivu, November-December 2008; witness account gathered by the Secretary-General's Investigative Team in 1997/1998.

[262] Interviews with the Mapping Team, North Kivu, November-December 2008; CADDHOM, "Enquête sur les massacres des réfugiés rwandais et burundais hutu ainsi que des populations civiles congolaises lors de la guerre de l'AFDL", June 1998.

[263] Interviews with the Mapping Team, North Kivu, December 2008.

3. Maniema

236. From late 1996, the Zairian Government massed its forces in Kindu and Kisangani with a view to launching a counter-offensive in the Kivu provinces. The first refugees arrived in Maniema province in early 1997 from the Walikale territory in North Kivu. They headed first towards the town of Kisangani but were stopped by the FAZ and rerouted to the Tingi-Tingi site, seven kilometres from Lubutu, near an airfield. Over the weeks that followed, almost 120,000 refugees settled in a makeshift camp at Tingi-Tingi. In the meantime, 40,000 other Rwandan Hutus, including many ex-FAR/Interahamwe, arrived in the village of Amisi, seventy kilometres east of Tingi-Tingi. From the start of 1997, the ex-FAR/Interahamwe used the Tingi-Tingi camp as a recruitment and training base with a view to leading a joint counter-offensive with the FAZ against the AFDL/APR troops. The FAZ and the ex-FAR/Interahamwe began to work in very close coordination with one another. The FAZ also provided the ex-FAR/Interahamwe with arms, munitions and uniforms in particular.

237. In January 1997, violent clashes took place between the AFDL/APR soldiers and the ex-FAR/Interahamwe for several weeks at the Osso bridge, at the border between North Kivu and Maniema province. On 7 February, after violent fighting in the village of Mungele, AFDL/APR troops took the Amisi camp. Most of the camp's population managed to escape in the direction of Lubutu and settled by the Tingi-Tingi camp. The final skirmishes between the AFDL/APR and the ex-FAR/Interahamwe took place in the village of Mukwanyama, eighteen kilometres from Tingi-Tingi. After this time, the fighting virtually ceased and the ex-FAR/Interahamwe fled in all different directions. Some dignitaries of the old Rwandan regime and refugees who could afford the price of the ticket (USD 800) booked seats onboard commercial aircraft that landed specially at Tingi-Tingi and left for Nairobi. In the evening of 28 February, the refugees, after hearing that the AFDL/APR troops were ten kilometres from Tingi-Tingi, left the camp and headed towards Lubutu. However, they were blocked until the next morning by the FAZ at the bridge over the Lubilinga River, commonly known as "Lubutu Bridge". In this context, the Mapping Team documented the following alleged incidents:

- On the morning of 1 March 1997, AFDL/APR units entered the Tingi-Tingi camp and indiscriminately killed its remaining occupants. Although most of the refugees had already left the camp, several hundred of them remained, including many sick people who were being treated in the dispensary and unaccompanied minors. According to witnesses, the AFDL/APR troops are thought to have killed most of the victims with knives. The bodies were then buried in several mass graves by volunteers from the Lubutu Red Cross.[264]

[264] Interviews with the Mapping Team, Maniema, March 2009; AI, "Deadly alliances in Congolese forests", 1997, p.5; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.4 and 5.

- In the afternoon of 1 March 1997, AFDL/APR units opened fire on refugees at the rear of the column fleeing towards Lubutu and killed several dozen of them. On the same day, AFDL/APR soldiers shot dead several hundred refugees who were waiting to cross the bridge over the Lubilinga River. Many refugees drowned when they jumped into the river. Others were crushed underfoot by the crowd in the ensuing panic. On 2 March, the AFDL/APR soldiers ordered the people of Lubutu to bury the victims, but most of the bodies were thrown into the river.[265]

238. On 27 February 1997, AFDL/APR troops entered the town of Kindu, which had been deserted by the FAZ. The refugees continued to head towards Lodja (westwards) or Kasongo (southwards). Previously, a third group, which was much smaller in number, had joined the refugees at the Tingi-Tingi camp via the Punia road. In this context, the Mapping Team documented the following alleged incidents:

- On 1 March 1997, AFDL/APR units killed 11 Rwandan Hutu refugees belonging to religious orders on the Kindu road, around twenty kilometres from Kalima, in the Pangi territory. The victims, eight priests and three nuns, had been refugees in South Kivu since 1994. They had found refuge in the parish of Kalima since 22 February. Having captured the town on 23 February, the AFDL/APR troops told the priests and the nuns to follow them on the pretext of returning them to Rwanda. On 1 March, they boarded a minibus sent by the soldiers. During the evening, the soldiers beat them to death with sticks. The bodies of the victims were buried at the scene.[266]

- In March 1997, AFDL/APR units killed some 200 refugees in the territories of Pangi and Kasongo. The victims were for the mostly survivors of the massacres committed in the Shabunda territory in South Kivu. In the refugee camp opened near Kalima Airport, in the Pangi territory, soldiers killed at least 20 people, mainly women and children who were awaiting the arrival of food aid supplied by UNHCR. In the town of Kalima, soldiers searched houses, executed the refugees who were hiding there and beat Zairians who had allowed them into their homes. The soldiers then killed refugees all the way along the road between Kalima and Kindu, in particular in the villages of Kingombe Mungembe, Mumbuza, Kenye and Idombo. The bodies of the victims remained on the road for several days before being buried by local people. In the weeks that followed, the soldiers continued to hunt down refugees in the Kasongo territory. They killed a large number of them in the villages of Kisanji, Sengaluji and Karubenda. Most of the

[265] Interviews with the Mapping Team, Maniema, March 2009; AI, "Deadly alliances in Congolese forests", 1997, p.5; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.4 and 5.

[266] Interview with the Mapping Team, North Kivu, December 2008; Haki Za Binadamu, press release no.1, 7 March 1997; AI, "Memorandum to the UN Security Council: Appeal for a Commission of Inquiry to Investigate Reports of Atrocities in Eastern Zaire", 24 March 1997.

survivors ran off into the forest. Witnesses estimate having seen at least 165 bodies, but in all likelihood the total number of victims is far in excess of this figure.[267]

239. Although there were no more clashes between the ex-FAR/Interahamwe/FAZ and the AFDL/APR troops, the massacres of refugees continued in the weeks that followed the fall of Tingi-Tingi. The refugees apprehended by AFDL/APR soldiers based in Lubutu were led to a site called Golgotha, three kilometres from Lubutu, where they were systematically executed.

- On 14 March 1997, during a joint mission, UN organisations and NGOs found around 2,000 refugee survivors of the recent massacres wandering around the Tingi-Tingi and Amisi camps. Until the official closure of these camps on 2 April, the AFDL/APR soldiers deliberately blocked all humanitarian, health and medical aid efforts destined for the survivors. MSF reported that during this period it had been almost impossible to provide refugees with medical care because the AFDL authorities had forbidden or delayed aid efforts for security reasons. For want of humanitarian and medical aid during the three weeks that followed the capture of the camp, at least 216 refugees died at Tingi-Tingi.[268]

4. **Orientale Province**

240. With the exception of the group of soldiers who accompanied the entourage of the former Rwandan president Juvénal Habyarimana that swiftly crossed the region between late 1996 and early 1997, the vast majority of Rwandan refugees did not arrive in Orientale Province until March 1997. Although they tried to reach Kisangani in the company of an extremely small number of ex-FAR/Interahamwe units via the Lubutu-Kisangani road, on the right bank of the Luluaba River (the Congo River),[269] they were pushed back by the FAZ towards Ubundu, 100 kilometres south of Kisangani, on the left bank of the Luluaba River.

241. From 6 March 1997, tens of thousands of refugees set up camp at Njale, in the Ubundu territory, on the right bank of the Zaire River, opposite the village of Ubundu. The fighting that ensued between the AFDL/APR troops and the ex-FAR/Interahamwe troops around Njale[270] created a wave of panic among the refugees and many of them tried to cross the river any way they could, in spite of the harsh weather conditions. Several hundred refugees reportedly drowned as they tried to cross the river.

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[267] Interviews with the Mapping Team, Maniema, March 2009.

[268] MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, pp.4 and 5.

[269] The Luluaba River is known as the Congo River from Kisangani.

[270] Fighting took place in the villages of Obiakutu and Babunjuli.

Attacks against refugees along the Lubutu-Kisangani road

242. Advancing faster than the others, a small group of approximately 1,000 refugees and ex-FAR/Interahamwe units managed to pass through before the closure of the Lubutu-Kisangani road and arrived on 12 March 1997 at the village of Wania Rukula, sixty-four kilometres from Kisangani. They settled in two makeshift camps between the towns of Luboya and Maiko, on the right bank of the Luluaba River. On the same day, FAZ soldiers from the Special Presidential Division (DSP) entered the camps and handed out weapons to the ex-FAR/Interahamwe in anticipation of an AFDL/APR attack.

- Around eight o'clock in the evening on 14 March 1997, after the defeat of the FAZ/ex-FAR/Interahamwe coalition, AFDL/APR soldiers allegedly killed at least 470 refugees in the two camps near Wanie Rukula, in the Ubundu territory. Most of the victims' bodies were dumped in the Luboya River but some were placed in three mass graves.[271]

Executions and forced disappearances of refugees in and around the town of Kisangani

243. After the capture of Kisangani on 15 March 1997, the AFDL/APR soldiers staged combing operations in and around the town, looking for refugees. The new AFDL authorities instructed local officials to round up all the refugees in the region. Whenever groups of refugees were spotted, the AFDL/APR soldiers went to the round-up sites and led the refugees away towards an unknown fate. In this context, the Mapping Team documented the following alleged incidents:

- Around 15 March 1997, AFDL/APR units forced the disappearance of around thirty refugees detained at the Prison Centrale in Kisangani. When they entered the prison, which had been abandoned by the Zairian security services, they sorted the prisoners according to their ethnic group. The Tutsis were freed and their repatriation to Rwanda arranged. The Hutus were taken outside the prison and their fate remains unknown to this day. Around twenty Hutu women and children were also led out of the prison under the pretext of being repatriated to Rwanda. However, their return has not been confirmed.[272]

- At the end of April 1997, AFDL/APR soldiers arrested a group of 11 refugees on the Kisangani-Lubutu road. The refugees were never seen again.[273]

[271] Interviews with the Mapping Team, Kinshasa, November 2008 and Orientale Province, January and February 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998.

[272] Interviews with the Mapping Team, Orientale Province, February 2009.

[273] Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998.

Attacks against refugees along the Ubundu to Kisangani railway line

244. After crossing the Luluaba River at Ubundu village, most of the refugees pressed onwards and settled around 14 March 1997 in a makeshift refugee camp known as "Camp de la Paix", or "peace camp", in the village of Obilo, 82 kilometres from Kisangani. On 15 March, however, AFDL/APR/UPDF troops captured Kisangani and most of the refugees decided to continue on their way, except for a few hundred refugees who remained in Obilo.

- At dawn on 26 March 1997, AFDL/APR units allegedly killed at least 80 refugees, including women and children, at the Obilo camp, in the Ubundu territory. Several days before, AFDL/APR soldiers from Kisangani had gone to Obilo and ordered the local authorities to take all the refugees in the village back to the Camp de la Paix so they could receive humanitarian aid. Also on 26 March 1997, villagers heard around 45 minutes of gunfire. The next day, they entered the camp, which was littered with spent cartridge cases, and found the bodies of the victims. As they left Obilo, the soldiers told the people that the refugees were evil and that they should on no account assist the survivors. The bodies were buried in four mass graves by the Red Cross and some of the residents. Two of the graves are located near the market, one near the church of the Jehovah's Witnesses and another on the banks of the Obilo River.[274]

245. The refugees who had left Obilo before the attack split and headed in two different directions. One group, which included ex-FAR/Interahamwe units, left in the direction of Équateur province, cutting through the forest at the 52 kilometre marker and then travelling through the Opala territory. Most of the refugees continued to head towards Kisangani in the hope of accessing humanitarian aid, or even being repatriated. Several tens of thousands of people set up camp in the village of Lula, seven kilometres from Kisangani, on the left bank of the river. On 31 March 1997, however, AFDL/APR soldiers arrived in the area and forced them to turn back towards Ubundu. The refugees then crowded into makeshift camps along the 125 kilometres of railway line linking Kisangani and Ubundu. Towards the middle of April, at least 50,000 refugees were living in the Kasese I and II camps,[275] located near the Kisesa locality, 25 kilometres from Kisangani. A second makeshift camp at Biaro, 41 kilometres from Kisangani, received 30,000 refugees.[276] Aid workers rallied quickly to assist the refugees living in these camps. Given the scale of the needs and due to problems accessing the camps, only a small proportion of the refugee population were able to benefit from humanitarian aid.

274 Interviews with the Mapping Team, Orientale Province, December 2008, January and May 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997.

275 For reasons unknown to the Mapping Team, reports and the international press commonly use "Kasese" to refer to the village of Kisesa.

276 IRIN, "Emergency Update No. 156 on the Great Lakes", 23 April 1997.

Aid workers were also faced with the hostility of AFDL/APR officials in the field. In this context, the Mapping Team documented the following alleged incidents:

- In April 1997, when between 60 and 120 refugees were dying each day from disease or exhaustion, AFDL/APR soldiers barred aid agencies and humanitarian NGOs from accessing the camps on several occasions and hindered the repatriation of refugees to Rwanda. In spite of the official approval by AFDL authorities on 16 April 1997 of UNHCR's plan to airlift and repatriate the thousands of refugees around Kisangani, the Rwandan Government opposed the plan and insisted that the refugees be repatriated by road.[277] On several occasions, however, the operations to repatriate refugees by road were delayed for a variety of excuses. The scheduled repatriation of 80 children from the Biaro camp on 18 April was called off by AFDL/APR officials on the controversial grounds that several cases of cholera had been reported in the nearby Kasese camp.[278] Subsequently, an aid convoy and a WFP food store were attacked by locals at the instigation of AFDL/APR soldiers, and aid workers found themselves banned from accessing the camps south of Kisangani. A checkpoint set up at Lula marked the entrance to this restricted zone for all aid workers. On 19 April and 20 April, MSF negotiated entry but was only able to work in the camps for two hours each day. From 21 April onwards, aid workers were banned entirely from accessing the camps.[279]

- On 21 April 1997, the residents of Kisesa, visibly encouraged by AFDL/APR soldiers, attacked the Kasese I and II camps with machetes and arrows, killing an unknown number of refugees and looting aid stores. Several sources have reported that the attack had been carried out in retaliation for the murder of six Kisesa villagers by the refugees. This version of the events has nonetheless been challenged by a number of reliable sources. AFDL/APR soldiers at the scene are alleged to have directly incited the people to attack the camps.[280]

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[277] IRIN, "Emergency Update No. 151 on the Great Lakes", 16 April 1997.

[278] IRIN, "Emergency Update No. 152 on the Great Lakes", 17 April 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997, p.6.

[279] Interview with the Mapping Team, Orientale Province, January and May 2009; confidential documents submitted to the Secretary-General's Investigative Team in the DRC in 1997/1998; UNHCR, "Situation Reports", April 1997; "Zaïre: le fleuve de sang", a France-Télévisions documentary broadcast in La marche du siècle by Jean-Marie Cavada, Pascal Richard and Jean-Marie Lemaire in June 1997; IRIN, "Emergency Update No. 143 on the Great Lakes", 4 April 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997; AI, "Deadly alliances in Congolese forests", 1997; James McKinley Jr. "Machetes, Axes and Guns: Refugees Tell of Attacks in Zaire", *New York Times*, 30 April 1997; IRIN, "Emergency Update No. 151 on the Great Lakes", 16 April 1997 and following days.

[280] Interviews with the Mapping Team, Orientale Province, November 2008, January-May 2009; confidential documents submitted to the Secretary-General's Investigative Team in the DRC in 1997/1998; C. McGreal, "Truth Buried in Congo's Killing Fields", *Guardian*, 19 July 1997; John Pomfret, "Massacres Were a Weapon in Congo's Civil War; Evidence Mounts of Atrocities by Kabila's Forces", *Washington Post*, 11 June 1997; IRIN, "Emergency Update No. 155 on the Great Lakes", 22 April 1997; IRIN, "Emergency Update No. 157 on the Great Lakes", 24 April 1997.

246. Many witnesses and various sources have told how a train from Kisangani arrived near the camps on 21 April 1997, carrying members of the APR special units that had been deployed at Kisangani Airport since 17 April.

- On the morning of 22 April 1997, AFDL/APR units, accompanied by villagers, allegedly killed at least 200 refugees in the Kasese I and II camps, in the presence of several APR senior figures. The massacre lasted between seven and twelve hours. According to several sources, some ex-FAR/Interahamwe units are thought to have been in the camps but the victims were mostly civilians.[281] After the massacre, the soldiers headed to the village of Kisesa and ordered the villagers to go to the camps and gather up the bodies, which were initially buried in mass graves. At a later date, the AFDL/APR soldiers returned to Kisesa to dig up the bodies and burn them. On 24 April, UNHCR and WFP officials and several journalists visited the Kasese I and II camps under AFDL/APR military escort. All the refugees, including the sick and the children, had disappeared.[282]

247. Straight after the Kasese massacres, AFDL/APR soldiers attacked Biaro camp, 41 kilometres from Kisangani.

- On 22 April 1997, AFDL/APR units allegedly opened fire indiscriminately on the Biaro refugee camp, killing close to 100 people, including women and children. The soldiers then went in pursuit of those who had managed to escape into the forest, killing an unknown number of them. They also requisitioned a bulldozer from a Kisangani-based logging company to dig mass graves. Witnesses saw AFDL/APR units transporting wood in trucks. This wood was then used to build pyres and burn the bodies.[283]

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[281] Interviews with the Mapping Team, Orientale Province, November 2008-January 2009 and May 2009; confidential documents submitted to the Secretary-General's Investigative Team in the DRC in 1997/1998; C. McGreal, "Truth Buried in Congo's Killing Fields", *Guardian*, 19 July 1997; John Pomfret, "Massacres Were a Weapon in Congo's Civil War; Evidence Mounts of Atrocities by Kabila's Forces", *Washington Post*, 11 June 1997; F. Reyntjens, *La guerre des Grands Lacs: alliances mouvantes et conflits extraterritoriaux en Afrique centrale*, L'Harmattan, 2009.

[282] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997; James McKinley Jr., "Machetes, Axes and Rebel Guns: Refugees Tell of Attacks in Zaire", *New York Times*, 30 April 1997; James McKinley Jr., "Zaire Refugees Bear Signs of Rebel Atrocities", *New York Times*, 2 May 1997; James McKinley Jr. and Howard French, "Hidden Horrors: A Special Report, Uncovering the Guilty Footprints Along Zaire's Long Trail of Death", *New York Times,* 14 April 1997.

[283] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; confidential documents submitted to the Secretary-General's Investigative Team in the DRC in 1997/1998; AI, "Deadly alliances in Congolese forests", 3 December 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997; James McKinley Jr., "Machetes, Axes and Rebel Guns: Refugees Tell of Attacks in Zaire", *New York Times*, 30 April 1997; James McKinley Jr. and Howard French, "Hidden Horrors: A Special Report: Uncovering the Guilty Footprints Along Zaire's Long Trail of Death", *New York Times*, 14 November 1997; James McKinley Jr., "Zaire Refugees Bear Signs of Rebel Atrocities", *New York Times*, 2 May 1997.

248. On 28 April 1997, the non-governmental organisation MSF was granted permission to visit the Kasese and Biaro camps, but all their occupants had disappeared. According to MSF,[284] before the attacks these camps were sheltering at least 5,000 people in a state of extreme exhaustion.[285]

249. On 22 April 1997, while the attacks were taking place on the Biaro and Kasese camps, AFDL/APR soldiers and villagers stopped refugees who were trying to escape and forced them to leave in the direction of Ubundu town centre.

- On 22 April 1997, at the 52 kilometre marker, AFDL/APR soldiers ordered refugees to stop and sit down. They then opened fire on them, allegedly killing an unknown number of people, including a large number of women and children. Their bodies were piled up by the roadside and then buried or burned.[286]

250. In May 1997, while UNHCR and aid workers were arranging the repatriation of a group of refugees between the 41 kilometre marker and Kisangani, the massacres continued in the area south of Biaro camp. The zone remained out of bounds to aid workers, journalists and diplomats until at least 19 May. On 14 May, the delegation of UNHCR Assistant High Commissioner Sérgio Vieira de Mello was refused access to the zone by AFDL/APR soldiers.[287] At the same time, when questioned by journalists as part of a television report, a Zairian member of the Katangese ex-Tigers who had been integrated into the AFDL/APR claimed to have witnessed over a thousand executions each week in this zone. He also reported that the victims' bodies were transported to certain sites at night to be burned.[288] The AFDL/APR soldiers led an "awareness-raising" campaign among the people to stop them speaking out about what had happened.[289]

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[284] MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997.

[285] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997; James McKinley Jr., "Machetes, Axes and Rebel Guns: Refugees Tell of Attacks in Zaïre", *New York Times*, 30 April 1997; James McKinley Jr., "Zaire Refugees Bear Signs of Rebel Atrocities", *New York Times*, 2 May 1997; James McKinley Jr. and Howard French, "Hidden Horrors: a Special Report. Uncovering the Guilty Footprints Along Zaire's Long Trail of Death", *New York Times,* 14 November 1997.

[286] Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; "Zaire: le fleuve de sang", a France-Télévisions documentary broadcast in La marche du siècle by Jean-Marie Cavada, Pascal Richard and Jean-Marie Lemaire in June 1997; C. Cyusa, "Les oubliés de Tingi-Tingi", Éditions La Pagaie, pp.132–135; M. Niwese, "Le peuple rwandais un pied dans la tombe", L'Harmattan, 2001, p.149.

[287] IRIN, "Emergency Update No. 172 on the Great Lakes", 15 May 1997.

[288] Interviews with the Mapping Team, Orientale Province, May 2009; confidential documents submitted to the Secretary-General's Investigative Team in the DRC in 1997/1998; "Zaire: le fleuve de sang", a France-Télévisions documentary broadcast in La marche du siècle by Jean-Marie Cavada, Pascal Richard and Jean-Marie Lemaire in June 1997.

[289] Interviews with the Mapping Team, Orientale Province, December 2008-February 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998.

251. From 30 April 1997 onwards, AFDL/APR soldiers began to transport several groups of refugee survivors of the attacks on the Kasese camps by train to the transit camp that had been set up near Kisangani Airport.

- On 4 May 1997, AFDL/APR soldiers allegedly caused the deaths of over 90 refugees by forcing them to travel in a train in conditions likely to cause considerable loss of human life. The AFDL/APR soldiers who had refused to allow aid workers to arrange their repatriation had crammed the refugees into wagons without observing minimum safety guidelines for passenger survival.[290]

Attacks against refugees along the Kisangani–Opala road

252. In early April 1997, refugees from the Ubundu territory, the probable survivors of the Biaro and Kasese massacres, gathered in the Yalikaka locality, by the Lobaye River.

- In April 1997, acting on the orders of a civilian, some residents of Yalikaka village in the Opala territory allegedly killed at least 50 refugees with cold weapons and blows of sticks. The bodies were buried at the scene or dumped in the river. This attack is thought to have been carried out in retaliation for the murder of a village resident a short time earlier by ex-FAR/Interahamwe units.[291]

253. After the massacre, the residents of Yalikaka village continued to prevent many refugees from crossing the river and escaping. They also informed AFDL/APR soldiers about refugees present in the village.

- Towards 28 April 1997, around twenty AFDL/APR soldiers arrived in the village of Yalikaka and allegedly killed hundreds of refugees. Upon their arrival, they interrogated the refugees and removed at least one Zairian who was among them. They then shot dead the refugees. The bodies of the victims were buried at the scene by the villagers.[292]

254. After the fall of Kisangani and the destruction of the camps between Kisangani and Ubundu, several thousand refugees regrouped in the villages of Lusuma and Makako, 206 kilometres from Kisangani. Unable to cross the Lomami River to reach Opala, they

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[290] Interviews with the Mapping Team, Kinshasa, January 2009 and Orientale Province, May 2009; UNHCR "Great Lakes Briefing Notes", 6 May 1997; J. Chatain, "Zaïre: 91 réfugiés étouffés ou piétinés", *L'Humanité*, 6 May 1997.

[291] Interviews with the Mapping Team, Orientale Province, January and February 2009; Documents submitted to the Mapping Team on the events in Opala; K. Emizet, "The Massacre of Refugees in Congo: A Case of UN Peacekeeping Failure and International Law", *The Journal of Modern African Studies*, Vol. 38, No. 02, 2000, p.177.

[292] Interviews with the Mapping Team, Orientale Province, January and February 2009; Documents submitted to the Mapping Team on the events in Opala; K. Emizet, "The Massacre of Refugees in Congo: A Case of UN Peacekeeping Failure and International Law", *The Journal of Modern African Studies*, Vol. 38, No. 2, 2000, p.177.

remained in these villages, looting the property and crops of civilians. In this context, the Mapping Team documented the following alleged incidents:

- Between April and May 1997, some residents of Yalikaka village and AFDL/APR units shot dead or killed with cold weapons 300 refugees in the village of Makako in the Opala territory.[293]

- In April and May, along the road between Yaoleka and Anzi in the Opala territory, villagers killed several dozen refugees by attacking them with poisoned arrows or leaving poisoned food for them to find. By so doing, the villagers hoped to dissuade the refugees from setting up camp in their villages and, in some cases, to take their revenge for the acts of looting carried out by ex-FAR/Interahamwe units and refugees as they crossed the area. Between 25 and 30 refugees were killed at Yaata, 10 at Lilanga, 21 at Lekatelo and around forty at Otala, at the border with Équateur province.[294]

255. The victory of AFDL/APR over the FAZ and ex-FAR/Interahamwe in Orientale province failed to put an end to the massacre, forced disappearances and serious violations of the rights of refugees in the province.

- From May or June 1997, during a planned operation, AFDL/APR soldiers allegedly killed an unknown number of refugees, including some ex-FAR units, in the Bengamisa locality, 51 kilometres north of Kisangani. The victims had been kidnapped in Kisangani and the surrounding area and transported to a military base.[295] According to witnesses, the soldiers are alleged to have led the victims to believe that they were going to take them back to Rwanda by road. When they arrived at the camp buildings, the victims, who included a large number of women and children, were led outside in small groups. They were bound and their throats were cut or they were killed by hammer blows to the head. The bodies were then thrown into pits or doused with petrol and burned. The operation was carried out in a methodical manner and lasted at least one month. Before vacating the premises, the soldiers tried to erase all trace of the massacres. With the aid of a motor boat and a canoe, they dumped the bodies in the river rapids, along with some of the soil taken from the extermination site. They also detonated bombs in the camp to turn over the earth where the bodies had been buried. [296]

256. After the closure of the Bengamisa camp, the AFDL/APR soldiers set up camp around thirty kilometres away in the Alibuku locality. They set up a temporary camp five

[293] Interviews with the Mapping Team, Orientale Province, January and February 2009; Documents submitted to the Mapping Team.
[294] Ibid.
[295] This was a former Gendarmerie camp near the river.
[296] Interviews with the Mapping Team, Orientale Province, December 2008 and March 2009.

kilometres from the village, in an unoccupied zone near a gravel quarry. They told the villagers that they were looking for the Hutus who had killed the Tutsis in Rwanda and asked them to help in their search. They set up a roadblock on the camp's access road and ordered the *chef de secteur* to ban the people from hunting in the surrounding forest.

- From June 1997 and in the two or three months that followed, AFDL/APR units allegedly killed an unknown number of refugees around Alibuku. Twice a week, a truck carrying refugees arrived at the site, escorted by two AFDL/APR military jeeps. The victims were killed with cold weapons or bound and thrown alive from the hilltop into the rocky valley below. It is impossible to determine accurately the number of people killed at this site, but given the number of comings and goings, the victims probably run to several hundred. Before they left, the soldiers tried to erase all trace of the massacres. After they had left, however, a group of women from the village found many human remains at the scene.[297]

257. As in the other provinces, the victory of the AFDL/APR soldiers over the FAZ did not signal the end of the serious violations of human rights of refugees in Orientale province. In this context, the Mapping Team documented the following alleged incidents:

- On 4 September 1997, at four o'clock in the morning, FAC[298]/APR soldiers took 765 refugees from a transit camp eleven kilometres from Kisangani and forcibly repatriated them to Rwanda and Burundi without third-party witnesses (UN organisations or NGOs). The operation concerned 440 Rwandans and 325 Burundians, including 252 women and 242 children.[299]

- In September 1997, in the presence of the local administrative authorities, FAC/APR soldiers carried out a systematic search of houses around the Lula refugee camp, seven kilometres from Kisangani, to remove refugee children being sheltered by locals. According to one witness, the soldiers are alleged to have said that the Hutus were an evil race that would create problems for the Congolese. They also added that "even the children, once they became adults (...) would start to do unbelievable things". Aid agencies were not involved in the repatriation of these children and their fate remains unknown.[300]

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[297] Interviews with the Mapping Team, Orientale Province, February 2009.

[298] From June 1997, the national army of the DRC was known as the Forces armées congolaises (FAC). Until the start of the Second Congo War, among the ranks of the FAC, in addition to the AFDL soldiers and the ex-FAZ, were many Rwandan and, to a lesser extent, Ugandan soldiers. On account of the difficulty in distinguishing clearly between Congolese and Rwandan soldiers at this time, the acronym FAC/APR has been used for the period from June 1997 to August 1998.

[299] Interviews with the Mapping Team, Orientale Province, January, February and May 2009; UNHCR, press release: "UNHCR condemns refugee expulsion from ex-Zaire", 4 September 2009; Great Lakes Briefing Notes, 5 September 2009.

[300] Interviews with the Mapping Team, Orientale Province, May 2009.

- In November 1997, FAC/APR soldiers kidnapped 33 refugees at Kisangani General Hospital and took them to an unknown destination.[301]

- Between January and February 1998, FAC/APR soldiers arrested four Rwandan refugees, including two minors, in Kisangani. Their fate is still unknown. The victims were members of the same family. The father had been teaching at the Université des Sciences in Kisangani since 1996.[302]

5. Équateur

258. The first refugees arrived in Équateur province in December 1996. This initial group predominately comprised high-ranking civilian and military dignitaries from the old Rwandan regime. The group headed swiftly towards Zongo via Gemena or Gbadolite, and then crossed the Ubangi River to reach the Central African Republic. Most of the refugees did not reach Équateur province until March or April 1997. They arrived on foot, having crossed the forest west of the Kisangani-Ubundu road, and took the road towards Ikela. They then journeyed to the heart of the province along the Ikela-Boende road, in the Tshuapa district. They travelled for the most part in groups of 50 to 200 people, accompanied by a few armed men. Some of the groups were made up exclusively of ex-FAR and Interahamwe militiamen. Like in the other provinces, when they passed through the villages, the latter committed acts of violence against the civilian populations. For their part, the AFDL/APR soldiers reached Équateur province in April via Isangi and Djolu. In this context, the Mapping Team documented the following alleged incidents:

- On 22 April 1997, as they entered Boende, a town 560 kilometres from Mbandaka on the left bank of the Tshuapa River, AFDL/APR soldiers shot dead an unknown number of refugees at the ONATRA (state-owned transport authority) port. Many refugees tried to escape by jumping into the Tshuapa River but they drowned. The refugees in Boende had been waiting for a boat for Mbandaka for several weeks. A first boat carrying refugees had set sail a few weeks before.[303]

- Towards 24 April, under AFDL/APR military escort, the refugees who had survived the killings of 22 April boarded canoes and began to cross the Tshuapa River. During the journey, the soldiers killed an unknown number of refugees at the dyke between the right bank of Boende and Lifomi, a village 14 kilometres from Boende.[304]

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[301] *Report on allegations of massacres and other human rights violations occurring in eastern Zaire (now the DRC) since September 1996, prepared by the Special Rapporteur on the situation of human rights in the DRC, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and a member of the Working Group on Enforced or Involuntary Disappearances* (E/CN.4/1998/64).

[302] Interviews with the Mapping Team, Orientale Province, February 2009.

[303] Interview with the Mapping Team, Kinshasa, March 2009; AEFJN (Africa Europe Faith and Justice Network), "Rapport sur les violations des droits de l'homme dans le sud de l'Équateur", 30 September 1997.

[304] Ibid.

259. The AFDL/APR troops continued to kill refugees around Boende throughout May, June and July 1997.[305] By way of example, the Mapping Team documented the following alleged incidents:

- Towards the end of April 1997, AFDL/APR elements burned refugees alive in the village of Lolengi, 48 kilometres from Boende. The soldiers covered the victims' bodies with plastic sheeting, to which they then set fire.[306]

- Around 9 May 1997, AFDL/APR units shot dead about twenty refugees near the Lofonda junction, 32 kilometres from Boende. The victims had emerged from the forest after the soldiers promised to help them return to Rwanda.[307]

260. Once Boende was captured by the AFDL/APR troops, the refugees on the Ikela road, upriver from the town, fled in several directions. Some headed in the direction of Monkoto, 218 kilometres south of Boende, crossed the Zaire River at Loukolela and entered the Republic of the Congo. Others fled northwards and reached Basankusu via Befale. Most continued to head westwards towards Ingende and Mbandaka, pursued by AFDL/APR soldiers. In this context, the Mapping Team documented the following alleged incidents:

- On 7 may 1997, AFDL/APR units killed at least 10 refugees in the village of Djoa, 310 kilometres from Mbandaka. The refugees had remained in the village awaiting medical care.[308]

- Also on 7 May 1997, AFDL/APR units killed seven refugees in the village of Bekondji and two in the village of Buya.[309]

- On 8 May 1997, AFDL/APR units killed nine refugees in Wele village, 25 kilometres from the Ruki River, and thirty refugees on the Lolo dyke linking the village of Yele and the right bank of the Ruki River.[310]

- Between 7 May and 9 May 1997, AFDL/APR units killed an unknown number of refugees along the sixty kilometres between Djoa and the Ruki River.[311]

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[305] AEFJN, "Rapport sur les violations des droits de l'homme dans le sud de l'Équateur", 30 September 1997.

[306] Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; AEFJN, "Rapport sur les violations des droits de l'homme dans le sud de l'Équateur," 30 September 1997.

[307] Ibid.

[308] Interviews with the Mapping Team, Équateur, April 2009; Letter from Losanganya *groupement* notables, 15 July 1997.

[309] Interviews with the Mapping Team, Équateur, April 2009.

[310] Interviews with the Mapping Team, Équateur, April 2009.

[311] Interviews with the Mapping Team, Équateur, April 2009; HRW and FIDH (International Federation for Human Rights), "What Kabila is hiding: Civilian Killings and Impunity in Congo", October 1997.

261. Towards the end of April 1997, thousands of refugees had gathered on the right bank of the Ruki River, waiting for a boat to Mbandaka. In two trips on 1 May and 8 May, the ferry from Ingende, requisitioned for this purpose by the Military Governor, evacuated 4,200 refugees to Irebu, a former naval command centre 120 kilometres south of Mbandaka. Others left for Mbandaka in canoes or on foot. The weakest refugees and the sick, however, were unable to leave the area before the arrival of the AFDL/APR soldiers.

- On 12 May 1997, AFDL/APR units allegedly clubbed to death a dozen civilian refugees between the villages of Lomposo and Kalamba, 85 and seventy kilometres respectively from Mbandaka. On 11 May, AFDL/APR soldiers had arrived onboard two trucks and several jeeps and had spent the night in Itipo parish on the left bank of the Ruki River, approximately 187 kilometres from Mbandaka. On 12 May, they set off again on the road to Mbandaka.[312]

262. After spending the night of 12 May to 13 May in the village of Kalamba, the AFDL/APR troops reached Wendji, 20 kilometres from Mbandaka. 6000 refugees were living in a local Red Cross makeshift camp in the village, near an old SECLI plant (Société équatoriale congolaise Lulonga-Ikelemba). They were not armed because the Gendarmerie had confiscated their weapons. Under the aegis of the Bishop of Mbandaka, an assistance and repatriation committee comprising members of the Catholic and Protestant Churches and MSF, ICRC and Caritas, tried to help the refugees but, given that AFDL/APR troops were advancing swiftly towards the zone, the committee elected to arrange the evacuation of the refugees to Irebu.

- On 13 May 1997, in the presence of a number of APR senior figures, AFDL/APR units allegedly killed at least 140 refugees in the village of Wendji. Upon their arrival in the village, the soldiers told the Zairians not to be afraid, as they had come for the refugees. They then made their way towards the camp and opened fire on the refugees. The refugees tried to escape but were trapped by soldiers arriving from the south. On the same day, the soldiers entered the local Red Cross office and killed unaccompanied minors who were awaiting repatriation to Rwanda. On 13 May, the people of Wendji buried 116 bodies. A three-month-old baby who was still alive at the time of burial was killed by an AFDL/APR soldier who was overseeing the burial procedure. On 14 May, another 17 bodies were buried.[313]

263. While one group of AFDL/APR soldiers was massacring refugees in Wendji, another headed towards Mbandaka onboard two trucks.

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[312] Interviews with the Mapping Team, Équateur, March/April 2009.

[313] Interviews with the Mapping Team, Équateur, March/April 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; Howard French, "Refugees From Congo Give Vivid Accounts of Killings", *New York Times*, 23 September 1997.

- On the morning of 13 May 1997, the second group of AFDL/APR soldiers allegedly opened fire on an unknown number of refugees who had escaped Wendji and were trying to reach Mbandaka. 18 refugees in particular were killed at the village of Bolenge and three at the Catholic Mission of Iyonda.[314]

264. Around ten o'clock in the morning on 13 May 1997, several hundred refugees raced into the streets of Mbandaka.

- On 13 May 1997, AFDL/APR soldiers allegedly opened fire on the refugees who had just arrived in Mbandaka, and killed an unknown number of them near the Banque Centrale du Zaïre, on the Avenue Mobutu.[315]

265. The soldiers then entered the ONATRA port zone, where many refugees had been waiting for days to board a boat for Irebu.

- On 13 May 1997, AFDL/APR units allegedly opened fire on refugees at the ONATRA port for five to ten minutes, killing an unknown number. The commanding officer then ordered the soldiers to stop firing and told the refugees to leave their hideouts. Some jumped into the Zaire River, hoping to escape. The AFDL/APR soldiers then took up position along the river and opened fire. Around two o'clock in the afternoon, the soldiers began to sort the refugees, then clubbed them to death. The next day, the commanding officer of the AFDL/APR soldiers authorised the local Red Cross to collect the bodies for burial in a mass grave five kilometres from Mbandaka, at the Bolenge Protestant Mission. However, many of the bodies at the ONATRA port were dumped in the river. According to some sources, at least 200 people are thought to have been killed in this massacre.[316]

266. In the end, the survivors of the various massacres committed in the south of Équateur province were moved into a camp at Mbandaka Airport. Starting on 22 May 1997, 13,000 refugees were repatriated by air to Rwanda. Most of the Rwandan refugees who had managed to cross the Zaire River settled in the Republic of the Congo, in three

[314] Interviews with the Mapping Team, Équateur, March 2009; AEFJN (Africa Europe Faith and Justice Network), "Rapport sur les violations des droits de l'homme dans le sud de l'Équateur", 30 September 1997.

[315] Interviews with the Mapping Team, Équateur, March/April 2009; Witness accounts gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998.

[316] Interviews with the Mapping Team, Équateur, March/April 2009; confidential documents submitted to the Secretary-General's Investigative Team in the DRC in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997, pp.6–8; Gandhi International, "Rapport d'activités avec addendum sur les violations des droits de l'homme et le dossier de massacre sur les réfugiés", 1997; Raymond Bonner, "For Hutu Refugees, Safety and Heartbreak", *New York Times*, 6 June 1997; John Pomfret, "Massacres Were a Weapon in Congo's Civil War; Evidence Mounts of Atrocities by Kabila's Forces", *Washington Post*, 11 June 1997.

camps approximately 600 kilometres north of Brazzaville: Loukolela (6,500 refugees), Liranga (5,500 refugees) and Ndjoundou (3,500 refugees).

267. In the second half of 1997, the new regime's national and provincial authorities systematically hindered the work of the Secretary-General's fact-finding mission, which was trying to investigate the Wendji and Mbandaka massacres. In November, the Governor of Équateur province, Mola Motya, ordered the human remains from the mass grave at Bolenge to be dug up to erase all trace of evidence before UN investigators could reach the scene. The Minister of the Interior facilitated the exhumation by imposing a curfew in Mbandaka town on 13 November.

268. The Wendji and Mbandaka massacres revealed the doggedness with which the AFDL/APR soldiers killed the refugees. Although the refugees had often mixed with ex-FAR/Interahamwe units during their flight across Congo/Zaire, by the time the AFDL/APR soldiers arrived in Mbandaka and Wendji, most of the ex-FAR/Interahamwe had already left the zone, as had the FAZ soldiers. Despite this, the AFDL/APR soldiers continued to treat the refugees as armed combatants and military targets.

C. Attacks against other civilian populations

269. During their flight, members of President Mobutu's security services and the ex-FAR/Interahamwe killed a large number of civilians and committed acts of rape and pillage. As they advanced towards Kinshasa, in addition to vast swathes of refugees, the AFDL/APR soldiers allegedly massacred a large number of Hutu Banyarwanda. They also eliminated many civilians suspected of assisting the ex-FAR/Interahamwe and Burundian Hutu armed groups, participating in the killings of Tutsis/Banyamulenge, helping the refugees as they fled or supporting President Mobutu's regime. After President Laurent-Désiré Kabila came to power in Kinshasa, the new security forces reportedly committed serious violations of human rights against civilians viewed as opponents of the new regime and of the continued presence of APR soldiers in the Congolese territory.

1. North Kivu

Goma city

270. On 29 October 1996, having captured the Rumangabo military base between Goma and Rutshuru, near the Rwandan border, AFDL/APR troops launched an attack on the city of Goma. In this context, the Mapping Team documented the following alleged incidents:

- Between 29 October and 1 November 1996, the struggle for the control of Goma caused the deaths of an unknown number of civilians. During the fighting, FAZ soldiers committed many acts of looting.[317]

- After the capture of Goma, on 1 November 1996, AFDL/APR troops killed or forced the disappearance of an unknown number of civilians, including many influential members of the Hutu Banyarwanda community. They also killed several FAZ units that were out of combat, including soldiers undergoing treatment at Goma General Hospital.[318] In the week of 2 November to 9 November, *Équipe d'urgence de la biodiversité* (EUB)[319] removed 776 bodies from the streets of the town. Some of the victims had been killed by stray bullets but others had been deliberately executed. The AFDL/APR troops also proceeded to systematically pillage the town, even attacking the stores and offices of aid agencies such as the ICRC and those of UN organisations like WFP and UNHCR.[320]

271. In spite of the capture of Goma by AFDL/APR forces, the ex-FAR/Interahamwe from the Mugunga camp remained active in the area around the city. On 3 November 1996, they looted vehicles and property from the Grand Séminaire in Buhimba, on the outskirts of Goma.

- On 6 November 1996, ex-FAR/Interahamwe units and Zairian gunmen allegedly killed three Tutsi members of religious orders at the Grand Séminaire in Buhimba, not far from the Mugunga refugee camp. The victims – two abbots and a nun – failed to escape from the Grand Séminaire when the building came under attack on 3 November. After hiding out for three days, they were stopped and killed when they went in search of food and water. A fourth person, of Tutsi ethnic origin, was saved.[321]

Rutshuru territory

- In the night of 5 June to 6 June 1996, at Bunagana, a village on the Ugandan border, armed units identified as APR and UPDF soldiers allegedly killed

[317] *Report of the Secretary-General's Investigative Team on serious violations of human rights and international humanitarian law in the DRC* (S/1998/581), Annex, p.39 and p.47; *Report of the Special Rapporteur on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), p.7.

[318] Interview with the Mapping Team, North Kivu, March 2009.

[319] Équipe d'urgence de la biodiversité (EUB), "Rapport final des activités de ramassage et inhumation de corps", February 1997. EUB was a Congolese NGO working on the issue of the environmental effects (e.g. deforestation) of the presence of high numbers of refugees in the region. The NGO had been contracted to bury the bodies in the vicinity of Goma.

[320] Interviews with the Mapping Team, North Kivu, November 2008.

[321] Interviews with the Mapping Team, North Kivu, November 2008 and March 2009.

between 28 and 36 civilians, most of them Hutu Banyarwanda.[322] According to some sources, Tutsis from Bunagana are thought to have been used as scouts, pointing out the houses of people to be killed to the commandos.[323]

272. AFDL/APR soldiers began to infiltrate the Bwisha chiefdom in October 1996. Towards mid-October, AFDL/APR units launched their first attack on the FAZ military base at Rumangabo. Aided by ex-FAR/Interahamwe units from the Katale and Mugunga refugee camps, the FAZ drove back the attackers. In the days that followed, additional AFDL/APR soldiers infiltrated the southern part of Rutshuru territory via the Virunga National Park and the Kibumba camp. The new infiltrators cut off the road between the Katale and Mugunga refugee camps and the FAZ military base, with a view to launching a second attack on Rumangabo. From the start of the infiltrations, AFDL/APR troops allegedly massacred civilian populations in the Bweza and Rugari *groupements*. The victims were principally Hutu Banyarwanda.[324]

273. In almost every instance, the massacres by the AFDL/APR soldiers followed the same pattern. Upon entering a locality, they ordered the people to gather together for a wide variety of reasons. Once they were assembled, the civilians were bound and killed by blows of hammers or hoes to the head. Many witnesses have claimed to have spotted a large number of Tutsi Banyarwanda youths who had left Rutshuru territory between 1990 and 1996 among the AFDL/APR soldiers. According to several witnesses, the AFDL/APR soldiers displayed a clear desire for revenge in their massacres of the Hutu Banyarwanda, targeting villages where Tutsis had been persecuted in the past. In this context, the Mapping Team documented the following alleged incidents:

- On 20 October 1996, AFDL/APR units killed between 70 and 150 civilians in the Musekera locality in the Bweza *groupement*, in the south of the Rutshuru territory. The soldiers had come to the village the previous night but had found no-one there, as the people had fled. On 20 October, they made a surprise return to the village and swiftly ordered the civilians, who were mostly Hutu Banyarwanda, to gather in the *maison communale*, or village hall, under the pretext that they were going to hand out food and drink to them. The victims were shut in the *maison communale*, bound and clubbed to death. Their bodies were then thrown into a latrine.[325]

- Around 20 October 1996, AFDL/APR units killed dozens of civilians, mostly Hutu Banyarwanda, in the village of Tanda, near Musekera. The victims were

[322] The term "Banyarwanda" denotes peoples originating from Rwanda and living in the province of North Kivu.

[323] Interviews with the Mapping Team, North Kivu, November 2008; WFP (World Food Programme), "Emergency Report No. 22 of 1996", 7 June 1996; AI, "Zaire – Lawlessness and insecurity in North- and South-Kivu", 1996, p.10.

[324] Locally, these Hutu Banyarwanda are known as Banyabwisha or Hutus from the Bwisha chiefdom.

[325] Interviews with the Mapping Team, North Kivu, February and April 2009.

killed with blows of hammers and small hoes. Before they left, the soldiers torched the village.[326]

- Around 30 October 1996, AFDL/APR units killed over 800 people, including women and children, in the villages of Bisoko, Mugwata, Ngugo and Kuri-Rugari in the Rugari *groupement* in Rutshuru territory. In the days leading up to the attack there had been violent clashes between the AFDL/APR soldiers and the FAZ/ex-FAR/Interahamwe around the Rumangabo military base, located near these villages. In November, a local committee compiled a list of the victims containing 830 names. During the massacres the soldiers also pillaged the villages.[327]

274. On 26 October 1996, AFDL/APR soldiers captured Rutshuru town, the administrative headquarters of Rutshuru territory.

- On 26 October 1996, AFDL/APR units allegedly killed an unknown number of Hutu Banyarwanda civilians in the camp for displaced people at Nyongera, several kilometres from Rutshuru. The soldiers surrounded the camp and then opened fire. The victims were mostly Hutu Banyarwanda from the Bwito chiefdom in Rutshuru territory. They had been living in the camp for several years due to the prevailing climate of violence in the Bwito chiefdom. According to one source, however, the massacre is thought to have been preceded by a brief exchange of fire between the AFDL/APR soldiers and the ex-Far/Interahamwe.[328]

275. When the AFDL/APR troops entered Rutshuru, the inhabitants of the surrounding villages fled into the hills in the Busanza *groupement*.

- On 30 October 1996, AFDL/APR units allegedly killed at least 350 civilians, most of them Hutu Banyarwanda, with blows of hammers to the head in Rutshuru town centre, close to the ANP house.[329] In the days leading up to the massacres, the soldiers had appealed to civilians who had fled the village of Kiringa, one kilometre from Rutshuru, to return home to attend a large public meeting on 30 October. When they returned to the village, the inhabitants of Kiringa were led to Rutshuru town centre and shut away in the ANP house. In the afternoon, the soldiers began to compile a register and asked people of Nande ethnic origin to return home. They then separated the men and women on the grounds that the women had to go and prepare the meal. The women were taken to the Maison de la Poste, where they were executed. The men were bound and led in pairs to a

[326] Interviews with the Mapping Team, North Kivu, February and April 2009.
[327] Interviews with the Mapping Team, North Kivu, February and March 2009.
[328] Interviews with the Mapping Team, North Kivu, December 2008 and February and April 2009.
[329] The Albert National Park (ANP) is the former name of the Virunga National Park.

sand quarry several dozen metres from the ANP house. All of them were then executed with blows of hammers.[330]

276. Over the course of the weeks that followed, AFDL/APR soldiers committed many massacres in villages in the Busanza, Kisigari and Jomba *groupements*, to the south and east of Rutshuru. The victims were principally Hutu Banyarwanda civilians. In this context, the Mapping Team documented the following alleged incidents:

- Towards the end of October 1996, AFDL/APR units killed between 30 and 60 people, most of them Hutu Banyarwanda, in the villages of Kashwa and Burayi, close to Rutshuru. Most of the victims had been bound before they were executed with blows of hammers or hoes. Some of the victims were shot dead.[331]

- Also towards the end of October 1996, AFDL/APR units killed around one hundred civilians, most of them Hutu Banyarwanda, in the villages of the Kisigari *groupement* in the Rutshuru territory, notably Mushoro, Biruma, Kabaya and Kazuba. The soldiers had rounded up the residents under the pretext that they were going to attend a meeting. Most of the victims were killed with blows of hoes or hammers to the head. Some died when they were trapped in their houses and burned alive. Others died after being thrown into the latrines.[332]

- Around 29 October 1996, AFDL/APR units forced the disappearance of an abbot and four nuns in the Jomba parish, in the Rutshuru territory. The victims were all Hutu Banyarwanda. They were last seen talking to AFDL/APR soldiers. Their bodies have never been found.[333]

- For several weeks, between October and November 1996, AFDL/APR units arrested and killed an unknown number of Hutu Banyarwanda civilians in a building where the AFDL/APR staff were based in Rutshuru town centre.[334] The victims had been intercepted at the checkpoints set up at the entrance to Rutshuru and near the Mondo Giusto hydroelectric plant. The victims' bodies were then dumped in the Fuko River.[335]

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[330] Interviews with MONUC Human Rights Office, North Kivu, October 2005; CREDDHO (Research Centre on Environment, Democracy, and Human Rights), "Appel urgent sur la découverte des fosses communes en territoire de Rutshuru", October 2005; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", pp.11 and 12.

[331] Interviews with the Mapping Team, North Kivu, March 2009.

[332] Interviews with the Mapping Team, North Kivu, January, March and April 2009.

[333] Interviews with the Mapping Team, North Kivu, November 2008 and February 2009; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), p.7; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.76; Luc de l'Arbre, "Ils étaient tous fidèles, nos martyrs et témoins de l'amour en RDC", November 2005, p.177.

[334] This building was located near the Bwisha chief's house.

[335] Interviews with the Mapping Team, North Kivu, February 2009.

- On 18 November 1996, AFDL/APR units massacred several hundred Hutu Banyarwanda at the Mugogo market, 31 kilometres from Rutshuru. Upon their arrival, the soldiers announced that they were going to organise a meeting to introduce the new chief of the locality to the people. After asking non-Hutus and the people of Kiwanja[336] to leave, the soldiers opened fire on the crowd. Some of the victims were killed with blows of hammers or pestles to the head. The early 1990s had borne witness to a conflict over land ownership at the Shinda plantation between the people of Mugogo village and a Tutsi family. Villagers had murdered a member of the Tutsi family.[337] In 2005, the people of Mugogo submitted a list to MONUC Human Rights Office containing the names of 1,589 victims.

- In early November 1996, AFDL/APR units killed several hundred Hutu Banyarwanda in a former IZCN (Zairian Institute for Nature Conservation) camp at Kabaraza, at the entrance to Virunga National Park, 20 kilometres from Rutshuru. The victims were Hutu Banyarwanda who had been apprehended in Ngwenda village at a checkpoint where soldiers would sort people according to their ethnic origin. The soldiers had led them to the former IZCN camp under the pretext that they were going to cultivate bean fields as part of a community project. When they arrived at the camp, the soldiers killed them with pestles. According to most sources, the total number of victims is thought to be as high as 600 people.[338]

277. From late 1996 onwards, the AFDL/APR soldiers began to mass-recruit among the Congolese population. Most of the new recruits were children (CAAFAG),[339] commonly known as the *Kadogo* ("small ones" in Swahili). In this context, the Mapping Team documented the following alleged incidents:

- In late 1996, AFDL/APR units recruited many minors in the villages around the Kashwa locality in the Gisigari *groupement* in Rutshuru territory, and in those around Ngungu in the Masisi territory. Recruiting officers went into the village schools, promising the children food or money. They also forcibly enlisted an unknown number of children. Some of the recruits were barely ten years old. Most of the area's recruits received minimal military training at the Matebe camp located near Rutshuru town centre. During their stay at the camp, the children were tortured and subjected to various kinds of cruel, inhuman and degrading

[336] Kiwanja is a village near Rutshuru, with a predominately Nande population.

[337] Interviews with the Mapping Team, North Kivu, December 2008 and February/April 2009; Witness account gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", p.13; CEREBA (Centre d'études et de recherche en éducation de base pour le développement intégré), "Rapport de mission en territoire de Rutshuru", October 2005, p.19; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, pp.101 and 102.

[338] Interviews with the Mapping Team, North Kivu, December 2008 and February/March 2009.

[339] Children involved with armed forces and armed groups.

treatment. They were raped and received only very little food. They were then sent straight to the front line.[340]

- On 7 may 1997, AFDL/APR units killed over 300 civilians in the villages of the Chanzerwa locality in the Binja *groupement*. When they arrived in the villages, the soldiers burst into houses and killed an unknown number of civilians with hatchets. They then captured an unknown number of civilians and led them to the village of Buhimba. Having bound and imprisoned them in the main building and courtyard at the church of the 8th CEPAC (Community of Pentecostal Churches in Central Africa), they killed them with blows of hoes to the head. Those who tried to escape were shot dead. The bodies were then thrown into the latrines, not far from the church. The AFDL/APR troops indiscriminately killed men, women and children. Most of the victims were Hutu Banyarwanda, but many Nande were also massacred at Buhimba. According to several survivors, the AFDL/APR soldiers killed several children by dashing their heads against walls or tree trunks. In all, 334 victims were recorded.[341]

- On 26 May 1997, AFDL/APR units kidnapped and forced the disappearance of at least 17 civilians from the village of Vitshumbi, on the edge of Lake Edward. The victims were accused of killing an AFDL/APR soldier who had died a short while earlier in unexplained circumstances. 22 villagers were led to the Rwindi tourist complex to be interrogated. Five were eventually freed but the others were never seen again.[342]

Bwito chiefdom[343]

278. After the Katale and Kahindo refugee camps were dismantled, many Rwandan Hutu refugees roamed the Bwito chiefdom until March 1997. They frequently mixed with the local population, which comprised mainly Hutu Banyarwanda. In this context, the Mapping Team documented the following alleged incidents:

- At the end of October 1996, a few weeks after the attack on the Katale refugee camp, AFDL/APR units killed at least 88 civilians, mostly Hutu Banyarwanda, in the village of Rusovu in the Tongo *groupement*. After rounding up the residents, the soldiers shut them away in around 15 houses, then killed them with blows of hoes and hammers to the head. They then set fire to the houses.[344]

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[340] Interviews with the Mapping Team, North Kivu, March and April 2009.

[341] Interviews with the Mapping Team, North Kivu, April 2009.

[342] Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.102; APREDECI, "Mission d'enquête sur la situation des droits de l'homme en province du Nord-Kivu", 1997; AI, "Deadly alliances in Congolese forests", 1997, p.18.

[343] Bwito is one of two chiefdoms in Rutshuru territory. It is located in the west of the territory.

[344] Interviews with the Mapping Team, North Kivu, April 2009; CEREBA, "Rapport de mission en territoire de Rutshuru", October 2005, p.29.

- In November or December 1996, AFDL/APR soldiers killed at least 200 civilians, most of them Hutu Banyarwanda, in the Bambu *groupement*, notably in the villages of Musanza, Marangara, Kanyangili, Kagando and Kishishe. In Kagando, the soldiers asked the villagers to assemble so they could receive food and salt. They then locked them in small groups in houses which they torched.[345]

- Also in November or December 1996, elements of the AFDL/APR killed 85 Hutu Banyarwanda civilians in the village of Duane in the Tongo *groupement*. Having been arrested during a combing operation, the victims were bound and locked in a house, which the soldiers then torched. The victims were burned alive and their bodies buried in small groups of four or five in mass graves.[346]

- On 31 December 1996, elements of the AFDL/APR killed around 300 civilians, most of them Hutu Banyarwanda, including women and children, in the village of Bukombo in the Rutshuru territory. On their arrival, the soldiers asked the residents to gather in order to attend a meeting. They then surrounded them and opened fire on the crowd. Before leaving the village, the soldiers looted medicine supplies and destroyed the hospital.[347]

- On 11 March 1997, elements of the AFDL/APR killed dozens of civilians, most of them Hutu Banyarwanda, including women and children, in the village of Mushababwa in the Bambu *groupement*. Upon their arrival, the soldiers asked the people to gather together in order to attend a meeting. They then surrounded the civilians and opened fire indiscriminately.[348]

- On 13 March 1997, elements of the AFDL/APR killed several hundred people, most of them Hutu Banyarwanda, in the village of Kazuba in the Bukombo locality. Upon their arrival in the village, the soldiers asked the pastor of the Adventist church to gather the people together to attend a meeting. The civilians who went to the church were shot dead. Other civilians were burned alive when their houses were set on fire. The soldiers indiscriminately killed men, women and children.[349]

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[345] Ibid.

[346] Ibid.

[347] Witness account gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), p.6.

[348] Interviews with the Mapping Team, North Kivu, December 2008 and January 2009; AI, "Deadly alliances in Congolese forests", 1997, p.8; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.94; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.36; AZADHO, "Droits de l'homme au Nord-Kivu. Une année d'administration AFDL: Plus ça change plus c'est la même chose", 1997, p.17.

[349] Interviews with the Mapping Team, North Kivu, December 2008 and February 2009; CEREBA, "Rapport de mission en territoire de Rutshuru", October 2005, p.30.

- Between 12 April and 19 April 1997, elements of the AFDL/APR killed over one hundred civilians, most of them Hutu Banyarwanda, in the village of Kabizo. The soldiers had asked the people to gather in order to attend a meeting. Most of the victims were clubbed to death. The bodies were piled into village houses, which were then set on fire. One source put forward a figure of 157 victims.[350]

Masisi territory

- On the evening of 6 November 1996, in the villages of Tebero and Njango, "Hutu armed units"[351] opened fire, threw grenades and fired rockets at trucks transporting several hundred civilians, most of them of Nande ethnic origin. On the morning of 7 November, armed units massacred survivors and systematically robbed the passengers before setting fire to the vehicles. According to some sources, 760 bodies were buried in three mass graves. The victims had left Goma on 6 November and were trying to reach the north of the province by road. The precise motive behind this massacre has not been determined.[352]

- Towards mid-November 1996, fleeing ex-FAR/Interahamwe killed between five and eleven civilians in the village of Ngungu.[353]

- On 5 December 1996, elements of the AFDL/APR killed at least 97 people in the village of Matanda. The majority of the victims were Hutu refugees and Hutu Banyarwanda.[354]

- On 7 December 1996, elements of the AFDL/APR killed around 310 civilians, including a large number of women and children, in the village of Kinigi in the Masisi territory. The soldiers had accused the local people, most of them Hutu Banyarwanda, of sheltering ex-FAR/Interahamwe. When they arrived, however, the ex-FAR/Interahamwe had already left the village. First, the soldiers tried to reassure civilians by telling them that they had nothing to fear. They then asked them to assemble in several buildings, including the Adventist church and the Rubona primary school, to attend a meeting. In the afternoon, the AFDL/APR

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[350] Interviews with the Mapping Team, North Kivu, April 2009; AI, "Deadly alliances in Congolese forests", 1997, p.9; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, p.31; CEREBA, "Rapport de mission en territoire de Rutshuru", October 2005, p.29.

[351] It was not possible to determine whether these were ex-FAR/Interahamwe or Hutu Banyarwanda militiamen.

[352] Interviews with the Mapping Team, North Kivu, November 2008 and February 2009; APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, p.31; APREDECI, "Rapport circonstanciel, novembre 1996 et ses événements", 1996; AZADHO, press release, "Massacre de plus de 500 personnes dans la localité de Kitchanga, zone de Masisi, par une bande armée", 6 December 1996.

[353] Interviews with the Mapping Team, North Kivu, March 2009.

[354] APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997; Peacelink, "Rapport du Kivu - bilan victimes, territoire de Masisi", undated. Available online at the following address: http://ospiti.peacelink.it/bukavu/znews047.html.

soldiers entered the buildings and killed the villagers with hoes and hatchets to the head. They also killed some civilians in their homes. The bodies were buried at Kinigi in several mass graves.[355]

- On 9 December 1996, elements of the AFDL/APR killed around 280 civilians in the village of Katoyi, in the south-west of the Masisi territory. When they arrived, the soldiers asked the tribal chief to gather the people together for a meeting. They then surrounded the civilians who had gathered in the village centre and bound them before killing them with cold weapons and small axes. Those who tried to escape were shot dead. The victims included a large number of women and children, as well as Rwandan refugees.[356]

- Around 23 December 1996, elements of the AFDL/APR killed over 460 Hutu Banyarwanda civilians, mostly men, in the village of Kausa, near the Nyamitaba locality. When they arrived, the soldiers explained that they were only looking for the Interahamwe and that they had come to reconcile the communities. They then asked the people to convene in the village square to attend a meeting. They then fired shots and bound the civilians. Some were locked in buildings, while others were led into the fields around the village. Still others were led on to the Kanyabihanga hill. Most of the victims were killed with hammer blows. Those who tried to escape were shot dead. After the massacre, the soldiers raped many women. A large number of women and children, as well as Rwandan refugee survivors of the Mugunga camp, were among the victims.[357]

- On 24 December or 25 December 1996, elements of the AFDL/APR from Kilolirwe killed around 160 civilians in the Nyakariba parish, in the Masisi territory. Upon their arrival in the village, the soldiers ordered the people of Nyamitaba and Nyakariba to gather in the parish of Nyakariba to attend a meeting. The victims were bound before being killed with hammer blows to the head. Those who tried to escape were shot dead. At least one priest was killed in this attack. The bodies of the victims were thrown into several mass graves located near the dispensary, the parish church and a place known as Camp Nord.

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[355] Interviews with the Mapping Team, North Kivu, December 2008 and February/March 2009; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.27; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.85.

[356] Interviews with the Mapping Team, North Kivu, December 2008 and February 2009; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.86; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.30.

[357] Interviews with the Mapping Team, North Kivu, December 2008 and January 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581), Annex, p.48; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), p.7; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.96; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.34; Grande Vision pour la défense des droits de l'homme, "Rapport sur les violations des droits de l'homme dans la zone agropastorale de Masisi", March 1997, p.4.

In 1997, AFDL/APR soldiers returned to dig up the remains, some of which were burned at the scene.[358]

- From late 1996 and over the course of the months that followed, elements of the AFDL/APR based on the Mufunzi hill kidnapped and killed an unknown number of civilians in the hills around Ngungu. The soldiers arrested civilians suspected of collaborating with Hutu militiamen at checkpoints they had set up on the main routes around the area. They also carried out frequent raids on the villages of Ngungu, Murambi, Kashovu, Karangara, Mumba, Kibabi and Nyambisi. Different sources report the number of victims as anywhere between one dozen and several hundred. The region's inhabitants named the Mufunzi hill Nyabihanga, which means "place of the skulls" in Kinyarwanda.[359]

- At the end of December 1996, AFDL/APR soldiers killed between 16 and 22 people and set fire to houses in the village of Muheto, ten kilometres from Nyakariba. In early 1997, they returned to Muheto and killed 16 civilians.[360]

- On 9 January 1997, elements of the AFDL/APR killed between 107 and 134 civilians in the village of Bitonga in the Masisi territory. Arriving in the village very early in the morning, the soldiers accused the local people, most of them Hutu Banyarwanda, of collaborating with ex-FAR/Interahamwe. The soldiers then opened fire and threw grenades at the civilians.[361]

- Around 20 January 1997, elements of the AFDL/APR killed 14 members of the same family, including children, in a house in Kanyangote village, near the Matanda parish.[362]

- On 25 January 1997, elements of the AFDL/APR killed at least 20 Hutu Banyarwanda civilians in the village of Kalangala. The soldiers had asked the villagers to convene in order to attend a meeting. They then surrounded them and opened fire.[363]

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[358] Interviews with the Mapping Team, North Kivu, December 2008 and January 2009; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), para. 21; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.97; La Grande Vision, "Rapport sur les violations des droits de l'homme dans la zone agropastorale de Masisi", March 1997, p.4.

[359] Interviews with the Mapping Team, North Kivu, December 2008 and March/April 2009.

[360] Interviews with the Mapping Team, North Kivu, December 2008 and January 2009; Grande Vision, "Rapport sur les violations des droits de l'homme dans la zone agropastorale de Masisi", March 1997, p.3.

[361] Interviews with the Mapping Team, North Kivu, December 2008 and March 2009; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), p.6; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.81.

[362] Interviews with the Mapping Team, North Kivu, March and April 2009.

[363] Interviews with the Mapping Team, North Kivu, December 2008 and February/March 2009; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.25; La Grande Vision, "Rapport sur les violations des droits de l'homme dans la zone agropastorale de Masisi", March 1997, p.4.

- On 23 February 1997, during military operations targeting Hutu armed units operating in the region, AFDL/APR soldiers killed over one hundred civilians, most of them Hutu Banyarwanda, in the village of Rubaya. Some of the victims were shot dead. Others were killed with cold weapons or burned alive in their homes. A large number of women and children were among the victims.[364]

- Towards 23 February 1997, elements of the AFDL/APR killed an unknown number of civilians in the village of Nambi. The soldiers arrived in the village while the cattle market was being held and accused certain civilians of stealing cattle. They then kidnapped between 30 and 50 civilians. That evening shots were heard, and the next day 15 bodies, including those of two women, were found on the Kayonde hill. To date, the bodies of the other victims have never been found.[365]

- In April 1997, elements of the AFDL/APR from Mushake, Kilolirwe and Ruvunda killed an unknown number of civilians in the village of Chandarama. The victims were shot dead or killed with blows of hoes. According to one source, only the men are thought to have been killed. The residents of the villages from which the victims came buried the bodies at a number of locations, most of them near the Kinyabibuga River.[366]

- Around 16 April 1997, elements of the AFDL/APR massacred around one hundred civilians at Mweso. The victims, most of them Hutu Banyarwanda, were on their way to the Kabizo market when the soldiers, based on the Kilumbu hill, requested their attendance at a public meeting. Some of the victims were then shot dead. Others were burned alive in a house. Several bodies were dumped in the Mweso River. Others were buried in a mass grave behind the Mweso parish.[367]

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[364] Interview with the Mapping Team, North Kivu, March 2009; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.86; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.28.

[365] Interview with the Mapping Team, North Kivu, February 2009; Witness account gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; *Report of the Secretary-General's Investigative Team* (S/1998/581), Annex, p.48; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.83.

[366] Interviews with the Mapping Team, North Kivu, December 2008 and April 2009; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.35.

[367] Interview with the Mapping Team, North Kivu, December 2008; AI, "Deadly alliances in Congolese forests", 1997, p.15; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.35.

- On 9 July 1997, FAC/APR[368] units killed 17 civilians and looted the village of Ruzirantaka. The soldiers had come to raid the house of the school principal, but during the raid an argument broke out and an AFDL/APR soldier was killed. To cover up the death *vis-à-vis* their superiors, the soldiers decided to create an incident and killed 16 villagers.[369]

- On 12 July 1997, a coalition between the Mayi-Mayi, Hutu armed units and members of village self-defence groups killed between 7 and 20 people, most of them Tutsi Banyarwanda, in the village of Ngungu. Following the massacre, FAC/APR units attacked and destroyed the villages of Katovu, Ufamando, Musongati, Kabingo, Rubaya, Kanyenzuki, Kibabi and Ngungu. The precise number of victims is still unknown.[370]

- Around August 1997, FAC/APR units burned alive several hundred civilians, most of them Hutu Banyarwanda, in the village of Mushangwe. After ordering local people to convene in a building to attend a meeting, the AFDL/APR soldiers set fire to the building.[371]

279. After President Kabila came to power in Kinshasa, the alliance between the AFDL/APR and the Hunde Mayi-Mayi swiftly deteriorated. Accusing the new regime of trying to marginalise them in the new army and refusing to accept the long-term presence of APR soldiers in the two Kivu provinces, a number of Mayi-Mayi groups decided to take up the armed struggle again. On 22 July 1997, violent clashes broke out in the village of Katale, twelve kilometres from Masisi, where the AFDL/APR had a military base. On 29 July, FAC/APR soldiers received reinforcements from Goma and embarked on a combing operation in the vicinity of Masisi. During the operation, they committed many acts of violence against the predominately Hunde civilian population, whom they accused of supporting the Mayi-Mayi.

- On 29 July 1997, FAC/APR units from the Katale military camp allegedly killed around fifty civilians, including women and children, in the banana plantations and fields surrounding the village of Mutiri, next to Masisi town. The victims, who had fled the village when the soldiers arrived, were captured and bound before being shot or killed by hammer blows to the head. Killings also took place

[368] As mentioned before, from June 1997 the national army of the DRC was known as the Forces armées congolaises (FAC). Until the start of the Second Congo War, in addition to AFDL soldiers and ex-FAZ, the FAC included many Rwandan and, to a lesser extent, Ugandan soldiers. On account of the difficulty distinguishing accurately between Congolese soldiers and Rwandan soldiers at this time, the acronym FAC/APR is used for the period from June 1997 to August 1998.

[369] APREDECI, "Mission d'enquête sur la situation des droits de l'homme dans la province du Nord-Kivu", 1997, p.38; AZADHO, "Une année d'administration AFDL: plus ça change plus c'est la même chose", 1997.

[370] Interview with the Mapping Team, North Kivu, March 2009.

[371] AZADHO, "Une année d'administration AFDL: plus ça change, plus c'est la même chose", 1997, p.5; AI, "Deadly alliances in Congolese forests", 1997, p.8.

in the surrounding villages, such as Kiterire. The soldiers then headed to Nyabiondo, nineteen kilometres from Masisi. On the way, they killed several dozen civilians and pillaged and torched at least a dozen villages, including Kanii, Masisi, Bulwa, Buabo, Bangabo, Kihuma, Luashi, Bukombo, Kamarambo and Kinyanguto.[372]

Nyiragongo territory (Petit Nord)

280. Situated between the city of Goma and the Mount Nyiragongo volcano, Nyiragongo is the smallest territory in the province of North Kivu. One refugee camp was located in this territory, on the Goma to Rutshuru road. From mid-October 1996, AFDL/APR soldiers moved on to the small strip of land of the Virunga National Park between the village of Rugari, in the Rutshuru territory, and Kibumba, in the Nyiragongo territory. In this context, the Mapping Team documented the following alleged incidents:

- Around 19 October 1996, unidentified men armed with guns and rocket launchers killed at least one hundred people between the villages of Rugari and Kibumba. The victims were killed in a series of attacks on vehicles on the Goma to Rutshuru road. 18 members of a Butembo football team who were on their way to Goma were killed when rockets were fired at their minibus. According to one source, members of the FAZ appointed to oversee the security of the vehicles were among the victims. The survivors were pursued by the attackers and killed in the forest.[373]

- On 12 April 1997, AFDL/APR units killed at least 33 people in the villages of Kanyati and Mudja. Upon their arrival at Kanyati, the soldiers asked the people to follow them to help them find Interahamwe. On the way, they ordered the civilians to lie on the ground and opened fire, killing 23 people. In the afternoon, they entered Mudja and opened fire on the people, killing ten civilians and injuring four. The soldiers had accused the people of Mudja of bartering supplies and coal with the Interahamwe operating near Goma.[374]

[372] Interviews with the Mapping Team, North Kivu, December 2008-January 2009; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, pp.55 and 56; AI, "Deadly alliances in Congolese forests", 1997, p.15 and 16; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, pp.55 and 56.

[373] Interviews with the Mapping Team, North Kivu, December 2008 and March/April 2009.

[374] AZADHO, "Une année d'administration AFDL: plus ça change, plus c'est la même chose", 1997, p.30; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.42; APREDECI, "Rapport sur le massacre de Mudja", 25 April 1997; AI, "Deadly alliances in Congolese forests", 1997, p.14.

Territories of Beni and Lubero (Grand Nord)

281. In 1997 and 1998, the AFDL/APR soldiers (known as the *Forces Armées Congolaises (FAC)* from June 1997[375]) and those of the APR committed massacres in the territories of Lubero and Beni. As the local population is 95% Nande and few refugees attempted their escape via these two territories, these massacres fulfilled a different logic to that observed in the territories of Masisi and Rutshuru. The main massacres took place in 1997 after the breakdown of the alliance between the AFDL/APR soldiers and the numerous local Mayi-Mayi groups. Denouncing the constant interference of Rwanda in the region and the brutal methods used by the AFDL/APR soldiers towards refugees and local people alike, many Mayi-Mayi groups distanced themselves and then entered into conflict with them. In response, the AFDL/APR soldiers carried out several attacks on populations suspected of collaborating with Mayi-Mayi groups. In this context, the Mapping Team documented the following alleged incidents:

- On 6 January 1997, AFDL/APR units killed 184 people and torched the village of Kyavinyonge, in the Beni territory. The soldiers, who had come from Butembo, were pursuing Mayi-Mayi units from Kasindi. The "Kasindian" Mayi-Mayi had made Kyavinyonge one of their strongholds. Two weeks before the massacre, violent clashes took place forty kilometres from Kyavinyonge in the village of Kyondo, forcing AFDL/APR troops to withdraw to Butembo. Having driven the Mayi-Mayi out of Kyavinyonge, the soldiers asked some of the civilians to come out of their houses and shot them dead. They also threw grenades at dwellings, resulting in many casualties. Among the 184 bodies recovered was that of a pastor, killed while he was trying to persuade soldiers to spare the civilians who were sheltering in his church. The victims' bodies were buried in various mass graves located in the village.[376]

- At the start of January 1998, FAC/APR soldiers killed an unknown number of people in the village of Kyavinyonge. The soldiers had come to Kyavinyonge to flush out the Mayi-Mayi. In the course of the operation, they killed civilians and looted dwellings.[377]

- On 20 February 1998, FAC/APR soldiers killed and raped an unknown number of civilians and looted dwellings during a combing operation in the city of Butembo.

[375] As mentioned before, from June 1997 the national army of the DRC was known as the Forces armées congolaises (FAC). Until the start of the Second Congo War, in addition to AFDL soldiers and ex-FAZ, the FAC included many Rwandan and, to a lesser extent, Ugandan soldiers. On account of the difficulty distinguishing accurately between Congolese soldiers and Rwandan soldiers at this time, the acronym FAC/APR is used for the period from June 1997 to August 1998.

[376] Interviews with the Mapping Team, North Kivu, November 2008 and February 2009; APREDECI, GVP, CRE, "L'Apocalypse au Nord-Kivu", 1997, p.43; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p.106.

[377] Interviews with the Mapping Team, North Kivu, February 2009.

The victims were accused of collaborating with the Vurondo Mayi-Mayi, who had attacked the FAC/APR camp on the Kikyo hill, near Butembo city centre.[378]

- From 14 April to 17 April 1998, FAC/APR units killed several hundred civilians, committed many rapes and carried out a large number of arbitrary arrests in the villages on the outskirts of Butembo. Some sources have put forward a figure of 300 victims. The FAC/APR had accused the victims of supporting the Mayi-Mayi responsible for the recent attack on their military base at Butembo. The combing operation lasted several days. Some of the victims were shot dead in their homes; others were taken to the Kikyo military camp where they were shot, run over by jeeps or buried alive. During the combing operation, the soldiers moved from house to house looking for Mayi-Mayi. They raped dozens of women and girls in their homes. On several occasions they forced the men to sleep with their sisters and/or their daughters.[379]

- From 1996 to 1998, the "Kasindian" Mayi-Mayi forcibly recruited a large number of minors and adults in the Lubero territory. After the death of their commanding officer, part of the group assumed the name of Vurondo Mayi-Mayi. Some of the minors, many of whom were no more than 11 years old, were recruited in schools on a voluntary basis, mainly on the promise of sums of money. Others, however, were kidnapped and forcibly enlisted. Once enrolled, the minors underwent secret initiation ceremonies. They were also tattooed to mark their lifelong connection with the group. The minors lived in appalling conditions under a reign of terror.[380]

2. South Kivu

282. During their capture of South Kivu, "Tutsi/Banyamulenge armed units" and forces from the AFDL, APR and the FAB[381] committed serious violations of human rights and international humanitarian law against Zairian civilians viewed as hostile to local Tutsi and Banyamulenge communities or friends of their enemies (the FAZ, the ex-FAR/Interahamwe, Burundian Hutu armed groups, "Bembe armed units" and the Mayi-Mayi groups in general). Many tribal chiefs were also killed during this time on political

[378] Interviews with the Mapping Team, North Kivu, February 2009; ASADHO*, Annual Report,* 1998, p.13; Groupe de chercheurs libres du Graben, "Rapport sur les massacres perpétrés au camp militaire de Kikyo"; AI, *DRC: A Year of Dashed Hopes*, 1998, pp.2–3.

[379] Ibid.

[380] Interviews with the Mapping Team, North Kivu, February 2009.

[381] As mentioned before, given the high numbers of APR soldiers among AFDL troops and at AFDL headquarters – a fact later acknowledged by the Rwandan authorities – and the great difficulty experienced by witnesses questioned by the Mapping Team distinguishing between AFDL and APR members in the field, this report will refer to AFDL armed units and APR soldiers engaged in operations in Zaire between October 1996 and June 1997 under the acronym AFDL/APR. In cases where, in certain regions, several sources have confirmed high numbers of Ugandan soldiers (in some districts of Orientale Province, for example) or the Forces armées burundaises (as in some territories in South Kivu) under the cover of the AFDL, the acronyms AFDL/APR/UPDF and AFDL/APR/FAB or AFDL/UPDF and AFDL/FAB may also be used.

and ethnic grounds, or simply in order to loot their property afterwards. In this context, the Mapping Team documented the following alleged incidents:

- On 12 September 1996, "Tutsi/Banyamulenge armed units" killed nine civilians at Kanyura and Makutano in the Itombwe sector of the Mwenga territory. Among the victims were the *chef de poste d'encadrement* (from the Rega tribe) and his collaborators, and the chief of the Basymuniaka II *groupement*, a Bembe from the Fizi territory, along with two members of his family. Many Bembe viewed this massacre as the start of the "total war" against the Banyamulenge.382

- On 6 October 1996, "Tutsi/Banyamulenge armed units" killed over fifty people in the village of Kidoti, two kilometres from Lemera, in the Uvira territory. The victims were mainly civilians. Some of the victims were killed by shrapnel; others were executed after being forced to dig mass graves, into which their bodies were then thrown.[383]

- On 6 October 1996, in the village of Lemera, eighty kilometres north-west of Uvira, "Tutsi/Banyamulenge armed units" killed 37 people in a hospital, including two members of the medical staff, civilians and FAZ soldiers undergoing treatment at the hospital. Before they left Lemera, the "Tutsi/Banyamulenge armed units" ransacked the hospital.[384]

- On 18 October 1996, AFDL/APR units killed at least 88 civilians in the village of Kiliba, thirteen kilometres north of Uvira city. The victims were civilians who were unable to escape in time after the departure of the town's eight *gendarmes*. Before they left Kiliba, the soldiers also pillaged the village. Of the 88 victims identified by the Red Cross, 15 were buried at Uvira.[385]

- On 18 October 1996, in Uvira territory, AFDL/APR units killed at least 51 civilians in the village of Bwegera in the Kakamba *groupement* in the Ruzizi

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[382] Interviews with the Mapping Team, South Kivu, April 2009; CADDHOM (collective action for human rights development), "Les atrocités commises en province du Kivu au Congo Kinshasa (ex-Zaïre) de 1996 à 1998", 1998, p.5; Palermo-Bukavu Solidarity Committee, "Les morts de la rebellion", 1997, p.2.

[383] Witness accounts gathered by the Secretary-General's investigative Team in the DRC in 1997/1998; Report of the Secretary-General's investigative team (S/1998/581), Annex, p.45; Palermo-Bukavu Solidarity Committee, "Les morts de la rébellion", 1997, p.2; AI, "Loin des regards de la communauté internationale: Violations des droits de l'homme dans l'est du Zaïre", 1996, p.3.

[384] Interview with the Mapping Team, South Kivu, February 2009; Witness accounts gathered by the Secretary-General's investigative team in the DRC in 1997/1998; *Report of the Secretary-General's investigative team* (S/1998/581), Annex, p.45; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 198; Palermo-Bukavu Solidarity Committee, "Les morts de la rébellion", 1997, p.1; AI, "Loin des regards de la communauté internationale: Violations des droits de l'homme dans l'est du Zaïre", 1996, pp.3 and 4.

[385] Interviews with the Mapping Team, South Kivu, November 2008 and March 2009; Confidential document submitted to the Secretary-General's investigative team in the DRC in 1997/1998; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 198; AI, "Loin des regards de la communauté internationale: Violations des droits de l'homme dans l'est du Zaïre", 1996, p.4.

Plain chiefdom. After the FAZ had left the village, the victims tried to escape into the mountains towards Kiringye but were caught by the soldiers. The Red Cross buried the bodies in mass graves.[386]

- On 25 October 1996, during the capture of Uvira, AFDL/APR/FAB units indiscriminately killed several hundred people, including refugees and Zairian civilians accused of belonging to Mayi-Mayi groups.[387]

283. When they left Uvira, the AFDL/APR/FAB soldiers advanced towards the interior of Fizi territory. In this context, the Mapping Team documented the following alleged incidents:

- In late October 1996, AFDL/APR units killed 27 civilians, most of them women and children, in the village of Mboko, fifty-two kilometres south of Uvira, in the Fizi territory. The victims were trying to cross Lake Tanganyika in canoes to reach Tanzania. Some were shot dead; others drowned in the lake.[388]

- On 28 October 1996, AFDL/APR units killed 101 Zairian civilians in the village of Abala-Ngulube, at the junction between the Moyen Plateau and the Haut Plateau near Minembwe, in the Fizi territory. The victims were Bembe, and were members of the third Malikia wa Ubembe Church. They had refused to leave the village and were in the church when the soldiers arrived. Some of the victims were burned alive in the church. A few days before the attack, "Bembe armed units" had killed two AFDL/APR soldiers in an ambush in the area around Abala-Ngulube. Since this massacre, the members of the third Malikia wa Ubembe Church have held a ceremony to remember the victims each 28 October.[389]

- In the second half of October 1996, AFDL/APR units killed 130 civilians in the Kaziba locality, fifty-three kilometres south-west of Bukavu, in the Walungu territory. On 16 October in particular, they killed 36 civilians in the Kaziba commercial centre. The bodies of the victims were buried in Kaziba town centre in a mass grave located near the Mennonite church. A short while later, the soldiers killed many civilians with spears and machetes in the Namushuaga/Lukube district. Subsequently, they killed at least 11 civilians in the Cihumba district, where a large number of inhabitants had found refuge. In

[386] Interviews with the Mapping Team, South Kivu, April 2009; Witness accounts gathered by the Secretary-General's investigative team in the DRC in 1997/1998.

[387] Interviews with the Mapping Team, South Kivu, November 2008 and February 2009; Report of the Secretary-General's investigative team (S/1998/581), Annex, p.37; AI, "Loin des regards de la communauté internationale: Violations des droits de l'homme dans l'est du Zaïre", 1996, pp.5 and 6.

[388] Interviews with the Mapping Team, South Kivu, April 2009.

[389] Interviews with the Mapping Team, South Kivu, February 2009.

addition to these massacres, the soldiers also looted the hospital, stores and many dwellings and ransacked the small local hydroelectric plant.[390]

- During the struggle for the control of Bukavu, on 29 October and 30 October 1996, AFDL/APR units killed over 450 civilians. On 29 October, they fired on the city with heavy weapons, indiscriminately killing civilians and soldiers. After the departure of the FAZ, they opened fire on the people who were trying to escape. They killed many civilians at point-blank range, including Catholic Archbishop Monsignor Munzihirwa, killed in his vehicle with his driver and bodyguard. From 30 October, the soldiers began to systematically search the houses, indiscriminately killing and torturing dozens of people, both civilians and military personnel.[391]

- From October 1996, the AFDL/APR soldiers recruited children in the territories of Uvira and Fizi and in the city of Bukavu. In Bukavu, recruiting was carried out in particular at the AFDL headquarters (Lolango Building) on the Avenue Maniema. Child recruits underwent basic military training in the village of Kidoti, in the Uvira territory, and were then sent to the front line.[392]

- On 6 February 1997, retreating ex-FAR/Interahamwe units and members of the FAZ killed four civilians and injured another two in the village of Matili, fifty-one kilometres from Shabunda town centre, in the Bakisi chiefdom in the Banguma *groupement*. The victims were accused of spying on behalf of AFDL/APR soldiers. Their bodies were buried in the cemetery at Matili.[393]

- On 14 March 1997, AFDL/APR units killed nine civilians, including one child, with knives and machetes at the VIPAM project[394] concession at Lwana, 101 kilometres north-west of Bukavu, in the Kalehe territory. The victims came from the territories of Shabunda and Kabare and were working for the VIPAM project. They were accused of assisting the Hutu refugees in their flight.[395]

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[390] Interviews with the Mapping Team, South Kivu, February and March 2009.

[391] Interviews with the Mapping Team, South Kivu, February and March 2009; Witness accounts gathered by the Secretary-General's investigative team in the DRC in 1997/1998; ICHRDD (International Centre for Human Rights and Democratic Development) and ASADHO, "International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997", 1998, p.12; CADDHOM, "Les atrocités commises en province du Kivu, 1996-1998", 1998, pp.9 and 10; Lutheran Church, "Rapport d'enquête sur les violations des droits de l'homme à l'est du Congo", May 1997, p.7.

[392] Interviews with the Mapping Team, South Kivu, December 2008 and March 2009.

[393] Interviews with the Mapping Team, South Kivu, January and February 2009.

[394] Pilot village for modern farming.

[395] Interviews with the Mapping Team, South Kivu, March 2009; Witness accounts gathered by the Secretary-General's investigative team in the DRC in 1997/1998; AI, "Deadly alliances in Congolese forests", 1997, p.8.

- On 26 May 1997, at Uvira, AFDL/APR units killed 126 civilians during a demonstration staged in protest of the murder of eight people by armed men suspected of belonging to the new security forces of the AFDL regime. After the massacre, the soldiers sealed off the zone and threw most of the bodies in two mass graves in the "Biens mal-acquis" ("ill-gotten goods") district, where they had set up their headquarters. Eight bodies were collected by the people and buried over the course of the following days.[396]

- In July 1997, FAC/APR soldiers[397] massacred between 500 and 800 people in the villages of Kazumba, Talama, Mukungu and Kabanga, on the border between the provinces of Katanga and South Kivu. These villages were used as bases by the small-scale "Jeshi la Jua" or "Sun army" militia, which was in open war with the new regime. The massacre was carried out in retaliation for an attack by Jeshi la Jua units, which resulted in one casualty on the FAC/APR side. The killings were spread out over several days and were indiscriminately targeted at combatants and civilians.[398]

- In the night of 22 December to 23 December 1997, FAC/APR soldiers killed 22 civilians at the Bulambika commercial centre, at Bunyakiri, in the Kalehe territory. The victims were accused of supporting the Mayi-Mayi who had occupied the village until then.[399]

3. Orientale

284. In December 1996, President Mobutu sent his elite troops and large stockpiles of weapons into the provinces of Orientale and Maniema. Mercenaries and the ex-FAR were integrated into the Zairian military system. The counter-offensive promised by the Kinshasa government in the Kivu provinces never materialised, however, owing to the state of decline of Mobutu's regime, the prevailing disorder within the FAZ and the careful planning by the AFDL/APR/UPDF soldiers of their attacks on Kindu and Kisangani.

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[396] Interviews with the Mapping Team, South Kivu, November 2008 and February/March 2009; Report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now DRC) since September 1996 (A/51/942), p.14; CADDHOM, "Les atrocités commises en province du Sud-Kivu", 1998, pp.11 and 12; AI, "Deadly alliances in Congolese forests", 1997, p.9; ICHRDD and ASADHO, *International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997*, 1998.

[397] From June 1997, the national army of the DRC was known as the Forces armées congolaises (FAC). Until the start of the Second Congo War, in addition to AFDL soldiers and ex-FAZ, the FAC included many Rwandan and, to a lesser extent, Ugandan soldiers. On account of the difficulty distinguishing accurately between Congolese soldiers and Rwandan soldiers at this time, the acronym FAC/APR is used for the period from June 1997 to August 1998.

[398] Interviews with the Mapping Team, South Kivu, February and April 2009; Witness accounts gathered by the Secretary-General's investigative team in the DRC in 1997/1998; CADDHOM, "Enquête sur les massacres de réfugiés", 1998.

[399] Interviews with the Mapping Team, South Kivu, March and April 2009; AI, *DRC: A Year of Dashed Hopes*, 1998, p.3.

285. After their lightning conquest of the Kivu provinces and Ituri, AFDL/APR/UPDF leaders made contact with Mobutu's generals and various Mayi-Mayi groups and led an intensive campaign of demoralisation against the FAZ. The AFDL President, Laurent-Désiré Kabila,[400] who initially had only very few troops, drafted in many CAAFAG[401] or *Kadogo* recruited during his conquests, then received strategic reinforcement from the "Katangese Tigers". These long-time opponents of Mobutu's regime, who had served for decades in the Angolan government army, arrived in Orientale province in February 1997 and provided the AFDL/APR/UPDF soldiers besieging Kisangani with the heavy artillery capacity they lacked.

- From November 1996, the AFDL/UPDF soldiers allegedly recruited thousands of young people, including many minors, across the Ituri district.[402]

286. As they retreated, FAZ soldiers committed acts of murder and rape against civilians. They also looted and destroyed much of their property. They often forced civilians to carry the goods they had looted over long distances.[403] The looting was of such an intense and systematic nature that the Kinshasa government declared Orientale province (formerly Haut-Zaïre) a disaster area on 10 January 1997. In this context, the Mapping Team documented the following alleged incidents:

- Between December 1996 and March 1997, retreating FAZ elements carried out widespread looting of places of worship and buildings used for education and aid efforts across Orientale province. The looting began in Ituri after their defeat in December 1996 at the hands of the AFDL/UPDF troops. The pillaging then continued as they retreated across the territories of Buta and Aketi in the district of Bas-Uélé, and Opala in the Tshopo district. In the same period, the FAZ looted the facilities of the companies Plantation Lever au Congo (PLC) and Plantations et Huileries au Congo (PHC) at Lokutu, Hasson et Frère and Regideso (state-owned water distribution company) at Opala, the *Compagnie de développement du Nord* (CONEDORD) at Aketi, Dingila, Malingweya and Maleganda and those of the Congolese institute for agronomic studies and research (INERA) at Yangambi.[404]

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[400] Following the death in January 1997 in mysterious circumstances of the first AFDL president, Kisase Ngandu, the party's spokesperson Laurent Désiré Kabila became president of the Alliance.

[401] Children involved with armed forces and armed groups.

[402] Interviews with the Mapping Team, Ituri, March and May 2009.

[403] A practice known as *botikake*.

[404] Interviews with the Mapping Team, Orientale Province, January and February 2009; Mgr Banga Bana, "La situation de violence à Buta", in Zaïre-Afrique-CEPAS (Centre of Study for Social Action), February 1997; La Tempête des tropiques, "Buta, Lodja et Katako-Kombe pillés", 6 and 7 March 1997; Le Soft international, "Des soldats en déroute pillent Isangi", no.630, March 1997; La Référence Plus, "Le pillage du Haut-Zaïre se poursuit en toute impunité", 5 March 1997; AI, "Zaire: Rape, killings and other human rights violations by security forces", 1997.

- Between December 1996 and March 1997, retreating FAZ units killed and tortured an unknown number of civilians during their acts of pillage. Most of the victims were killed because they refused to allow the soldiers to loot their property. FAZ members also raped an unknown number of women and girls. In December 1996, in the Yayango, Yomaie and Yalingo chiefdoms in the Opala territory and in the territories of Buta and Bondo, they raped an unknown number of women and a man whom they had kidnapped to carry the looted goods. The FAZ also committed many acts of gang rape against women in Ituri, in particular at Komanda.[405]

- Following the capture of Kisangani, on 15 March 1997, retreating FAZ soldiers set fire to the village of Yaolalia, in the Opala territory.[406]

287. After the AFDL captured Bunia, in December 1996, military leaders in Kinshasa sent an elite Civil Guard unit comprising Katangese ex-Tigers siding with Mobutu into Orientale province to support the FAZ.

- In the night of 24 January to 25 January 1997, a FAZ commando unit comprising many Katangese ex-Tigers from the Civil Guard allegedly killed several dozen civilians in the village of Bafwanduo in the Bafwasende territory. The victims were shot dead, killed with bayonets or burned alive after the soldiers threw grenades at their huts. According to several sources, soldiers also carried out acts of cannibalism on their victims. Before they fled when Mayi-Mayi from the Nia Nia locality launched a counter-attack, the soldiers set fire to the village. According to the sources, the total number of dead is thought to be between fifty and over three hundred. The bodies of the victims were buried in the village by the Mayi-Mayi.[407]

288. As they withdrew in the face of the advancing AFDL/APR/UPDF, the ex-FAR/Interahamwe also attacked civilians. In this context, the Mapping Team documented the following alleged incidents:

- On 6 March 1997, in Bamoneka village, eighty-seven kilometres from Kisangani in the Ubundu territory, ex-FAR/Interahamwe executed four unarmed villagers whom they had accused of being part of the FAZ group who had betrayed them in the AFDL/APR attack on the Tingi-Tingi camp.[408]

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[405] Interviews with the Mapping Team, Orientale Province, January-February 2009; AI, "Zaire: Rape, killings and other human rights violations by security forces", 1997.

[406] Interviews with the Mapping Team, Orientale Province, January 2009.

[407] Interviews with the Mapping Team, Orientale Province, December 2008; *La Référence Plus*, "Massacre des habitants de tout un village à 314 km de Kisangani", 17 February 1997; N. Kristof, "Along a Jungle Road in Zaire, Three Wars Mesh", *New York Times*, 26 April 1996.

[408] Interviews with the Mapping Team, Orientale Province, February 2009.

- In the first three months of 1997, AFDL/APR units summarily executed an unknown number of CAAFAG (child soldiers known as *Kadogo* in Swahili) and Mayi-Mayi serving in the ranks of the AFDL. In early 1997, having captured the town of Dungu, in the Haut-Uélé territory, AFDL/APR units killed an unknown number of *Kadogo* accused of carrying out acts of violence against civilians, committing rape or lacking discipline. In February, they killed around twenty *Kadogo* with cold weapons in the town of Wamba in the Haut-Uélé district. On 18 February, in the town of Isiro in the Rungu territory, they bombarded a camp housing *Kadogo* and Mayi-Mayi with cold weapons, killing at least ten of them. In the days that followed, AFDL/APR soldiers went to the hospital where survivors of the attack were being treated and kidnapped them. The victims were never seen again.[409]

289. After the capture of Kindu, on 27 February 1997, AFDL/APR/UPDF troops stepped up the military pressure on Kisangani and the surrounding area. The FAZ and foreign mercenaries in Kisangani stepped up their acts of violence against the population, known for its hostile attitude towards the Mobutu regime. According to some sources, they executed over 120 civilians at this time.[410] In this context, the Mapping Team documented the following alleged incidents:

- On 9 March 1997, nine kilometres from Kisangani, near the Tshopo bridge, foreign mercenaries killed 15 civilians in the village of Benwengema in the Banalia territory. The victims were part of a group of 16 civilians arrested a short while earlier that day near the Tshopo bridge and accused of being Mayi-Mayi in league with the AFDL. The 16 civilians were locked in a house and the commanding officer of the mercenaries gave orders to fire at the house with rocket launchers. After the massacre, the inhabitants of Bayanguna village went to the scene to bury the bodies and collect the only survivor. On 10 March, FAZ units and foreign mercenaries led a punitive campaign against the village of Bayanguna, killing at least four civilians. Some were stabbed; others were shot dead.[411]

- Between 1 March and 14 March 1997, FAZ units and foreign mercenaries arbitrarily arrested over one hundred civilians and summarily executed an

[409] Interviews with the Mapping Team, Orientale Province, February 2009; *La Voix des opprimés*, "Rapport sur les événements du Haut-Zaïre entre 1993 et 2003", 2008.

[410] Interviews with the Mapping Team, Orientale Province, February 2009; Witness account gathered by the Secretary-General's investigative team in the DRC in 1997/1998; Friends of Nelson Mandela for the Defence of Human Rights (ANMDH), "La précarité de la situation des droits de l'homme avant la chute de la ville de Kisangani entre les mains de l'AFDL", March 1997; ICHRDD and ASADHO, "International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997", June 1998, AI, "Deadly alliances in Congolese forests", 1997; AI, "Zaïre -Viols, meurtres et autres violations des droits de l'homme imputables aux forces de sécurité", 1997; M. Mabry and S. Raghavan, "The Horror, The Horror: With A Final Spasm Of Violence, Mobutu's Corrupt Regime Lurches Toward A Chaotic Collapse", Newsweek, 31 March 1997.

[411] Ibid.

unknown number of them. Most of the people arrested were tortured in cells located near Bangoka Airport, twenty kilometres east of Kisangani. Some were executed on the airport runway. Before leaving the town, on 14 March 1997, the mercenaries kidnapped 11 detainees, who were never seen again. In all, between 13 March and 14 March, the mercenaries killed or forced the disappearance of at least 28 people at Kisangani Airport and along the road linking Kisangani and the Ituri district.[412]

290. Deserted by the FAZ, Kisangani fell into the hands of the AFDL/APR/UPDF soldiers on 15 March 1997. Over the course of the months that followed, AFDL leaders tried to form a new army incorporating *Kadogo* and young Mayi-Mayi militiamen recruited during their conquests. In this context, the Mapping Team documented the following alleged incidents:

- After the capture of Kisangani, on 15 March 1997, the AFDL/APR/UPDF soldiers billetted almost one thousand CAAFAG (*Kadogo*) and Mayi-Mayi in the Kapalata training camp, seven kilometres north of Kisangani, in conditions likely to cause considerable loss of human life. In 1997, between ten and twenty *Kadogo* and Mayi-Mayi died each day. In all, around 400 *Kadogo* and Mayi-Mayi died at the Kapalata camp or at Kisangani General Hospital. Between January and February 1998, under pressure from the international community and with the support of UNICEF, the FAC transferred several hundred children in the camp to the "Mama Mobutu" orphanage in the Mangobo district. One night in June 1998, FAC/APR soldiers kidnapped between 200 and 300 *Kadogo*, who were never seen again.[413]

- After Laurent-Désiré Kabila came to power in Kinshasa, the AFDL/APR/UPDF soldiers, and then the FAC/APR,[414] led several operations to secure Orientale Province, which gave rise to serious violations against civilians. In several towns, cases of torture, summary execution and rape were reported, particularly in

[412]Interviews with the Mapping Team, Orientale Province, February 2009; Witness account gathered by the Secretary-General's investigative team in the DRC in 1997/1998, 14 March 1997; Friends of Nelson Mandela for the Defence of Human Rights (ANMDH), "La précarité de la situation des droits de l'homme avant la chute de la ville de Kisangani entre les mains de l'AFDL", March 1997; ICHRDD and ASADHO, "International Non-Governmental Commission of Inquiry into the Massive Violations of Human Rights Committed in the DRC - Former Zaïre - 1996-1997", 1998; AI, "Deadly alliances in Congolese forests", 1997; AI, "Zaire: Rape, killings and other human rights violations by security forces", 1997; M. Mabry and S. Raghavan, "The Horror, The Horror: With A Final Spasm Of Violence, Mobutu's Corrupt Regime Lurches Toward A Chaotic Collapse", Newsweek, 31 March 1997; James McKinley Jr., "Serb Who Went to Defend Zaïre Spread Death and Horror Instead", *New York Times*, 19 March 1997.

[413] Interviews with the Mapping Team, Orientale Province, November 2008; Groupe Horeb*, Annual Report,* 1999.

[414] In late 1997, Uganda had withdrawn most of its troops from Orientale Province. However, large numbers of APR soldiers remained in the major towns. On behalf of the FAC, an APR commander ran the military region covering Orientale Province, North Kivu and South Kivu from Kisangani.

Kisangani, in the territories of Isangi and Opala in the Tshopo district and in the district of Bas-Uélé.[415]

- On 22 December 1997, FAC/APR soldiers from Buta killed two civilians and tortured seventeen in the village of Bondo in the district of Bas-Uélé. The victims were accused of instigating a revolt against the local security services controlled by Mayi-Mayi bandits who were oppressing the people. Having been detained at Buta, and then Kisangani, the survivors were finally released on 16 January 1998.[416]

4. Maniema

291. On 24 February 1997, the FAZ fled the town of Kindu and AFDL/APR troops entered the town on 27 February.

- Between the end of February and the beginning of March 1997, as they fled across the Kailo territory towards the Kasai provinces, the retreating FAZ soldiers allegedly raped and kidnapped an unknown number of women in the villages of Tchoko, Kasuku, Lukama, Olangate and Tchumba Tchumba, some of whom were used as sex slaves. After several months some of the victims were released but others were never seen again. The FAZ also looted widely and forced civilians to follow the soldiers and carry the stolen goods.417

5. Katanga

292. As they retreated, the FDD units[418] from South Kivu arrived in the north of Katanga province. They killed civilians and pillaged villages, in particular in the territories of Moba and Pweto.

- In March 1997, FDD units allegedly killed between two and ten civilians in the village of Kansenge in the Mulonde *groupement*, in the Moba territory. Before they left, they pillaged and torched the village.419

293. Since the 1970s, a sizeable Tutsi community from the Minembwe plateaus in the Fizi territory in South Kivu had settled in the area of Vyura, a locality situated 150

[415] Interviews with the Mapping Team, Orientale Province, January-February 2009; Groupe Lotus, press release on acts of violence committed at Ubundu and Kisangani, 22 September 1997.

[416] Interviews with the Mapping Team, Orientale Province, January 2009; Groupe Lotus-Groupe Justice et Libération, "Rapport conjoint sur les événements de Bondo", 1998; AI, "Zaire: Rape, killings and other human rights violations by security forces", 1997.

[417] Interviews with the Mapping Team, Maniema, March 2009.

[418] The FDD (Forces pour la défense de la démocratie) were the armed wing of the Burundian Hutu rebel movement CNDD (Centre national pour la défense de la démocratie).

[419] Interviews with the Mapping Team, Katanga, March 2009.

kilometres from Moba, in the Tanganyika district. As the anti-Tutsi sentiment deepened from 1995 onwards and the start of the First Congo War, relations between the Tutsis of Vyura (known as the Banyavyura) and the rest of the predominately Tabwa population seriously deteriorated.

- In April 1997, at Vyura, in the Moba territory, "Tutsi/Banyamulenge armed units" and AFDL/APR soldiers allegedly killed the tribal chief of Vyura and a member of his family. The victims were arrested in the village of Mwanza. After being led to Vyura, the tribal chief was stripped, tortured and dragged along the road by a vehicle. His nephew was buried alive in the pit where the chief's body was thrown.420

6. Équateur

294. After the fall of Kisangani, on 15 March 1997, FAZ soldiers fled towards the west of the country, taking a variety of routes. On the way, they were joined by groups of Rwandan refugees. As they retreated, the FAZ, ex-FAR/Interahamwe and Rwandan refugees looted many civilian properties and public buildings and destroyed facilities, including hospitals, health centres, schools and places of worship. In this context, the Mapping Team documented the following alleged incidents:

- In March 1997, FAZ units looted the general hospital, the convent of the Missionaries of the Sacred Heart and the Ekombo primary school in the Ikela locality, in the district of Tshuapa.[421]

- In April 1997, Rwandan refugees looted the Catholic Mission of Yalisele and Yoseki Hospital in the Djolu territory, and stole 76 cattle from a farm in the village of Mondombe in Bokungu territory, in the Tshuapa district.[422] On 19 April, ex-FAR units stole the cattle and looted the property of the Protestant church at Deke, sixty-eight kilometres from Bokungu town centre.[423]

- Towards mid-May 1997, soldiers from the Special Presidential Division (DSP) looted the Bwa Félix school, the CDI (Centre for Development and Integration) hospital and the residences of some former dignitaries from the Mobutu regime in the Wapinda locality in the Yakoma territory, in the North Ubangi district.[424]

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[420]Interviews with the Mapping Team, Katanga, March 2009; Report of SOCIMO (civil society of Moba) submitted to the Mapping Team on 2 March 2009.

[421] Interviews with the Mapping Team, Équateur, March 2009; Document submitted to the Mapping Team, Équateur, April 2009.

[422] Interviews with the Mapping Team, Équateur, April 2009.

[423] Witness account gathered by the Secretary-General's investigative team in the DRC in 1997/1998.

[424] Interviews with the Mapping Team, Kinshasa, March and April 2009.

- From 17 May to 20 May 1997, units from the FAZ and the DSP killed an unknown number of civilians and systematically looted property in the town of Gbadolite.[425]

295. Throughout their withdrawal, the FAZ and the ex-FAR/Interahamwe units committed many acts of assault on women living in the villages in the region. The ex-FAR/Interahamwe also killed civilians when they refused to allow them to loot their property. In this context, the Mapping Team documented the following alleged incidents:

- In early April 1997, ex-FAR/Interahamwe units killed an unknown number of civilians in the Ene *groupement*, ten kilometres from Ikela, in the Tshuapa district. In Moma village, they killed a civilian, after stealing his food. In the village of Yali, they killed a man who refused to hand over a goat. They also killed a nine-year-old boy during an attack on the village of Ene-Punga.[426]

- Also in early April 1997, ex-FAR/Interahamwe units killed a man who refused to hand over his cattle in the village of Ilombo in the Ikela territory.[427]

- On 16 May 1997, a group of around fifteen ex-FAR/Interahamwe units killed two civilians, including a girl, on the road between Mpenda and Iyembe, two villages 120 kilometres from Mbandaka, in the Bikoro territory in the Équateur district. The militiamen opened fire when one of the victims refused to hand over their bicycle.[428]

296. Generally speaking, the AFDL/APR troops did not encounter serious resistance as they advanced across Équateur province. Fighting was limited to a few skirmishes with ex-FAR/Interahamwe units near Lolengi, in the Boende territory, and clashes with DSP units at Wapinda. As a whole, the people of Équateur gave a relatively warm welcome to the AFDL/APR troops on their arrival. However, large-scale public massacres of Rwandan refugees, summary execution of many civilians, and arbitrary arrests, torture[429] and other ill-treatment inflicted on the population swiftly worsened their relations with the locals.[430] In this context, the Mapping Team documented the following alleged incidents:

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[425] Interviews with the Mapping Team, Kinshasa, March and April 2009.

[426] Interviews with the Mapping Team, Kinshasa, February and March 2009; AI, *Deadly Alliances in the Congolese Forests*, 1997, p.14.

[427] Interview with the Mapping Team, Équateur, April 2009; AEFJN (Africa Europe Faith and Justice Network), "Rapport sur les violations des droits de l'homme dans le sud de l'Équateur", undated.

[428] Interview with the Mapping Team, Équateur, March and April 2009.

[429] One of the most frequently used methods of torture was "Fimbo Na Libumu" ("whipping to the stomach" in Lingala), which involved forcing the victim to drink five litres of water and then beating their stomach.

[430] Interviews with the Mapping Team, Équateur and Kinshasa, February, March and April 2009.

- Towards mid-May 1997, AFDL/APR units killed seven civilians originally from the area around the village of Vabesu, eight kilometres from Wapinda, in the Yakoma territory. The victims had been kidnapped by the soldiers, who wanted them to reveal where the DSP soldiers were in hiding. They were shot and their bodies buried in a mass grave.[431]

- Around 16 May 1997, at Mbandaka, AFDL/APR units executed the chief of the Losanganya chiefdom at the PLZ port, now Endundu Port. The chief, who was suspected of having informed the Mobutu authorities about the massacres of refugees in his chiefdom, was arrested at his home in Djoa village on 14 May and taken to Mbandaka. His body has never been found.[432]

- On 28 October or 29 October 1997, FAC/APR soldiers[433] killed nine civilians in the village of Baenga in the Basankusu territory. They also committed many acts of rape.[434]

7. Kasaï occidental

297. The AFDL/APR forces arrived in Kananga on 12 April 1997. In this context, the Mapping Team documented the following alleged incidents:

- On 6 June 1997, AFDL/APR soldiers killed nine civilians and a young non-combatant soldier in the town of Tshimbulu, administrative centre of the Lulua district.[435]

- On 22 June 1997, in Kananga, AFDL/APR soldiers subjected an unknown number of civilians to cruel, inhuman and degrading treatment and committed many acts of looting and armed robbery. Nuns from the Carmelite Order of St. Joseph were among the victims.

- Between June 1997 and August 1998, the town's military commander established a reign of terror in Kananga, allowing the security forces to torture civilians and loot their property with complete impunity.[436]

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[431] Interviews with the Mapping Team, Kinshasa, April 2009.

[432] Interviews with the Mapping Team, Équateur and Kinshasa, March and April 2009.

[433] As mentioned before, from June 1997 the national army of the DRC was known as the Forces armées congolaises (FAC). Until the start of the Second Congo War, in addition to AFDL soldiers and ex-FAZ, the FAC included many Rwandan and, to a lesser extent, Ugandan soldiers. On account of the difficulty distinguishing accurately between Congolese soldiers and Rwandan soldiers at this time, the acronym FAC/APR is used for the period from June 1997 to August 1998.

[434] Interviews with the Mapping Team, Équateur, March and April 2009; Report of Gandhi International (Équateur), Mbandaka, 1997.

[435] Interview with the Mapping Team, Kasai Occidental, April 2009.

[436] Interview with the Mapping Team, Kasai Occidental, April 2009; Société civile du Kasai Occidental, "Panorama de la situation des droits de l'homme au Kasai Occidental", August 2000, pp.7–10.

8. Bandundu

298. In May 1997, the two main towns in Bandundu province, Bandundu town and Kikwit, fell into the hands of AFDL/APR troops, without a great deal of resistance. In a last-ditch effort to halt the progress of the AFDL/APR towards Kinshasa, military leaders sent FAZ and DSP troops, along with UNITA[437] and ex-FAR units and mercenaries of various nationalities to Kenge, approximately 200 kilometres from Kinshasa.[438] When they arrived near Kenge, on 4 May, the troops passed themselves off as AFDL/APR units to test the loyalty of the people towards President Mobutu's regime. In their eagerness to see the AFDL arrive, some of Kenge's inhabitants had already destroyed symbols of state authority – the state authorities having fled before the rebels arrived – and prepared welcome banners for the soldiers of the Alliance. In this context, the Mapping Team documented the following alleged incidents:

- On 4 May 1997, FAZ/DSP/UNITA/ex-FAR units summarily executed an unknown number of civilians considered as traitors in the village of Mangangu, west of the town of Kenge, and at the entrance to the town.[439]

- On 5 May 1997, FAZ/DSP/UNITA/ex-FAR units clashed with AFDL/APR units in heavy weapon fire in Kenge town centre, killing at least 65 people, including children. During the struggle, first-aid workers were not adequately protected and ten members of the Red Cross, who were trying to assist the injured, were killed. An unknown number of CAAFAG, sent to the front line by the AFDL/APR soldiers, are thought to have been killed by Katyusha rocket launchers used by the FAZ. The fighting also resulted in at least 126 civilian wounded.[440]

- As they retreated, FAZ/DSP/UNITA/ex-FAR units executed at least 30 civilians across the town. Some of the victims were bound before they were executed. The members of the local Kimbanguist Church were particularly targeted due to their open support for the AFDL. The soldiers of the FAZ/DSP/UNITA/ex-FAR also

[437] União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola), an armed group at war with the Angolan government from 1975 to 2002.

[438] In the text that follows, this coalition is designated as FAZ/DSP/UNITA/ex-FAR.

[439] Interviews with the Mapping Team, Bandundu, February 2009; Odon Bakumba, "La bataille de Kenge", pamphlet created at Kenge, undated.

[440] Interviews with the Mapping Team, Bandundu, February 2009; LINELIT (National League for Free and Fair Elections), "Jungle ou état de droit", 1997; Odon Bakumba, "La bataille de Kenge", pamphlet created at Kenge, undated; Le Moniteur, "Toute la vérité sur les massacres de Kenge, 1997", 9 May 2005; HRW and FIDH, "What Kabila is hiding: Civilian Killings and Impunity in Congo", October 1997; ICRC (International Committee of the Red Cross), press release no.7, May 1997; Zaire Watch News Briefs, 1 May and 12 May 1997; World Vision, "Zaire Update", 8 May 1997; Australian Broadcasting Corporation (ABC), "Fierce fighting continues", 9 May 1997.

raped an unknown number of women, in particular in the Kwango Bridge district.[441]

- From 6 May and over the course of the days that followed, FAZ/DSP/UNITA/ex-FAR units fleeing towards Kinshasa killed several dozen civilians, committed rape and pillage and torched several houses along the Kenge to Kinshasa road. Mass graves are still marked, in particular in the villages of Moyen-ville, Tiabakweno, Ndjili, Mbinda and Mbinda Nseke. In all, the fighting at Kenge caused the deaths of over 200 civilians and injured over one hundred more. [442].

9. Kinshasa

299. In the days that followed the capture of Kinshasa, the AFDL/APR troops and their allies committed summary executions, acts of torture sometimes resulting in death, and rape. Between 18 May and 22 May 1997, volunteer teams from the national Red Cross collected between 228 and 318 bodies in Kinshasa and the surrounding area. They also evacuated over a dozen wounded to various hospitals and clinics in the city.[443] Soldiers from the DSP were a particular target, as were the former dignitaries of the Mobutu regime. Ordinary civilians were also victims of serious violations. In particular, many people were arbitrarily arrested and detained in conditions likely to cause considerable loss of human life. In October 1997, the Special Rapporteur on the situation of human rights in the DRC referred over 40 cases of torture to the Government.[444] In this context, the Mapping Team documented the following alleged incidents:

- Between May and June 1997, AFDL/APR units, aided by the civilian population, carried out a large number of public executions. In many instances, the bodies of the victims were burned, notably in the communes of Masina and Matete, and in the Kingabwa district of the Limete commune.[445]

- Between May and June 1997, AFDL/APR units executed an unknown number of ex-FAZ soldiers and political opponents detained in the GLM (Litho Moboti Group) building. Every night, several people were brought out of their cells and

[441] Interviews with the Mapping Team, Bandundu, February 2009; Odon Bakumba, "La bataille de Kenge", pamphlet created at Kenge, undated.

[442] Interviews with the Mapping Team, Bandundu, February 2009.

[443] ICRC, press release, 22 May 1997.

[444] *Report of the Special Rapporteur on the situation of human rights in the Republic of Zaire (now DRC)* (A/52/496).

[445] Interviews with the Mapping Team, Kinshasa, March-April 2009; *Report of the Secretary-General's investigative team* (S/1998/581), Annex; ACPC (Association des cadres pénitentiaires du Congo), "30 jours de violations des droits de l'homme sous le pouvoir de l'AFDL", 1997; VSV (La Voix des sans-voix pour les droits de l'homme), "Bref aperçu sur la situation actuelle des droits de l'homme à Kinshasa sous l'AFDL", 1997; La lettre hebdomadaire de la FIDH, 3 July to 10 July 1997; Info-Congo/Kinshasa, 11 August 1997; AI, "Deadly alliances in Congolese forests", 1997; "Jours de guerre à Kinshasa", a France-Télévisions documentary broadcast in La marche du siècle by Jean-Marie Cavada, Pascal Richard and Jean-Marie Lemaire in June 1997.

led to the riverside, where they were executed and their bodies dumped in the water. These executions stopped after protests from human rights organisations, who were alerted by local fishermen who saw bodies rising to the river surface every day.[446]

- In June and July 1997, FAC/APR units detained and tortured an unknown number of people in the prisons at the Kokolo and Tshatshi camps. Many prisoners died as a result of the ill-treatment inflicted on them, malnutrition, unhygienic conditions and lack of access to medical care.[447]

- From November 1997, at least 24 wounded ex-FAR soldiers were officially reported missing, most likely executed by FAC/APR units at an unknown date. Eight of them were previously at the Ngaliema and Kinoise clinics. The other sixteen had been transferred by AFDL/APR units several days after the capture of Kinshasa from Ward 11 at the "Mama Yemo" Hospital to the Kabila camp (formerly Mobutu camp). In the camp, they were threatened with death and underwent cruel and degrading treatment before they disappeared. After the loss of Orientale Province by the FAZ/ex-FAR/Interahamwe in March 1997, around one hundred wounded ex-FAR soldiers who had fought alongside the FAZ in the province had been hospitalised in several hospitals in Kinshasa.[448]

- After the capture of the capital, FAC/APR units, in particular many *Kadogo*, imposed methods of punishment in Kinshasa that were tantamount to cruel, inhuman and degrading treatment, in particular public flogging and punishment with the *chicotte*, a leather-thonged whipping device. Many civilians died from internal bleeding when their stomachs were whipped.[449]

300. From June 1997, the new regime's military high command sent the ex-FAZ soldiers to the Kitona military base in Bas-Congo to follow training in "ideology and re-education". As soon as the ex-FAZ had left for Kitona, the FAC/APR soldiers entered the camps where the soldiers of the old regime were living. In this context, the Mapping Team documented the following alleged incidents:

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[446] Interviews with the Mapping Team, Kinshasa, March 2009; HRW, "Uncertain Course: Transition and Human Rights Violations in the Congo", December 1997.

[447] Interviews with the Mapping Team, Kinshasa, March 2009; *Report on the situation of human rights in the DRC* (former Zaire) (E/CN.4/1998/65 and Corr.1).

[448] Interviews with the Mapping Team, Kinshasa, April 2009; *Report of the Secretary-General's investigative team* (S/1998/581), Annex; VSV, "Bref aperçu sur la situation actuelle des droits de l'homme à Kinshasa sous l'AFDL", 1997; ACPC, "30 jours de violations des droits de l'homme sous le pouvoir de l'AFDL", 1997; "Jours de guerre à Kinshasa", a France-Télévisions documentary broadcast in La marche du siècle by Jean-Marie Cavada, Pascal Richard and Jean-Marie Lemaire in June 1997; IRIN, 29 April 1997.

[449] *Report on the situation of human rights in the DRC* (former Zaire), (E/CN.4/1998/65 and Corr.1); VSV, "Bref aperçu sur la situation actuelle des droits de l'homme à Kinshasa sous l'AFDL", 1997; ACPC, "30 jours de violations des droits de l'homme sous le pouvoir de l'AFDL", 1997; LINELIT, "Jungle ou état de droit", 1997.

- In the CETA (airborne forces' training centre) and Tshatshi military camps, FAC/APR units raped a large number of wives and daughters (sometimes minors) of ex-FAZ soldiers who had left for Kitona. They forced some victims to live with them as sex slaves and carry out domestic chores for them.[450]

- At the Kokolo camp, FAC/APR units raped a large number of wives and daughters of ex-FAZ soldiers who had left for Kitona, as well as women arrested at random in the town. Many gang rapes took place in the area of the camp known as "Camp Américain". One girl was raped by several soldiers and then tortured. The soldiers poured hot wax over her genital area and the rest of her body.[451]

- Over the course of the period in question, many sources report that across Kinshasa the AFDL/APR soldiers also raped and beat a large number of women, including many prostitutes.[452]

301. At the end of September 1997, several of Kinshasa's districts were hit by shells fired from Brazzaville by the armed groups fighting for the control of the presidency in the Republic of the Congo. The FAC/APR reacted by firing on Brazzaville for two days with rocket launchers.

- From 29 September to 1 October 1997, shots from heavy weapons fired indiscriminately from Brazzaville reportedly caused the deaths of at least 21 people in different districts of Kinshasa.[453]

302. Following President Kabila's decision to ban political party activity, the new regime's security forces targeted the leaders and activists of the main opposition parties. During the crackdown, female members of the immediate family of arrested opponents were frequently the victims of rape. In this context, the Mapping Team documented the following alleged incidents:

- Between 1997 and 1998, FAC/APR soldiers frequently arbitrarily arrested and tortured PALU (*Parti lumumbiste unifié* – Unified Lumumbist Party) activists. On 25 July 1997, during a crackdown operation on a PALU demonstration, they killed between one and four activists and injured at least four. Several dozen

[450] Interviews with the Mapping Team, Kinshasa and Matadi, March and April 2009; Colonel Kisukula Abeli Meitho, *La désintégration de l'armée congolaise de Mobutu à Kabila*, L'Harmattan, 2001.

[451] Interviews with the Mapping Team, Kinshasa, April 2009; *Report of the Special Rapporteur* (A/52/496).

[452] *Report of the Special Rapporteur* (A/52/496); ASADHO (Association africaine de défense des droits de l'homme), "Appel urgent. SOS au Congo-Zaïre: les espaces démocratiques menaces", 1997; ACPC, "30 jours de violations des droits de l'homme sous le pouvoir de l'AFDL", 1997; UDPS/Belgium (Union for Democracy and Social Progress), "l'UDPS/Belgique accuse M. Kabila pour crimes contre l'humanité", November 1998. Available at the following address: www.congoline.com/Forum1/Forum02/Kashala03.htm

[453] Interviews with the Mapping Team, Kinshasa, March 2009; IRIN, "Emergency Update No. 260 on the Great Lakes", 1 October 1997; *Reuters*, "Kabila to send troops to Brazzaville", 1 October 1997.

PALU activists were arbitrarily arrested and tortured on this occasion. On the same day, the soldiers searched and looted the residence of the party's president, Antoine Gizenga, in the Limete commune. During the operation, they killed a PALU activist and seriously injured six more by beating them with whips, iron bars and rifle butts.[454]

- Between 1997 and 1998, FAC/APR soldiers frequently arrested UDPS activists and tortured them for several months at various detention sites.[455]

- On 10 December 1997, FAC/APR soldiers beat and gang-raped two sisters of the President of the FSDC (*Front pour la survie de la démocratie au Congo* – Front for the Survival of Democracy in Congo). The FSDC President, a former dignitary under Mobutu, was finally arrested in February 1998. During his detention at the central prison and then at the Mikonga military training centre, he was frequently tortured.[456]

10. Bas-Congo

303. Under President Mobutu's regime and until its fall, in May 1997, the various Zairian security services, in particular the Civil Guard, committed many acts of violence, especially rape, and tortured many civilians with complete impunity. An illustrative case has been heard in the Rotterdam District Court (Netherlands).

- In October 1996, at Matadi, the Civil Guard commander Colonel Sébastien Nzapali, nicknamed "King of the Beasts" on account of his notorious brutality, had a customs officer working at the Matadi port tortured. On 7 April 2004, Colonel Nzapali was sentenced to two and a half years in prison by the Rotterdam District Court (Netherlands) for these crimes. Nzapali had been living in the Netherlands since 1998 but his application for political asylum was denied.[457]

304. From the start of 1997, the Angolan government made contact with the Rwandan and Ugandan authorities and lent its support to the AFDL/APR/UPDF operation aimed at removing President Mobutu from power. The FAA (*Forces armées angolaises*) soldiers took advantage of their presence in Kinshasa alongside AFDL/APR/UPDF troops to step up their crackdown on Cabindan populations who had taken refuge in the province of Bas-Congo.

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[454] HRW, "Uncertain Course: Transition and Human Rights Violations in the Congo", 1997; Info-Congo/Kinshasa, 11 August 1997; AI, "Deadly alliances in Congolese forests", 1997.

[455] HRW, "Uncertain Course: Transition and Human Rights Violations in the Congo", 1997; AI, "Deadly alliances in Congolese forests", 1997; AI, *DRC: A Year of Dashed Hopes*, 1998.

[456] Interview with the Mapping Team, Kinshasa, May 2009; AI, *DRC: A Year of Dashed Hopes*, 1998.

[457] Interviews with the Mapping Team, Bas-Congo, March 2009; Verdict of the Rotterdam District Court (Netherlands), 7 April 2004.

- From June 1997, in the Bas-Fleuve district in Bas-Congo province, FAA units allegedly arrested and forced the disappearance of an unknown number of refugees originating from Cabinda. In 1998, the FAA set up an operations centre at Tshela, from where they led several crackdown operations. The Congolese security forces also reportedly arrested several natives of Cabinda accused of having separatist designs and transferred them to various detention sites in Kinshasa.[458]

305. At the end of May 1997, after the capture of Kinshasa, the AFDL/APR soldiers arrived in the province of Bas-Congo. They reportedly inflicted cruel, inhuman and degrading treatment and punishment on a large number of civilians, in public, for often minor offences. Several people who were tortured with the *chicotte* died from internal bleeding caused by being whipped on the stomach.[459]

306. The AFDL/APR soldiers also raped a large number of women. By way of example, the Mapping Team has been able to document the following alleged incidents:

- From June 1997, in the Lisanga (Missioni) camp at Matadi, AFDL/APR units, later the FAC/APR, raped an unknown number of wives of ex-FAZ soldiers left alone when their husbands were sent to the Kitona military centre to be "re-educated". They forced a large number of them to carry out domestic chores for them.[460]

- In the same period, FAC/APR/UPDF units also raped several women at the Redjaf military camp at Matadi.[461]

307. After President Laurent-Désiré Kabila came to power, between 35,000 and 45,000 FAZ soldiers from all over the country were sent to the Kitona military base, in the town of Moanda, to be "re-educated". The base could only accommodate around 10,000 people and was in an advanced state of disrepair. The Mapping Team has been able to document the following alleged incidents:

- From June 1997, the ex-FAZ present at the Kitona base were kept in conditions likely to cause considerable loss of human life, in particular due to lack of food, unhygienic conditions and a lack of access to appropriate medical care. FAC/APR units allegedly carried summary executions of several ex-FAZ soldiers. They

[458] Interviews with the Mapping Team, Bas-Congo, Kinshasa, March-April 2009*; Report of the Special Rapporteur* (A/52/496); Info-Congo/Kinshasa (citing an AZADHO report), 11 August 1997; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2001; Mouvement séparatiste cabindais (Cabindan separatist movement), press release, 8 November 1998.

[459] Interviews with the Mapping Team, Bas-Congo, March 2009.

[460] Ibid.

[461] Ibid.

submitted others to cruel, inhuman and degrading treatment, such as whipping and public torture. The total number of deaths is hard to determine but many witnesses have claimed that during the first two months of operation at the Kitona centre, between five and ten people died every day.[462]

- In July 1997, FAC/APR units secretly executed ex-FAZ soldiers who had rebelled in protest against the living conditions enforced on them at the Kitona base. From October 1997, living conditions at the base improved and the soldiers began to receive their pay.[463]

[462] Interviews with the Mapping Team, Bas-Congo, Kinshasa, March-April 2009; AZADHO, "Espoirs déçus", 1997; Immigration and Refugee Board of Canada, "Rapport sur le Congo", 1998; Colonel Kisukula Abeli Meitho, "La désintégration de l'armée congolaise de Mobutu à Kabila", L'Harmattan, 2001, p.78; AI, "Deadly alliances in Congolese forests", 1997.

[463] Interview with the Mapping Team, Kinshasa, April 2009; "Emergency Update No. 211 on the Great Lakes", 15 July 1997.

CHAPTER III. AUGUST 1998–JANUARY 2001: THE SECOND WAR

308. From late 1997 onwards, the relationship between President Kabila, Rwanda and the Tutsi soldiers present in the Forces armées congolaises (FAC) had deteriorated significantly, primarily because the Rwandan authorities and certain Congolese Tutsi soldiers had accused the Congolese president of favouring his Katanga clan, failing to respect his commitments in relation to recognising the right of the Banyamulenge to Congolese nationality and being too conciliatory towards the ex-Forces armées rwandaises/Interahamwe [ex-FAR/Interahamwe] and Mayi-Mayi militias, which were hostile to the presence of the *Armée patriotique rwandaise* (APR) in the Congo. In July 1998, fearing a coup d'état, President Kabila dismissed the Rwandan general James Kabarebe from his position as Chief of Staff of the FAC and ordered the APR soldiers to leave Congolese territory. In response, on 2 August 1998, some Tutsi soldiers mutinied and, with the help of the APR, the Ugandan army [Ugandan People's Defence Force (UPDF)], the Burundi army [*Forces armées burundaises (FAB)*] and some soldiers from the *ex-Forces armées zaïroises* (ex-FAZ), launched a rebellion intended to overthrow President Kabila.

309. Within a few weeks, this coalition, under the banner of a new political and military movement, the *Rassemblement congolais pour la démocratie* (RCD),[464] took control of the main towns in North and South Kivu, Orientale Province and North Katanga and broke through into the province of Équateur. Its offensive into the province of Bas-Congo and Kinshasa failed, however, due to the military intervention of Angola and Zimbabwe alongside President Kabila. During the following months, the DRC therefore found itself divided into two zones, one led by Laurent Kabila with the support of the armed forces of Zimbabwe [Zimbabwe Defence Forces (ZDF)], Angola *(Forças Armadas Angolanas* – Angolan Armed Forces (FAA)), Namibia [Namibia Defence Force (NDF)], Chad [Armée nationale tchadienne (ANT)] and Sudan, and the other controlled by the armed wing of the RCD, the *Armée nationale congolaise* (ANC), the Rwandan army (APR), the Ugandan army (UDPF) and the Burundian army (FAB).

310. Over the months, the military situation became more complex. To limit the ANC's and APR's grip on North and South Kivu, Laurent Kabila formed alliances with the Mayi-Mayi armed groups, the Burundian Hutu armed group, the Forces pour la défense de la démocratie (FDD)[465] and with ex-FAR/Interahamwe and "Hutu armed elements", now reorganised within the *Armée de libération du Rwanda* (ALiR). Uganda, meanwhile, whose army was in control of a large part of Orientale Province, created and supported a second political and military movement, the *Mouvement pour la libération du Congo* (MLC), led by Jean-Pierre Bemba, to manage the areas it had conquered in the province of Équateur. In March 1999, against a background of growing disagreement

[464] The RCD was officially created on 16 August 1998. Led by a Congolese, Wamba Dia Wamba, the movement's stated aim was to end the presidency of Laurent-Désiré Kabila.

[465] The FDD was the armed wing of the Burundi Hutu movement of the Centre national pour la défense de la démocratie (CNDD).

between Rwanda and Uganda as to which strategy to pursue against President Kabila, the RCD split into a pro-Rwandan wing (RCD-Goma) and a pro-Ugandan wing [*RCD-Mouvement de libération* (ML)]. In spite of these divisions, the RCD-Goma army (the ANC) and the APR continued to extend their area of influence into North Katanga, the Kasais and Équateur.

311. On 10 July 1999, under intense diplomatic pressure, an agreement was signed in Lusaka between the principal belligerents.[466] In addition to a ceasefire, the agreement called for the disarmament of all armed groups, starting with the ex-FAR/Interahamwe, the departure of foreign troops and for inter-Congolese political discussions to be held. This highly ambitious agreement had no effect on the ground, as the belligerents continued to seek a military solution to the crisis and the conflict became more entrenched, against a background of the pillaging of the country's natural resources and an exacerbation of violence directed at civilians, especially women, in particular in North and South Kivu, North Katanga and Orientale Province.

A. Attacks directed at Tutsi civilians

312. Following the outbreak of the second war, on 2 August 1998, radio and television stations based in Kinshasa broadcast official communiqués calling for a general mobilisation of the population and collectively accusing the Tutsis of being in collusion with APR rebels and soldiers. In the days that followed, President Kabila's security services and those people who were hostile to the rebellion embarked on a campaign of hunting down Tutsis, Banyamulenge and people of Rwandan origin in general. Numerous civilians deemed to have a "Tutsi" or "Rwandan" appearance were also targeted. In total, several thousand people were arrested and had their property confiscated or destroyed. Several hundred of them disappeared, the majority of them allegedly victims of summary executions. In the area controlled by the Kabila Government, around 1,500 people were arbitrarily held in detention camps, officially in order to guarantee their safety. From July 1999 onwards, having then lived for over a year in deplorable conditions, these people were gradually able to leave the country as the result of an agreement between the Congolese Government, the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and several host countries.

1. Kinshasa

313. In early August 1998, clashes broke out between the FAC, which had remained loyal to President Kabila, and Tutsi soldiers in the Kokolo and Tshatshi camps.[467] At the

[466] For the text of the Agreement, see S/1999/815, appendix.

[467] On 4 August 1998, hundreds of Rwandan and Ugandan soldiers placed under the orders of James Kabarebe arrived by plane at the base in Kitona, in Moanda (Bas-Congo), from Goma. A number of soldiers from the ex-FAZ staioned at the base for months rallied to support them. During the days that followed, this Rwandan-Ugandan-Congolese military coalition advanced rapidly along the road between Moanda, Boma and Matadi, heading for Kinshasa.

same time, President Kabila's security forces embarked on a series of searches throughout the capital, looking for rebels and their possible accomplices. Almost a thousand civilians responded to the call from the Congolese authorities and signed up to "popular defence" groups. The Congolese Government apparently equipped them with edged weapons and used them alongside the regular security forces. People of Tutsi or Rwandan origin or who bore a physical resemblance to them were the prime targets. Several senior figures in the regime, including the head of President Kabila's cabinet, Mr Abdoulaye Yerodia Ndombasi, stirred up hatred against the Tutsis, comparing them to a "virus, a mosquito and filth that must be crushed with determination and resolve".[468] In this context, the Mapping Team documented the following alleged incidents.

- From August 1998 onwards, elements of the *Police d'intervention rapide* (PIR) [Police Rapid Intervention Force] arrested several high-ranking figures suspected of supporting the RCD as well as numerous Tutsi or Rwandan civilians. Unknown numbers of women were also arrested and raped by police officers in the prisons of the PIR and the *Inspection de la police provinciale de Kinshasa* (Ipkin) [Kinshasa Provincial Police Inspectorate]. On 14 September 1998, 111 people, including numerous Tutsis, were detained in the *Centre pénitentiaire et de rééducation de Kinshasa* [Kinshasa Penitentiary and Re-education Centre] (CPRK, the former Makala prison).[469]

- Also from August 1998 onwards, FAC soldiers arrested, took out of combat and shot some 20 Rwandan soldiers, Congolese Tutsis and a number of ex-FAZ members suspected of having supported the rebels. The bodies of the victims were buried on the road to Matadi, at a location between the Mbenseke cemetery and the Gombe-Lutendele neighbourhood in the municipality of Mont-Ngafula. Other groups of Rwandan/Banyamulenge soldiers were subsequently executed in similar circumstances.[470]

- Again from August 1998 onwards, an unknown number of people held at the Palais de Marbre, the GLM (Litho Moboti Group) and the Palais de la Nation, including numerous Tutsis, were shot dead and buried where they had been detained or tied up in sacks weighted down with stones and thrown into the river.[471]

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[468] International arrest warrant dated 11 April 2000 from the Examining Magistrate Vandermeersch (Belgium) for Mr. Abdoulaye Yerodia Ndombasi; ASADHO, "A round-table discussion on peace and national reconciliation is essential": press release no. 11/986, September 1998.

[469] Interviews with the Mapping Team, Kinshasa, April 2009; IRIN, "Update No. 483", citing an article from *Libération*, 19 August 1998; IRIN, "Update No. 473 for Central and Eastern Africa", 4 August 1998; *The Times*, "Embattled Congo plans "nightmare" for Tutsi rebels", 12 August 1998; *The Times*, "Kabila régime calls for slaughter of the Tutsis", 14 August 1998; ICRC, press release, 17 September 1998; HRW, *Casualties of War*, February 1999.

[470] Interviews with the Mapping Team, Kinshasa, March 2009.

[471] Interviews with the Mapping Team, Kinshasa, March and April 2009; HRW, *Casualties of War*, February 1999.

- From August 1998 onwards and over the course of the following months, FAC soldiers executed or tortured and subjected to cruel, inhuman and degrading treatment an unknown number of civilians, including numerous Tutsis and Rwandans and people who resembled Tutsis in the Kokolo camp. The victims were often tortured in the prison of the 50th Brigade and in the offices of the land forces information officer, which had been converted into *ad hoc* prison cells. On 19 August, over 160 Tutsi prisoners were counted by the ICRC in the Kokolo camp. Most of the prisoners were held in conditions likely to result in a significant loss of human life. Women detainees were raped on a regular basis, particularly when they went to take a shower. According to several witnesses, the bodies of people who had been killed or had died were burnt or buried in mass graves dug inside the camp itself.[472]

- Again, from August 1998 onwards and over the course of the following months, FAC soldiers detained, tortured and executed an unknown number of people, including numerous Tutsis, in underground prison cells at the Tshatshi camp in Kinshasa. According to one witness, a soldier from the camp's 501st battalion explained that "the people who are here are to be slaughtered". The bodies of the victims were thrown directly into the river.[473]

314. When the ANC/APR/UPDF troops entered the suburbs of Kinshasa around 26 August 1998, the members of the popular defence groups and to a lesser extent, the FAC began to hunt down the infiltrators and their supposed accomplices. An unknown number of Tutsis, people of Rwandan origin and others who resembled them were killed during this period. On 27 August, in the municipality of Kasavabu, a civilian declared on Radio France Internationale (RFI) that it was the population and not the soldiers who were at the front of the queue to "burn the Tutsis".[474] People with traces of red mud on their shoes, such as is found in the Bas-Congo, people wearing sports clothes, certain members of the attacking forces moving around as civilians and several people with learning disabilities who did not comply with the ceasefire were attacked.[475] In total, at least 80 people were killed, some of them burned alive by necklacing, others impaled or mutilated to death and others shot. The bodies of the victims were most often left in the streets or thrown into the River Ndjili or the River Congo.[476] During these events, several hundreds

[472] Interviews with the Mapping Team, Kinshasa, March and April 2009; ICRC, press release, 28 August 1998; IRIN, 28 August 1998; HRW, *Casualties of War*, February 1999.

[473] Interviews with the Mapping Team, Kinshasa, March and April 2009.

[474] "It was the people. It was not the soldiers. It was us, we were the ones who burnt the Tutsis. We, when we see a Tutsi - myself, when I see one, I burn him." BBC [British Broadcasting Corporation], Summary of World Broadcasts, 29 August 1998.

[475] HRW, *Casualties of War*, February 1999; AI, *DRC: War against unarmed civilians*, 1998.

[476] *Report on the situation of human rights in the DRC* (E/CN.4/1999/31), appendix III; ASADHO, "RDC: Le pouvoir à tout prix. Répression systématique et impunité", Annual report 1998, p.16; *Libération*, "La vie reprend à Kinshasa", 1 September 1998.

of people were wounded and large amounts of property pillaged.[477] Many isolated cases were reported, although the Mapping Team has not been able to verify all of these. In this context, the Mapping Team documented the following alleged incidents.

- On 27 August 1998, two members of the security forces threw a person, probably Tutsi, from a bridge over the River Ndjili in the municipality of the same name, and opened fire. The scene was filmed and broadcast on television screens throughout the world.[478]

- Around 27 August 1998, civilians and members of the popular defence groups burned several people alive in the neighbourhoods of Vundamanenga, Kimbiolongo and Ndjili Brasserie in the village of Mbuku, in the municipality of Mont-Ngafula. Several infiltrators, exhausted, were arrested, burned alive and then buried in the forest by residents of these neighbourhoods.[479]

- Around 27 August 1998, on avenue Kasavubu, civilians dragged a charred human body a distance of several metres. Corpses were also burned at the bus stop between 12th and 13th Street, on boulevard de Limete, opposite the police station. A man with a learning disability was shot multiple times in the central marketplace.[480]

- In the sub-region of Tshangu, east of Kinshasa, a section of the population, primarily young people, killed at least ten people suspected of being infiltrators. Some were beaten to death and others burned alive. Nine bodies were buried in a mass grave in the Siwambanza area of the Mokali neighbourhood in the municipality of Kimbanseke.[481]

- On one night at the end of August 1998, a group of armed men wearing balaclavas violently beat the members of a Tutsi family living in rue Luapula, in the municipality of Barumbu.[482]

315. Between September and December 1998, a commission made up of representatives of the Government of Kinshasa, international organisations and national non-governmental organisations (NGOs) arranged for the exhumation of an unknown number of bodies in the General Motors neighbourhood of the municipality of Masina, in

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[477] IRIN, "Weekly Round-Up - DRC: Rebels admit loss of Matadi", 4 September 1998.

[478] *Libération* "Meurtre en direct à Kinshasa", 2 September 1998.

[479] Interviews with the Mapping Team, Kinshasa, March 2009.

[480] Colonel Kisukula Abeli Meitho, "La désintégration de l'armée congolaise de Mobutu à Kabila", 2001, p. 64 and 68; ASADHO, press release, September 1998; Union des patriotes de la diaspora congolaise (UPDC), "Comment le peuple de Kinshasa a défendu la capitale contre les agresseurs". Available at: www.updcongo.com/forum/viewtopic.php?f=2&p=3

[481] Interviews with the Mapping Team, Kinshasa, April 2009.

[482] Interviews with the Mapping Team, Kinshasa, April 2009.

the neighbourhoods of Kingasani ya suka and Mokali in the municipality of Kimbanseke, in the neighbourhoods of Ndjili/Brasserie and Kimwenza in the municipality of Mont-Ngafula, in the neighbourhood of Binza/Météo in the municipality of Ngaliema and in the neighbourhood of the CETA camp in the municipality of Nsele. The bodies were later buried in the cemetery of Mbenseke Futi in the municipality of Mont-Ngafula. It has not been possible to confirm the number of people exhumed.[483]

316. Arbitrary arrests, rapes and summary executions continued for over a year, although in a more attenuated form. At times, over a thousand people were reportedly detained in the military camps and the various prisons in Kinshasa.[484] In this context, the Mapping Team documented the following alleged incidents.

- At the end of 1998, an unknown number of people were still detained in conditions likely to result in a significant loss of human life in the prison cells of the Détection militaire des activités antipatrie (DEMIAP) [Military detection of antipatriotic activities]. According to witness statements, those detained could see lorries taking the bodies of prisoners who had died, following the ill treatment and torture they had suffered, out of the camp on a regular basis.[485]

- In early 1999, one night a firing squad made up primarily of members of the Presidential Guard executed around 20 Tutsis and members of the ex-FAZ at the Kibomango Training Centre on the road to Bandundu. The victims had been imprisoned at the GLM. Their bodies were buried in a mass grave close to the Centre.[486]

- On 12 January 1999, the FAC from the 50th Brigade arbitrarily arrested around 30 people, including at least 25 Tutsis, mostly women, and took them to the Kokolo camp. At the instigation of the Apostolic Nunciature, the victims were given shelter at the Centre Béthanie in La Gombe, which the FAC pillaged and vandalised during the operation. At the beginning of January, there were still almost 140 Tutsis in the Kokolo camp in conditions likely to result in a significant loss of human life.[487]

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[483] Interviews with the Mapping Team, Kinshasa, March 2009; Congoso, "Bulletin droits de l'homme hebdo", September 1998.

[484] *Report on the situation of human rights in the DRC* (E/CN.4/1999/31); HRW, *Casualties of War*, February 1999; ICRC, Activities report, 1998; ICRC, "Update No. 99/02 on ICRC Activities in the DRC", 9 December 1999; IRIN, 6 August 1998 and 3 September 1999; IRIN, 14 August 1998, citing a press release from the U.S. Department of State.

[485] Interviews with the Mapping Team, Kinshasa, March 2009.

[486] Interviews with the Mapping Team, Kinshasa, March 2009.

[487] Interviews with the Mapping Team, Kinshasa, April 2009; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading punishments and treatments (E/CN.4/2001/66) ; HRW, *Casualties of War*, February 1999.

317. The total number of people killed during this period on the basis of their Tutsi or Rwandan origins or physical appearance is impossible to estimate. Following pressure exerted by the international community and the personal commitment of the Congolese Minister of Human Rights, the authorities in Kinshasa agreed to transfer some detainees to the "Accommodation site for vulnerable people" in the premises of the *Institut national de sécurité sociale* (INSS) [National Social Security Institute] in Cité Maman Mobutu in the municipality of Mont-Ngafula.

318. At the end of 1998, the ICRC counted at least 925 people, the majority of whom were Tutsis, in the INSS centre and the various detention centres it visited.[488] Between June and September 1999, the ICRC and UNHCR were able to help almost 1,000 people leave the country, including people at the INSS centre, prisoners and people living in secret.[489] In 2002, however, over 300 Tutsis were still reported to be at the INSS centre, as well as Hutus and people from mixed marriages awaiting resettlement.[490]

2. North Kivu

319. When the second war broke out, in August 1998, the troops in the 10th brigade of the FAC mutinied and the town of Goma fell into the hands of the RCD without any real fighting. On 14 September, however, the Mayi-Mayi and ex-FAR/Interahamwe launched an attack on several neighbourhoods in the town.

- On 14 September 1998, a number of ex-FAR/Interahamwe allegedly killed over 100 civilians in Goma, including numerous Tutsis, primarily women and children. In particular, the ex-FAR/Interahamwe killed around ten minors and an unknown number of women, all of Tutsi ethnicity, in an orphanage in the Katindo neighbourhood. They also killed civilians in the same neighbourhood, in whose homes Tutsis displaced by the war had been staying shortly before the attack. The victims were either shot or beaten to death with a studded baton. Their bodies were buried in the cemetery in Goma by the Red Cross.[491]

3. Katanga

320. In early August 1998, after the outbreak of the second war, the District Commissioner for Tanganyika organised a meeting at the stadium in Kalemie, during

[488] ICRC "Update No. 99/02 on ICRC Activities in the DRC", 9 December 1999.

[489] The ICRC evacuated a total of 857 people who had been held in Kinshasa and Lubumbashi; IRIN, 2 and 4 July and 3 September 1999.

[490] Centre d'information géopolitique de la Commission des recours des réfugiés, "L'identité rwandaise en RDC", 2 October 2003.

[491] Interviews with the Mapping Team, North Kivu, February and March 2009; ASADHO, "RDC: Le pouvoir à tout prix. Répression systématique et impunité", *Annual Report,* 1998, p. 16; Solidarité pour la promotion sociale et la paix (SOPROP), "La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion jusqu'au 21 septembre 1998", 1998, p. 10.

which he called on the population to enlist in so-called "Volunteer" paramilitary groups and attack the Tutsis living in the district.

- At the beginning of August 1998, FAC members and groups of "Volunteers" arrested Tutsis living in Kalemie. The men were held in the central prison and the women in houses on the SNCC hill [*Société nationale des chemins de fer du Congo* - Congo National Railway Company] During the days that followed, many tens of Tutsi men were taken out of the central prison to "Camp Marin", close to the airport. The FAC then allegedly summarily executed them and threw their bodies into a mass grave. Having taken control of Kalemie on 26 August 1998, senior officials in the RCD released the women and children who were still in the prison. They also arranged for the exhumation of over 70 bodies from Camp Marin and had them taken by boat to Uvira, where a monument has been built in their memory.[492]

321. As mentioned previously, in the early 1970s a sizeable Tutsi community from the Minembwe plateaux in the Fizi region in South Kivu had settled in the Vyura region, 150 kilometres from Moba, in the Tanganyika district. During the 1990s, the relationship between the Vyura Tutsis (known as Banyavyura) and the rest of the population, most of whom were Tabwa, had deteriorated significantly, particularly following the execution, in April 1997, of the Tabwa traditional leader by AFDL/APR troops.[493] Following the outbreak of the second war, in August 1998, the District Commissioner for Tanganyika, in a public address given in Kalemie, called on the local population to "wipe Vyura off the map". In this context, the Mapping Team documented the following alleged incidents.

- On 15 August 1998, in Vyura, members of the FAC arrested over 2,000 Tutsis and killed an unknown number of them. On 16 August, soldiers killed around ten influential members of the local Tutsi community. The men were held at the Kansalale camp, in a church and in the house of Chief Kabugora. Women and children were held in a church and in the primary school in Kasanga. The arrests were accompanied by pillaging of Tutsi property. On 18 August 1998, a group of around 300 Tutsis, who had managed to escape and arm themselves with spears and knives, launched a counter-attack on the FAC. During the fighting, the FAC killed around 60 Tutsis, including Chief Kabugora, set fire to every house they passed, pillaged property and stole Tutsi cattle. The total number of killings is difficult to establish. Several sources indicate that over 100 Tutsis died in Vyura during August 1998. On 15 September, ANC and APR troops took control of Vyura and helped the 8,000 to 10,000 Tutsi survivors to leave for Kalemie. Some

[492] Interviews with the Mapping Team, Katanga, October 2008/March 2009; ASADHO, "RDC: Le pouvoir à tout prix. Répression systématique et impunité"*, Annual Report,* 1998, p. 16; AI *DRC: War against unarmed civilians*, 1998, p. 4; Deutsche Presse-Agentur "Massacres of Tutsis reported as more DRC peace talks tabled", 3 September 1998; Deutsche Presse-Agentur "Congo rebels bury remains of massacre victims", 10 December 1998.

[493] See incident mentioned in paragraph 329.

settled in South Kivu, whilst others sought refugee status in neighbouring countries.[494]

- In Moba, in August 1998, FAC troops, aided by residents, shot and killed around 40 members of the Tutsi community, mainly shopkeepers and students.[495]

322. At the beginning of 1998, over 1,000 young recruits, including several hundred young Tutsis, had just completed their military training under Tanzanian instructors at the cadet college on the Kamina base.

- On 5 August 1998, the security forces that had remained loyal to the Government in Kinshasa allegedly killed an unknown number of young Tutsi or Rwandan military recruits at the military base in Kamina. The victims were not armed. They were reported shot dead in large hangars close to the rails, near the base's arms store. The bodies of the victims are then thought to have been buried in the surrounding forest, or burnt. The total number of victims remains unclear but is thought to be at least 100.[496]

323. During the first half of the 20th century, encouraged by the colonial authorities, a sizeable community of people of Rwandan origin (Hutus and Tutsis) settled in the southern part of Katanga province (Lubumbashi, Likasi, Kipushi and Kolwezi) to work in the mines. This relatively quiet community had become more visible after the arrival of AFDL/APR soldiers in Lubumbashi, in April 1997.

- Alleged incidents include the following: from 3 or 4 August 1998 onwards, President Kabila's security services in Lubumbashi, Kipushi, Likasi and Kolwezi arbitrarily arrested several hundred Tutsis, people of Rwandan origin and civilians who resembled them. Most of these people were tortured in the prisons of the *Agence nationale de renseignements* (ANR) [National Intelligence Agency], police or army. Several tens of them were executed. The Vangu military camp and the Kilimasimba quarry on the road between Lubumbashi and Kipushi were often cited as probable locations for summary executions. In its 1998 report, the *Association africaine de défense des droits de l'homme* (ASADHO) [African Association for the Defence of Human Rights) suggested a figure of over 70 victims. Most of those who were not executed were taken to the former convent of the Bakhita congregation in the Kigoma neighbourhood in Lubumbashi. Over 500 civilians, the majority of them Tutsis, lived in the Bakhita camp for over a

[494] Interviews with the Mapping Team, Katanga, October 2008/January 2009; ASADHO, "RDC: Le pouvoir à tout prix. Répression systématique et impunité", 1998, p. 16; AI, *DRC: War against unarmed civilians*, 1998, p. 4; IRIN, "Weekly Round-Up", 11 September 1998.

[495] Interviews with the Mapping Team, Katanga, October 2008; Memorandum of the Banyamulenge student community at the National University of Rwanda "Isoko", 6 August 2007.

[496] Interviews with the Mapping Team, Katanga, March 1999; Memorandum of the Banyamulenge student community at the National University of Rwanda "Isoko", 6 August 2007.

year, in deplorable conditions. From July 1999, those held at the Bakhita convent were authorised to leave Lubumbashi and were able to resettle abroad with the help of UNHCR and the ICRC. In the area under government control, however, the hunt led by the ANR and the FAC continued in Katanga province into 2000 and resulted in an unknown number of summary executions and disappearances.[497]

4. Orientale Province

324. Between 31 July and 1 August 1998, following the decision taken by President Kabila to send the APR troops back home, the Rwandan troops stationed in Kisangani were sent to Bangboka airport. Some of the soldiers refused to get on the planes, however, and remained at the airport where there were also soldiers from the ex-FAZ waiting to leave for the retraining centre at the Kamina base in Katanga. After the outbreak of the second war, on 2 August 1998, fighting broke out over control of Bangboka airport by the APR troops and the FAC who had remained loyal to President Kabila (the Tigres Katangais and the Mayi-Mayi incorporated into the FAC). As a result of the ex-FAZ rallying to the cause of President Kabila, the FAC managed to retain control of the town and the airport and prevent the APR from sending in reinforcements by plane. On 21 August, however, ANC/APR/UPDF soldiers launched a land-based operation along the Lubutu highway. Following intense fighting, the FAC were forced to leave Kisangani and on 23 August, the town passed into the hands of the ANC/APR/UPDF troops.

- Between 2 and 23 August 1998, the security services, the *Police nationale congolaise* (PNC) and FAC loyal to President Kabila and civilians recruited into the self-defence militias allegedly killed at least several tens of Tutsis and people of Rwandan origin or with a physical resemblance to them. Some victims were stoned or killed with edged weapons, particularly in the working-class municipalities of Mangobo and Kabondo. In some cases, the police intervened to protect victims in danger. In other cases, the victims were taken to private homes to be tortured and executed. Their bodies were either thrown into the River Congo or buried in mass graves around Simi-Simi airport, close to the Governor's residence. At the time of the arrests, the security forces and militias also systematically pillaged the victims' property.[498]

[497] Interviews with the Mapping Team, Katanga, February 2008 and Kinshasa, March 2009; ASADHO, "RDC: Le pouvoir à tout prix. Répression systématique et impunité", 1998, p. 16 and 40; AI, *DRC: War against unarmed civilians*, 1998, p. 4; IRIN, "Weekly Round-Up", 11 September 1998; Oral presentation of the report of the Special Rapporteur on the situation of human rights in the DRC, 55th session of the Commission on Human Rights, Geneva, 22 March-30 April 1999; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2001.

[498] Interviews with the Mapping Team, Orientale Province, January-March 2009, Kinshasa, May 2009; Confidential document submitted to the Mapping Team in December 2008.

325. Persecution of Tutsis and Rwandans in general took place in several other towns in Orientale Province. As an example, the Mapping Team was able to document the following case.

- On the night of 28 to 29 August 1998, the FAC allegedly killed six Tutsi civilians, 13 kilometres south of Isiro at the bridge over the River Neva, in the Rungu region. The victims had been accused of colluding with the APR. Their bodies were then thrown into the river.[499]

5. Kasai Occidental

326. As in other provinces, after the outbreak of the second war, the security services that had remained loyal to the Government in Kinshasa and the FAC allegedly arrested and executed an unknown number of Rwandan soldiers and civilians: Tutsis, people of Rwandan origin and those who resembled them. During the period under consideration, several ex-FAZ soldiers accused of colluding with the APR and ANC were also executed:

- Between August 1998 and January 1999, the FAC from the 20th brigade organised the disappearance of 80 Tutsi soldiers taken out of combat and killed at least seven unarmed ex-FAZ and an unknown number of civilians, most of whom were accused of collaborating with the APR and ANC. The executions took place in the *École de formation des officiers* (EFO) (Officers' Training College) camp in Kananga. The bodies of the victims were then placed in sacks and thrown into the River Lulua. During the night of 27 to 28 December, for example, 10 people were taken out of their cells in the EFO camp and beaten to death with hammers.[500]

6. Maniema

327. After the outbreak of the second war, fighting broke out in Kindu between the FAC troops who had remained loyal to President Kabila and those who had chosen to rebel. First, the loyalist troops managed to force the rebels to flee. As in all the provinces still under the control of Kinshasa, President Kabila's security services increased their attacks on Tutsis and civilians of Rwandan origin in general.

328. Since the colonial period, many people from Rwanda and Burundi had settled in Kalima to work in the region's mines.

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[499] Interviews with the Mapping Team, Orientale Province, January-February 2009; Voix des opprimés, "Rapport sur les événements du Haut-Zaïre entre 1993 et 2003", 2008.

[500] Interview with the Mapping Team, Kasai Occidental, April 2009

- On 18 August 1998, around the town of Kalima, in the Pangi region, members of the FAC who had remained loyal to President Kabila allegedly killed at least 133 civilians of Rwandan origin, the majority of whom were Tutsis. Most of the victims were shot dead at the Rushurukuru power station and in the town of Kakula.[501]

7. Kasaï Oriental

- From August 1998 onwards, in Mbuji Mayi, the security services reportedly arbitrarily arrested and killed an unknown number of Tutsis, people of Rwandan origin and those resembling them: In November 1999, they arrested at least ten Tutsis, whom they then transferred first to Makala prison in Kinshasa and then to the refugee camp in the municipality of Mont-Ngafula, where they remained until 2001. Tutsis and people of Rwandan origin were also transported to Kananga by lorry. On 10 October 1999, the ANR arrested a human rights activist involved in protecting the Tutsi and Rwandan community in Mbuji Mayi. The activist was then transferred to the headquarters of the ANR in Kinshasa, where he was arbitrarily detained for several months in cruel, inhuman or degrading conditions. Under pressure from human rights NGOs, the Special Rapporteur on the situation of human rights in the DRC and the media, however, he was released on 6 January 2000.[502]

B. Attacks on other civilian populations

1. Bas-Congo

329. On 4 August 1998, hundreds of Rwandan troops and a small number of Ugandan troops placed under the orders of James Kabarebe arrived by plane at the military base in Kitona, in Moanda, having travelled from Goma. Some ex-FAZ soldiers stationed at the Kitona base for several months rallied to join them. During the days that followed, the Rwandan-Ugandan-Congolese military coalition was reinforced by several thousand men and embarked on its conquest of the Bas-Congo via the road between Moanda, Boma and Matadi. Some elements in the FAC, which included numerous children associated with armed groups and forces ("child soldiers") (known as "*Kadogo*" in Swahili) tried to resist, particularly in Boma and Mbanza Ngungu, but were swiftly overwhelmed; many died during the fighting.

[501] Interviews with the Mapping Team, Maniema, March 2009.
[502] Interview with the Mapping Team, Kasai Oriental, March-April 2009.

330. Throughout their advance on Kinshasa, the Rwandan-Ugandan-Congolese coalition, referred to in the remainder of the report using the acronym ANC/APR/UPDF, killed numerous civilians and committed a large number of rapes and acts of pillaging. In this context, the Mapping Team documented the following alleged incidents.

- On 7 August 1998, fighting between elements of the ANC/APR/UPDF and FAC for the control of Boma caused the death of an unknown number of civilians, most often victims of stray bullets. The coalition forces killed at least 22 civilians close to the central bank and municipal gardens. The victims included gardeners, workers at the abattoir, two people with learning disabilities and people waiting for a vehicle to take them to Moanda.[503]

- Between 7 and 10 August 1998, in Boma, elements from the ANC/APR/UPDF confined and raped several women, often collectively, in the Premier Bassin hotel, which they had requisitioned. They also caused a significant amount of damage to the hotel.[504]

- From 4 August to 4 September 1998, ANC/APR/UPDF soldiers systematically pillaged the bank vaults in Moanda, Matadi and Mbanza Ngungu.[505]

- On 13 August 1998, ANC/APR/UPDF soldiers stopped the turbines on the Inga dam, depriving Kinshasa and a large area of the province of Bas-Congo of their main source of electricity for almost three weeks. By making property essential to the survival of the civilian population unusable, they caused the death of an unknown number of civilians, particularly children and hospital patients.[506]

331. On 17 August 1998, however, during the Southern African Development Community (SADC) summit, Zimbabwe, Angola and Namibia announced they were sending troops to the DRC to support the army that had remained loyal to President Kabila. During the days that followed, elements of the ZDF were deployed to Kinshasa, whilst the FAA launched a land and air offensive in the Bas-Congo. On 23 August, the FAA took back control of the Kitona base from the ANC/APR/UPDF troops.

332. During their advance along the Moanda-Boma-Matadi-Kisantu road, the FAA killed civilians, committed rape and pillaged hospitals and homes. When they entered an area, the FAA would carry out a systematic search operation and execute all those it suspected of collusion with their enemies. The FAA took advantage of these operations to rape women and pillage homes. The property pillaged was then sent to Angola by river,

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[503] Interviews with the Mapping Team, Bas-Congo, March 2009.

[504] Interviews with the Mapping Team, Bas-Congo, March 2009.

[505] Interviews with the Mapping Team, Bas-Congo, March 2009.

[506] Interviews with the Mapping Team, Kinshasa, April 2009; *Report on the situation of human rights in the DRC* (E/CN.4/1999/31); ICRC, press releases, 19, 28 August and 9 September 1998.

road and even by helicopter. The FAA killed any civilians, including women and children, who tried to oppose the atrocities. The scale of the pillaging gave both the victims and witnesses the impression that this was a planned operation. It is clear that the Angolan military hierarchy and the authorities in Kinshasa at least tolerated the commission of these various violations. In this context, the Mapping Team documented the following alleged incidents.

- On 23 August 1998, on their arrival in Moanda, elements of the FAA raped at least 30 women and girls, most of them in the Bwamanu neighbourhood. In some cases, the soldiers obliged the members of the victims' families to applaud during the rapes, on penalty of execution.[507]

- From 26 August 1998, elements of the FAA summarily executed an unknown number of civilians in the centre of Boma. They also raped an unknown number of women and girls. They pillaged civilian property, primarily in the city's suburban neighbourhoods.[508]

- From 27 August 1998, elements of the FAA raped six women shopkeepers and at least three girls in the village of Manterne, 19 kilometres from Boma, on the road to Matadi.[509]

- Around 27 August 1998, in the village of Kinzau Mvwete, halfway between Boma and Matadi, elements of the FAA killed 45 civilians, including women and children.[510]

- From 4 September, elements of the FAA raped an unknown number of women and girls, in particular during search operations in the Mvuadu and Kinkanda neighbourhoods in the town of Matadi. The troops also pillaged tens of private homes.[511]

- Around 6 September, in Kimpese, elements of the FAA committed rapes and acts of pillaging on a large scale.[512]

333. In mid-September 1998, the FAA, ZDF and FAC regained control of the province of Bas-Congo. The ANC/APR/UPDF troops withdrew to Angola, to an area under the control of UNITA, before leaving for Rwanda between November and December. During this period, the humanitarian situation remained very worrying because of the scale of the

[507] Interviews with the Mapping Team, Bas-Congo, March 2009; HRW, *Casualties of War*, February 1999.
[508] Interviews with the Mapping Team, Bas-Congo, March 2009.
[509] Interviews with the Mapping Team, Bas-Congo, March 2009.
[510] Interviews with the Mapping Team, Bas-Congo, March 2009
[511] Interviews with the Mapping Team, Bas-Congo, March 2009.
[512] Interviews with the Mapping Team, Bas-Congo, March 2009

pillaging, carried out primarily in hospitals, the destruction of major infrastructure and restrictions imposed on the freedom of movement of humanitarian workers in the province by the Government in Kinshasa.

2. Kinshasa

334. At the end of August 1998, soldiers from the ANC/APR/UPDF and FAC/ZDF fought each other for control of Kinshasa. In this context, the Mapping Team documented the following alleged incidents.

- At the end of August 1998, the ZDF used heavy weapons to bombard the municipalities of Kimbanseke, Masina and Ndjili and the village of Kingatoko, on the border with the province of Bas-Congo, and killed around 50 civilians. During the night of 27 to 28 August, 282 wounded civilians were taken into the capital's main hospitals and medical centres. The bombardments prompted thousands of people to move to other municipalities. Elements of the ZDF fired with heavy weapons, making no distinction between civilian and military targets. These therefore included healthcare institutions and places of worship. The military authorities often exposed civilians to indiscriminate fire, ordering them to remain in their homes so that ANC/APR/UPDF soldiers were unable to hide in abandoned houses.[513]

- Between 28 August and 1 September 1998, the fighting between ANC/APR/UPDF and FAC/ZDF troops caused several civilian deaths, primarily in the municipality of Mont-Ngafula.[514]

- On 28 August 1998, the FAC killed at least two Red Cross volunteers, one of them by smashing his skull, whilst they were trying to rescue victims from the bombardments in the Mitendi and Mbenseke neighbourhoods of the municipality of Mont-Ngafula. During the same incident, they also seriously wounded an unknown number of Red Cross volunteers.[515]

335. On 13 August 1998, ANC/APR/UPDF troops took control of the Inga hydroelectric power station in the Bas-Congo and stopped the turbines on the dam.

- By stopping the turbines on the Inga dam for three weeks during August and September 1998, the ANC/APR/UPDF troops deprived part of the province of Bas-Congo and several neighbourhoods in Kinshasa of power and water supplies.

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[513] Interviews with the Mapping Team, April 2009; *Report on the situation of human rights in the DRC* (E/CN.4/1999/31); ASADHO, press release, 6 September 1998; AI, *DRC: War against unarmed civilians*, 1998; Reuters, "Shelling in Kinshasa suburb, Civilians Flee", 23 August 1998; IRIN, "Weekly Round-Up", 4 September 1998.

[514] Interviews with the Mapping Team, Kinshasa April 2009.

[515] Interviews with the Mapping Team, Kinshasa March 2009.

> They thus made unusable property that was essential to the survival of the population, such as medical centres and the General Hospital in Kinshasa. During these three weeks, the mortality rate in the medical centres increased significantly, particularly amongst children.[516]

336. During the same period, the security forces in general committed assassinations, murders, extrajudicial executions, rapes and acts of torture directed against political opponents and ordinary civilians, with almost complete impunity.[517]

337. Between the months of August 1998 and January 2001, around 50 reports of incidents that had occurred in Kinshasa were sent to the Government through the mechanisms provided by the Commission on Human Rights, which included: the Working Group on enforced or involuntary disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading punishments or treatments and the Working Group on arbitrary detentions.[518]

338. The incidents are too numerous for them all to be listed. The Mapping Team was able to document the following alleged cases, which are included by way of example.

- Between the end of 1998 and 2001, elements of the security forces of the Government in Kinshasa organised the disappearance of, torture and rape of numerous militant members of the UDPS and PALU political parties. The serious violations to which they were subjected typically took place in the prison cells of the *Police d'intervention rapide* (PIR) of the *Direction des renseignements généraux et services spéciaux* (DRGS) [Kin Mazière], the Ipkin (ex-Circo) and the Kokolo camp.[519]

- From 28 October 2000, President Kabila's security services arbitrarily arrested and tortured at least 93 people, including 60 soldiers and 33 civilians from the provinces of North Kivu, South Kivu and Maniema. The victims had been accused of planning a *coup d'état* led by one of the founder members of the AFDL, Anselme Masasu Nindaga. Most of the soldiers were held at the training

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[516] Interviews with the Mapping Team, Kinshasa, April 2009; *Report on the situation of human rights in the DRC* (E/CN.4/1999/31); ICRC, press releases, 19, 28 August and 9 September 1998.

[517] ASADHO*, Annual Report,* 1998; AI, *DRC: Killing human decency*, 2000; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999, 2000 and 2001.

[518] Most of these communications, which concern hundreds of people, were made jointly with the Special Rapporteur on the situation of human rights in the DRC: E/CN.4/1999/39/Add.1, E/CN.4/1999/61, E/CN.4/1999/62, E/CN.4/1999/63, E/CN.4/2000/4, E/CN.4/2000/9, E/CN.4/2000/64 and Corr.1 and 2, E/CN.4/2001/9/Add.1, E/CN.4/2001/14, E/CN.4/2001/66, E/CN.4/2001/68 and E/CN.4/2003/Add.1

[519] Interviews with the Mapping Team, Kinshasa, April and May 2009; ASADHO*, Annual Report,* 1998; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999, 2000 and 2001.

centre in Maluku, Camp Kokolo, Camp Tshatshi and the GLM. Some of those held were summarily executed, whilst others were tortured to death. Some of the victims remained in detention for over three years and were only released after the promulgation of the government decree declaring a general amnesty.[520]

339. As part of their alliance with the Angolan Government, the authorities in Kinshasa tried to impede the activities of the members of the Cabindan independence movement, the FLEC (Front pour la libération du Cabinda).

- From 1998 to 1999, the security forces of the Government in Kinshasa closed the offices of the FLEC and carried out numerous arbitrary arrests of Cabindan independence militants. Most of the victims are said to have been tortured. Some Cabindan militants were reportedly transferred to Angola. Some are still recorded as having disappeared.[521]

3. North Kivu

City of Goma, Masisi, Rutshuru, Walikale and Nyiragongo regions (Petit-Nord)

340. On 2 August 1998, General Sylvain Buki read out a communiqué on *Radio-télévision nationale congolaise* (RTNC) [Congolese national television and radio] in Goma, announcing that a rebellion has broken out within the FAC. All the troops in the 10th Brigade of the FAC mutinied and the city of Goma fell into the hands of the ANC and APR without any real fighting. Goma thus remained out of reach of the forces of the Government of Kinshasa for almost the whole period, i.e. between August 1998 and January 2001, with the FAC managing to bombard the city on one occasion.

- On 11 May 1999, an FAC aircraft is said to have bombarded several neighbourhoods and municipalities in Goma, killing and wounding around ten civilians, primarily in the Mukosasenge neighbourhood of the municipality of Karisimbi.[522]

341. During the campaigns in North Kivu, however, the bias of the RCD towards the local Tutsi community, the interference by Rwanda in the management of the province and the brutality of the ANC and APR troops towards civilians prompted numerous people in North Kivu to join the Mayi-Mayi armed groups. The latter formed an alliance with the ex-FAR/Interahamwe and the Hutu armed elements that had joined forces within

[520] Interviews with the Mapping Team, Kinshasa May 2009; *Report on the mission conducted between 11 and 21 March 2001 by the Special Rapporteur on the situation of human rights in the DRC* (E/CN.4/2001/40/Add.1); CODHO [Committee of Human Rights Observers], press release, 30 December 2000; Info-Congo/Kinshasa, October-December 2000 and January-March 2001.

[521] Interviews with the Mapping Team, Kinshasa, March and May 2009; *Reports on the situation of human rights in the DRC* (E/CN.4/1999/31 and E/CN.4/2000/42).

[522] Interviews with the Mapping Team, North Kivu, February 2009; IRIN, "Over 40 killed as Uvira, Goma bombed", 14 May 1999.

the ALiR from the end of 1997, and stepped up the number of attacks against ANC/APR troops by using the forests in the Walikale and Masisi regions and the Virunga National Park as support bases.

342. With financial support and arms supplied by the Government in Kinshasa, the Mayi-Mayi and ALiR groups stepped up the number of ambushes of ANC/APR soldiers and committed acts of pillaging against the civilian populations. As a result of their activism, the ANC/APR soldiers were only able to control part of the urban areas. In light of this situation, they stepped up their search operations in the Masisi, Rutshuru and Walikale regions. Numerous civilians were targeted based on their ethnicity, with the Hutu Banyarwanda systematically accused of supporting the ALiR and the Hunde, Nyanga and Tembo of collaborating with the Mayi-Mayi groups. In this context, the Mapping Team documented the following alleged incidents.

- During the course of August 1998, ANC/APR soldiers killed an unknown number of Hutu Banyarwanda in the Tanda area in the Rutshuru region. The killings took place during a military operation directed at elements of the ALiR operating in the region.[523]

- On 25 February 1999, elements of the ANC/APR stormed the marketplace in Lukweti, in the Masisi region, opened fire and killed 45 people, all civilians.[524]

- Around 8 August 1999, elements of the ANC/APR killed at least 17 civilians in the village of Otobora in the Walikale region. Shortly before the massacre, there had been violent fighting between the Mayi-Mayi and ANC/APR troops based in Bunyakiri, in South Kivu. Most of the victims were displaced persons from the neighbouring village of Hombo.[525]

- On 12 August 1999, elements of the ANC/APR killed at least 44 civilians, a majority of them women and children of Tembo ethnicity, in the village of Miano in the Masisi region. They also mutilated an unknown number of people and destroyed the local health centre. Most of the victims were killed on the basis of their ethnic origin, with Tembos often assumed to be part of the Mayi-Mayi groups fighting the ANC/APR troops in the region.[526]

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[523] Interviews with the Mapping Team, North Kivu, February 2009.

[524] La Grande Vision, "La situation dramatique des droits de l'homme sous la rébellion du RCD"; report published ex-situ January to April 1999; SOPROP [Solidarité pour la promotion sociale et la paix], "Génocide en coulisses", 1999; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p. 121.

[525] Interviews with the Mapping Team, South Kivu; HRW, *Eastern Congo ravaged*, May 2000, p. 10.

[526] Interviews with the Mapping Team, North Kivu, December 2008; AI, *DRC: Killing human decency*, 2000, p. 15.

- Around 23 November 1999, elements of the ANC/APR killed an unknown number of civilians in the village of Ngenge in the Walikale region, indiscriminately opening fire on residents. On 24 November, ANC/APR soldiers beat a group of senior figures in the village to death. The same soldiers killed civilians in the neighbouring villages of Kangati and Kaliki.[527]

- On 5 February 2000, elements of the ANC/APR massacred at least 30 people in the village of Kilambo in the Masisi region. A local NGO identified 27 victims. According to several witnesses, other massacres are thought to have taken place at the same time near Kilambo, taking the total number of victims to almost 60.[528]

343. During this period, members of the ALiR also attacked civilians in the territories of Walikale and Masisi. In this context, the Mapping Team documented the following alleged incidents.

- In January 2000, elements of the ALiR killed around 100 civilians in the village of Luke and the surrounding area. Members of the militia had accused the victims of collaborating with ANC/APR forces. Most of the victims are thought to have been killed with machetes or shot. Members of the militia also pillaged the village.[529]

- On 9 July 2000, elements of the ALiR killed between 34 and 42 civilians during an attack on a displaced persons' camp in Sake. Most of the victims, the majority of whom were of Hunde and Tembo ethnicity, were women and children.[530]

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[527] *Report on the situation of human rights in the DRC* (A/55/403), par. 99; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p. 121; HRW, *Eastern Congo ravaged*, May 2000, p. 9 and 10.

[528] *Report on the situation of human rights in the DRC* (A/55/403), par. 99; HRW, *Eastern Congo ravaged*, May 2000, p. 9 and 10.

[529] Interview with the Mapping Team, North Kivu, January 2009; Didier Kamundu Batundi, "Mémoire des crimes impunis, la tragédie du Nord Kivu", 2006, p. 144.

[530] *Report of the Special Rapporteur* (A/55/403), par. 34; ASADHO, *Annual report 2000*, p. 39; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001, p. 8; International Crisis Group (ICG), "Anatomie d'une sale guerre", December 2000.

Beni and Lubero regions (Grand-Nord)

344. On 7 August 1998, the UPDF took unopposed control of the town of Beni and the surrounding region. During the following months, however, numerous local young people joined the Mayi-Mayi groups operating in the Beni and Lubero regions. With financial support and weapons provided by the Government in Kinshasa, these Mayi-Mayi groups increased in strength and stepped up the number of attacks against the UPDF military convoys travelling between Beni and Butembo and in an area to the north-west of the two towns. On 14 November 1999, Mayi-Mayi combatants attacked Ugandan troops in Beni, killing several soldiers and a UPDF colonel.

345. The Mayi-Mayi groups in Grand-Nord quickly began to fight due to rivalry for the control of the region's agro-pastoral and mining resources and local control over peace negotiations. Violent confrontations broke out between the Vurondo Mayi-Mayi of Chief Lolwako Poko Poko and those of Chief Mudohu.

346. In 2000, the attempts made by the RCD-ML to regain control of the Vurondo Mayi-Mayi and incorporate them in the Armée patriotique congolaise (APC), the armed wing of the RCD-ML, failed and led to further incidents. In August, the Vurondo Mayi-Mayi, who had been brought to Lubero by the APR for a military training course run by UPDF troops, rebelled.

- On 25 and 26 August 2000, confrontations between the Vurondo Mayi-Mayi and APC/UPDF troops in the village of Lubero reportedly resulted in tens of deaths among the Mayi-Mayi and an unknown number of civilian victims. Some sources suggest that 17 civilians were killed and seven Mayi-Mayi prisoners summarily executed.[531]

347. Following these incidents, the Mayi-Mayi restarted and intensified their attacks on UPDF convoys between Beni and Butembo. In retaliation, the UPDF forces led operations against villages suspected of sheltering Mayi-Mayi groups. UPDF soldiers often made disproportionate use of force during these attacks, killing combatants and civilians indiscriminately.

- On 1 November 2000, UPDF soldiers allegedly killed between seven and eleven people during an attack on the population of the villages of Maboya and Loya, 16 kilometres north of the town of Butembo. A few hours before the attack, four UPDF soldiers had been killed by Vurondo Mayi-Mayi during an ambush close to the village of Maboya. During the afternoon, UPDF soldiers apparently launched

[531] Interview with the Mapping Team, North Kivu, February 2009; HRW, "Uganda in Eastern DRC: Fueling Political and Ethnic Strife", March 2001, p. 41.

an indiscriminate attack on the inhabitants of both villages and set 43 houses on fire. Some victims were shot and killed, whilst others were burned alive.[532]

348. On 8 November 2000, close to the village of Butuhe, 10 kilometres north of Butembo, Vurondo Mayi-Mayi attacked a UPDF convoy that was escorting lorries transporting minerals.

- On 9 November 2000, UPDF soldiers are alleged to have killed indiscriminately 36 people in the village of Kikere, close to Butuhe, north of Butembo. The soldiers fired blindly on civilians using rifles and rocket-launchers. Some civilians died as a result of being burned alive in their homes. The soldiers also systematically killed domestic animals and destroyed civilian property.[533]

349. In the town of Beni, UPDF soldiers instituted a reign of terror for several years with complete impunity. They carried out summary executions of civilians, arbitrarily detained large numbers of people and subjected them to torture and various other cruel, inhuman or degrading treatments. They also introduced a particularly cruel form of detention, putting the detainees in holes dug two or three metres deep into the ground, where they were forced to live exposed to bad weather, with no sanitation and on muddy ground.

- In March 2000, UPDF soldiers allegedly killed four civilians and wounded several others in the town of Beni during an operation to quell a demonstration. The victims had been protesting against the murder of a woman, the arbitrary arrest of her husband and the pillaging of their house, committed a few days earlier by UPDF soldiers.[534]

350. During the period under consideration, UPDF soldiers carried out several operations against an armed group of Ugandan origin, the ADF-NALU (Allied Democratic Forces–National Army for the Liberation of Uganda[535]) based in the Ruwenzori massif in the Beni region. For their part, ADF-NALU carried out attacks on villages in the Ruwenzori region, kidnapping numerous civilians and pillaging their property. In this context, the Mapping Team documented the following alleged incidents.

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[532] United Nations, press release, Commission on Human Rights, 2 April 2001; ASADHO, "L'Ouganda sacrifie la population civile congolaise", February 2001; HRW, "Uganda in Eastern DRC: Fueling Political and Ethnic Strife", p. 42; De l'Afrique vers le monde, "Butembo, en territoire occupé: message de paix pour le Nouvel An 2001 par l'évêque catholique et par le représentant des baptistes", 5 January 2001. available on the Internet at: http://web.peacelink.it/dia/report/jan_05_2001.txt.

[533] ASADHO, "L'Ouganda sacrifie la population civile congolaise", February 2001; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p. 123; HRW, "Uganda in Eastern DRC: Fueling Political and Ethnic Strife", p. 42.

[534] Interviews with the Mapping Team, North Kivu, February 2009.

[535] Formed from an amalgamation of former rebel groups, the ADF-NALU [*Allied Democratic Forces-National Army for the Liberation of Uganda*] appeared in the second half of the 1980s after the arrival in power of the Ugandan President, Yoweri Museveni. During the 1990s, the ADF-NALU were supported by President Mobutu and used North Kivu as a sanctuary.

- In 2000, north of Beni, elements from the ADF-NALU killed, kidnapped and reduced to slavery hundreds of civilians and forcibly recruited children on a large scale. In January, for example, they kidnapped over 100 people in Mutwanga, in the Beni region. In April, they attacked villages in the area around Mutwanga, killing an unknown number of civilians and kidnapping hundreds. Members of the militia also kidnapped tens of minors and used them as sex slaves for several years.[536]

- Also in 2000, elements of the ADF-NALU killed and kidnapped an unknown number of civilians in the town of Bulongo, at the foot of the Ruwenzori massif. The people they kidnapped were forced to carry the property pillaged from the town over long distances. During these forced marches, which could last several weeks, numerous civilians died of exhaustion or were executed. The ADF-NALU kept the survivors in their camp. They forcibly enlisted men and boys and used women and girls as domestic servants and sex slaves. Most of the victims suffered from malnutrition and were subjected to cruel, inhuman or degrading treatment. Many died in detention. Some victims managed to escape but still suffer severe after-effects.[537]

4. South Kivu

351. In Bukavu, during the first few hours following the outbreak of the second war, Tutsi soldiers who had mutinied with the help of the APR were faced with heavy resistance from the FAC soldiers who had remained loyal to the Government in Kinshasa. In this context, the Mapping Team documented the following alleged incidents.

- On 3 August 1998, rebel Banyamulenge soldiers and elements of the APR executed at least 38 officers and around 100 FAC soldiers rendered out of combat at Kavumu airport, north of Bukavu. After the rebellion broke out, the soldiers had tried to resist but, given their numerical inferiority in the wake of the arrival of APR reinforcements, they were forced to surrender. The victims were first disarmed and forced to lie down on the airport runway. The Banyamulenge and APR soldiers then forced the *Kadogo* in the group to fire on the officers and soldiers.[538]

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[536] Interviews with the Mapping Team, North Kivu, February 2009.

[537] Interviews with the Mapping Team, North Kivu, February 2009.

[538] Interviews with the Mapping Team, North Kivu, November 2008; Interviews with the Mapping Team, South Kivu, November 2008 and March 2009; Anonymous account submitted to the Mapping Team, South Kivu, by a local NGO; Ambroise Bulambo, "Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD", L'Harmattan 2001, p. 73 to 75 and 88 ; ASADHO*, Annual Report,*1998; Groupe Jérémie, "Parole à la base", 1999, p. 30; CADDHOM, Half-year report, 15 February 1999, p. 6; AI, "DRC: The war against unarmed civilians", 1998, p. 10; Petition to the International Court of Justice of the DRC against Rwanda dated 28 May 2002, p. 3.

- In August 1998, elements of the ANC/APR killed or raped an unknown number of civilians during two operations (nicknamed Musako) to search for arms caches carried out in the town of Bukavu. Most of the rapes were committed in the municipalities of Kadutu and Ibanda.[539]

352. In spite of their rapid conquest of most of the towns in South Kivu, ANC/APR/FAB soldiers did not manage to gain control of the countryside. The RCD's bias towards the Tutsi and Banyamulenge communities, its political and military dependence on Rwanda and the violent acts committed by its soldiers on civilians, traditional leaders and members of the Catholic clergy in fact deprived the movement of the support of the majority of those living in the province. During the months following the outbreak of the second war, numerous young men joined the existing Mayi-Mayi armed groups or were involved in the creation of new groups, such as Mudundu 40 in the Walungu region. Many of these groups formed alliances with the ex-FAR/Interahamwe and the Hutu armed groups that had reorganised in the ALiR, as well as the Burundian Hutu armed group, the CNDD-FDD.

353. Except for the special Mayi-Mayi Division of General Padiri in the Bunyakiri *groupement* and the Shabunda region and, to a lesser extent, the Forces d'autodéfense populaires (FAP) of Colonel Dunia, which received arms and money from the Government in Kinshasa to coordinate their operations, most of the Mayi-Mayi groups in South Kivu operated on a highly decentralised basis. Faced with attacks by Mayi-Mayi groups, the FDD and the ALiR, the ANC/APR/FAB soldiers reacted by stepping up the number of search operations and rapes and systematically attacking civilian populations suspected of collaborating with the enemy. For their part, Mayi-Mayi groups and elements of the CNDD-FDD and the ALiR also attacked and raped civilians, whom they accused of supporting the RCD, stole their property and committed numerous acts of pillage.[540] In this context, the Mapping Team documented the following alleged incidents.

- Between 1998 and 2002, the RCD-Goma[541] security services in Bukavu and Uvira arbitrarily arrested and tortured several traditional leaders along with administrative officials, political opponents and members of civil society. Victims were generally arrested simply on the basis of having dared to criticise the policy

[539] Interviews with the Mapping Team, South Kivu, March and May 2009; *Report on the situation of human rights in the DRC* (E/CN.4/1999/31); HRW, *Casualties of War*, 1999, p. 36; AI, "DRC: The war against unarmed civilians ", 1998, p. 11 and 12.

[540] The violations attributable to Mayi-Mayi groups are at first sight less numerous than those committed by other armed groups operating in the province. There are a number of explanations for this. In some cases, Mayi-Mayi groups effectively acted as community self-defence militia and only rarely targeted civilians. In other cases, the population did not want to confirm the violations attributable to them because they still consider that overall these groups played a positive role during the war. In yet other cases, the population refused to confirm incidents for fear of being subjected to retaliation, given that some of these groups are still active in the region.

[541] Further to the split within the RCD between the pro-Ugandan and pro-Rwandan branches of the movement, South Kivu found itself in the area under the control of the RCD-Goma from March 1999.

being pursued by the RCD-Goma or for having asked for APR troops to leave Congolese territory. Victims were systematically accused of supporting Mayi-Mayi and ALiR groups and held for months in cruel, inhuman or degrading conditions. Some were transferred to prisons in Goma, Kisangani or Rwanda, where some of them disappeared without trace.[542]

- On 6 August 1998, elements of the ANC/APR/FAB killed tens of civilians in Uvira. Hundreds of victims were killed during confrontations with the FAC when they tried to take shelter or escape from the combat zone. Others were executed after the end of the fighting during search operations. The soldiers also raped women during these operations.[543]

- Also on 6 August 1998, elements of the ANC killed 13 people, including the chief of the Kiringye area, in the village of Lwiburule, 53 kilometres to the north-west of Uvira. The chief was killed for not having informed the RCD authorities of the presence of Mayi-Mayi in the village. The other victims were killed whilst they were in the chief's house.[544]

- Again on 6 August 1998, elements of the ANC/APR killed 15 people in the area around the villages of Kivovo, Kigongo and Kalungwe, 11 kilometres south of Uvira. The victims had been accused of sheltering Mayi-Mayi. They were killed with daggers or shot in the area around the main port in Kalundu and at SEP Congo facilities. Young people, conscripted by the soldiers, and members of the local Red Cross then buried the bodies of the victims in mass graves.[545]

- On 24 August 1998, ANC/APR soldiers massacred over 1,000 civilians, including numerous women as well as babies and children in the villages of Kilungutwe, Kalama and Kasika, in the Mwenga region, 108 kilometres from Bukavu. Before they were killed, most of the women were raped, tortured and subjected to genital mutilation. The massacre was organised as a retaliation following the death, on 23 August, of around 20 ANC/APR officers in an ambush organised by the Mayi-Mayi on the road between Bukavu and Kindu. Numerous bodies of babies and

[542] Interviews with the Mapping Team, South Kivu, March and May 2009; Confidential document submitted to the Mapping Team on the subject of four people deported to Rwanda in 1998; AI, *DRC: A Year of Dashed Hopes*, 1998.

[543] Interviews with the Mapping Team, South Kivu, November 2008 and February and April 2009; Jean Migabo Kalere, "Génocide au Congo? Analyse des massacres des populations civiles", Broederlijk Delen, 2002, p. 48; HRW, *Casualties of War*, 1999, p. 32; AI, "DRC: The war against unarmed civilians", 1998, p. 7 and 8.

[544] Interviews with the Mapping Team, South Kivu, February, April and May 2009.

[545] Interviews with the Mapping Team, South Kivu, March and April 2009; Compilation of accounts on the massacres committed in the Eastern Congo/Zaïre by the armies of Rwanda, Uganda and Burundi, "Pour que l'on n'oublie jamais", 2001, p. 16; ASADHO*, Annual Report,* 1998, p. 15; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", Broederlijk Delen, 2002, p. 48; CADDHOM, Half-year report, 15 February 1999 p. 5; AI, "DRC: The war against unarmed civilians", 1998, p. 7.

children were thrown into the latrines. Before they left, the soldiers pillaged three villages and set fire to large numbers of homes[546].

- On 2 September 1998, elements of the ANC killed 13 civilians, including children and old people, in the village of Kitutu in the Mwenga region, 225 kilometres to the south-west of Bukavu. The soldiers also set fire to over 100 houses between the villages of Kabuki and Kilima.[547]

- Around 29 September 1998, Mayi-Mayi from Bunyakiri killed seven Tutsi civilians of Rwandan origin, including five women, in the village of Nzovu in the chiefdom of Bakisi, 192 kilometres south of the centre of the town of Shabunda.[548]

- In October and November 1998, elements of the ANC/FAB killed 22 civilians in the neighbouring villages of Swima and Lusambo in the Fizi region, 38 kilometres south of Uvira. The victims were in the marketplace on the shores of Lake Tanganyika when the soldiers opened fire indiscriminately. These soldiers had accused the inhabitants of Swima of being Mayi-Mayi and collaborating with elements of the CNDD-FDD. The massacre took place after a member of the FDD wounded an ANC/FAB soldier in the area.[549]

- During the night of 21 to 22 October 1998, elements of the ANC/APR killed at least 10 civilians in the village of Bushaku, in the Kalehe region, 50 kilometres north of Bukavu. Most of the victims were burned alive in a house where they had been locked up by the soldiers. The soldiers also pillaged and set fire to large numbers of homes. On 21 October, Mayi-Mayi had killed a number of ANC/APR soldiers. The latter accused the inhabitants of Bushaku of supporting the Mayi-Mayi.[550]

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[546] Interviews with the Mapping Team, South Kivu, October-December 2008, February-March 2009; Ministry of Human Rights of the DRC, "Livre Blanc: La guerre d'agression en RDC. Trois ans de massacres et de génocide à huis clos", October 2001, p. 11 to 13; Petition to the International Court of Justice of the DRC against Rwanda dated 28 May 2002, p. 4; CADDHOM, "Massacres de Kasika au sud-Kivu", 1998; COJESKI, "Report of 20 November 1998", 1998, p. 2 and 3; COJESKI, Report of January 1999, 1999, p. 26; Christian Hemedi Bayolo, "L'Église profanée, chronique et violation des droits du clergé pendant la guerre d'agression 1998-2000", February 2002, p. 21 to 23; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", Broederlijk Delen, 2002, p. 47 and 48 and 61 to 67; Ambroise Bulambo, *Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD*, L'Harmattan 2001, p. 87 and 98 and 99 (photographs); Groupe Jérémie, "Parole à la base", 1999 p. 21 and 30; AI, "DRC: The war against unarmed civilians", 1998, p. 8 and 11; HRW, *Casualties of War*, 1999, p. 30.

[547] Interviews with the Mapping Team, Sud–Kivu, May 2009; *Report on the situation of human rights in the DRC* (E/CN.4/1999/31); COJESKI, "Vue synoptique des violations au South Kivu", 1998.

[548] Interview with the Mapping Team, South Kivu, March 2009; CADDHOM, *Half-year report*, 1999 p. 8; Héritiers de la Justice (HJ), "Vue synoptique sur le cas du South Kivu" 1998, p. 4.

[549] Interviews with the Mapping Team, Sud–Kivu, April 2009; HJ, "Report for the 4th quarter of 1998", 1999, p. 6; COJESKI, "Vue synoptique des violations au South Kivu", 1998, p. 6.

[550] Interviews with the Mapping Team, South Kivu, February and April 2009; HJ, *Report for the 4th quarter of 1998*, 1999, p. 3; HRW, *Casualties of War*", 1999, p. 31.

- On 8 November 1998, elements of the ANC/APR killed around ten people around the centre of the town of Bunyakiri (the village of Maibano and the shopping centre in Bulambika) in the Kalehe region, 80 kilometres north of Bukavu.[551]

- Between 3 and 4 December 1998, elements of the ANC/APR killed several tens of people in the Kalehe region, in the villages of Bogamanda and Buhama, and in the village of Lemera, on the road leading to the marketplace in Chipaho. Most of the victims were shopkeepers on their way to market. The victims were accused of collaborating with the Mayi-Mayi and killed with edged weapons.[552]

- On 21 December 1998, elements of the ANC/APR/FAB killed nine civilians in the village of Mboko, in the Tanganyika area of the Fizi region, 52 kilometres south of Uvira. The massacre took place on 21 December on the morning after the soldiers had chased the Mayi-Mayi from the village. The soldiers searched the houses, brought out the civilians and killed them, shooting some and killing others with edged weapons on the basis that they were collaborating with the Mayi-Mayi.[553]

- Between 28 December 1998 and 5 January 1999, confrontations between elements of the ANC/APR and elements of the FAC/ALiR/Mayi-Mayi caused an unknown number of deaths amongst the civilian population in the villages of Mubumbano, Mudirhi and Ntondo/Mubumbano in the Walungu region, around 60 kilometres to the south-west of Bukavu. The victims had been accused of supporting local Mayi-Mayi groups, including the Mudundu 40 group, which was very active in the region.[554]

- Between 30 December 1998 and 2 January 1999, elements of the ANC/APR/FAB killed more than 800 people in the villages of Makobola II, Bangwe, Katuta, Mikunga and Kashekezi in the Fizi region, 24 kilometres south of Uvira. The soldiers also committed numerous acts of pillaging and destruction. A large number of women and children, Red Cross volunteers and religious leaders were included among the victims. The soldiers had accused the civilian population of collaborating with the Mayi-Mayi, who had killed APR and ANC commanders on 29 December 1998 in Makobola. Whilst the Mayi-Mayi, who had controlled Makobola II until then, had withdrawn into the surrounding mountains, the

[551] Interviews with the Mapping Team, South Kivu, March 2009; CADDHOM, *Half-year report*, 1999, p. 6.

[552] Interviews with the Mapping Team, South Kivu, February and April 2009; HJ, *Report for the 4th quarter of 1998*, 1999, p. 3; HRW, *Casualties of War*, 1999, p. 31.

[553] Interviews with the Mapping Team, South Kivu, February and April 2009.

[554] Interviews with the Mapping Team, South Kivu, February and March 2009; COJESKI, "Cinq mois d'invasion - South Kivu", 1999, p. 32 and 33; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999, p. 6.

soldiers fired indiscriminately on civilians in the village. Some of the victims were killed by being burned alive in houses set on fire by the soldiers.[555]

- On 12 January 1999, elements of the ANC/APR killed several civilians on the route between Burhale, 55 kilometres to the north-west of Bukavu, and Mushinga-Lubona, 62 kilometres to the north-west of Bukavu, in the Walungu region. The victims had been accused of supporting the local Mayi-Mayi movement, Mudundu 40, which had set up its headquarters in Mushinga-Lubona.[556]

- On 19 February 1999, elements of the ANC/APR based in Kavumu killed at least six civilians and set fire to homes in the village of Bitale, 62 kilometres to the north-west of Bukavu, in the Kalehe region. Soldiers also raped women and girls. They had accused the local population of supporting the Mayi-Mayi operating in the region.[557]

- On 5 March 1999, elements of the ANC killed more than 100 people in the town of Kamituga, 180 kilometres from Bukavu, in the Mwenga region. The victims were taken to the headquarters of the ANC/APR on the Mero hill and then killed with edged weapons. Their bodies were then thrown into three mass graves located on the site of the University of Kamituga.[558]

- In March 1999, elements of the FAB burned six fishermen alive in the village of Kazimia, 171 kilometres south of Uvira, in the community of Nganja in the Fizi region. The victims had just arrived in the port when they were arrested and interrogated in a house and then burned alive. Shortly before the killing, soldiers from the ANC/FAB and elements of the Mayi-Mayi/CNDD-FDD had fought over control of the village.[559]

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[555] Interviews with the Mapping Team, South Kivu, February 2009; Ambroise Bulambo, *Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD*, L'Harmattan, 2001 p. 88; Ministry of Human Rights of the DRC, "Livre Blanc: La guerre d'agression en RDC, Trois ans de massacres et de génocide à huis clos" October 2001, p. 13 to 15; Petition to the International Court of Justice of the DRC against Rwanda dated 28 May 2002, p. 5; CADDHOM, *Half-year report*, 1999, p. 6; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", Broederlijk Delen, 2002, p. 49 and 69 to 79; AI, *DRC: Killing human decency*, 2000, p. 13; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2001, p. 6.

[556] Interviews with the Mapping Team, South Kivu, February and March 2009.

[557] Interviews with the Mapping Team, South Kivu, February and March 2009; HRW, *DRC, Eastern Congo ravaged* 2000, p.10.

[558] Interviews with the Mapping Team, South Kivu, March and May 2009; IRIN, "Update No. 629 for Central and Eastern Africa", 1999; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999, p. 7.

[559] Interviews with the Mapping Team, South Kivu, March-April 2009; AI, *DRC: Killing human decency*, 2000, p. 15.

- In May 1999, elements of the ANC burned 28 people alive, including entire families with their children, in the village of Mwandiga, on the outskirts of Baraka, in the Fizi region. The victims, who were fleeing to Ubwari, had stopped in the village in the hope of finding a dugout canoe and boarding it. When the soldiers arrived in Mwandiga, they ordered the civilians still there to gather to take part in a meeting. Two civilians remained in hiding, whilst 28 responded to the call. The massacre took place shortly after the ANC soldiers had taken back control of the town of Baraka from the Mayi-Mayi.[560]

- On 13 March 1999, elements of the ANC/APR killed a dozen civilians in the Mulambi and Karhendezi *groupement*s in the chiefdom of Burhinyi, around 80 kilometres to the south-west of Bukavu, in the Mwenga region. The massacre took place in retaliation for losses suffered by the ANC/APR during confrontations with the Mayi-Mayi in the area of Cirhongo, around 60 kilometres to the south-west of Bukavu, in the Walungu region. The victims had been accused of collaborating with the Mayi-Mayi of the Mudundu 40 based in the chiefdom of Ngweshe.[561]

- On 17 March 1999, elements of the ANC/APR killed 72 civilians in the village of Budaha in the chiefdom of Burhinyi, in the Mwenga region. Most of the victims were shot dead or killed with edged weapons. The soldiers carried out the massacre in retaliation for the losses suffered during fighting with the Mayi-Mayi of the Mudundu 40.[562]

- On 1 June 1999, Mayi-Mayi from the Pangi region in Maniema province killed around 50 civilians in the village of Nyalukungu, 108 kilometres south of the centre of the town of Shabunda, in the chiefdom of Wakabango. The victims had been accused of collaborating with the RCD-Goma. They were buried in Nyalukungu in four mass graves, the largest of which was close to the health centre in Nyalukungu.[563]

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[560] Interviews with the Mapping Team, South Kivu, April 2009.

[561] Interview with the Mapping Team, South Kivu, March 2009; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", Broederlijk Delen, 2002, p. 50; AI, *DRC: Killing human decency*, 2000, p. 13.

[562] Interview with the Mapping Team, South Kivu, March 2009; Compilation of accounts on the massacres committed in the Eastern Congo/Zaïre by the armies of Rwanda, Uganda and Burundi, "Pour qu'on n'oublie jamais", 2001, p. 30; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", 2002, p. 50; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999, p. 7; AI, *DRC: Killing human decency*, 2000, p. 13.

[563] Interviews with the Mapping Team, South Kivu and Maniema, January and March 2009; Document submitted to the Mapping Team by the NGO CADDHOM, Shabunda office, in March 2009; OHCHR, *Report of mission to Nyakulungu, 2 May 2008*; HJ, "Terreur en territoire de Shabunda". Available at: www.heritiers.org/shabundadesolation.html (accessed January 2009)

- On 15 August 1999, a number of Mayi-Mayi killed 20 civilians in the village of Hombo, 120 kilometres to the north-west of Bukavu, in the Kalehe region. The victims were on board a vehicle travelling to Bukavu. Like all vehicles leaving Hombo at the time, they were accompanied by an ANC/APR military escort. The Mayi-Mayi opened fire on the vehicle, indiscriminately killing civilians and soldiers.[564]

- On 20 September 1999, elements of the ANC/APR killed 25 civilians, including women and children, in the village of Kionvu, 125 kilometres to the south-west of Bukavu, in the Mwenga region. When they arrived, the soldiers had rounded up the civilians, making them think that they were going to hand out food; they then killed them, the majority of them with edged weapons. The victims had been accused of being Mayi-Mayi. The soldiers committed the massacre in retaliation for the losses they had suffered during fighting with the Mayi-Mayi in the neighbouring village of Kalambi.[565]

- On 23 October 1999, elements of the ANC/APR killed 50 civilians, including large numbers of women, in the village of Kahungwe, 40 kilometres north of Uvira. The soldiers opened fire without warning on civilians in the marketplace. Shortly before the killing, there had been confrontations between the soldiers and the Mayi-Mayi in the area around Sange.[566]

- On 24 October 1999, Mayi-Mayi from the Mudundu 40 group killed a woman and girl and looted several homes in the village of Kibirira, near to the centre of the town of Walungu, 47 kilometres to the south-west of Bukavu. One of the victims was the mother of a shopkeeper based in Bukavu, who was accused of collaborating with the RCD-Goma, and the other his employee. The ANC/APR soldiers had left Kibirira by the time the arrival of the Mayi-Mayi was announced.[567]

- In November 1999, elements of the ANC/APR buried alive 15 women from the villages of Bulinzi, Ilinda, Mungombe and Ngando, near to the town centre of

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[564] Interviews with the Mapping Team South Kivu, March and April 2009; Compilation of accounts on the massacres committed in the Eastern Congo/Zaire by the armies of Rwanda, Uganda and Burundi, "Pour qu'on n'oublie jamais", 2001, p. 30; HRW, *Eastern Congo ravaged* 2000, p. 10.

[565] Interviews with the Mapping Team, South Kivu, December 2008, February, March and May 2009; Confidential document submitted to the Mapping Team in 2009; Christian Hemedi Bayolo, "L'Église profanée, chronique and violation des droits du clergé pendant la guerre d'agression 1998-2000", February 2002, p. 32; AI, *DRC: Killing human decency*, 2000, p. 13.

[566] Interview with the Mapping Team, South Kivu, April 2009; ASADHO*, Annual Report,* 2000 p. 40; Dignité des sans-voix, "La femme dans la tourmente des guerres en RDC", 2003, p. 7; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", 2002, p. 52; Memorandum from civil society in South Kivu to the MONUC, 14 December 1999, p. 5; AI, *DRC: Killing human decency*, 2000, p. 13.

[567] Interviews with the Mapping Team, South Kivu, March 2009; AI, *DRC: Killing human decency*, 2000, p. 22.

Mwenga, 135 kilometres to the south-west of Bukavu. Before being buried alive in the town centre in Mwenga, the victims were tortured and raped, some with sticks, and subjected to other cruel, inhuman and degrading treatments, consisting primarily of inserting hot peppers into their genital organs. The soldiers had accused the victims of collaborating with the Mayi-Mayi.[568]

- On 22 November 1999, elements of the ANC/APR killed 21 civilians in the village of Chibinda, near to the town centre in Kalonge, 63 kilometres to the north-west of Bukavu. The victims were attending a service in the CELPA [*Communauté des églises libres de pentecôte en Afrique* - Community of Free Pentecostal Churches in Africa] church when the soldiers burst into the building and accused the worshippers of being Mayi-Mayi. Many of them escaped but around 20 were arrested and shot dead. The victims' bodies were then buried by the villagers not far from the church. Before they left, the soldiers pillaged the village and set several houses on fire.[569]

- On 14 May 2000, elements of the ANC killed several tens of civilians in the village of Katogota, between Bukavu and Uvira, in the Uvira region. The soldiers arrived in Katogota by lorry and began to kill the villagers, moving from house to house. Some were shot dead and others burned alive when the soldiers set fire to their houses. The total number of victims is difficult to estimate, because the soldiers prohibited access to the village for several days, during which time they burned large numbers of bodies and threw them into the River Ruzizi. The massacre was committed following the death of an ANC commander in a military ambush attributed to elements of the CNDD-FDD.[570]

- On the night of 29 to 30 May 2000, elements of the ALiR killed two civilians and wounded several others in the village of Igobegobe, 40 kilometres from Bukavu,

[568] Interviews with the Mapping Team, South Kivu, November 2008 and March 2009; DRC Ministry of Human Rights, *Livre Blanc: La guerre d'agression en RDC. Trois ans de massacres and de génocide à huis clos,* October 2001, p. 31 and 33; Petition to the International Court of Justice of the DRC against Rwanda dated 28 May 2002, p. 4; COJESKI, *Rapport 1999-2000*, 2000, p. 9; HJ, "Le Gouverneur du South Kivu n'a pas convaincu", 5 February 2000; Info–Congo/Kinshasa, May-June 2000, p. 161; Jean Migabo Kalere, "Génocide au Congo ? Analyse des massacres des populations civiles", 2002, p. 52; Ambroise Bulambo, "Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD", 2001, p. 90; Memorandum from civil society in South Kivu to the MONUC, 14 December 1999, p. 5.

[569] Interviews with the Mapping Team, South Kivu, November 2008 and April 2009; COJESKI, "Les violations caractérisées des droits de l'homme dans les Kivu", March 2000, p. 10 and 11; Christian Hemedi Bayolo, "L'Église profanée, chronique and violation des droits du clergé pendant la guerre d'agression 1998-2000", February 2002, p. 27.

[570] Interviews with the Mapping Team, South Kivu, March 2009; ASADHO, press release no. 0018, 2000; Dignité des sans-voix, "La femme dans la tourmente des guerres en RDC", 2003, p. 73; Ambroise Bulambo, "Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD", 2001 .p. 88; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001, p. 13.

in the Kabare region. They also kidnapped a nurse working in the health centre and systematically pillaged the village.[571]

- On 14 June 2000, elements of the ALiR burned a civilian alive in the village of Cishozi, 35 kilometres from Bukavu, in the Kabare region.[572]

- On 17 June 2000, the elements of the ALiR responsible for the attack of 14 June on Cishozi pillaged the town centre in Kabare and the surrounding area. In particular, they stole numerous civilians' property and livestock and pillaged the hospital in Mukongola, the Catholic church of Saint-Joseph and the secondary school in Canya, as well as other buildings. The victims of the pillaging were sometimes forced to carry the looted property to the ALiR camp.[573]

- On 29 June 2000, Mayi-Mayi and elements of the CNDD-FDD looted health centres and property belonging to people living in the villages around Lueba, 78 kilometres south of Uvira, in the community of Tanganyika in the Fizi region.[574]

- On 30 June 2000, elements of the ANC/APR killed at least 29 civilians in Lulinda and the surrounding area (Mwachata and Icwa), 64 kilometres south of Uvira, in the community of Tanganyika in the Fizi region. They also raped several women and set fire to houses. The killings took place during the counter-attack led by ANC/APR soldiers against the Mayi-Mayi and CNDD-FDD in the Baraka region.[575]

- On 19 July 2000, elements of the ANC/APR killed 12 civilians and wounded four in the village of Kikamba, 84 kilometres south of the centre of the town of Shabunda, in the Begala *groupement* in the Shabunda region. The victims were taking part in a traditional marriage ceremony when they were shot dead. The attack by the soldiers took place after the failure of their operation against the Mayi-Mayi operating in the region.[576]

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[571] Interviews with the Mapping Team, South Kivu, March 2009; IRIN, "Central and Eastern Africa Weekly Round-Up 26", 30 June 2000; Diocesan Commission on Justice and Peace, "Flash special - Les Interahamwe massacrent la population de Bushwira en territoire de Kabare", 29 November 2002.

[572] Ibid.

[573] Ibid.

[574] Interviews with the Mapping Team, South Kivu, February 2009; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001, p. 12.

[575] Interviews with the Mapping Team, South Kivu, February 2009; *Report on the situation of human rights in the DRC* presented by the Special Rapporteur (A/55/403), AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001, p. 14; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000, p. 7

[576] Interviews with the Mapping Team, South Kivu, January and February 2009.

354. Between August 1998 and January 2001, ANC/APR soldiers and Mayi-Mayi fought for control of the mining town of Lulingu, which has a large number of coltan mines[577] and was therefore seen as a strategic target by the belligerents.

- In July and August 2000, during their attacks on the mining town of Lulingu, 90 kilometres from the centre of the town of Shabunda, the Mayi-Mayi allegedly killed an unknown number of civilians, committed cruel, inhuman and degrading acts and pillaged the town. At least 25 civilians were drowned in the River Lugulu whilst they were attempting to escape.[578]

355. One of the main leaders of the Bunyakiri Mayi-Mayi had set up his headquarters in the Shabunda region, in the strategic, mineral-rich location of Nzovu, in the chiefdom of Bakisi in the Bamuguba-Sud *groupement*, 192 kilometres south of the centre of the town of Shabunda. In 1999, the Government in Kinshasa had sent arms and munitions in by plane to the local airstrip to support the Mayi-Mayi East division. The Nzovu Mayi-Mayi and ANC/APR soldiers fought for control of the region throughout 1999 and 2000. In this context, the Mapping Team documented the following alleged incidents.

- Between 18 and 24 August 2000, elements of the ANC/APR killed 34 civilians, set fire to tens of houses, pillaged property and stole livestock in the Nzovu area. The victims had been accused of collaborating with the Mayi-Mayi.[579]

- On 2 September 2000, Mayi-Mayi and elements of the ALiR killed 10 people, including members of the Institut congolais pour la conservation de la nature (ICCN) [Congolese Institute for Nature Conservation], a journalist and two wardens from the Kahuzi-Biega national park, in the Kabare/Kalehe regions. The victims were taking part in an ICCN mission when they were caught in an ambush. Several civilians were also wounded during the attack. The survivors were held by the Mayi-Mayi and elements of the ALiR for a day and forced to carry the property that had been pillaged during the ambush. They were then released.[580]

- During the period under consideration, elements of the ANC/APR killed, raped, tortured and subjected an unknown number of civilians to cruel, inhuman and degrading treatment in the centre of the town of Mwenga, in the Mwenga region.

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[577] Coltan is a mineral used in the manufacture of mobile phones, computers and other electronic devices.

[578] Interviews with the Mapping Team, South Kivu, April 2009; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001.

[579] Interview with the Mapping Team, South Kivu, March 2009; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000, p. 6; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001, p. 13.

[580] Interview with the Mapping Team, South Kivu, February 2009; ASADHO*, Annual Report,* 2000. p. 40; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001, p. 19 and 20; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000, p. 5.

The victims were often held in a ditch filled with water to which salt and hot peppers had been added. They had generally been accused of being Mayi-Mayi or of collaborating with them. The bodies of some victims were thrown behind the Catholic church in Mwenga, where they were later discovered.[581]

- On 12 September 2000, elements of the ANC based in Mutarule, 42 kilometres north of Uvira, killed 16 civilians during an attack on a bus linking the villages of Rubanga and Sange. They also killed at least three people in the village of Katekama, close to Sange. These attacks are thought to have been carried out in retaliation for the murder of an ANC soldier by the Mayi-Mayi.[582]

- On 13 October 2000, elements of the ALiR kidnapped an unknown number of girls aged between 13 and 15 in the centre of the town of Kabare. Some of the victims were released after they had been raped; others are still recorded as having disappeared. During their attack on Kabare, elements of the ALiR also pillaged the teachers' camp at the Kamole Institute. On 18 October, the same elements returned to the villages and pillaged the teachers' camp for a second time.[583]

- In October 2000, in the village of Citungano, elements of the ALiR kidnapped two civilians, a father and his 14-year-old daughter. Having forced the victims to carry the property they had pillaged from the village, they released the father. The girl was only able to return to the village a week later, after she had been raped.[584]

- During the period under consideration, elements of the ALiR committed numerous rapes in the villages of the Irhambi-Katana *groupement*, 54 kilometres north of Bukavu, in the chiefdom of Kabare (primarily in the Kahuzi-Biega national park). They also kidnapped numerous women, whom they used for several months or even years as sex slaves. During the same period, they committed similar crimes in the Kalehe region, primarily in the chiefdom of Buloho.[585]

- During the period under examination, elements of the ANC/APR recruited numerous young minors to their ranks. Recruitment campaigns took place in the town of Bukavu and the regions of Uvira, Walungu (Burhale and Kaniola

[581] Interviews with the Mapping Team, South Kivu, March 2009; *Report on the situation of human rights in the DRC* (E /CN.4/1999/31); Petition to the International Court of Justice of the DRC against Rwanda dated 28 May 2002. p. 4; COJESKI, "Vue synoptique sur les violations massives des droits de l'homme pendant les trois mois d'agression du South Kivu/RDC", 1998, p. 3.

[582] Interviews with the Mapping Team, South Kivu, March and April 2009.

[583] Interviews with the Mapping Team, South Kivu, March 2009; IRIN, "Central and Eastern Africa Weekly Round-Up 26", 30 June 2000; Diocesan Commission on Justice and Peace, "Flash special - Les Interahamwe massacrent la population de Bushwira en territoire de Kabare", 29 November 2002.

[584] Ibid.

[585] Interviews with the Mapping Team, South Kivu, March, April and May 2009.

groupements), Kabare (village in Nyamunyunyi) and Kalehe (Bunyankiri *groupement*). In August 1998, the ANC recruited around 100 children who had previously been demobilised by UNICEF. In the beginning, recruitments were on a voluntary basis as part of an awareness-raising campaign aimed at parents. Given the limited success of this campaign, the ANC soldiers turned to systematic forced recruitment. As a result, numerous children were kidnapped as they left school or at markets. The recruits were forced to undergo military training in the Congo or Rwanda, under the military orders of the APR. In 2002, there were still over a thousand minors in the ranks of the ANC. Despite official denials, forced recruitment of children continued until at least June 2003.[586]

5. Maniema

356. In September 1998, President Kabila sent several tens of thousands of soldiers to Kindu to launch a counter-offensive against the ANC/APR in North and South Kivu. On 12 October, however, after seven days of fighting, the ANC/APR soldiers took control of Kindu. The rest of Maniema province moved into the RCD's zone of influence during the months that followed, without the ANC/APR encountering any real resistance. In spite of the presence at the head of the RCD of two important figures in the province, the movement remained unpopular in Maniema. In early 1999, Mayi-Mayi from South Kivu began to infiltrate the province.

- On 10 March 1999 at around 4 a.m., elements of the ANC/APR allegedly raped 10 women, pillaged civilian property and set fire to over 300 houses in the village of Kipaka in the Kasongo region. The attack was organised after a Mayi-Mayi from the Fizi region had fought with a police officer in Kipaka, three days earlier.[587]

357. The disproportionate scale of the retaliation prompted numerous young people in the Kasongo region to join the Mayi-Mayi movement. A week after the incident in Kipaka, the Fizi Mayi-Mayi leader in South Kivu came in person to Kipaka to recruit young soldiers. From the Kasongo region, the Mayi-Mayi movement gradually spread to the Kabambare, Kibombo, Kailo and Pangi regions. During the second quarter of 1999, Mayi-Mayi and ANC/APR troops fought each other for control of the villages in the Kabambare region. In this context, the Mapping Team documented the following alleged incidents.

- On 15 May 1999, elements of the ANC/APR killed 11 civilians in the Kimbanguist church of Musoni in the village of Kabambare. Ten civilians were

[586] Interviews with the Mapping Team, South Kivu, February and March 2009; Committee on the Rights of the Child, "Child Soldiers – Country Reports", 2004; HRW, *Casualties of War*, 1999, p. 36 and 37; Coalition to Stop the Use of Child Soldiers, "*Child Soldiers Global Report –DRC*", 2001.

[587] Interviews with the Mapping Team, Maniema, March 2009; Politique africaine, "Le Maniema, de la guerre de l'AFDL à la guerre du RCD", n°. 84, December 2001, p. 74.

burned alive and a female priest who had tried to escape was buried alive. ANC/APR troops also set fire to a large number of houses and caused the deaths of an unknown number of civilians. The attacks took place as part of an ANC/APR offensive against the Mayi-Mayi in the region.[588]

- On 18 June 1999, elements of the ANC/APR set fire to the village of Saidi, in the Kasongo region. Saidi was the birthplace of the Mayi-Mayi leader Rambo, based in Bikenge. People living in Saidi had left the village following the arrival, one week earlier, of ANC/APR soldiers in Karomo, a village seven kilometres from Saidi. Confrontations between the Mayi-Mayi and the ANC/APR resulted in several other villages in the region being set on fire.[589]

- At the end of August 1999, elements of the ANC/APR executed 10 civilians close to their base in Kipaka, in the Kasongo region. The victims were arrested on 20 August in Yambayamba whilst the ANC/APR soldiers pillaged the village. Nine of the victims were former members of the Tande Mahango Mayi-Mayi group, who had laid down their weapons. One of the victims was the brother of a former Mayi-Mayi fighter, who was away from the village on the day of the raid. The bones of the victims were discovered by the villagers a year later; identifiable from clothing found at the scene.[590]

6. Orientale Province

358. Between August and September 1998, ANC/APR/UPDF soldiers took control of almost all of Orientale Province. FAC soldiers engaged in looting as they fled, in particular in the regions of Opala, Basoko and Yahuma. They also brutally suppressed all those whom they suspected of supporting the RCD.

- On 5 October 1998, elements of the FAC allegedly summarily executed 25 people on the Bomokande bridge in the village of Dingila in the district of Buta. Having been arbitrarily held for three weeks, the victims, 15 FAC soldiers who were no longer able to fight, eight Nande civilians and two civilians of Rwandan origin were decapitated and their bodies thrown in the river. The 25 victims had been accused of having helped UPDF troops during their successful attack on the town of Isiro. During their two months in Dingila, the soldiers reportedly also raped an unknown number of women, including several minors and systematically looted civilian property.[591]

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[588] Interviews with the Mapping Team, Maniema, March 2009; Document submitted to the Mapping Team by the NGO ADDHELI [Action de développement, de défense des droits de l'homme and de lutte contre l'ignorance], Kalemie, March 2009.

[589] Interviews with the Mapping Team, Maniema, March 2009.

[590] Interviews with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.

[591] Interviews with the Mapping Team, Orientale Province, January 2009.

359. After the withdrawal of the FAC from Orientale Province, numerous civilians joined the Mayi-Mayi armed groups and attacked ANC/APR soldiers at several places in the region. In retaliation, ANC/APR soldiers led punitive expeditions against civilian populations suspected of collaborating with the Mayi-Mayi. In this context, the Mapping Team documented the following alleged incidents.

- On 24 October 1998, elements of the ANC/APR executed 28 civilians, including several minors, in the village of Makoka, on the border with Maniema province, in the Lubutu region. The soldiers also raped at least seven women. Before they left, they pillaged and set fire to the village. According to the villagers, there were no Mayi-Mayi in Makoka at this time.[592]

- At the end of 1999, in the Opala region, soldiers from the ANC/APR killed two boys between the villages of Yatolema and Yalikoko and raped an unknown number of women. At the end of 1999, soldiers raped at least one young girl in the town of Opala.[593]

- In October 2000, at the 63-kilometre marker on the road between Kisangani and Lubutu, elements of the ANC/APR summarily executed four young boys accused of being Mayi-Mayi. The soldiers then arrested seven members of the victims' family and tortured them for three consecutive days before releasing them. The day before the incident, a group of Mayi-Mayi had killed several ANC/APR soldiers during an ambush, forcing them to withdraw to their base in Wanie Rukula, in the Ubundu region.[594]

360. During the period under consideration, FAC planes bombarded ANC/APR/UPDF positions in Orientale Province on several occasions.

- On 10 January 1999, a FAC plane apparently indiscriminately bombarded the town of Kisangani, killing 12 civilians and wounding 27. On 22 February, FAC bombardments of the town of Opala caused five civilian deaths. The number of casualties caused by the bombardments could have been much higher if military sources in Kinshasa had not warned civilians in time, allowing them to leave the towns that had been targeted.[595]

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[592] Interviews with the Mapping Team, Orientale Province, January 2009; Document submitted to the Mapping Team by the President of civil society in Wanie Rukula, Orientale Province, 2009; Congolese Foundation for the Promotion of Human Rights and Peace (FOCDP), "Memorandum to the Secretary-General of the United Nations", 2001; Justice and Liberation group, 1999 report.

[593] Interviews with the Mapping Team, Orientale Province, January 2009.

[594] Interviews with the Mapping Team, Orientale Province, February 2009.

[595] Interviews with the Mapping Team, Orientale Province, January and February 2009; Horeb Group, *Annual Report,* 1999; Justice and Liberation group, "La guerre des alliés and le droit international humanitaire", May 1999; Lotus Group, *Report on the bombardments of 1999*, 2000.

361. In August 1999, whilst international pressure on the leaders of the RCD-Goma to sign the Lusaka Agreement[596] was intensifying, the simmering crisis between Rwanda and Uganda for the control of the RCD degenerated into open conflict in Kisangani. On the morning of 7 August, APR and UDPF soldiers fought with heavy weapons for several hours without any civilians being wounded. The situation calmed down again over the course of the following days. Tension continued to build, nonetheless, and both sides strengthened their positions and brought large numbers of weapons into the town. On the evening of 14 August, fighting again broke out between the two armies at the airport and extended along the main roads and into the town centre.

- From 14 to 17 August 1999, APR and UPDF soldiers are said to have used heavy weapons in areas with a dense civilian population as they fought to gain control of the town of Kisangani. The fighting allegedly caused the deaths of over 30 civilians and wounded over 100 of them. The APR fired on both military targets and private homes belonging to civilians suspected of supporting the Ugandans. Once the hostilities were over, Rwandan and Ugandan soldiers pillaged several places in Kisangani.[597]

362. After three days of fighting, Uganda and Rwanda signed a ceasefire agreement that provided for Kisangani to be demilitarised and the headquarters of the pro-Ugandan branch of the RCD, the RCD-Kisangani-*Mouvement de Libération* (RCD-K-ML) led by Wamba dia Wamba, to be relocated to Bunia on 1 October 1999. During the months that followed, Orientale Province found itself divided into a "Rwandan zone" under the control of the RCD-G and a "Ugandan zone" dominated by the various movements supported by Kampala. In May 2000, however, tension between the Ugandan and Rwandan armies again moved up a notch in Kisangani. The UPDF strengthened its military positions to the north-east of the town and the APR reacted by bringing in additional weapons.

- On 5 May 2000, the APR and UPDF are said to have used heavy weapons in densely populated areas, causing the deaths of over 24 civilians and wounding an unknown number of them. Before the start of the hostilities, the Ugandan army

[596] For the text of the agreement, see S/1999/815, appendix.

[597] Interviews with the Mapping Team, Orientale Province, December 2008; Judicial Commission of Inquiry - Republic of Uganda, *Final Report on Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC, 2001*, November 2002; Horeb Group, "Les affrontements de Kisangani: crimes contre les droits humains and le processus de paix durable", August 1999; Justice and Liberation group, "La guerre des alliés en RDC and le droit à l'autodétermination du peuple congolais", August 1999; Lotus Group, "Les conséquences de la contradiction des alliances and factions rebelles au nord-est de la RDC: La guerre de Kisangani", September 1999.

had warned the population of the imminent bombardments and had asked for the evacuation of several areas located close to their targets.[598]

363. On 12 May 2000, a team of United Nations military observers was sent to the area. Under international mediation, the two parties adopted a demilitarisation plan for the town, which they began to implement on 29 May. Fighting broke out again on 5 June, however, resulting in the so-called "Six-Day War".

- The APR and UPDF fought each other in Kisangani from 5 to 10 June 2000. Both sides reportedly embarked on indiscriminate attacks with heavy weapons, killing between 244 and 760 civilians according to some sources, wounding over 1,000 and causing thousands of people to be displaced. The two armies also destroyed over 400 private homes and caused serious damage to public and commercial properties, places of worship, including the Catholic Cathedral of Notre-Dame, educational institutions and healthcare facilities, including hospitals. The UPDF had taken steps to avoid civilian losses by ordering the evacuation of combat zones before the start of hostilities and prohibiting access to three areas that were declared off-limits to non-combatants. This restriction was, however, also extended to humanitarian workers, in particular the ICRC, which was not able to get help to the wounded for several days.[599]

7. Ituri

364. In mid-August 1998, UPDF soldiers arrived in Ituri and quickly took control of the district without encountering any real resistance. Like the rest of Orientale Province, Ituri was placed under RCD administration. Following the movement's split, in March 1999, into a pro-Rwandan branch (RCD-Goma) and a pro-Ugandan branch (RCD-ML), Ituri was integrated into the RCD-ML zone and administered from Kisangani. The key man on the ground in Ituri, however, was the UPDF Chief of Staff, General Kazini. He applied a policy that supported autonomy for the region in relation to the rest of Orientale Province and openly favoured the interests of the Hema community, thus reviving former conflicts over land.

[598] Interviews with the Mapping Team, Orientale Province, November 2008; Judicial Commission of Inquiry - Republic of Uganda, *Final Report on Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC 2001*, November 2002; Justice and Liberation group, "La guerre des alliés à Kisangani (5 mai-10 juin 2000)", 2000; Lotus group, "Les rivalités ougando-rwandaises à Kisangani: La prise en otage de la population civile", May 2000.

[599] Interviews with the Mapping Team, Orientale Province, November 2008 and February 2009; Report of the inter-agency assessment mission to Kisangani (S/2000/1153), appendix; IRIN, Weekly reports, May 2000 to June 2000; Judicial Commission of Inquiry - Republic of Uganda, *Final Report on Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC 2001*, November 2002; Justice and Liberation group, "La guerre des alliés à Kisangani (5 mai-10 juin 2000), 2000; Lotus group, *Report on the war in Kisangani*, 2000; Lotus Group, "Kisangani, Le visage de la fatalité", January 2001.

365. The Hema-Gegere farmers[600] who, a few years previously, had acquired new concessions from the land registry in the Djugu region, took advantage of the new political situation to enforce their rights. As the Lendu from the Walendu Pitsi[601] community, who held the customary rights to the land concerned, disputed the value of their title deeds, the Hema-Gegere farmers appealed to the courts and had the Walendu Pitsi expelled from the concessions they wanted. The latter refused to leave, however, and clashes broke out with the police officers who had come to remove them. Several senior Lendu, including the leaders of the Walendu Pitsi and Walendu Djatsi communities, were arrested for vandalism. In April 1999, the Hema-Gegere concession-holders paid UPDF and APC soldiers to attack the Lendu villages located in the disputed concessions.[602]

366. In this climate, the appointment in June 1999 of Adèle Lotsove, a Hema woman from the Djugu region,[603] as Governor of the new province of Kibali-Ituri,[604] was seen by the Djugu Lendu as a provocation. Her arrival in Ituri was accompanied by a deployment of Ugandan soldiers to the disputed concessions and the withdrawal of the police forces from the majority of the Djugu region. The Walendu Pitsi organised themselves into self-defence forces and confronted the UPDF soldiers and Hema self-defence forces created by the concession-holders in the Walendu Pitsi, Walendu Djatsi, Walendu Tatsi and Ndo Okelo communities. The Lendu and Hema self-defence forces quickly transformed themselves into community militias and people living in the Djugu region were subjected to a first campaign of ethnic cleansing, which resulted in hundreds of deaths. In this context, the Mapping Team documented the following alleged incidents.

- Between June and December 1999, UPDF and APC soldiers killed an unknown number of Lendu civilians in villages in the Djugu region close to the concessions claimed by the Hema-Gegere farmers. Villages in the Dz'na Buba, Linga, Jiba, Dhendo, Blukwa Mbi, Laudjo, Laudedjo Gokpa, Nyalibati and Gbakulu *groupements* were particularly badly affected. Most of the victims were Lendu but Hema were also killed during the attacks. Numerous victims died when their village was set on fire or following heavy arms fire directed at their homes. Some victims were shot dead at point-blank range.[605]

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[600] The term Hema-Gegere or Hema-Nord refers to the Hema in the northern part of the district and speaking the same language as the Lendu. Until 2002, they were allied to Hemas living in the southern part of the district (sometimes called Hema-Sud) although the latter did not speak the same language as them.

[601] In the remainder of the text, Lendu from the Walendu Pitsi community will be referred to by the term Walendu Pitsi.

[602] The chiefs of the Pitsi and Djatsi community were released in September 1999.

[603] Adèle Lotsove is a Hema woman from the Bahema-Badjere chiefdom in the Djugu region. She previously occupied the post of Vice-Governor of Orientale Province.

[604] The new province combined the districts of Ituri and Haut-Uélé.

[605] Interviews with the Mapping Team, Ituri, March 2009; Report of the Ituri Peacekeeping Committee, Bunia, August 1999; Document submitted to the Mapping Team on statistics for the Djugu region, March 2009.

- Between June and December 1999, members of the Lendu militia killed several tens of Hema-Gegere in the village of Libi from the Walendu Pitsi community and in the village of Fataki from the Walendu Djatsi community. These attacks led to the displacement of almost all the Hema-Gegere living in the Walendu Pitsi community.[606]

- From June 1999 onwards, the Lendu self-defence groups recruited large numbers of children to their ranks and used them during their attacks on Hema locations. They most often helped them to carry pillaged property.[607]

- On 20 June 1999, members of the Hema militias and UPDF soldiers killed at least 25 people, including several civilians, during an attack on the village of Dhendro, in the Walendu Pitsi community, on the border with the Dhendro *groupement*.[608]

- On 14 September 1999, members of the Lendu militias from the Walendu Pitsi community used edged weapons to kill several hundred Hema-Gegere, including a majority of civilians, during widespread attacks on locations in the Dhendro *groupement* in the Bahema-Nord community. Members of the militias also pillaged and set fire to tens of villages. The victims were buried in mass graves. According to several sources, the massacre took place in retaliation for an attack committed on 20 June by members of the Hema militias in the village of Dhendro.[609]

- On 14 September 1999, during a night-time offensive on the village of Fataki, in the Walendu Djatsi community, members of the Hema militias and Hema soldiers from the APC killed several tens of civilians with edged weapons, including at least 15 minors and several women. The assailants then buried the bodies themselves. Following the attack, all the Lendu left the village and Fataki became a Hema bastion in the Walendu Djatsi community.[610]

367. During the months that followed, members of the Lendu militias tried to regain control of Fataki on several occasions. For its part, the UPDF concentrated its troops on Fataki and Linga and led several offensives against Lendu militia bases in Kpandroma and Rethy, in the Walendu Djatsi community.

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[606] Interviews with the Mapping Team, Ituri, March and May 2009.

[607] Interviews with the Mapping Team, Ituri, March to April 2009.

[608] Interviews with the Mapping Team, Ituri, March 2009; Documents submitted to the Mapping Team in February and March 1999; *Special report on the events in Ituri* (January 2002-December 2003) [S/2004/573], MONUC; Report of the Ituri Peacekeeping Committee, Bunia, August 1999.

[609] Ibid.

[610] Interviews with the Mapping Team, Ituri, March 2009; Confidential document submitted to the Mapping Team in February 2009; Document submitted to the Mapping Team on the victims of the conflict, Ituri, March 2009.

368. During the period under consideration, the Lendu militias also attacked villages in the Djugu region on the shores of Lake Albert, the majority of which were populated by Hema.[611]

- In July 1999, members of the Lendu militias from the Buba group in the Walendu Pitsi community allegedly killed over 100 Hema civilians in the fishing village of Musekere in the Bahema-Nord community. Having encircled the village at dawn and forced six APC soldiers there to flee, they massacred the population using machetes and other edged weapons. From the start of the conflict, the Lendu leaders of the Buba *groupement* had threatened to attack the inhabitants of Musekere on several occasions.[612]

369. In October 1999, the RCD-ML set up a Peacekeeping and Monitoring Committee[613] and organised several inter-community meetings, which resulted in peace agreements being signed by the leaders of the different communities. Whilst the Peacekeeping Committee deployed in the north of the Djugu region succeeded in restoring calm to the region, however, confrontations broke out between Hema and Lendu militias in the south of the region in the Walendu Djatsi, Banyari Kilo, Mabendi, Mambisa and Ndo Okebo communities.

- On 1 December 1999, members of the Lendu militias confronted elements of the UPDF and members of the Hema militias over control of the mining town of Bambou, in the Walendu Djatsi community in the Djugu region. The fighting allegedly led to the deaths of over 200 members of the civilian population. Numerous victims were mutilated and the town looted. Most of the victims' bodies were thrown into the River Chari.[614]

370. At the end of 1999, Ugandan soldiers and senior members of the RCD-ML[615] tried to ease the conflict in the Djugu region. In November, the Ugandan President, Yoweri Museveni, met representatives of the Ituri communities. On 16 December, Adèle Lotsove handed over her post as Governor to Ernest Uringi Padolo, a member of the Alur community, which was seen as neutral in the Hema/Lendu conflict.[616] The sector

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[611] Ibid.

[612] Interviews with the Mapping Team, May 2009, ACIAR [*Australian Centre for International Agricultural Research*]-Justice Plus, "Tentative de paix, action humanitaire and bilan des affrontements sanglants entre Lendu (Bbale) et Hema (Gegere) en territoire de Djugu", August 1999–March 2000.

[613] The Committee was led by the academic Jacques Depelchin, a friend of the President of the RCD-ML, Wamba dia Wamba and the Ugandan President, Yoweri Museveni.

[614] Interviews with the Mapping Team, Ituri, April 2009; Confidential documents submitted to the Mapping Team in February 2009.

[615] In October 1999, the RCD-ML relocated its headquarters from Kisangani to Bunia.

[616] In numerical terms the Alur are the largest community in Ituri. In 1999, members of the Lendu militias had attacked members of the Alur community which were then supported by the Hema militias. In September 1999, however, following the peace agreement concluded in Rethy with the Lendu, the Alur distanced themselves from the Hema.

commander who had made UPDF soldiers available to the Hema-Gegere concession-holders to attack the Walendu Pitsi was replaced. These initiatives helped to restore calm to the district over the course of 2000, but did not put an end to the serious violations of human rights in the Djugu region. In this context, the Mapping Team documented the following alleged incidents.

- In January 2000, members of the Lendu militias from the Walendu Pitsi and Bahema-Nord communities attacked people living in the Blukwa *groupement*, killing several hundreds of Hema with edged weapons. The *groupement* had been the site of violent inter-ethnic confrontations since September 1999. The attack in January took place after the departure of APC troops, fleeing from the increasing violence.[617]

- On 26 April 2000, members of the Hema militias and UPDF troops attacked the Buba *groupement*, in the Walendu Pitsi community, causing around 10 deaths, the majority of whom were Lendu civilians.[618]

- Between 27 August and 12 September 2000, members of the Hema militias from Mangala, Ghele, Gele and Liko, sometimes acting with the support of the Hema APC soldiers, pillaged and set fire to several villages in the Walendu Djatsi community including Mbau (27 August), Glakpa and Gobi (28 August), Logai (29 August), the villages in the Dz'na *groupement* (31 August) and Mayalibo (6-12 September).[619]

8. Kasaï Occidental

371. Between March and July 1999, ANC/APR soldiers launched a vast offensive to take control of the provinces of Eastern and Kasai Occidental. In April, they captured the areas of Lodja and Lubefu, and the FAC fled towards Kananga, committing numerous atrocities and looting as they went. Between May and June, FAC and ZDF soldiers entered into violent confrontations with ANC/APR troops for the control of the Demba and Dimbelenge regions, north of Kanaga. People on both sides of the front line were subjected to numerous atrocities. Given the land-locked nature of the region and the lack of time, the Mapping Team was only able to document a limited number of incidents, which are reported below as representative of the violations committed during this period.

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[617] Interviews with the Mapping Team, Ituri, March 2009; ACIAR-Justice Plus, "Tentative de paix, action humanitaire and bilan des affrontements sanglants entre Lendu (Bbale) and Hema (Gegere) en territoire de Djugu", August 1999-March 2000; ASADHO, press release, "Affrontements sanglants entre Lendu and Hema", 7 February 2000; ASADHO, "Rapport sur le conflit interethnique Hema-Lendu en territoire de Djugu, dans la province Orientale", 7 December 1999.

[618] Interviews with the Mapping Team, Ituri, April 2009; Documents submitted to the Mapping Team in March 2009.

[619] Interviews with the Mapping Team Ituri, March and April 2009; Documents submitted to the Mapping Team in March 2009.

372. Having conquered and then lost the town on several occasions, ANC/APR soldiers finally took control of Dimbelenge on 30 June 1999. In this context, the Mapping Team documented the following alleged incidents.

- During the course of June 1999, elements of the FAC killed at least 36 civilians, including women, children and the President of the local Red Cross in the centre of the town of Dimbelenge, in the Lulua district. The killings took place after control of the town was temporarily regained by the FAC. The victims had been accused by the FAC of having collaborated with ANC/APR soldiers. Initially, the FAC locked all the inhabitants in a church, with the intention of killing them. An FAC soldier, however, who was later executed for his actions, opened the door of the church, allowing most of the inhabitants to escape. The soldiers set fire to numerous houses in the town before they left.[620]

- In June 1999, elements of the FAC based in Bibumba killed four civilians in Kankole, 32 kilometres from Katende, in the Dimbelenge region. The village had been occupied for a time by ANC/APR soldiers.[621]

373. In spite of the signature of the Lusaka Agreement in July 1999,[622] the ceasefire never came into effect. In September 1999 and March 2000, the ANC/APR launched several unsuccessful offensives in order to take control of the whole province. In this context, the Mapping Team documented the following alleged incidents.

- In September 1999, elements of the FAC killed at least 23 civilians, including women and children, in Kabinda Mukole in the Demba region. The FAC, coming from their base in Bena Leka, seven kilometres from Kabinda Mukole, had gone to the village to dislodge the ANC/APR soldiers there. Once they realised that the latter had already left, the FAC turned their attention to the civilians, whom they accused of having given shelter to ANC/APR soldiers. Before they left, they looted property and set fire to large numbers of houses.[623]

- Between September and October 1999, elements of the FAC killed three civilians, raped at least 13 women and subjected an unknown number of civilians to cruel, inhuman and degrading treatment in the town of Bena Leka in the Demba region.[624]

[620] Interviews with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.
[621] Interviews with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.
[622] For the text of the Agreement, see 1999 (S/1999/815), appendix.
[623] Interview with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.
[624] Interview with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.

- In September 1999, elements of the ANC/APR based in Katende killed four civilians, including the traditional chief of the village, in Tshinseleke, in the Dimbelenge region. The chief had been accused by a rival of storing weapons. The three other victims were blown up by mines after ANC/APR soldiers forced them to march across a minefield in front of their column.[625]

- In May 2000, elements of the FAC killed at least seven civilians in Bibumba, in the Demba region. Victims were executed for having protested against the atrocities and cruel, inhuman or degrading treatment inflicted by the FAC on the civilian population. According to witnesses, over the course of the period the FAC killed an unknown number of civilians in the neighbouring forest.[626]

9. Katanga

374. During the second half of 1998, ANC/APR troops launched an offensive to take control of North Katanga. On 26 August, they took control of the town of Kalemie, in the district of Tanganyika. A week later, elements of the FAC and groups of "Volunteers"[627] launched a counter-attack, but without success.

- On 3 September 1998, during the course of their attack on Kalemie, elements of the FAC and "Volunteers" allegedly summarily executed around 15 ANC/APR soldiers who were out of combat. Six of them were burned alive in the middle of the street. The FAC also killed six ANC/APR soldiers being treated at the General Hospital in Kalemie and a member of the medical staff (a nurse). An unknown number of civilians, the majority of them victims of stray bullets, died during the confrontations.[628]

375. The ANC/APR troops regained control of Kalemie on 4 September 1998 and conducted search operations for two days.

- Between 4 and 5 September 1998, elements of the ANC/APR arrested several dozen men in Kalemie, including "Volunteers" who had laid down their weapons and civilian non-combatants. Reportedly, some of them were killed immediately at various locations in the town, in particular avenue Lambo and avenue Maila and at the Catholic church in Lubuye. Around 60 men were taken first to military prisons and then to the central prison. After three days, several dozen of them

[625] Interview with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.

[626] Interview with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.

[627] The groups of "Volunteers" had been set up by the Government in Kinshasa immediately following the outbreak of the second war in order to enlist civilians and support the FAC against the ANC/APR.

[628] Interviews with the Mapping Team, Katanga, December 2008-February 2009; *Report on the situation of human rights in the DRC* (E /CN.4/1999/31), p. 37; AI, "DRC: The war against unarmed civilians", 1998, p. 5.

were taken out of the prison and summarily executed on a bridge over the River Lukuga. In total, the ANC/APR soldiers killed at least 84 people.[629]

376. After Kalemie had been taken back, the town became the principal logistics base for the ANC/APR in Katanga. Over the course of the following months and years, aircraft from the ZDF, which was allied to the FAC, bombarded the town on several occasions. In this context, the Mapping Team documented the following alleged incidents.

- From 1998 to 2003, ZDF soldiers carried out a number of raids on the town of Kalemie, causing the deaths of at least 25 civilians and wounding 13. The raids also destroyed numerous buildings.[630]

- In December 1998, elements of the ANC/APR summarily executed five civilians in the village of Kasenga, in the Manda community in the Moba region. The victims had been accused of collaborating with the FAC based in the chiefdom of Mutumbala. Three bodies were thrown into a ditch. Before they left, the soldiers set fire to several hundred houses and destroyed civilian property.[631]

- On 27 January 1999, three aircraft and a helicopter from the ZDF dropped several bombs on the town of Nyunzu, killing at least 14 civilians and wounding an unknown number of them. The bombings, which targeted ANC/APR positions, also destroyed large amounts of civilian property.[632]

377. Starting in February 1999, the ANC/APR launched a major offensive in order to take control of the Kongolo, Kabalo, Moba, Nyunzu, Manono and Malemba Nkulu regions. President Kabila brought ex-FAR/Interahamwe and Hutu combatants under the control of the ALiR into the area to support the FAC/ZDF/FDD already operating there, in the hope of blocking their advance. He also encouraged the formation, throughout the whole of Katanga, of civil self-defence militias or *Forces d'autodéfense populaires* (FAP) [local self-defence forces]; in rural areas, these took the form of Mayi-Mayi groups similar to those operating in North and South Kivu. During the period under consideration, the population of northern and central Katanga was taken hostage by different armed groups. The ANC/APR troops and to a lesser extent, those of the ALiR, FDD and Mayi-Mayi systematically massacred civilians suspected of collaborating with

[629] Interviews with the Mapping Team, Katanga, January-February 2009; Report submitted to the Mapping Team by the NGO ADDHELI, Kalemie, 6 March 2009; ASADHO, *RDC: Le pouvoir à tout prix. Répression systématique and impunité - Annual report*, 1998, p. 16; AI, "DRC: The war against unarmed civilians", 1998, p. 9.

[630] Interviews with the Mapping Team, Katanga, December 2008-March 2009; *Report of the Special Rapporteur* (A/56/327), par. 68; Memorandum from the group of victims of the bombings from 1998 to 2003, Kalemie, 13 June 2006; IRIN, "*Weekly Round-up*", 11 September 1998.

[631] Interviews with the Mapping Team, Katanga, January 2009.

[632] Interviews with the Mapping Team, Katanga, February 2009.

their respective enemies. In this context, the Mapping Team documented the following alleged incidents.

Kabalo region

- On 2 February 1999, elements of the ANC/APR killed between nine and eleven civilians, including children, in the village of Kadimbu-Tambo in the Luela-Luvunguyi community, 20 kilometres from Kabalo. They set fire to several houses prior to leaving the village. The soldiers had accused the inhabitants of collaborating with the Mayi-Mayi.[633]

- In early April 1999, elements of the ANC/APR based in Kabalo massacred at least 28 civilians in the villages of Kalanda, Kahompwa and Kakuyu, 95 kilometres from Kabalo. They killed several civilians in Kalanda, including the chief of Kahompwa. The inhabitants of Kalanda and Kahompwa who were able to escape took refuge in Kakuyu, where the FAC/ZDF soldiers were stationed. On 4 April, however, the FAC/ZDF fled and elements of the ANC/APR entered the village and killed the inhabitants, accusing them "of being Luba and brothers of President Kabila."[634]

- Starting on 4 April 1999 and over the following two weeks, elements of the ANC/APR massacred over 40 civilians, including women and children, in the villages of Ngoma, Kabamba, Pofu, Lwama, Rudisha, Mukila, Kiluwe, Kabambale and Ndala in the Munga *groupement*, in the Kabalo region. One case of rape and cases of bodily mutilation were also reported. The soldiers also engaged in pillaging and destroyed large amounts of civilian property. The victims had been accused of helping the Mufu 3 Mayi-Mayi group.[635]

- On 1 June 1999, elements of the ANC/APR massacred at least 23 civilians in the village of Mbayo in the chiefdom of Luela Luvunguyi, in the Kabalo region. The victims had gone to buy food in the government zone. The ANC/APR soldiers ambushed them and accused them of collaborating with the FAC based in the village of Nguena. Having subjected them to interrogation, they executed them by shooting them or beating them with hammers before throwing their bodies into a mass grave. It seems that elements of the ANC/APR operating in the Mbayo area committed numerous instances of these types of violation against civilians.[636]

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[633] Interviews with the Mapping Team, Katanga, February 2009.

[634] Interviews with the Mapping Team, Katanga, February 2009.

[635] Interviews with the Mapping Team, Katanga, November 2008; Anonymous document "La rébellion à Kongolo, août 1998-juillet 1999"; Document submitted to the Mapping Team on 24 February 2009: "Les faits saillants des incidents du territoire de Kabalo".

[636] Interviews with the Mapping Team, Katanga, February 2009; Document submitted to the Mapping Team on 24 February 2009: "Les faits saillants des incidents du territoire de Kabalo".

- In June 1999, elements of the FAC killed more than 50 civilians in the village of Kitule and the surrounding area, in the Lukuswa area of the Kabalo region. The village had been under ANC/APR control for several months. When they regained control of the village, the FAC killed at least 41 civilians, including representatives of the RCD-Goma and their families. The FAC then forced some 40 civilians to transport the property pillaged in Kitule to the village of Kyoto. Around ten of these civilians managed to escape, but the others have been recorded as missing since that time.[637]

- In July 1999, elements of the ANC/APR based in Boya killed at least 15 civilians in the village of Kabango in the Lwena Luvunguyi community, in the Kabalo region. They also looted civilian property and set fire to the village. The victims were arrested when they tried to return home, having fled from Kabango two days earlier following an attack by the FAC on their village. The victims had been accused of spying on behalf of the FAC.[638]

- On a Sunday in 2000,[639] elements of the ANC/APR summarily executed at least 11 civilians at the side of the road between Kabalo and Kakuyu, in the Kabalo region. The victims were from the village of Mulonga in the Luela-Luvunguyi community, in the Kabalo region. The soldiers were looking for members of the FAC who had laid a mine on the main road and caused the deaths of several of their comrades. The ANC/APR soldiers called the population in Mulonga together and arrested 12 young men whose haircuts or the gun marks on their shoulders gave the impression that they were FAC soldiers. They then forced them to follow them for over 20 kilometres before killing 11 of them (one of them managed to escape). The victims' bodies were thrown into a mass grave at the side of the road.[640]

Moba region

- On 4 March 1999, elements of the ANC/APR killed 84 civilians in the village of Lyapenda in the Manda community, in the Moba region. Accused of having collaborated with the FAC who had controlled the village until that point, the

[637] Interviews with the Mapping Team, Katanga, November 2008; Document submitted to the Mapping Team on 24 February 2009: "Les faits saillants des incidents du territoire de Kabalo".

[638] Interviews with the Mapping Team, Katanga, February 2009; Document submitted to the Mapping Team on 24 February 2009: "Les faits saillants des incidents du territoire de Kabalo".

[639] The information given to the Mapping Team by the witnesses to this incident was judged to be sufficiently precise and credible for it to be included in the report despite the fact that none of the witnesses was in a position to be more precise in respect of the date on which the violations took place. The Team subsequently tried, unsuccessfully, to establish a more precise date.

[640] Interviews with the Mapping Team, Katanga, November 2008.

victims were locked in two houses and then burned alive. Anyone who tried to escape was shot dead.[641]

- On 4 June 1999, elements of the ANC/APR killed at least 22 civilians in the village of Katwe in the Kapungo *groupement*, in the Moba region. The victims were locked in a house and then burned alive. The soldiers also committed rapes. The attack on Katwe took place after an ANC/APR officer was wounded by a mine exploding on the main road between Nyembe and Pepa.[642]

- On 3 July 1999, elements of the ANC/APR killed 48 civilians in the village of Mazembe in the Manda community, in the Moba region. The massacre took place after a vehicle transporting ANC/APR troops was blown up by a mine not far from the village of Lyapenda. Having accused the civilians there of giving information to the FAC and FDD operating in the region, the ANC/APR soldiers locked them in huts and set fire to them. Most of the victims worked for the livestock breeding company ELYGMA but there were also around ten children among them. Some of the victims were shot rather than being burned alive. The fire started by the soldiers also destroyed ELGYMA's buildings.[643]

- In July 1999, elements of the ANC/APR killed at least ten civilians in Katimbe, a village close to Kasanga, in the chiefdom of Kayabala, in the Moba region. When they arrived in the village, the soldiers assembled the civilians and accused them of helping the FAC by providing them with food. They shot anyone who tried to escape and then assembled the civilians in a house and set fire to it. The village was burnt to the ground.[644]

[641] Interviews with the Mapping Team, Katanga, January 2009; Report from the Socimo submitted to the Mapping Team on 2 March 2009.

[642] Interviews with the Mapping Team, Katanga, January 2009; Report from the Socimo submitted to the Mapping Team on 2 March 2009.

[643] Interviews with the Mapping Team, Katanga, January/March 2009.

[644] Interviews with the Mapping Team, Katanga, January/February 2009.

Kongolo

- Between March and November 1999, in the village of Sola, 30 kilometres north of Kongolo and its surrounding area, members of the Mayi-Mayi killed at least eight civilians. The Mayi-Mayi had regained control of Sola in March. Accused of having supported the ANC/APR, the victims were executed following a travesty of a trial before the head medicine man. Most were tortured and mutilated to death in front of the people. The medicine man used certain parts of the body (lips, nose, ears, genitals, buttock and part of the thorax) to make charms that were supposed to protect the Mayi-Mayi from bullets. Witnesses were able to give the names of eight victims, but the real number of those tortured is probably much higher.[645]

378. In March 1999, the Mufu 3 Mayi-Mayi succeeded in regaining control of the town of Kongolo for three days. As they retreated, they dispersed into the Munga *groupement*. In April, the ANC/APR launched a military operation in the *groupement* in order to neutralise the Mayi-Mayi. In this context, the Mapping Team documented the following alleged incidents.

- On 21 April 1999, elements of the ANC/APR massacred 58 people, including civilians and Mayi-Mayi, in the village of Kasanga in the Mohona community. The soldiers were trying to get to Nonge, where the Mufu 3 Mayi-Mayi leader had set up his headquarters. When they arrived in Kasanga, where the Mufu 3 Mayi-Mayi had a small base, someone allegedly fired into the air to alert the inhabitants. The ANC/APR soldiers immediately opened fire on the population, indiscriminately killing Mayi-Mayi who were out of combat as well as civilians, including a child. Elements of the ANC/APR also pillaged and set fire to the village before moving on to Nonge.[646]

- Also on 21 April 1999, elements of the ANC/APR killed at least 17 civilians and set fire to part of the village of Nonge in the Mohona community, in the Kongolo region. Nonge was the headquarters of the Mufu 3 but most of the Mayi-Mayi had fled the village before the soldiers arrived.[647]

- On 9 May 1999, ANC/APR soldiers coming from Kongolo massacred at least 125 civilians, including large numbers of children, in the village of Tubundu, six kilometres from Makutano, in the Mambwe community in the Kongolo region. The ANC/APR soldiers were looking for the chief of the Mambwe community, whom they had accused of collaborating with the Mayi-Mayi. Having failed to

[645] Interviews with the Mapping Team, Katanga, November 2008.

[646] Interviews with the Mapping Team, Katanga, November 2008.

[647] Interviews with the Mapping Team, Katanga, November 2008; Anonymous document "La rébellion à Kongolo, août 1998-juillet 1999".

find him, they killed the chief of Tubundu, the medicine man and members of his family. They subsequently assembled the civilians in the centre of the village and opened fire. The soldiers set fire to the village before they left. Two weeks later, the victims' bodies were buried in mass graves with the help of the Red Cross. The village was rebuilt on another site nearby.[648]

379. From May 1999 onwards, during their operations against the Mayi-Mayi in the region, ANC/APR soldiers killed numerous civilians in the Yambula community, in the Kongolo region. They also looted and set fire to over 20 villages. In this context, the Mapping Team documented the following alleged incidents.

- In Nungu, on 12 May 1999, elements of the ANC/APR surprised villagers meeting at the home of the village chief and opened fire, killing 14 civilians. The victims had been accused of meeting to help the Mayi-Mayi. In May, the soldiers looted and set fire to the villages of Mwana Kasongo, Nungu, Kwenze, Mayenze, Tuta, Kaulo, Mwana Tambwe, Ngamba and Toileti. In November, they killed at least two civilians in Imba and one in Mukoko and set fire to numerous villages including Imba 1, Imba 2, Imba 3, Kalawa, Mesu, Kabenge, Muti, Mukoko, Kilongo, Seba and Himba.[649]

- On 23 March 2000, elements of the ANC/APR executed five civilians at Moza Block 1, 20 kilometres from Kongolo. The victims had been accused of collaborating with the Mayi-Mayi.[650]

- On 23 March 2000, elements of the ANC/APR killed 34 unarmed civilians and wounded one in Moza, a village in the Bayashi community in the Kongolo region. Having been arrested by an ANC/APR patrol, the victims were accused of collaborating with the Mayi-Mayi. They were then locked in a house and burned alive. Anyone who tried to escape was shot dead, except for two civilians who survived the killing.[651]

- On 10 October 2000, elements of the ANC/APR burned 11 civilians alive in the village of Nindila, in the area around Sola, 30 kilometres north of Kongolo. The victims were part of the group of villagers who had responded to the call by the ANC/APR soldiers to assemble in the village square. Having accused the victims of collaborating with the Mayi-Mayi, the ANC/APR soldiers locked them in a

[648] Interviews with the Mapping Team, Katanga, November 2008 and February 2009; Letter from the Great Chief of the Bena Mambwe to the President of the Republic, "Mémorial du massacre de 125 innocents à Tubundu", 15 April 2006; Lieve Joris, "L'heure des rebelles", Actes Sud, 2007, p. 193 to 195.

[649] Interviews with the Mapping Team, Katanga, November 2008; Anonymous document "La rébellion à Kongolo, août 1998-juillet 1999".

[650] Interviews with the Mapping Team, Katanga, November 2008.

[651] Interviews with the Mapping Team, Katanga, November 2008.

thatched hut and set fire to it. In early October 2000, the Mayi-Mayi in Sola had ambushed and killed an ANC/APR commander.[652]

Nyunzu

380. The Nyunzu region was under the control of ANC/APR troops. From April 1999 onwards, Mayi-Mayi allied to elements of the ALiR tried to chase elements of the ANC/APR out of the community of Nord-Lukuga. In this context, the Mapping Team documented the following alleged incidents.

- In April 1999, elements of the ALiR set fire to the villages of Sulumba, Lwazi, Mpende and Mufunqwa in the community of Nord-Lukuga, in the Nyunzu region. Members of the militia had accused the inhabitants of these villages of collaborating with elements of the ANC/APR based in Lengwe.[653]

- During the first half of 1999, the Mayi-Mayi burned the village of Lengwe and killed seven civilians in Katuko.[654]

- In January 2000, elements of the ANC/APR killed several tens of civilians, including women and children, in the village of Makele in the community of Sud-Lukuga, in the Nyunzu region. Some of the victims were shot, others killed with edged weapons and others burned alive in their houses. Several of those who tried to escape were drowned crossing the River Lweyeye. The names of 51 victims were able to be identified, amongst them the Mayi-Mayi leader Kapata. The ANC/APR soldiers also pillaged civilian property and set fire to the village before withdrawing. After the arrival of the ANC/APR in the region, at the end of 1998, Makele had provided shelter for numerous displaced people from Mulongo and Mabilibili and was also used as a base for the Mayi-Mayi groups in the region. The ANC/APR made no distinction between civilians and the Mayi-Mayi during their attack. The village has not been rebuilt.[655]

- On 27 February 2000, elements of the ANC/APR killed 12 pygmies (four civilians and eight ex-Mayi-Mayi who had laid down their weapons) in the village of Nyemba, 39 kilometres from Nyunzu, in the community of Nord-Lukuga. The execution took place whilst the ex-Mayi-Mayi victims were being transferred to the ANC/APR base in Kabeya Mayi, 34 kilometres from Nyunzu. These Mayi-Mayi had long been in conflict with the ANC/APR and were collaborating with elements of the ALiR. Since 2000, the authorities of the RCD-Goma had managed to persuade the Mayi-Mayi in the area to lay down their weapons.[656]

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[652] Interviews with the Mapping Team, Katanga, November 2008.
[653] Interviews with the Mapping Team, Katanga, February 2009.
[654] Interviews with the Mapping Team, Katanga, February 2009.
[655] Interviews with the Mapping Team, Katanga, February 2009.
[656] Interviews with the Mapping Team, Katanga, February 2009.

- On 5 March 2000, pygmy Mayi-Mayi, including survivors of the killing in Nyemba on 27 February 2000, attacked the village of Mpende, in the community of Nord-Kukuga, killing nine civilians and wounding six with poisoned arrows. These Mayi-Mayi from Kitengetenge and their leader Katengu had accused the inhabitants of Mpende of having helped the ANC/APR to kill ex-Mayi-Mayi pygmies a few days earlier. The Mayi-Mayi also set fire to several houses in the village during the attack.[657]

- In May 2000, elements of the ANC/APR killed 11 civilians, including a woman and child, in the villages of Misimbe and Makuikui in the community of Nord-Lukuga. The killing took place two kilometres from the village of Mpende after the Mayi-Mayi had ambushed elements of the ANC/APR based in Lengwe and Kabeya-Mayi. After several exchanges of fire, the Mayi-Mayi fled but elements of the ANC/APR followed them into the villages of Misimbe and Makuikui, where they fired on civilians.[658]

- On 10 July 2000, in Kalundu, in the community of Nord-Lukuga, elements of the ALiR killed two civilians, including the chief of the village, who had refused to accompany them.[659]

- In October 2000, elements of the ANC killed four civilians, including a child, in the village of Bulolo in the Sud-Lukuga area, in the Nyunzu region. The victims had gone to harvest manioc in their fields in the village of Bwana when they were arrested by an ANC/APR patrol. The victims were taken to Bulolo and killed with edged weapons; their bodies were then burnt.[660]

- On 15 November 2000, Mayi-Mayi killed three civilians, including the chief of the village, and wounded one in Kilya after the villagers had gone to complain to the captain in charge of the ANC/APR soldiers in Nyunzu about a rape committed by the Mayi-Mayi.[661]

- On 3 December 2000, elements of the ANC/APR killed between 12 and 16 civilians, including at least two children, in Kasandwe, 14 kilometres from Nyunzu. The soldiers were looking for the members of the ALiR who, the day before, had killed a civilian accused of collaborating with the ANC/APR in the village of Pilipili, seven kilometres from Nyunzu. Having failed to find the ALiR involved in the killing, the soldiers went on to Kasandwe. Having accused the

[657] Interviews with the Mapping Team, Katanga, February 2009.
[658] Interviews with the Mapping Team, Katanga, February 2009.
[659] Interviews with the Mapping Team, Katanga, February 2009.
[660] Interviews with the Mapping Team, Katanga, February 2009.
[661] Interviews with the Mapping Team, Katanga, February 2009.

local population of collaborating with the members of the ALiR, they killed the civilians with sticks and edged weapons and then burned the victims' bodies.[662]

- On 12 December 2000, elements of the ALiR killed three civilians in the village of Kalenge, eight kilometres from Nyunzu. The members of the militia had criticised the victims for having provided the ANC/APR soldiers with information on their military positions.[663]

- During the night of 12 to 13 January 2001, Mayi-Mayi and elements of the ALiR killed between five and seven civilians in the village of Lipenda and the bivouac in Nathanali, six kilometres from Nyunzu. The Mayi-Mayi based in Lukunde had accused the victims of having sheltered elements of the ANC/APR in their homes and given them palm wine.[664]

- On 23 January 2001, elements of the ALiR accompanied by pygmy Mayi-Mayi killed seven men and stripped 20 women in the area around the village of Biengele, two kilometres from Nyunzu, on the main road to Kongolo. The assailants had accused the victims of having given food to the ANC/APR troops.[665]

Malemba Nkulu

- During the night of 19 to 20 July 1999, elements of the ANC/APR killed at least 11 civilians, including seven children, in the village of Kasala in the chiefdom of Museka, in the Malemba Nkulu region. On their arrival in Kasala, the soldiers threatened the occupants of a house that they would kill them if they did not give them money. They then set fire to the house and shot the occupants. Seven civilians, including four children, died the same day. Three children aged 4, 6 and 8 years were seriously burned and died a few days later.[666]

- Between 1999 and 2001, elements of the ANC/APR killed at least 52 civilians in Mulongo, in the Malemba Nkulu region. The people surprised when they crossed the River Congo to get to the left bank, occupied by the FAC, and the Mayi-Mayi on the right bank, controlled by the ANC/APR, had been accused of being Mayi-

[662] Interviews with the Mapping Team, Katanga, February 2009.

[663] Interviews with the Mapping Team, Katanga, February 2009.

[664] Interviews with the Mapping Team, Katanga, February 2009.

[665] Interviews with the Mapping Team, Katanga, February 2009.

[666] Interviews with the Mapping Team, Katanga, January 2009; *Report of the Special Rapporteur* (A/54/361), par.101; Syfia RD Congo, "Le calvaire des déplacés katangais", 1 September 1999; Kalenge Yamukena Yantumbi, *Le Nord-Katanga à feu and à sang,* Kyamy Network Editions, Lubumbashi, 2004; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000.

Mayi and were systematically killed. The bodies of some of the victims were thrown into wells.[667]

- On 24 November 2000, elements of the FAC summarily executed nine people, including one of the founders of the AFDL, Commander Anselme Masasu. Arrested in Kinshasa at the end of October, the victims were held for over two weeks in the GLM building in Kinshasa in cruel, inhuman or degrading conditions. On 21 November, accompanied by around 40 other people accused of preparing a coup d'état against President Kabila, they were transferred to ANR prisons in Lubumbashi. On 22 November, the victims and other accused were taken to the village of Cantonnier, about 20 kilometres from the town. Having been condemned to death at the end of a summary trial by the Military Court sitting in Cantonnier specifically for this purpose, the victims were shot. Following the publication of a press release about the case by the ASADHO on 2 December, several human rights activists were arrested in early 2001. The ASADHO's senior official in Katanga was arbitrarily detained and tortured for several months in the GLM building.[668]

10. Équateur

381. In November 1998, a new rebellion, the Mouvement pour la libération du Congo (MLC) began with support from Uganda. Led by Jean-Pierre Bemba Gombo, in the early days the MLC had just one battalion consisting mainly of ex-FAZ soldiers supported by elements of the UPDF. In a few months, however, the MLC army, the Armée de libération du Congo (ALC) added numerous ex-FAZ to its ranks and took control of several urban areas in the north of Équateur province. The town of Bumba fell on 17 November, the town of Lisala on 10 December, the village of Businga, on the crossroads to the towns of Gemena and Gbadolite on 20 December, the town of Gemena on 24 December and the village of Libenge, in the far west of the province, on the border with the Central African Republic, on 4 January 1999. The FAC conducted very intense air bombardments in December 1998 to block the advance of the ALC/UPDF. In this context, the Mapping Team documented the following alleged incidents.

- On 22 December 1998, an FAC Antonov dropped 11 home-made bombs on the village of Businga, killing five civilians. On 24 December, an FAC Antonov plane bombed the village a second time, killing two civilians.[669]

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[667] Interviews with the Mapping Team, Katanga, December 2008; Confidential document submitted to the Mapping Team in 2008.

[668] Interviews with the Mapping Team, Katanga/Kinshasa, February 2009; *Report of the Special Rapporteur* (A/56/327), par. 32; Actualités en RDC, "Commandant Anselme Masasu Nindaga: La VSV exige la copie du jugement de l'exécution", 21 March 2001. Available at: http://web.peacelink.it/dia/sommar/mar_21_2001.txt; AI, "From assassination to state murder?", 12 December 2002.

[669] Interviews with the Mapping Team, Kinshasa, February 2009.

- On 25 December 1998, an FAC plane Antonov bombed the town of Gemena, lightly wounding two civilians. On 28 December, an FAC Antonov plane indiscriminately dropped several home-made bombs on Gemena, killing at least 27 civilians.[670]

382. At the same time, the FAC, elements of the Armée nationale tchadienne (ANT) and others from the ALiR launched a land-based counter-offensive. During the operation, FAC/ANT/ALiR soldiers committed serious violations directed at civilians whom they considered to be hostile to the regime of President Kabila and accomplices of the ALC. In this context, the Mapping Team documented the following alleged incidents.

- On 28 December 1998, elements of the FAC killed at least four civilians in the forest surrounding the village of Businga. An eye witness reported that one of the victims, an injured woman, was shot and killed by an FAC soldier. The previous day, the FAC/ANT/ALiR had chased the ALC/UPDF from the village, causing the civilians to flee into the forest.[671]

- On 9 January 1999, elements of the ANT set fire to 55 houses and 18 civilians were burned alive in Boyasegbakole I in the Gemena area. The massacre took place on the fringes of the confrontations between the ANT and ALC/UPDF for the control of Gemena.[672]

- Around 10 January 1999, elements of the FAC and units of President Kabila's Presidential Guard known as the PPU[673] killed 25 people, including six women, in the village of Nduma, around 100 kilometres from Zongo. The bodies of the victims were thrown into wells. Around the same date, elements of the FAC/PPU killed 15 inhabitants of the village of Mase, two kilometres from Nduma. Some victims were burned alive, whilst others were shot dead.[674]

- On 29 March 1999, in the Businga region, elements of the FAC/ANT/ALiR looted the IME Loko development centre, the hospital between Businga and Gbadolite and property belonging to the Evangelical Community of Ubangi-Mongola (CEUM).[675]

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[670] Interviews with the Mapping Team, Équateur, April 2009.

[671] Interviews with the Mapping Team, Kinshasa, February 2009.

[672] Interviews with the Mapping Team, Équateur, April 2009; Confidential document submitted to the Mapping Team, March 2009.

[673] The "Presidential Protection Unit" later became the Groupe spécial de sécurité présidentielle (GSSP) [Presidential Special Security Group].

[674] Interviews with the Mapping Team, Kinshasa and Équateur, February, March and April 2009; AFP [Agence France-Presse], *DRC troops massacre 300 civilians*, 13 January 1999; AI, *Killing human decency*, 2000, p. 10.

[675] Interviews with the Mapping Team, Équateur, April 2009.

383. After the ALC/UPDF troops had withdrawn to Lisala, the FAC/ANT/ALiR soldiers continued their offensive and arrived in Umangi during the night of 23 to 24 February 1999. On 24 February, the FAC attacked the town of Lisala. In this context, the Mapping Team documented the following alleged incidents.

- On 24 February 1999, elements of the FAC/ALiR shot and killed three civilians in the village of Umangi and a fourth in the village of Edjeke, less than 20 kilometres from Lisala.[676]

- Between 24 and 26 February 1999, the FAC/ANT/ALiR and ALC/UPDF shelled the town of Lisala, killing at least 15 civilians.[677]

384. On 26 February 1999, ALC/UPDF troops regained control of Lisala, forcing the FAC/ANT/ALiR to withdraw to Umangi.

- On 26 February 1999, elements of the FAC/ANT/ALiR killed three civilians as they withdrew to Umangi in the village of Bopuo, seven kilometres from Lisala.[678]

- On 28 February 1999, elements of the FAC/ANT/ALiR killed seven civilians in the village of Ngonzi-Rive, nine kilometres from Lisala. The victims, who had been taken hostage the day before, were executed in front of the school complex building in Ngonzi-Rive. One of the victims was killed for having claimed the bicycle the soldiers had taken from him.[679]

385. During the following months, violent fighting broke out between elements of the FAC/ANT/ALiR and the ALC/UPDF around Businga and Kateke, two villages in the district of Nord-Oubangui. The fighting resulted in heavy losses on both sides. In this context, the Mapping Team documented the following alleged incidents.

- On 28 May 1999, 12 kilometres from Businga, elements of the ALC/UPDF executed an ALiR member who was no longer able to fight. Numerous witness statements indicate that the ALC soldiers cut off the lips of Chadian prisoners. Cases of prisoners being summarily executed and mutilated were very frequent.[680]

[676] Interviews with the Mapping Team, Équateur, April 2009.
[677] Interviews with the Mapping Team, Équateur, April 2009.
[678] Interviews with the Mapping Team, Équateur, April 2009.
[679] Interviews with the Mapping Team, Équateur, April 2009.
[680] Interviews with the Mapping Team, Kinshasa, February-March-April 2009.

- In May 1999, whilst they were withdrawing from Congolese territory, elements of the ANT pillaged large amounts of civilian property and several tonnes of coffee in the town of Zongo in the district of Sud-Oubangui.[681]

386. Taking advantage of the withdrawal of ANT troops and the arrival of reinforcements from the recruitment and training camps, ALC/UPDF soldiers launched a second major offensive in May 1999. In three months, ALC/UPDF troops regained control of the towns of Kateke (27 April 1999), Businga (14 May 1999) and Gbadolite (3 July 1999). As they retreated, elements of the FAC/ALiR carried out deliberate attacks on civilians, either because they were accused of collaborating with ALC/UPDF soldiers or in order to provide an opportunity to loot their property. In this context, the Mapping Team documented the following alleged incidents.

- On 10 May 1999, elements of the FAC/ALiR killed three minors between Businga and Loko. An unknown number of civilians were also killed in the villages of Bokosa, Bogbudu, Bobusu and Bobale.[682]

- In June 1999, elements of the FAC/ALiR killed at least eight civilians in Inke, a village 50 kilometres from Gbadolite.[683]

- Towards the end of July 1999, elements of the FAC killed between 32 and 45 civilians in the village of Bogwaka, south of Gemena. The victims, who belonged to a group of young choir members from the village of Bogon, were heading for Akula to enlist in the ALC. When they arrived in Bogwaka, in the Gemena region, the victims were intercepted by the FAC. Assuming the FAC were ALC soldiers, the victims told them they wanted to enlist in the army of the MLC. The civilians were led to the house of the FAC commander and executed one by one. The bodies were buried in Bogwaka in a mass grave behind the house used by the FAC commander at the time.[684]

387. In June 1999, the ALC/UPDF troops took control of Bongandanga, a town south of Lisala. Elements of the FAC, belonging to a battalion nicknamed "Robot" because of the uniforms and equipment used by the soldiers, beat a retreat towards Djolu. In this context, the Mapping Team documented the following alleged incidents.

- Before leaving Bongandanga, elements of the FAC Robot battalion killed two civilians behind the Bongandanga Institute. The victims had been accused of belonging to the ALC.[685]

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[681] Interviews with the Mapping Team, Équateur, April 2009.

[682] Interviews with the Mapping Team, Kinshasa, March/April 2009; Action humanitaire du Congo, "Situation des graves violations des droits humains dans le Nord-Équateur", 4 April 2009.

[683] Ibid.

[684] Interviews with the Mapping Team, Équateur, April 2009.

[685] Interviews with the Mapping Team, Équateur, March-April 2009.

- In July 1999, elements of the Robot battalion kidnapped 36 women in the village of Bolima-Likote, halfway between the Bongandanga and Djolu regions, and raped them in the forest.[686]

- In July 1999, elements of the Robot battalion killed six civilians and set fire to the village of Djilingi, the administrative centre of the Likote *groupement*.[687].

388. In spite of the signature of the Lusaka Agreement by all parties to the conflict,[688] none of them respected the ceasefire in Equateur province. In the hope of blocking the advance of ALC/UPDF troops towards Mbandaka, the FAC restarted their air raids over the region, using hand-made bombs. In this context, the Mapping Team documented the following alleged incidents.

- On 4 August 1999, an FAC Antonov carried out an air raid on Makanza, in the Basankusu territory, killing an unknown number of civilians.[689]

- After the town had been captured by ALC/UPDF troops, on 30 November 1999, the FAC bombed Basankusu on several occasions, killing an unknown number of civilians.

- Around 9 November 1999, having regained control of the village of Mbombe, between Dongo and Imese, elements of the FAC killed 17 people in Mbombe. The victims had been accused of supporting the MLC.[690]

389. On 23 February 2000, violent fighting broke out between the FAC and ALC/UPDF troops around Bolomba. As they retreated, the FAC turned on the civilian population on at least three occasions. In this context, the Mapping Team documented the following alleged incidents.

- On 24 February 2000, elements of the FAC based in Likwelo shot dead five civilians in the Bolomba region. The victims had come from Likwelo to Bolomba in order to sell fish, but the soldiers accused them of collaborating with the MLC. The Chief of Likwelo was one of the victims.[691]

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[686] Interviews with the Mapping Team, Équateur, March-April 2009.

[687] Interviews with the Mapping Team, Équateur, March-April 2009.

[688] For the text of the agreement, see S/1999/815, appendix.

[689] Interviews with the Mapping Team, Équateur, April 2009; IRIN, "Bemba Waiting for Chiluba Reply Over Bombings", 6 August 1999; AI, *Killing human decency*, 31 May 2000, p. 11.

[690] Interviews with the Mapping Team, Équateur, April 2009.

[691] Interviews with the Mapping Team, Équateur, April 2009.

- On 25 February 2000, elements of the FAC shot six civilians in Eliki, 23 kilometres from Bolomba. The executions took place following a summary judgment passed after a travesty of a trial that condemned the victims to death because of their support of the MLC. The victims had been arrested by the FAC on 24 February with nine other civilians from Boso-Nzote and taken by jeep to Eliki. The nine other civilians had managed to escape, having distracted a soldier who was supposed to be guarding them. The six victims were buried in two mass graves in the village of Eliki.[692]

- On 3 March 2000, elements of the FAC based in Maponga buried two women alive in the village of Bobganga. The victims had been accused of collaborating with the MLC.[693]

- On 25 February 2000, following their retreat from the village of Lotoko, elements of the FAC/ALiR shot nine civilians from Mompanga and Mange, two villages on the main road between Basankusu and Boende, in the Befale region. The victims had been accused of supporting the MLC. They were executed one-by-one, close to the FAC/ALiR camp in Mange. Some of the victims were shot and others clubbed to death; one of them was asphyxiated. The Chief of Mompanga was one of the victims.[694]

- At the end of February 2000, the same elements of the FAC/ALiR raped around 20 women in Mange, one of whom died from injuries sustained during the rape. They also kidnapped an unknown number of women, including one minor, and used them as sex slaves for several months. [695]

390. According to some sources, some of the perpetrators of the crimes committed around Mange were summarily judged at the Military Court in Boende and then executed.

391. In early May 2000, the ALC/UPDF troops gained control of the village of Buburu, on the River Oubangui. In July, the FAC regained control of all the villages as far as Libenge by mounting heavy artillery on boats. Numerous civilians living in the villages along the riverbank were indiscriminately killed by the bombardments.

- Around the end of May 2000, elements of the FAC allegedly killed seven boys in the village of Buburu because they had refused to hand over their bicycles. The victims' bodies were thrown into the Oubangui.[696]

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[692] Interviews with the Mapping Team, Équateur, April 2009.

[693] Interviews with the Mapping Team, Équateur, April 2009.

[694] Interviews with the Mapping Team, Équateur, April 2009; MSF, *RDC, Silence on meurt, Témoignages*, L'Harmattan, 2002.

[695] Ibid.

[696] Interviews with the Mapping Team, Équateur, April 2009.

392. On 9 August 2000, a UPDF tank is said to have fired on a boat transporting FAC soldiers and at least several dozen soldiers drowned near the Protestant Mission in Kala, a village 30 kilometres from Libenge:

- Between 20 July and 10 September 2000, elements of the 10th Brigade of the FAC executed tens of civilians in the village of Dongo. On 21 July, the soldiers first arrested and executed the civilians who were still in the village when they arrived. During the days that followed, they arrested and executed the civilians who had fled into the bush and who had finally agreed to return. The killings ceased on 10 September when the ALC/UPDF regained control of Dongo. The bodies of the victims were placed in a number of mass graves opposite the area office on avenue Mbenga, close to the market, on the road between Dongo and Ikwangala. On 14 September, the MLC brought several international journalists to the area so that international public opinion would become aware of the massacres.[697]

[697] Interviews with the Mapping Team, Kinshasa and Équateur, April 2009; Ian Fisher, "Congo's War Triumphs over Peace Accord", New York Times, 18 September 2000; Voice of America, "Congo Rebels", 14 September 2000.

CHAPTER IV. JANUARY 2001–JUNE 2003: TOWARDS TRANSITION

393. Following the assassination of Laurent-Désiré Kabila on 16 January 2001 and his replacement by his son Joseph Kabila, a new phase of the conflict began. The belligerents agreed to implement a plan to withdraw their forces and start preparing for the Inter-Congolese Dialogue (ICD). From March 2001 onwards, MONUC's military observers were able to be deployed along the front line and consolidate the ceasefire.

394. In the provinces of North and South Kivu, however, the war continued between Kabila's Government (the Mayi-Mayi groups, FDD and ALiR) and the soldiers of the ANC, (the armed wing of the RCD-Goma), and the Rwandan soldiers of the APR.

395. In Orientale Province, the efforts made by Uganda to unite its two allies, the RCD-ML and the MLC, failed. After the RCD-ML rallied to the Government in Kinshasa, the ALC (the army of the MLC) and the ANC stepped up their attacks on the army of the RCD-ML, the APC. The attacks were designed to prevent the government army of the FAC from regaining a foothold in North Kivu and Orientale Province through its new ally, the RCD-ML.

396. In spite of reluctance on both sides, the Inter-Congolese dialogue began on 25 February 2002 in Sun City (South Africa). On 19 April, President Joseph Kabila and the head of the MLC, Jean-Pierre Bemba, announced the conclusion of a framework power-sharing agreement for which they gained the support of most of those involved in the Dialogue, except the RCD-Goma and several parties from the unarmed political opposition, including the UDPS.

397. On 30 July 2002, the Congolese and Rwandan Presidents signed a peace agreement in Pretoria, providing for the withdrawal of Rwandan troops from Congolese territory in return for the dismantling of the ex-FAR/Interahamwe and Hutu armed groups within the *Forces démocratiques de libération du Rwanda* (FDLR[698]).[699] At the same time, the Government in Kinshasa concluded a peace agreement with Uganda in Luanda on 6 September, providing for the withdrawal of Ugandan troops from the Congo and the re-establishment of peace in the Ituri district.[700] Starting in September 2002, Zimbabwean, Angolan, Namibian, Rwandan and Ugandan troops began to withdraw from Congolese territory. Under intense international pressure, the various elements and entities involved in the Inter-Congolese Dialogue finally signed the Global and All-Inclusive Agreement in Pretoria on 17 December 2002.[701] In spite of the continued fighting in North and South Kivu, the deterioration in the security situation in North

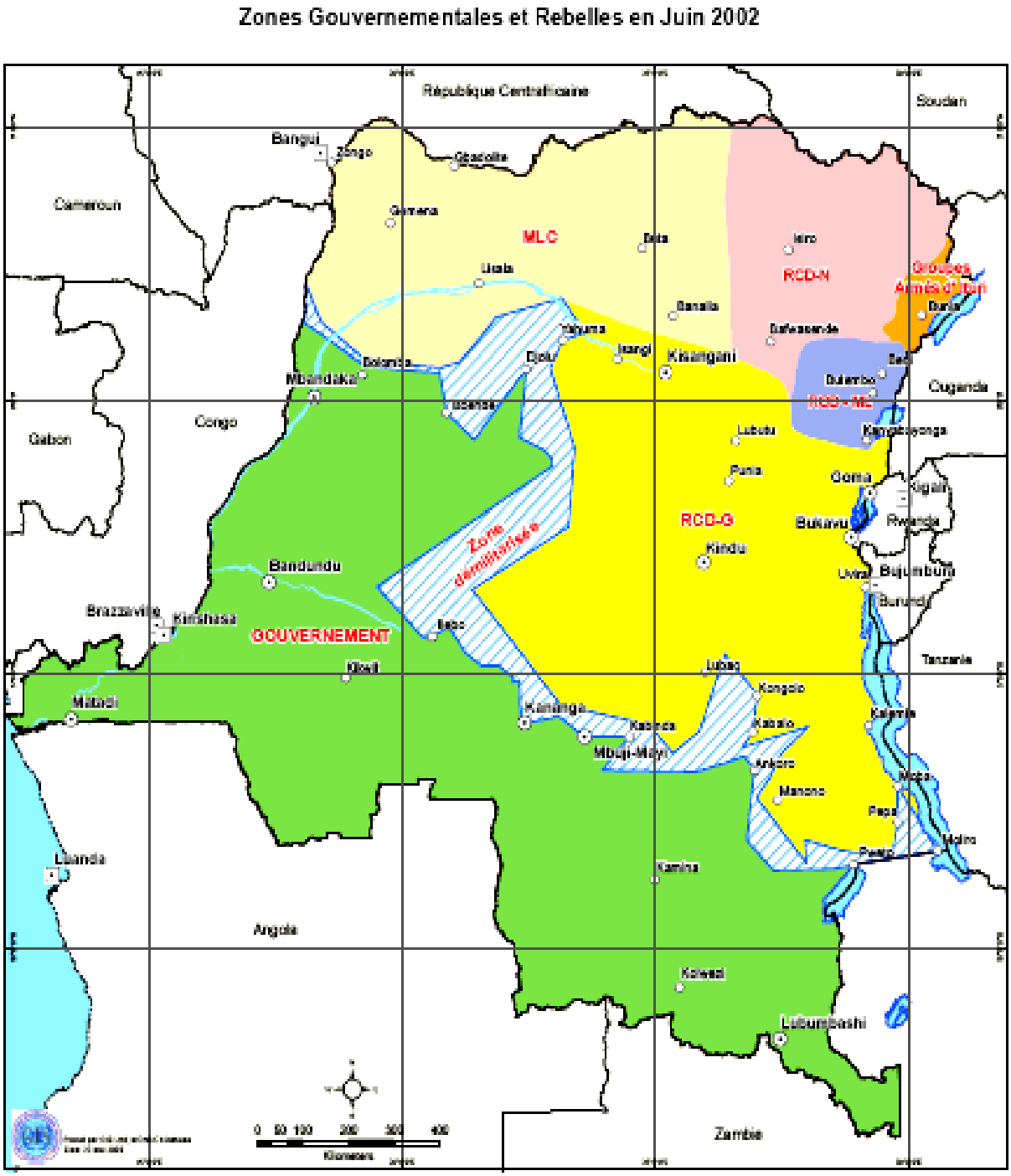
[698] The ALiR was dissolved as part of the FDLR at the end of 2000.

[699] For the text of the Agreement, see S/2002/914, appendix.

[700] Available at the following address: www.droitcongolais.info/files/0426_accord_du_6_septembre_2002_rdc-ouganda_r.pdf.

[701] Available at the following address: http://democratie.francophonie.org/IMG/pdf/VII.1.pdf.

Katanga and the intensification of the war between the different militias in Ituri, the participants in the Inter-Congolese Dialogue ratified the Global and All-Inclusive Agreement in Sun City (South Africa) on 1 April 2003 along with an additional memorandum on the integration of the various armed groups into a single national army. The transition institutions were officially put in place on 30 June 2003.



Government and Rebel Zones, June 2002

A. Orientale Province

398. From January 2001 to June 2003, in spite of acceleration in the pace of the peace negotiations, the situation did not improve for those living in Orientale Province. In the area under the control of the RCD-Goma (the town of Kisangani and the Ubundu, Opala, Isangi and Yahuma regions), ANC/APR soldiers reportedly continued to commit atrocities and use disproportionate force against civilians;

- In January 2001, in the village of Obenge, elements of the ANC/APR based in Opala tortured and killed at least 11 civilians, including women and children, who were suspected of belonging to a Mayi-Mayi group. The soldiers are also said to have set fire to part of the village.[702]

399. In June 2001, the ANC/APR launched a punitive operation against the Mayi-Mayi groups operating in the diamond-producing area of Masimango, in the south of the Ubundu region. In this context, the Mapping Team documented the following alleged incidents.

- During the night of 20 to 21 June 2001, before they reached Masimango, elements of the ANC/APR killed 11 civilians, including several minors, with edged weapons in the village of Kababali. They then set fire to the village, sparing only the women and four men.[703]

- On the morning of 21 June 2001, elements of the ANC/APR killed 16 people and raped 10 women in the village of Masimango.[704]

- During the six months following the attack of 21 June 2001 on the village of Masimango, ANC/APR soldiers based in the region killed at least 100 people, most of them unarmed civilians. They also looted and set fire to several villages.[705]

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[702] Interviews with the Mapping Team, Orientale Province, January 2009; Report produced by the Lotus Group, 2009.

[703] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Groupe Justice et Libération, "Massacres des populations civiles dans les villages de Masimango, Kababali and Abali", 2001; Memorandum from the FOCDP [Fondation congolaise pour la promotion des droits humains and de la paix] to the Secretary-General of the United Nations, 2001.

[704] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Groupe Justice et Libération, "Massacres des populations civiles dans les villages de Masimango, Kababali and Abali", 2001; Memorandum from the FOCDP to the Secretary-General of the United Nations, 2001.

[705] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Groupe Justice et Libération, "Massacres des populations civiles dans les villages de Masimango, Kababali and Abali", 2001; Memorandum from the FOCDP to the Secretary-General of the United Nations, 2001.

400. In April 2002, Joseph Kabila and Jean-Pierre Bemba signed a power-sharing agreement. As the agreement was rejected by the RCD-Goma and the main opposition party, the UDPS, the negotiations taking place as part of the Inter-Congolese Dialogue stalled. On 14 May 2002, in Kisangani, a group of soldiers and police officers with no identifiable leader called on the RCD-Goma security forces to rebel. They also incited the local population to kill any Rwandans in the town.

- On 14 May 2002, several unidentified civilians, responding to the call of the ANC's rebels, are said to have killed at least six people. The victims were Rwandans, people of Rwandan origin and those who resembled them.[706]

401. Over the course of the day, soldiers from the ANC/APR were sent reinforcements from Goma and regained control of the town.

- Between 14 and 22 May 2002, elements of the ANC/APR allegedly killed at least 276 civilians and wounded hundreds in Kisangani, particularly in neighbourhoods in the municipality of Mangobo, at Camp Ketele, at Bangoka airport and on the Tshopo bridge. The soldiers also committed an unknown number of rapes and looted civilian property during their search operations. Numerous bodies were thrown into the River Tshopo, some of which had been mutilated and disembowelled.[707]

402. During the period under consideration, the Bas-Uélé district remained under the control of ALC/UPDF soldiers. The latter allegedly committed serious violations against all those who dared to dispute their authority or criticised their involvement in pillaging the natural resources of the region. The case below is mentioned for illustrative purposes.

- From 2001 to January 2003, elements of the ALC/UPDF apparently tortured and killed an unknown number of civilians in the town of Buta. Most of the victims were held in muddy holes in conditions likely to cause death through disease or exhaustion. After a human rights activist had been tortured and held in one of the

[706] Interviews with the Mapping Team, Orientale Province, December 2008; Eleventh report of the Secretary-General on MONUC (S/2002/6); Report of the Special Rapporteur (E/CN.4/2003/3/Add.3); DRC Ministry of Human Rights, "Livre blanc spécial sur les récurrentes violations des droits de l'homme and du droit international humanitaire dans la ville de Kisangani", June 2002; Groupe Justice et Libération, "Vraie ou fausse mutinerie de Kisangani and le massacre des populations civiles", June 2002; ANMDH, "Kisangani – Les événements du 14 May 2002 – Rapport sur le massacre de la population and le pillage des biens des paisibles citoyens", 30 May 2002, Lotus Group, "Comprendre les événements du 14 mai 2002 et agir pour le respect des droits humains and une paix juste", July 2002; Synergie pour la paix (SYPA), Rapport d'enquête sur le massacre de Kisangani du 14 au 16 mai 2002, June 2002; AI, "RDC: Il faut que justice soit rendue maintenant aux victimes des massacres de Kisangani", press release, 12 June 2002; AI, *DRC, Our brothers who help kill us: economic exploitation and human rights abuses in the east*, 2003; HRW, "Crimes de guerre à Kisangani: Identification des officiers impliqués", 20 August 2002.

[707] Ibid.

muddy holes by the soldiers, MONUC and United Nations organisations sent out an investigative mission and had these prisons shut down.[708]

403. Between 2001 and 2003, troops from the ALC, the army of the MLC, and the few soldiers in Roger Lumbala's RCD-National[709] confronted elements of the APC, the armed wing of the RCD-ML, for control of the district of Haut-Uélé on several occasions. During the period under consideration, the town of Isiro passed back and forth into the hands of both sides several times. In October 2002, faced with the advance of the APC, the ALC sent reinforcements from Équateur to Isiro as part of the "Clean the blackboard" operation (*Operation effacer le tableau*). This operation was designed to destroy the APC once and for all, so as to deprive the Government in Kinshasa of its ally, the RCD-ML, in the eastern Congo and to get hold of the natural resources still under the control of the RCD-ML before the transition period began. The UPC, which was also trying to crush the APC, joined in with the operation. Elements from the "Clean the blackboard" operation mounted an ambush against the APC in the village of Madesi. In this context, the Mapping Team documented the following alleged incidents.

- On 30 or 31 July 2002, elements of the APC gang-raped six women in the area around the village of Madesi.[710]

- During and after the fighting, between 31 July and 2 August 2002, elements of the ALC taking part in the "Clean the blackboard" operation tortured, mutilated and killed at least 16 APC combatants as well as an unknown number of civilians, including women and children. ALC soldiers used the organs of some of their victims (genitals and ears) as war trophies and showed them to the population of Isiro. The Mapping Team was not in a position to confirm the allegations that elements of the "Clean the blackboard" operation indulged in acts of cannibalism after the fighting.[711]

- In early March 2003, ALC soldiers tortured to death six palm-oil sellers in Ganga in the Haut-Uélé district. The day after the killing, they massacred a woman by beating her with a hammer on the grounds that she was wearing an item of clothing with the APC logo on.[712]

[708] Interviews with the Mapping Team, Orientale Province, January 2009.

[709] The RCD-National is a small political and military movement that appeared in 2001 and had a military presence in the regions of Isiro and Watsa. Led by Roger Lubumla, who had long been President of the UDPS opposition party in France, the movement allied itself to Jean-Pierre Bemba's MLC on the ground and had few of its own troops.

[710] Interviews with the Mapping Team, Orientale Province, January and February 2009; Voix des opprimés, "Rapport sur les événements du Haut-Zaïre entre 1993 et 2003", 2008.

[711] Ibid.

[712] Ibid.

- In late 2002 and early 2003, elements from the Forces armées du peuple congolais (FAPC), an armed group active in the Aru and Mahagi regions of the Ituri district raped and killed an unknown number of civilians in the area around the Kilomoto gold mine, in the Watsa region of the Haut-Uélé district.[713]

B. Ituri

404. During the second half of 2000, the underlying conflict between the President of the RCD-ML, Wamba dia Wamba and his two principal lieutenants, the Nande Mbusa Nyamwisi[714] and the Hema John Tibasima[715] broke out in public. Wamba dia Wamba had long criticised Nyamwisi and Tibasima for trying to orchestrate the conflict between the Hema and Lendu communities[716] in order to establish a power base in the district and control the region's natural resources. In August, Wamba dia Wamba tried to regain control of the movement by dismissing Nyamwisi and Tibasima from their posts, but they resisted and the number of incidents on the ground between the different factions of the APC increased. After several unsuccessful attempts at mediation by Uganda and a series of confrontations in the centre of Bunia, Wamba dia Wamba was exiled to Kampala in December, leaving the leadership of the RCD-ML to Nyamwisi and Tibasima.

405. In January 2001, Ituri saw a resurgence of violence in the Djugu area. Between January and February, members of the Hema militias from Bogoro, generally accompanied by Hema soldiers from the APC and UPDF soldiers, led indiscriminate attacks in the Walendu Tatsi community, next to the Bahema-Nord community, killing an unknown number of civilians. In this context, the Mapping Team documented the following alleged incidents.

- On 4 January 2001, during a failed attack on Kpandroma, members of the Hema militias based in Fataki killed at least 35 Lendu civilians in the Zabu *groupement* in the Walendu Pitsi community, particularly in Aruda and Mola and the surrounding area.[717]

- In early 2001, members of the Hema militias killed at least 16 people and kidnapped two minors who have been since recorded as having disappeared in the

[713] Interviews with the Mapping Team, Orientale Province, January and February 2009.

[714] Originally from North Kivu, Mbusa Nyamwisi was then Prime Minister of the RCD-ML.

[715] A former director of the Okimo mining company, which sold gold from Ituri, John Tibasima was the Movement's Defence Minister.

[716] Since 2000, Mbusa Nyamwisi and the UPDF had organised military training for Lendu militiamen at the Nyaleke camp, close to the town of Béni, in North Kivu. John Tibasima supervised the training in Uganda and in the Rwampara camp, close to Bunia, of thousands of Hema militiamen in order to integrate them into the APC.

[717] Interviews with the Mapping Team, Ituri, April 2009.

Salimboko, Poli-Masumbuku and Penyi *groupements* in the Walendu Tatsi community.[718]

- Also in early 2001, members of the Lendu militias killed an unknown number of civilians, including a majority of Hema and Alur in the villages alongside Lake Albert in the Bahema Banywagi and Bahema-Nord communities.[719]

- Between January and February 2001, UPDF soldiers attacked around 20 villages in the Walendu Tatsi community, killing around 100 people, including various Lendu civilians. During the attacks, the soldiers also committed rape, looted and caused an unknown number of people to disappear. Most of the victims were killed in villages located near the Zumbe power station, in the Bedu Ezekere *groupement*, where they had gathered under the protection of members of the Lendu militias.[720]

- On 3 February 2001, members of the Hema militias and UPDF troops killed 105 people, including numerous Lendu civilians, in the villages in the Bulo *groupement* in the Ndo Okebo community in the Djugu region. The victims often came from the Walendu Pitsi community. They had taken refuge in the Bulo *groupement* following recent attacks on their village.[721]

406. At the end of 2000, the conflict between the Hema and Lendu finally reached the Irumu region. The UPDF soldiers lent their support to the local Hema communities and violent incidents broke out on the ground.

- Between 9 and 18 January 2001, members of the Hema militias allegedly killed around 60 people, including numerous Lendu and Ngiti civilians,[722] in the village of Kotoni, in the Irumu region and the surrounding area.[723]

407. Following the bombardment of the Walendu Bindi community by a UPDF helicopter, Ngiti militiamen, originally in conjunction with the Djugu Lendu from the Walendu Bindi community, launched an attack on 19 January 2001 against UPDF

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[718] Interviews with the Mapping Team, Ituri, February 2009; Documents produced by members of the Lendu communities and submitted to the Mapping Team in March 2009.

[719] Interviews with the Mapping Team, Ituri, March and April 2009; Documents submitted to the Mapping Team in March 2009.

[720] Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (January 2002-December 2003) [S/2004/573], MONUC; Documents submitted to the Mapping Team in April 2009; Transcription of the phone message of the chief of the Walendu Tatsi community to the press, 11 February 2001, list of events that occurred in the community.

[721] Interview with the Mapping Team, Ituri. May 2009; Report of the Bbale community submitted to the Mapping Team in March 2009.

[722] The Ngiti are Lendu from the Irumu region.

[723] Interviews with the Mapping Team, Ituri, February 2009; Documents produced by members of the Lendu communities and submitted to the Mapping Team in March 2009.

positions at the airport in Bunia. During the attack, Ngiti militiamen tried to destroy the helicopter the UPDF had used to bomb their villages. The UPDF finally repelled the attack but at the cost of a significant loss of human life.

- On 19 January 2001, Hema militiamen and civilians allegedly killed between 200 and 250 civilians from the Lendu, Ngiti, Nande and Bira ethnic groups in the Mudzipela neighbourhood in the town of Bunia. The victims, who included a large number of women and children, were killed with machetes, spears or studded batons. Most of them were subjected to mutilation. Some were decapitated and their heads carried through the town as trophies. The Hema militiamen and civilians also systematically looted the victims' property and set fire to several houses. Shortly before the massacre, UPDF officers and senior members of the Hema community in Bunia had held a meeting and called on Hema civilians to attack the Lendu population.[724]

408. In order to restore calm to Ituri and avoid new splinter groups developing within the RCD-ML, Uganda forced the RCD-ML and MLC to join forces within a new movement, the Front de libération du Congo (FLC), led by Jean-Pierre Bemba.[725] On 6 February 2001, the FLC organised consultations with the traditional chiefs in Ituri and on 17 February, the latter signed a memorandum of agreement, providing in particular for an immediate cessation of hostilities, the disarmament of the militiamen and the dismantling of the training camps.[726] During the months that followed, the number of violations decreased significantly. Inter-community tension on the ground nonetheless remained high and the militias continued to arm themselves. In this context, the Mapping Team documented the following alleged incidents.

- On 26 April 2001, armed men killed six members of the ICRC during an attack on a humanitarian convoy in the area around Fataki in the Walendu Djatsi community, in the Djugu region. Local sources indicate that the attack is thought to have been perpetrated by Ugandan soldiers and Hema militiamen. The attack was supposedly aimed at ending the presence of humanitarian personnel in areas where the displaced Lendu had taken refuge. During the period under consideration, numerous sources indicate that Hema militias and armed groups severely hampered the work of humanitarian organisations in areas populated principally by Lendu.[727]

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[724] Interviews with the Mapping Team, Ituri, March 2009; Documents submitted to the Mapping Teamà in Bunia in March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; *New York Times*, "Congo's War Turns a Land Spat Into a Blood Bath", 29 January 2001.

[725] The army of the MLC, the ALC, already controlled the districts of Haut-Uélé and Bas-Uélé.

[726] The memorandum of agreement also included various provisions on the reform of the local land and judicial system and on combating impunity.

[727] Interviews with the Mapping Team, Ituri, March and May 2009, HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

- In 2001, Hema soldiers from the APC killed 40 Lendu, a majority of them civilians, including women, children and elderly and disabled people, in the village of Gobu in the Bahema-Nord community. The victims were taken to a ditch and shot. Their bodies were then thrown into the ditch.[728]

- In January 2002, UPDF troops and Hema militiamen opened fire on the population of the village of Kobu in the Walendu Djatsi community in the Djugu region, killing 35 Lendu civilians. As they entered the village, Ugandan soldiers killed four civilians in the marketplace, including one disabled person. Almost all of the population fled and hid in the forest for nearly two months. On their return to the village, the villagers found 35 decomposed bodies, which they buried in various places. Those responsible for the massacre were trying to remove Lendu populations from the Kobu area, close to the Kilomoto gold mines. Following the killing, the population of Kobu sent a petition to Governor Lopondo, who visited the area shortly afterwards accompanied by senior figures in the UPDF. Following the visit, UPDF soldiers left the area.[729]

- On 26 January 2002, members of the Hema militias killed around 100 Lendu in a forest a few kilometres from Datule, in the Bahema-Sud community in the Irumu region. The victims had been chased from the village of Datule the previous day by a UPC commander. They were killed with machetes, spears and studded batons. A young girl of 13 was the only person to survive the attack.[730]

- On 28 January 2002, Hema militiamen killed and mutilated around 50 Lendu civilians in Kasenyi in the Irumu region. Having been informed of the massacre that had taken place on 26 January, the victims had fled the village of Datule on 27 January in the hope of reaching the Lendu villages in the Walendu Bindi community. They were hiding behind a police station when they were surprised and killed.[731]

- Between January and May 2002, Hema militiamen in the region forcibly recruited all the men from the Alur ethnic group living in the village of Gobu in the Bahema-Nord community in the Djugu region.[732]

- Between February and April 2002, elements of the UPDF and Hema militiamen killed several hundred Lendu civilians in the Walendu Bindi community in the Irumu region. They also tortured and raped an unknown number of people. The

[728] Interviews with the Mapping Team, Ituri, March 2009.
[729] Interviews with the Mapping Team, Ituri, April 2009; ASADHO, *Annual Report 2002*, March 2003, p. 28.
[730] Ibid.
[731] Interviews with the Mapping Team, Ituri, April-May 2009; ASADHO, *Annual Report 2002*, March 2003, p. 28.
[732] Interviews with the Mapping Team, Ituri, March and April 2009.

villages of Aveba, Bukiringi, Nombe, Kaswara, Djino, Kagaba, Biro, Kapalayi, Gety étang, Tsubina, Kinyamubaya, Karach, Bolomo, Bachange, Tsede, Molangi, Tamara, Irura, Modiro, Mukiro and Anyange were all pillaged.[733]

409. In February 2002, against a background of growing economic rivalry between Hema and Nande businessmen and disagreements on the new strategic directions taken by the Mouvement,[734] the Defence Minister of the RCD-ML, Thomas Lubanga, and the Hema soldiers of the APC broke away from the RCD-ML to form a political and military Hema group, the *Union des patriotes congolais* (UPC). In response, Mbusa Nyamwisi and Nande officers in the APC, supported by certain members of the UPDF, reduced Hema influence in the district,[735] intensified their cooperation with the FAC[736] and encouraged members of the Lendu and Ngiti militias to join forces in political military groups, namely the *Front National Intégrationiste* (FNI)[737] and the *Forces de résistance patriotique en Ituri* (FRPI)[738]. During the course of 2002, these various armed groups received significant supplies of weapons from Uganda and the Government in Kinshasa. In this context, the Mapping Team documented the following alleged incidents.

- Starting on 21 May 2002 and during the course of the next six months, elements of the UPC killed at least 46 civilians, most of them from the Bira ethnic group, in Walu in the Ngombe-Nyama *groupement*, in the Irumu region. The militiamen also raped an unknown number of women, looted and destroyed educational institutions and hospitals. These attacks were supposedly intended as retaliation for the help given to the Lendu by the Bira during the previous attacks against the Hema in the region.[739]

- In May 2002, Lendu militiamen accompanied by civilians killed at least 80 people, mainly Hema and Alur, in the village of Gobu in the Bahema-Nord community. The victims were civilians or soldiers who were no longer able to fight. Most were summarily executed with edged weapons. According to several witness statements, the Hema militiamen in the area had fled before members of the Lendu militias arrived in the village.[740]

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[733] Interviews with the Mapping Team, Ituri, March-April 2009; Confidential documents on the events in Ituri submitted to the Mapping Team, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

[734] In 2001, Mbusa Nyamwisi broke away from the FLC and the MLC to enter into an alliance with the Government in Kinshasa.

[735] Governor Uringi was replaced by a Kasaian, Jean-Pierre Molondo, the bishop of Bunia, a Hema accused of having taken part in the ethnic conflict, who was in turn replaced by a Nande.

[736] From 2002, the FAC set up an integrated operational headquarters (EMOI) in Nyaleke with the APC from Nyamwisi.

[737] The FNI united the Lendu militias from the Djugu region.

[738] The FRPI brought together the Ngiti militias from the Irumu region. The Ngiti are related to the Lendu but nonetheless distinct from them.

[739] Interviews with the Mapping Team, Ituri, May 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

[740] Interviews with the Mapping Team, Ituri, April 2009.

- In early June 2002, elements of the UPDF and Hema militiamen indiscriminately killed members of the Lendu militias and an unknown number of civilians in the Lendu villages in the Walendu Pitsi community. By way of example, in June 2002, Hema militiamen and elements of the UPDF killed at least 27 people in Buba.[741]

410. In June 2002, faced with the advance of Lendu militiamen into the Banyali-Kilo community in the Djugu region, the local Security Council for the town of Mongwalu decided to chase away or eliminate any Lendu living in the town. In this context, the Mapping Team documented the following alleged incidents.

- On 10 June 2002, elements of the UPC supported by local youths, systematically attacked the houses of Lendu living in Mongwalu, killing around 20 civilians. The victims, who were long-term residents of Mongwalu, were either shot dead or killed with studded batons.[742]

- On 11 June 2002, in retaliation for a massacre carried out the day before, several hundred Lendu from the villages of Kobu, Bambou and Kpandroma killed tens of civilians with edged weapons, most of them from the Hema ethnic group, in the town of Mongwalu. The Hema left Mongwalu following the massacre.[743]

411. In early August 2002, elements of the UPC, with support from UPDF troops, are reported to have chased elements of the APC out of the town of Bunia. In this context, the Mapping Team documented the following alleged incidents.

- Between 7 and 10 August 2002, in Bunia, at least 300 civilians were killed on the basis of their ethnic origin, most of them by UPC militiamen. Between 7 and 8 August, elements of the UPC killed an unknown number of Bira, Lendu and Nande civilians during raids on the neighbourhoods of Mudzipela, Bigo and Saio. Lendu and Ngiti militiamen responded by killing an unknown number of Hema civilians in the districts of Mudzipela, Saio, Rwambuzi and Simbiliabo. At the same time, Lendu and Ngiti militiamen killed 32 Hema civilians and wounded and mutilated an unknown number of them at a farm in the village of Lengabo, a few kilometres from Bunia. Between 9 and 11 August, elements of the UPDF and the UPC killed at least 80 Lendu, Nande and Bira civilians at the Governor's

[741] Interviews with the Mapping Team, Ituri, April 2009; Documents submitted to the Mapping Team, Ituri, March 2009.

[742] Interviews with the Mapping Team, Ituri, April and May 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[743] Interviews with the Mapping Team, Ituri, April and May 2009; Document submitted to the Mapping Team, "Rapport d'enquête-massacre à Mongwalu", undated; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

residence, at the hospital in Bigo and at Bunia central prison. The bodies of the victims were then placed in mass graves.[744]

412. Over the course of the following months, violent fighting broke out on several fronts, between elements of the UPC and UPDF on the one hand, and those of the APC and FNI-FRPI on the other. Both coalitions targeted civilian populations on the basis of their ethnic origins. Numerous civilians from non-belligerent tribes were also massacred on the basis of their actual or supposed support for one or other camp. Many of them were also victims of forced recruitment to the various armed groups. The mining regions north of Bunia, control of which was seen as strategic by the various groups involved, were the theatre for some particularly violent fighting.

413. On 9 August 2002, having had to leave Bunia quickly, Governor Lopondo, the APC troops and Lendu and Ngiti militiamen[745] established a base in Komanda for the purpose of preparing the counter-offensive. The UPC, meanwhile, consolidated its positions south of Bunia in order to prevent the counter-attack from elements of the APC and FNI-FRPI and to gain control of the area's mining resources. In this context, the Mapping Team documented the following alleged incidents.

- On 9 August 2002, elements of the APC and Lendu and Ngiti militiamen killed tens of civilians, mostly Hema, in the town of Komanda and the surrounding villages in the Basili-Basumu community, in the Irumu region. Guided by the Ngiti militiamen who had infiltrated the village and by local youths, elements of the APC and members of the militias moved from house to house, killing Hema civilians purely on the basis of their ethnic origin. Most of the victims were killed with edged weapons. Some were tied up and then killed with spears.[746]

- From 14 to 19 August 2002, elements of the UPC killed over 50 civilians from different ethnic groups during an attack on the village of Komanda. Most of the victims were shot or killed with edged weapons when they fled Komanda for Beni. Many of the victims had left Bunia a few days previously following the takeover of the town by the UPC and had taken refuge in Komanda. The aim of the UPC attack was to avenge the massacre committed in Komanda on 9 August.[747]

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[744] Interview with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[745] The latter did not come from Bunia but had been recruited on the way, during their flight to Beni, in the village of Medu, halfway between Bunia and Komanda.

[746] Interviews with the Mapping Team, Orientale Province, January 2009 and Ituri, April 2009; Document submitted to the Mapping Team, Ituri, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[747] Ibid.

- On 28 August 2002, Hema-Gegere militiamen associated with the UPC killed several tens of "non-native" inhabitants[748] in the gold-producing town of Mabanga in the Mambisa community, in the Djugu region. The victims were killed either with machetes or with studded batons. Sixteen of them were clubbed to death with planks of wood. The Hema-Gegere militiamen associated the "non-natives" with Governor Lopondo and APC soldiers. Whilst the Lendu militiamen were trying to take control of the region's mines, the Hema-Gegere militiamen feared that the "non-natives" were helping them. During previous fighting in Mabanga, the Lendu militiamen had systematically killed Hema civilians but had spared the "non-native" populations. After the massacre, UPDF troops intervened to provide cover for the flight of the non-natives to Bunia.[749]

- On 31 August 2002, elements of the UPC supported by Bira militiamen killed at least 14 civilians, including women and children, in several villages in Songolo in the Walendu Bindi community, in the Irumu region. They also carried out acts of pillaging and widespread destruction, setting fire to over 1,000 houses. Several victims were mutilated and killed in an extremely cruel fashion. At least three women were impaled. Songolo was considered to be one of the FRPI fiefdoms.[750]

- Between 5 and 15 September 2002, elements of the FRPI and APC systematically massacred over 1,000 Hema-Gegere and Bira civilians, including large numbers of children, in Nyakunde and the surrounding villages in the Andisoma community, in the Irumu region. They also carried out numerous acts of pillaging. The victims were killed purely on the basis of their ethnic origin, mostly using arrows or edged weapons. Elements of the APC and FRPI had set up road blocks so that no-one from the Hema or Bira ethnic groups was able to escape from Nyakunde. FRPI militiamen sorted civilians and the soldiers there who were no longer able to fight based on their ethnic origin in the Evangelical Medical Centre. They systematically killed Hema and Bira and spared the members of other ethnic groups. Numerous victims were detained in cruel, inhuman or degrading conditions for several days before they were finally executed. Most of the massacres took place once the fighting with the UPC militiamen present in Nyakunde had been over for several days.[751]

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[748] The term "non-natives" here refers to inhabitants of Ituri who originated from other parts of the DRC. The term used locally is "Jajambo".

[749] Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[750] Interviews with the Mapping Team, Ituri, March and April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[751] Interview with the Mapping Team, Ituri, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003; AI, "DRC: On the precipice: the deepening human rights and humanitarian crisis in Ituri", 2003.

- On 13 September 2002, elements of the FRPI from Gety killed around 150 people, including numerous civilians, most of them Hema, in the lakeside *groupement* of Bandikado in the Bahema–Sud community, in the Irumu region. They killed and mutilated an unknown number of people in Nyamavi, for example. They also looted the villages before leaving the *groupement*. These attacks also caused several thousand people to be displaced for several years.[752]

- On 11 October 2002, in the Djugu region, elements of the FNI from the Walendu Djatsi community killed an unknown number of Alur, Hema, Bira and Nyali civilians in the mining town of Nizi in the Mambisa community. They also killed 28 people and kidnapped 23 women in the mining area of Kilomoto. During these attacks, the militiamen mutilated numerous victims, carried out large-scale pillaging and set fire to numerous buildings, including the community offices, schools and a hospital. The victims' bodies were buried in nine mass graves. According to witnesses, the FNI militiamen accused inhabitants of the town from all ethnic groups of supporting the UPC.[753]

414. Between October and December 2002, confrontations between elements of the FNI-FPRI and UPC had spread throughout the Irumu region. The UPC troops led major military operations in the same region directed at the FRPI bases in the Walendu Bindi community and Lendu enclaves in the Bahema-Sud community. The Bira farmers living in Pinga, in Songo in the Irumu region were also attacked, with the UPC suspecting them of funding the FNI and FRPI. In this context, the Mapping Team documented the following alleged incidents.

- Between 15 and 16 October 2002, UPC militiamen killed at least 180 people, including civilians, in Zumbe in the Walendu Tatsi community. The militiamen also raped at least 50 women. Most of the victims were killed with machetes or spears. Some were shot dead. Some survived but were badly mutilated. Having looted large amounts of property and stolen 1,500 head of cattle, the UPC troops set fire to the village, destroying more than 500 buildings, including health centres and schools. Zumbe was an FRPI fiefdom.[754]

- On 20 October 2002, elements of the UPC from Bunia and Bogoro killed at least 10 Lendu civilians during attacks on several villages, including Nombe, Medhu, Pinga, Kagaba, Singo and Songolo in the Walendu Bindi community, in the Irumu region. A Bira woman married to a Lendu civilian was also killed. The

[752] Interviews with the Mapping Team, Ituri, April 2009; Document submitted to the Mapping Team: Report on the violation of human rights committed during the organised attacks on the Bahema-Sud community from 2001 to 2003, undated.

[753] Interview with the Mapping Team, Ituri, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[754] Interviews with the Mapping Team, Ituri, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

militiamen systematically pillaged property and stole cattle belonging to Lendu in the villages they attacked.[755]

- On 24 October 2002, elements of the UPC killed several dozen Lendu in the Walendu Bindi community, particularly in the villages of Nombe, Kagaba, Lakabo, Lokpa, Medhu, Songolo, Pinga, Androzo and Singo. Most of the victims were killed with edged weapons. The militiamen also kidnapped more than 20 people, including women. They also stole some 1,450 head of cattle and burned at least 351 houses, including schools and health centres.[756]

- On 5 November 2002, elements of the FRPI killed at least 14 civilians, including two women, in the village of Saliboko in the Mobala community, in the Irumu region. They also pillaged and set fire to the village. Most of the victims were Bira. They were attacked at night in their houses. First they were tied up and then killed with machetes. Some civilians managed to escape but were often severely mutilated. The militiamen were critical of the Bira in Saliboko for having given shelter to displaced Hema. The village has not been rebuilt since.[757]

415. The signing of a peace agreement in September 2002 between the DRC and Uganda offered new prospects for peace in Ituri. In addition to the withdrawal of UPDF troops from Gbadolite and Beni, the agreement provided for the creation of a Peacekeeping Commission in Ituri and the setting up of an Administration intérimaire de l'Ituri (AII) [Interim Administrative Authority for Ituri] responsible for managing the district after the departure of the Ugandan soldiers. On the ground, however, far from stabilising the region, the closer relationship between Kinshasa and Kampala prompted new patterns of alliances that made the situation even more volatile. As mentioned previously, in October 2002, the MLC army, the ALC, and its allies in the RCD-N launched a major operation east of Orientale Province, called "Clean the blackboard". This operation aimed to destroy the APC once and for all, so as to deprive the Government in Kinshasa of its ally in eastern Congo and get hold of the natural resources still under the control of the RCD-ML before the transition period began. The UPC, which was also trying to crush the APC, joined in with the operation.

416. On 12 October 2002, the ALC and its allies from the RCD-N entered the town of Mambasa. On 29 October, however, they were forced to withdraw, before regaining control of the town from the APC on 27 November. During the attacks, the ALC soldiers (MLC and RCD-N) committed numerous atrocities directed at civilians.

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[755] Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

[756] Ibid.

[757] Interviews with the Mapping Team, Ituri, March and April 2009.

- Between 12 and 29 October 2002, elements of the ALC and RCD-N taking part in the "Clean the blackbaord" operation allegedly killed at least 173 Nande and Pygmy civilians in Mambasa and in the villages along the main road between Mambasa and Beni, particularly in Teturi, Mwemba and Byakato, in the Mambasa region. The soldiers also carried out acts of cannibalism, mutilated an unknown number of civilians, raped a large number of women and children and committed widespread pillaging. The victims were killed purely on the basis of their ethnic origin, with Nande and Pygmies accused of supporting the RCD-ML.[758]

417. Following their victory over the APC in Mambasa, elements of the ALC/RCD-N/UPC, with the help of UPDF soldiers, launched a major military operation in order to take control of the mining town of Mongwalu.

- On 20 November 2002, during their attack on Mongwalu, elements of the ALC/RCD-N/UPC are alleged to have killed at least 50 Lendu, including civilians and Lendu militiamen who were no longer able to fight. Most of the victims were shot dead or killed with edged weapons. Some were killed whilst they were hiding in a church. Some survived but were badly mutilated and tortured.[759]

418. On 30 November 2002, APC, FNI and FRPI troops regained control of the towns of Irumu and Komanda. Following the scandal caused by the publicity organised about acts of cannibalism committed by troops taking part in the "Clean the blackboard" operation, the international community put pressure on the leaders of the MLC, the RCD-ML and the RCD-N to sign a ceasefire agreement in Gbadolite on 30 December 2002.[760] The UPC, however, which in December 2002 had successfully taken control of the strategic town of Mwanga and blocked access north of Bunia for the FNI militiamen based in the Kilomoto region, rejected the agreement. Faced with the closer relationship between the Government in Kinshasa and Uganda and the ALC's withdrawal from Ituri, the UPC entered into an alliance with Rwanda, which brought weapons and military advisers into the area immediately. In response to the arrival of Rwandan soldiers into the area, Uganda ended its collaboration with the UPC and offered its support to the Lendu militia and the APC. During the first half of 2003, fighting between the UPC and elements of the FNI, FRPI, APC and UPDF intensified and spread throughout the district.

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[758] Minority Rights Group International, *Erasing the Board. Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern DRC*, 2004; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[759] Interviews with the Mapping Team, Ituri, April and May 2009, *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood*, July 2003.

[760] Following the "Erasing the board" operation, the Kabila Government wrote to the President of the Security Council to ask him to set up an International Criminal Court for the DRC. The proposal was supported by Jean-Pierre Bemba, who asked in return that the court should be competent to judge all the crimes committed in the country since 1996.

419. On 23 January 2003, the UPC officially asked the UPDF troops to evacuate Ituri. In February, the Peacekeeping Commission in Ituri began its work but the UPC rejected the creation of the interim institutions provided for in the agreement of September 2002. The hardening of the UPC's positions and the open conflict with the UPDF caused several internal splits. The Hema-Sud militiamen led by Chief Kawa Mandro left the UPC to create a new armed group, the Parti pour l'unité et la sauvegarde de l'intégrité du Congo (PUSIC), with the support of Uganda. In the Mahagi and Aru regions, Jérôme Kakwavu also left the UPC and created the Forces armées du peuple congolais (FAPC) with the support of Ugandan soldiers who wanted an ally in areas with substantial forest resources.

- On 2 January 2003, elements of the FAPC from Mahagi allegedly killed around ten Alur civilians in the village of Djalusene, in the Djukoth community, in the Mahagi region. They also raped several women and set fire to numerous houses.[761]

420. Between January and March 2003, the UPC carried out several military offensives in order to take control of the mining areas around Mongwalu and Kobu.[762] In this context, the Mapping Team documented the following alleged incidents.

- On 13 January 2003, elements of the UPC from Mongwalu killed at least ten Alur civilians in Nyangaraye. The victims were killed with machetes, most of them in the Catholic church where they had been assembled. The bodies were then burned when the church was set on fire.[763]

- Between 18 and 20 February 2003, elements of the UPC from Mwanga and Kunda raped and killed an unknown number of civilians during attacks on the villages of Ngongo Kobu, Lipri, Nyangaraye and Bambou. During the attacks, the militiamen also destroyed infrastructure owned by the Kilomoto mining company, including schools and hospitals.[764]

- On 24 February 2003, elements of the FNI and FRPI, under the command of Mathieu Ngudjolo and Germain Katanga respectively, indiscriminately killed between 200 and 350 people, including a majority of Hema civilians, in the village of Bogoro in the Bahema-Sud community. They also raped numerous women and girls and reduced some of them to sexual slavery. They also took part in widespread pillaging of the village and destroyed numerous homes. Elements of the FNI and FRPI included numerous children under the age of 15 amongst

[761] Interviews with the Mapping Team, Ituri, April 2009.

[762] Interviews with the Mapping Team; Ituri, April 2009; Confidential documents submitted to the Mapping Team, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

[763] Ibid.

[764] Ibid.

their combatants. Ngudjolo and Katanga are currently being tried in the International Criminal Court for the crimes committed during this attack.[765]

- On 25 February 2003, elements of the UPC took hostage, tied up and killed around 50 Lendu delegates in the village of Sangi in the Walendu Djatsi community, who had come to negotiate with UPC officers. Four days previously, having carried out an attack on the village of Buli and suffered significant losses, UPC officers had invited senior Lendu figures in the area to take part in peace talks in the village of Sangi. The victims, who included numerous women, were killed with machetes, knives and batons. Some were tied up and then killed in the village church. Others were taken to Kobu and killed there. Only two people survived the massacre. The victims' bodies were buried in several mass graves.[766]

- For several days, starting on 25 February 2003, elements of the UPC raped and killed an unknown number of people in the villages of Jitchu, Buli, Ngabuli, Pili, Athe, Bakpa, Lambi and Widde in the Walendu Djatsi community. On 25 February, for example, heavy weapons fire directed at the village of Buli caused numerous civilian casualties. The militiamen also arrested tens of civilians, including numerous women and children who were hiding in the Jitchu forest in the area around Buli. Having brought them back to the village of Kobu and held them there, they executed them with edged weapons. The 40 or so bodies found in Kobu were then buried in the village by the local people.[767]

- On 4 March 2003, FNI militiamen from Zumbe and elements of the APC killed at least 47 civilians during an attack on the village of Mandro. The place was a former UPC training centre which had been a bastion of the PUSIC since February 2003. The victims, most of them Hema-Sud, were indiscriminately killed with edged weapons, or shot. Elements of the FNI also kidnapped an unknown number of women, who were reduced to slavery. Before leaving Mandro, the FNI troops systematically pillaged and stole civilian property, in particular bringing several thousand head of cattle back to Zumbe.[768]

421. On 6 March 2003, after the UPC had attacked the UPDF base in Ndele, a few kilometres from Bunia, UPDF soldiers and elements of the FNI and FRPI set up a joint military operation and regained control of the town of Bunia.

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[765] Document submitted to the Mapping Team: *Report on the violation of human rights committed during the attacks organised against the Bahema-Sud community from 2001 to 2003, March 2009; Special report on the events in Ituri* (S/2004/573), *MONUC; Second special report of the Secretary-General on MONUC* (S/2003/566); Pre-Trial Chamber I of the ICC, 2 July 2007, Arrest warrant for Germain Katanga, ICC-01/04-01/07, Pre-Trial chamber I of the ICC, *Amended Document Containing the Charges Pursuant to Article 61(3)(a) of the Statute*, 26 June 2008.

[766] Ibid.

[767] Ibid.

[768] Interviews with the Mapping Team, Ituri, March 2009, *Special report on the events in Ituri* (S/2004/573), MONUC.

- On 6 March 2003, elements of the UPC and UPDF/FNI/FRPI fought each other with heavy weapons in Bunia, reportedly killing between 17 and 52 civilians. After the withdrawal of UPC troops from the town, elements of the FNI killed an unknown number of Hema civilians on the basis of their ethnic origins. Elements of the UPDF/FNI/FRPI also looted and destroyed numerous buildings, private homes and premises used by local and international NGOs. UPDF soldiers sometimes intervened to ask elements of the FNI/FRPI to stop the atrocities and leave the town.[769]

422. After taking control of Bunia, elements of the FNI launched a major offensive against the UPC bastions located north of the town. In this context, the Mapping Team documented the following alleged incidents.

- Between 9 and 13 March 2003, elements of the FNI killed at least 113 civilians in the villages of the Kilo-Banyari community, in the Djugu region, and in the villages in the Sindoni-Akeso *groupement* and along the road to Mongwalu, including Itende, Kabakaba and Kilo-Missio. The victims were of various ethnic origins but included a large number of Nyali. During the attacks, FNI militiamen mutilated civilians, pillaged property and set fire to villages. On 10 March, for example, elements of the FNI opened fire on the population of Kilo, indiscriminately killing 20 civilians. The UPDF soldiers there tried, without any great success, to stop the FNI atrocities directed at civilians.[770]

- On 3 April 2003, elements of the FNI killed and mutilated several hundred people, including a majority of Hema civilians, in the Largude *groupement* in the Bahema-Nord community. Some victims, including children, were killed by heavy weapons fire, others by being shot or with edged weapons. The militiamen also attacked the hospital in Drodro, where they killed at least 27 people. Numerous women were kidnapped by the militiamen and reduced to sexual slavery. At the end of the hostilities some of the women were released, but others are still recorded as having disappeared.[771]

- On 13 May 2003 in Mongwalu, elements of the FNI killed two MONUC military observers. The militiamen mutilated the victims' bodies and stole both their personal property and MONUC property. The militiamen suspected the observers of supporting the UPC troops who were threatening to attack Mongwalu. Hundreds of civilians from various ethnic groups had taken refuge in the house where the military observers were living. Both victims were arrested on the road

[769] Interviews with the Mapping Team, Ituri, March and April 2009, *Special report on the events in Ituri* (S/2004/573), MONUC; AI, *DRC-Ituri - a need for protection, a thirst for justice*, 2003.

[770] Interviews with the Mapping Team, Ituri, April 2009, HRW, *Le fléau de l'or*, June 2005.

[771] Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

to the airport and then publicly executed. On 19 February 2007, the military tribunal at the Bunia garrison sentenced seven FNI militiamen who were involved in the murders to life imprisonment for war crimes.[772]

423. After the departure of the UPDF troops from the Ituri district, under considerable international pressure, in early May 2003, the UPC and FNI troops fought to take control of the strategic locations left vacant by the Ugandan soldiers. Anticipating new massacres, thousands of Bunia's inhabitants opted to leave the town. Some followed the UPDF troops to Uganda. Others fled to Beni, in North Kivu. On 6 May, serious clashes broke out in Bunia between elements of the FNI under the orders of Mathieu Ngudjolo and elements of the UPC under the command of Bosco Ntaganda.

- On 6 May 2003, FNI militiamen and, to a lesser extent, members of the UPC militias allegedly indiscriminately killed several hundred civilians, committed rape and carried out widespread pillaging in Bunia during fighting for control of the town. They also mutilated numerous civilians. Elements of the FNI particularly targeted neighbourhoods inhabited primarily by Hema, such as Mudzipela and Nyagasenza. They killed religious representatives, set fire to numerous houses and looted the offices of several international NGOs including Medair, Agro-Action Allemande (AAA) and COOPI [Cooperazione Internazionale].[773]

424. The UPC swiftly led a counter-offensive and finally took control of Bunia.

- Having gained control of the town on 12 March 2003, UPC militiamen are reported to have killed several hundred civilians, mostly Ngiti Lendu and Jajambo from other districts, primarily Nande.[774]

425. In response to this series of massacres and the attacks carried out against MONUC facilities, the Secretary-General of the United Nations asked Member States on 15 May 2003 to form a coalition in order to end the humanitarian disaster and allow MONUC to complete its deployment in Bunia.[775] On 16 May, Tanzania organised a summit, during which President Kabila met delegations from the Administration intérimaire de l'Ituri [Interim Administrative Authority for Ituri] and the leaders of the main armed groups. In light of the continued fighting, on 30 May the Security Council

[772] Interviews with the Mapping Team, April and May 2009; Judgment of the military court at the Bunia garrison on 19 February 2007, RP no. 103/2006; HRW, *Ituri: Couvert de sang, Violence ciblée sur certaines ethnies dans le nord-est de la RDC*, July 2003.

[773] Interviews with the Mapping Team, Ituri, March and April 2009, *Special report on the events in Ituri* (S/2004/573), MONUC; AI, *DRC-Ituri - How many more have to die?* 2003; AI, *DRC-Ituri - a need for protection, a thirst for justice*, 2003; MSF, "Ituri: promesses non tenues ? Un semblant de protection and une aide inadéquate", 25 July 2003.

[774] Ibid.

[775] Letter sent to the President of the Security Council by the Secretary-General (S/2003/574).

adopted Resolution 1484 (2003), authorising the deployment to Bunia of an interim emergency multinational force under European command.

426. On 31 May 2003, the FNI and Lendu from Datule launched a major offensive against the village of Tchomia, which at the time was under the control of PUSIC troops. The attack was intended as revenge for the attack carried out by the PUSIC on Datule on 26 January 2002. In just a few hours, elements of the FNI chased out the PUSIC troops and destroyed their military camps.

- On 31 May 2003, elements of the FNI, often accompanied by members of their families, including women and children, are alleged to have killed almost 300 people in the village of Tchomia in the Bahema-Sud community, systematically massacring the Hema-Sud victims on the basis of their ethnic origin. The militiamen moved from house to house, killing civilians. They reportedly also killed 40 people at the hospital in Tchomia. During the killings, elements of the FNI had blocked all access roads into Tchomia in order to prevent anyone escaping from the village. The militiamen and their families embarked on widespread pillaging of the area. Before they left, they set fire to schools, churches and the hospital. They also kidnapped ten women, whom they used to carry the property they had pillaged and as sex slaves.[776]

427. The interim emergency multinational force began its deployment in Bunia on 6 June 2003. After a few weeks, it managed to restore order in the town and put an end to ethnic killing. Outside Bunia, however, the acts of violence continued. Elements of the FNI, FRPI and FAPC launched a series of attacks against UPC and PUSIC positions in the Djugu and Irumu regions. These violent clashes resulted in numerous massacres of civilians, most of them from the Hema ethnic group. In this context, the Mapping Team documented the following alleged incidents.

- On 7 and 20 June 2003, elements of the FNI killed an unknown number of Hema civilians, estimated at 137 according to some sources, in the village of Katoto in the Bahema–Nord community, in the Djugu region. The victims were shot dead or killed with edged weapons. The bodies were buried in approximately 30 mass graves. The militiamen also mutilated several people, pillaged the village and set fire to houses. Katoto was chosen as a target because of the presence of UPC and PUSIC positions in the village.[777]

- In June 2003, elements of the FPAC and FNI killed 33 civilians in the mining town of Nizi in the Mambisa community, in the Djugu region. The attack was

[776]Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; AI, *DRC-Ituri - How many more have to die*, 2003.

[777] Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003; documents submitted to the Mapping Team, April 2009.

intended to destroy the UPC camp and chase away the Hema who controlled the Kilomoto mining company.[778]

- On 11 June 2003, elements of the FNI, FRPI and APC killed an unknown number of civilians, estimated at over 160 according to some sources, in the Bagungu and Beiziha *groupements*, close to Kasenyi, in the Irumu region. The victims, mostly Hema displaced by the war, were either shot dead or killed with edged weapons. Around 30 victims were killed when they were trying to flee by boat across Lake Albert. The militiamen also kidnapped over 20 people, including women, and executed any who did not have the strength to carry the property that had been pillaged. They also set fire to over 200 homes.[779]

- On 10 June 2003, FNI militiamen from Djugu slaughtered around 40 civilians, mostly Alur, in Nioka in the Mahagi region. Until then the area had been occupied by UPC militiamen. Most of the victims, who included several children, were either shot dead or killed with edged weapons. Elements of the FNI had criticised the inhabitants of Nioka for having given shelter to Hema who had been displaced by the war.[780]

428. Following the withdrawal of the UPDF soldiers from the mining region of Mongwalu, in March 2003, FNI troops took control of the area. On 10 June, UPC troops regained control of the town of Mongwalu but, after 48 hours, FNI troops launched a counter-attack with the support of elements of the UPDF.

- On 11 June 2003, FNI militiamen allegedly killed several hundred people, including numerous civilians, in Mongwalu. They also raped tens of women and carried out acts of systematic pillaging in the town and its surrounding area. Following the attack, hundreds of bodies were found in the area and burned on the orders of FNI militiamen.[781]

429. During the period under consideration, all the armed groups in Ituri (UPC, FNI, FRPI, FAPC and PUSIC) are alleged to have recruited thousands of children along ethnic lines.

- Between 2001 and 2003, thousands of Hema children recruited by the UPC had undergone military training in the Mandro, Katoto and Bule camps. During the

[778] Interviews with the Mapping Team, Ituri, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

[779] Interviews with the Mapping Team, April 2009; Documents submitted to the Mapping Team, April 2009; *Special report on the events in Ituri* (S/2004/573), MONUC.

[780] Interviews with the Mapping Team, Ituri, March 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; Justice Plus, "Massacre des civils à Nyoka (Mahagi)", press release, 23 June 2003.

[781] Interviews with the Mapping Team, Ituri, April and May 2009, *Special report on the events in Ituri* (S/2004/573), MONUC; HRW, *Ituri: Covered in Blood. Ethnically Targeted Violence in Northern DRC*, July 2003.

training, they were often tortured, subjected to cruel, inhuman or degrading acts and raped. In 2000, at least 163 of these children were sent to Uganda to undergo military training at a UPDF camp in Kyankwanzi before finally being repatriated to Ituri by UNICEF in February 2001. Between 2002 and 2003, some children associated with the UPC were kidnapped and taken to Rwanda to undergo military training in the APR camps. An unknown number of Lendu children were taken to military training camps in North Kivu. Other communities were affected by the same phenomenon, primarily the Alur, largely in the Mahagi region.[782]

C. Katanga

430. Throughout 2000, the Mayi-Mayi led by Chief Makabe based in Musao, in the Badia area, fought alongside the FAC and ZDF in order to prevent the ANC/APR from taking control of the Malemba Nkulu region. As the front stabilised and the number of atrocities by the FAC directed at the civilian population increased, however, the relationship between the FAC and the Mayi-Mayi deteriorated significantly. In January 2001, the accidental killing of two Mayi-Mayi in the Makabe group by FAC soldiers during a joint operation degenerated into open conflict.

- In January and March 2001, elements of the FAC reportedly set fire to around 20 villages in the areas of Badia (Ayamba, Lufuy, Kikose, Lubinda, Kyungu, Kimbalama, Kalembe, Kishiko, Katota, Lwamba Numbi, Lwamba Kamalenge, Kakongolo, Kajima, Kalwenye, Munengwelela and Musao) and Mwanza Seya (Nshimbi, Kimiba, Lubembey, Bunda and Mputu 1) in the Malemba Nkulu region. These attacks are said to have resulted in over ten civilian deaths and caused thousands of others to be displaced. The soldiers had accused the inhabitants of the villages of supporting the Mayi-Mayi.[783]

431. In 2001, following the introduction of the ceasefire between the principal belligerents and the cessation of most military operations in Katanga, the Government in Kinshasa dissolved the FAP but did not implement an appropriate demobilisation and reintegration plan. Feeling they had been abandoned by those in power, the Mayi-Mayi led by Chief Makabe and his lieutenant Kabale became more and more aggressive

[782] Interviews with the Mapping Team, Ituri, April and May 2009; Confidential documents submitted to the Mapping Team, May 2009; *Special report on the events in Ituri* (S/2004/573), MONUC; *Reports of the Secretary-General on children and armed conflict* (S/2002/1299, A/58/546-S/2003/1053 and Corr. 1 and 2 and A/59/695-S/2005/72); BBC News, "UN finds Congo child soldiers", 21 February 2001; BBC News, "DRC awash with child soldiers", 17 February 2003.

[783] Interviews with the Mapping Team, Katanga, December 2008; Confidential document of the working group on international crimes committed in the DRC submitted to the Mapping Team; CVDHO [Commission de vulgarisation des droits de l'homme and de développement], "Alerte sur la situation d'insécurité générale et de violation massive des droits de l'homme and du droit humanitaire dans le territoire de Malemba Nkulu, fevrier-mars 2001", April 2001; ASADHO, CDH [Centre démocrate humaniste], CVDHO, "Nord- Katanga: attaques délibérées contre la population civile", October 2003, p. 23; Kalenge Yamukena Yantumbi, *Le Nord-Katanga à feu and à sang*, Kyamy Network Editions, Lubumbashi, 2004, p. 113 to 116.

towards the FAC and representatives of the State. On 14 November, in Katoto, in the Haut-Lomami district, the interim Governor of Katanga, Jacques Muyumba, organised a reconciliation meeting between the Mayi-Mayi leaders, the FAC and the police. The agreement reached at the meeting did not hold, however, and further acts of violence began to be committed on the ground from 2002. It appears that during the period under consideration, the Mayi-Mayi continued to receive weapons from certain senior figures in the FAC, further adding to the confusion reigning at the time. In this context, the Mapping Team documented the following alleged incidents.

- On 27 February 2002, elements of the FAC burned 11 civilians alive, including at least one child, and set fire to houses in Kilumba Kumbula, in the Mwanza area in the Malemba Nkulu region. The victims had been arrested by an FAC patrol as they were returning from the fields. The FAC tied up the victims and took them to the village of Kilumba Kumbula, where they locked them in a thatched hut and set fire to it. Victims who tried to escape were shot dead. One civilian managed to get away.[784]

- On 27 February 2002, elements of the FAC killed seven civilians, including two children, one woman and the local chief, in Kimiba, in the Mwanza area of the Malemba Nkulu region. The FAC had found a note written by some Mayi-Mayi in the house of the chief of Kimiba, asking him to provide them with food. Convinced that the chief was collaborating with the Mayi-Mayi, they decided to kill both him and his family. The FAC set fire to the village before they left.[785]

- In March 2002, elements of the FAC killed at least nine civilians, including five children, in the village of Ngwena Mai in the Luela Luvunguyi area, in the Kabalo region. Many people displaced by the war were living in the village, which was in the government zone and was also used as a base by two Mayi-Mayi groups. The extortion and rapes committed by the FAC and directed at the population had made the soldiers very unpopular amongst civilians. After one soldier had been killed by Mayi-Mayi, the FAC entered the village and opened fire on the civilians indiscriminately. They also raped at least one woman, looted and then set fire to the village.[786]

- In May 2002, elements of the FAC killed the wife of the minister of the Kiwala Church in the Congo and her three children with bayonets in the village of Lubondoyi in the Mwanza area of the Malemba Nkulu region. The Mayi-Mayi had been fighting over control of the village for several months. The FAC had

[784] Interviews with the Mapping Team, Katanga, December 2008.

[785] Interviews with the Mapping Team, Katanga, December 2008.

[786] Interviews with the Mapping Team, Katanga, November 2008; Document submitted to the Mapping Team on 24 February 2009: "Les faits saillants des incidents du territoire de Kabalo".

accused the minister of collaborating with the Mayi-Mayi. As the minister had managed to escape to Lubondoyi, the soldiers executed his family.[787]

432. During the period under consideration, ANC/APR troops pursuing the FDLR troops stationed in Katanga cracked down on civilians suspected of collaborating with the FDLR. In this context, the Mapping Team documented the following alleged incidents.

- On 4 March 2002, elements of the ANC/APR buried 13 civilians alive, including at least two children, in the village of Lwizi in the Sud-Lukuga area, in the Nyunzu region. The victims had been accused by the RCD of selling food to the FDLR.[788]

- Between May and July 2002, elements of the FAC looted and set fire to several villages in the Badia area, in the Malemba Nkulu region, including Lubinda, Kikose, Sukie and Kimbalama. They killed at least eight civilians accused of supporting the Mayi-Mayi, sometimes mutilating them. Each time the FAC withdrew, the Mayi-Mayi returned to the villages and pillaged the civilians' remaining property.[789]

- Between February and November 2002, members of the Mayi-Mayi conducted a reign of terror in the chiefdom of Kayumba in the Malemba Nkulu region. They attacked the town of Mukanga on several occasions and killed at least 16 civilians considered hostile to the Mayi-Mayi movement. Cases of cannibalism were reported. The population of Mukanga was forced to take refuge in the village of Mukubu.[790]

- Between 2001 and 2003 the Mayi-Mayi groups operating in the communities of Nkulu, Mwanza and Kayumba in the Malemba Nkulu region kidnapped and recruited several tens of children. Most of these children were used to carry pillaged property, transport munitions and cook. Some were given firearms and used as sentries whilst others took part in the hostilities against first the ANC/APR and then the FAC.[791]

- Between 2001 and 2003, in the communities of Nkulu, Kayumba and Mwanza in the Malemba Nkulu region, Mayi-Mayi groups kidnapped tens of young girls

[787] Interviews with the Mapping Team, Katanga, December 2008.

[788] Interviews with the Mapping Team, Katanga, December 2008.

[789] Interviews with the Mapping Team, Katanga, December 2008; Yamukena Yantumbi Kalenge, *Le Nord-Katanga à feu and à sang*, Kyamy Network Editions, Lubumbashi, 2004, p. 113 to 116.

[790] Interviews with the Mapping Team, Katanga, December 2008; Confidential document of the working group on international crimes committed in the DRC submitted to the Mapping Team.

[791] Interviews with the Mapping Team, Katanga, December 2008.

aged between 8 and 12 years to use them as sex and domestic slaves. A witness also reported rapes committed by the FAC based in Malemba Nkulu.[792]

433. Over the same period, in the part of Katanga under the control of the ANC/APR/RDF[793], the confrontations continued between Mayi-Mayi groups and ANC/APR/RDF soldiers. In this context, the Mapping Team documented the following alleged incidents.

- Between mid-2000 and 2002, ANC/APR soldiers conducted a reign of terror and killed at least 34 civilians in the villages of Lunfunkwe and Kiwewe, less than 10 kilometres from the town of Kalemie. The victims were suspected of being Mayi-Mayi or of collaborating with them. Most of them were killed with sticks or edged weapons.[794]

- Between 2001 and 2003, in the context of their war against ANC/APR troops for the control of the Tumbwe communities in the Kalemie and Benze region, in the Nyunzu region, members of Mayi-Mayi groups killed an unknown number of civilians and pillaged and set fire to homes. Before they left the villages, they often forced civilians to come and settle in the areas under their control. On 21 May 2001, in the Nyunzu region, the Mayi-Mayi attacked the village of Benze in the Sud-Lukuga community controlled by the ANC/APR. During the operation, they killed and mutilated civilians, set fire to houses and looted property. In 2002, in the Tumbwe community, in the Kalumbi *groupement* in the Kalemie region, the Mayi-Mayi tortured, mutilated and killed civilians. They also looted civilian property and set fire to villages.[795]

- During 2002 and 2003, elements of the ANC/APR/RDF based in Nyemba and Miala conducted a reign of terror in the area between the communities of Tumbwe and Sud–Lukuga, in the Kalemie and Nyunzu regions. The soldiers attacked the villages in the area and killed an unknown number of civilians on the basis that they were collaborating with the Mayi-Mayi and refused to assemble in the RCD-Goma zone. The soldiers also forcibly recruited several civilians and killed those who refused to be integrated. They held several suspects in detention in muddy holes in cruel, inhuman and degrading conditions and summarily executed an unknown number of civilians in public.[796]

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[792] Interviews with the Mapping Team, Katanga, December 2008.

[793] As mentioned before, From June 2002, the *Armée patriotique rwandaise* (APR) was renamed the Rwandan Defence Forces (RDF) or *Forces rwandaises de défense* (FRD) in French.

[794] Interviews with the Mapping Team, Katanga, January 2009; *Réseau national des organisations non gouvernementales des droits de l'homme de la République démocratique du Congo* (RENADHOC), "Panorama de la situation des droits de l'homme en RDC, rapport annuel", 2003, p. 16.

[795] Interviews with the Mapping Team, Katanga, February 2009.

[796] Interviews with the Mapping Team, Katanga, January 2009; RENADHOC, "Panorama de la situation des droits de l'homme en RDC, rapport annuel", 2003, p. 16.

434. On 30 July 2002, President Kabila and President Kagame signed a peace agreement in Pretoria.[797] On 18 and 19 September, the Rwandan Defence Forces withdrew from the towns of Kalemie, Nyunzu, Kongolo and Kabalo. Kinshasa, for its part, prohibited FDLR activities on its territory and tried to repatriate the 1,500 to 1,800 members of the FDLR who had been stationed at the Kamina base for over a year. As the FDLR rejected the process, the FAC attacked the Kamina base on 30 October, however the main result of the operation was that it allowed over 1,300 members of the FDLR to flee to North Katanga, South Kivu and Eastern and Kasai Occidental. On 1 November, the 95th Brigade, based in Ankoro, was given orders to arrest FDLR members in the Horizon Brigade, disarm them and take them to Kamina. The FAC managed to disarm the 3rd Company of the FDLR and arrest 21 of its members. Following mediation efforts by the Mayi-Mayi Chief Médard and Chief Ntuta, with whom the FDLR were allied, the FAC released these members of the FDLR on 5 November. In spite of this, tension in Ankoro remained high between the Mayi-Mayi and the FAC, with the latter accusing the former of opposing the disarmament of the FDLR.

- Between 10 and 20 November 2002, elements of the FAC fired approximately 245 shells on the town of Ankoro, allegedly causing the death of over 100 civilians and the destruction of over 4,000 houses, including schools and hospitals, generally by setting fire to them. The FAC pillaged over 100 houses during the days of fighting. On 10 November, the FAC and Mayi-Mayi had been involved in a series of minor provocations and altercations near the river, which had degenerated into open conflict and prompted the FAC commander to launch an operation to neutralise the Mayi-Mayi. Believing the civilian population to be complicit with the Mayi-Mayi and the FDLR, the soldiers bombarded the residential neighbourhoods of Ankoro-Nord and Ankoro-Sud with heavy weapons for several days.[798]

435. In order to restore calm to the Malemba Nkulu region, the Governor of Katanga, Ngoy Mukena, and General John Numbi Banza Tambo met in August 2002 at Makabe's headquarters in Musao. They gave the Mayi-Mayi leaders, Makabe, Mwende and Kabale, numerous gifts in return for their commitment to disarm. The Mayi-Mayi leaders fell out over how to share the spoils, however, and refused to disarm, which resulted in the violence continuing throughout 2002. In February 2003, Governor Mukena and General John Numbi paid another visit to Makabe. They made him a General and give him the title of Head of Security for the Malemba Nkulu region. In return, Makabe reorganised his militia, had Kabale arrested and promised to call in the weapons that had been distributed across the region.

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[797] For the text of the Agreement, see S/2002/914, appendix.

[798] Confidential documents of the working group on international crimes committed in the DRC sent to the Mapping Team; ASADHO, CDH, CVDHO, "Nord-Katanga: Attaques délibérées contre la population civile", October 2003; ASADHO, "Rapport sur le procès d'Ankoro", February 2005; Kalenge Yamukena Yantumbi, *Le Nord-Katanga à feu and à sang*, Kyamy Network Editions, Lubumbashi, 2004.

436. After a lull of a few months, Kabale was released and returned to the chiefdom of Kayumba. The local population, which had suffered at the hands of Kabale's Mayi-Mayi in 2002, immediately set off to hunt him down. On 13 May 2003, they killed Kabale near Lake Zibambo. Elements of the Mayi-Mayi organised a punitive expedition in retaliation. In the town of Malemba Nkulu, the Mayi-Mayi, claiming they were now solely responsible for maintaining order in the region, attacked and looted the offices and homes of the local police. The violence then spread to the chiefdom of Kayumba and to the Bukama and Kabongo regions, on the main Kitenge road.

- From 21 May 2003, elements of the Mayi-Mayi allegedly killed an unknown number of civilians, committed rape and looted and set fire to the villages of Mukanga, Museba, Ilunga, Kamitengo, Kakenza and Kimana in the chiefdom of Kayumba in the Malemba Nkulu region. At least 12 identified people were reported killed in Mukanga with the Mayi-Mayi mutilating the bodies of several victims. They also looted several school buildings and health centres.[799]

437. The Mayi-Mayi in the Bukama region sowed terror and committed atrocities directed at numerous civilians in the region. An autonomous Mayi-Mayi movement was created in the Kabongo region and, from the end of 2003, it became increasingly aggressive and violent towards the FAC and the civilian population.

438. In total, according to an estimate produced by the MONUC office, between 2002 and 2004, over 500 people were killed and over 2,000 villages destroyed as a result of open warfare between the FAC and Mayi-Mayi from Katanga.

D. North Kivu

439. From the end of 2000 the RCD-Goma tried to strengthen its popular base in North Kivu. To this end, it appointed a Hutu Banyarwanda, Eugène Serufuli, as Governor of the province. Serufuli tried to recreate a sense of unity between Tutsi and Hutu Banyarwanda, which had been largely lost since the early 1990s, around the concept of a "Rwandan-speaking" area. In order to break the alliance between the Mayi-Mayi and ex-FAR/Interahamwe and the Hutu armed groups within the FDLR, the Governor offered the Mayi-Mayi a separate peace and recruited massive numbers of Hutu Banyarwanda to the "Local Defence Forces", which were allied with the ANC/APR soldiers.

[799] Interviews with the Mapping Team, Katanga, December 2009; Confidential documents of the working group on international crimes committed in the DRC sent to the Mapping Team; ASADHO, CDH, CVDHO, "Nord-Katanga: attaques délibérées contre la population civile", October 2003; Service chrétien d'animation rurale du Katanga (SCARK), "Secours humanitaire d'urgence en faveur des victimes de Mayi-Mayi dans la chefferie de Kayumba à Kyolo-Museka", 5 June 2003; "Aide-mémoire des notables de la chefferie de Kayumba à l'attention de la délégation venue de Kinshasa pour suivre la tragédie de Kayumba", 9 June 2003; Kalenge Yamukena Yantumbi, *Le Nord-Katanga à feu and à sang*, Kyamy Network Editions, 2004.

440. In spite of the failure of the "Oracle of the Lord" operation launched by the FDLR against Rwanda in May-June 2001 and the start of the withdrawal of Rwandan soldiers from the province in September 2002, the strategy of the RCD-Goma towards the Mayi-Mayi and Hutu Banyarwanda groups did not have the anticipated impact. Most of the Mayi-Mayi groups, encouraged by the Government in Kinshasa, refused to negotiate with the RCD-Goma and maintained their alliance with the FDLR. In response, the RCD-Goma tried to divide the various Mayi-Mayi groups and offered certain Mayi-Mayi leaders positions within the ANC in return for their collaboration in the war against the groups cooperating with the FDLR. As in the previous period, civilians continued to be targeted by armed groups, against a background of widespread pillaging of natural resources by the various forces involved. Given problems of access to certain areas and a lack of time, the Mapping Team was only able to document a small number of alleged cases, which are described below by way of example.

1. Town of Goma, Masisi, Rutshuru, Walikale and Nyiragongo regions (Petit-Nord)

- In early November 2002, elements of the ANC killed an unknown number of people from the Hunde ethnic group during an attack on the village of Bushimoo in the Bashali Mokoto *groupement*, in the Masisi region. The victims had been accused of supporting a group of Mayi-Mayi under the command of a Hunde leader who was collaborating with the FDLR. The ANC had recruited a former member of the Mayi-Mayi group who came from the village and was from the Nyanga ethnic group.[800]

- On 3 November 2002, elements of the Mayi-Mayi group under the command of a Hunde leader set fire to several Nyanga villages in the Bashili Mokoto *groupement*, creating an unknown number of victims.[801]

- Between 21 and 23 January 2003, elements of the ANC killed an unknown number of Hunde civilians in the villages of Bushimoo, Kauli and Binyungunyungu in the Bashali Moboto *groupement*. On 21 January, they opened fire on civilians in the village of Bushimoo. On 22 January, they killed around 15 people on the bridge over the River Osso. On 23 January, they set fire to the villages of Kauli and Binyungunyungu. During the attacks, the soldiers raped at least one woman.[802]

- On 25 February 2003, elements of the ANC opened fire on the population in the villages of Bushimoo and Kailenge, killing at least 44 people. The killing took

[800] Statements gathered by MONUC's Human Rights Division, North Kivu, 2003; SOPROP, "Les droits de l'homme au Nord-Kivu, une affaire qui te concerne aussi", January-March 2003; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p. 135 and 136.

[801] Ibid.

[802] Ibid.

place whilst the leaders of the RCD-Goma had asked the local population to come and attend a community meeting, during which the new head of the village of Bushimoo, a former Mayi-Mayi who had joined the ANC, was to be introduced to them.[803]

- In April 2003, elements of the ANC killed five civilians and tortured two women in the forest around the village of Kabusa, around ten kilometres from the town of Walikale. The victims had taken refuge in the forest in order to flee the fighting between the ANC soldiers and Mayi-Mayi elements in the neighbouring village of Biruwe. The soldiers had accused the victims of collaborating with the Mayi-Mayi.[804]

- On 26 June 2003, elements of the ANC used bayonets to kill seven inhabitants of the village of Lukweti, which was seen by the soldiers as a Mayi-Mayi fiefdom. The soldiers systematically pillaged the village before they left.[805]

441. During the period under consideration, the Pygmy or Twa populations in the Beni and Butembo regions were regularly attacked by ANC soldiers and the FDLR. The Pygmies had regularly been accused of collaborating with one or other of the armed groups. It appears, however, that certain violations, such as rape, were motivated by the belief that raping Pygmy women was a remedy for illness. In this context, the Mapping Team documented the following alleged incidents.

- In March 2003, elements of the ANC gang-raped an unknown number of Pygmies in the village of Mubambiro, on the edge of the Virunga National Park, around 20 kilometres north of Goma, forced them to suffer cruel, inhuman or degrading treatment and detained them arbitrarily. The victims had been accused of collaborating with the FDLR. At the same time, elements of the FDLR also raped Pygmy women from the same village.[806]

- In September 2003, elements of the ANC gang-raped an unknown number of Pygmies in the village of Mudja, on the edge of the Virunga National Park, around 15 kilometres north of Goma, forced them to suffer cruel, inhuman or degrading treatment and detained them arbitrarily.[807]

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[803] Ibid.

[804] Interviews with the Mapping Team, North Kivu, December 2008.

[805] Statements gathered by MONUC's Human Rights Division, North Kivu, 2003; Réseau européen Congo (REC), "Info 06", 2003.

[806] Interviews with the Mapping Team, North Kivu, April 2009. Confidential document submitted to the Mapping Team, April 2009.

[807] Ibid.

2. Beni and Lubero regions (Grand-Nord)

442. In the Beni and Lubero regions controlled by the RCD-ML, fighting continued between the troops from the APC (the armed wing of the RCD-ML) and the UPDF on the one hand and the various Mayi-Mayi groups on the other.

- In 2001, elements of the APC allegedly killed at least five civilians and set fire to houses in the village of Kiantsaba, 15 kilometres from Beni. APC soldiers and the Vurondo Mayi-Mayi had long been in dispute over control of the village.[808]

443. From 2001, Mayi-Mayi groups and UPDF soldiers, sometimes supported by elements of the APC, engaged in fierce fighting to gain control of the village of Irango, around 20 kilometres from Beni.

- In 2001, elements of the UPDF allegedly killed an unknown number of people in the village of Irango. The victims had been accused of supporting the Mayi-Mayi. The soldiers also raped numerous girls. During the attack, they set fire to and looted several houses.[809]

444. In the town of Beni, UPDF soldiers instituted a reign of terror for several years with complete impunity. They summarily executed civilians, tortured and arbitrarily detained an unknown number of people, several of them in muddy holes two or three metres deep.

- Throughout 2001, elements of the FDLR are alleged to have terrorised and killed tens of civilians in the region north of Kanyabayonga. Civilian killings were reported, particularly in the villages of Kayna, Mayene, Nyamindo, Kisandja and Kiteka.[810]

E. South Kivu

445. During the period under consideration, the RCD-Goma tried to secure a popular base in South Kivu and increase the isolation of the FDLR by organising an inter-Kivu dialogue in September 2001 and offering local Mayi-Mayi groups the opportunity to sign a separate peace agreement. With the exception of the Mudundu 40 group, Mayi-Mayi groups in the province, although encouraged by the Government in Kinshasa, refused to negotiate with the RCD-Goma. The inter-Kivu dialogue was boycotted by most local civil society organisations.

[808] Interviews with the Mapping Team, North Kivu, February 2009.
[809] Interviews with the Mapping Team, North Kivu, February 2009.
[810] Interviews with the Mapping Team, North Kivu, February and April 2009.

446. Fighting between the ANC/APR and the Mayi-Mayi groups supported by Kinshasa and collaborating with the FDLR and armed Hutu Burundian groups (the FDD[811] and FNL[812]) continued on the ground until 2003. From 2002 onwards, the ANC/APR was also confronted with a real insurgency on the part of the Banyamulenge in the Minembwe area, led by a former ANC commander, Patrick Masunzu. Seen by the ANC/APR as "Tutsi Mayi-Mayi", Masunzu's *Forces républicaines et fédéralistes* (FRF) were allied to two Mayi-Mayi groups operating in the Mwenga, Uvira and Fizi regions and challenged the ANC/APR with the support of the Government in Kinshasa.

447. From September 2002, the gradual withdrawal of the soldiers of the Rwandan Defence Forces (RDF) allowed the Mayi-Mayi and FDLR to regain control of several villages and broaden their zone of influence in South Kivu.[813] In light of this situation, the ANC and RDF led several offensives against local Mayi-Mayi groups in order to regain lost ground. In this context, the Mapping Team documented the following alleged incidents.

- On 16 September 2001, Mayi-Mayi elements killed at least 21 civilians in the village of Masanga, 51 kilometres from the centre of the town of Shabunda, in the chiefdom of Bakisi in the Bagabo *groupement*. The Mayi-Mayi looted and set fire to several homes before they left the village.[814]

- In 2001, Mayi-Mayi elements killed at least three civilians, including the village chief and a woman accused of being the partner of an ANC/APR soldier in the village of Nundu, 56 kilometres south of Uvira. Before they killed her, the Mayi-Mayi mutilated the woman's genital organs.[815]

- On 17 January 2002, Mayi-Mayi and FDLR elements killed six civilians, including three women, and set fire to four houses in the Nyakabere II neighbourhood in the town of Sange, 33 kilometres north of Uvira. The attack took place shortly after a member of the local self-defence militias set up by the RCD-Goma had killed a woman in the Nyakabere I neighbourhood in Sange.[816]

- In January 2002, elements of the ANC/APR killed between 17 and 20 people, including at least one baby and two minors, in the village of Kaboke II in the Tanganyika area of the Fizi region. The killings took place after the end of the fighting between the Mayi-Mayi in the region and the ANC/APR soldiers. Some

[811] Les Forces pour la défense de la démocratie (FDD) were the armed wing of the Burundian Hutu movement of the Centre national pour la défense de la démocratie (CNDD).
[812] The Forces nationales de libération (FNL) were the armed wing of the Burundian Hutu movement Parti pour la libération du peuple hutu (PALIPEHUTU).
[813] From 14 to 20 October 2002, the Mayi-Mayi had taken control of the town of Uvira
[814] Interviews with the Mapping Team, South Kivu, January and February 2009.
[815] Interviews with the Mapping Team, South Kivu, April 2009.
[816] Interviews with the Mapping Team, South Kivu, April 2009.

of the victims were shot dead on their return to the village, others whilst they were hiding in the bush. Others still were burned alive when their houses were set on fire.[817]

- During the period under consideration, elements of the ANC/APR committed rapes and acts of pillaging directed at civilian populations living in the villages of Cibanda, Nshesha and Makwale, 40 kilometres to the south-west of Bukavu, in the Walungu region.[818]

- Between July and August 2002, as part of the operation known as "Soap" or "Palm oil", elements of the FDD raped at least 22 men in several villages in the Ubwari peninsula. The victims had been accused of supporting the RCD-Goma.[819]

- On 20 July 2002, elements of the FDLR killed seven civilians, raped several women and pillaged the property of several women in the village of Nyabibwe, 95 kilometres north of Bukavu, in the Kalehe region. They also kidnapped children, whom they later forced to carry the property they had pillaged. Some of these children were subsequently enlisted in the FDLR.[820]

- In October 2002, elements of the Mayi-Mayi and FRF raped and killed an unknown number of civilians in the Uvira region and pillaged their property.[821]

- On 20 October 2002, having regained control of Uvira, ANC soldiers raped and killed an unknown number of civilians in the town and surrounding villages, particularly in Runingu, Kiliba, Sange, Ndunda, Luvungi and Kamanyola.[822]

- From 22 December 2002 and for the next several months, elements of the Mayi-Mayi launched home-made bombs on Baraka, in the Fizi region, from dugout canoes, killing at least 17 people and destroying at least 40 houses. None of these bombardments was aimed at military targets. The Mayi-Mayi targeted civilian populations in order to force them to leave the area under the control of the RCD-Goma.[823]

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[817] Interviews with the Mapping Team, South Kivu, April 2009.

[818] Interviews with the Mapping Team, South Kivu, March 2009.

[819] Interviews with the Mapping Team, South Kivu March and April 2009; Confidential report submitted to the Mapping Team by NGOs in Uvira, October 2008.

[820] Interviews with the Mapping Team, South Kivu, March and April 2009.

[821] Interviews with the Mapping Team, South Kivu, April 2009; Documents from October 2002 submitted to the Mapping Team by local NGOs, April 2009; IRIN, "Weekly Round-Up No. 146", 26 October-1 November 2002.

[822] Interviews with the Mapping Team, South Kivu, April 2009; Confidential report from October 2002 submitted to the Mapping Team by local NGOs in Uvira, April 2009; IRIN, "Weekly Round-Up 146", 26 October-1 November 2002.

[823] Interviews with the Mapping Team, South Kivu, April 2009.

448. Towards the end of 2002, senior figures in the RCD-Goma began negotiations with a political wing of the Mudundu 40 Mayi-Mayi movement led by Odilon Kurhenga Muzimu and Patient Mwendanga. The aim of the negotiations was to complete the withdrawal of RDF soldiers from the Walungu region in return for the collaboration of the political wing of the Mudundu 40 in order to annihilate the movement's military wing, led by Commander Kahasha (Foka Mike) and elements of the Mudundu 40 operating in the region. In December, when the negotiations ended, the RCD-Goma appointed Patient Mwendanga to the post of Governor of South Kivu. The military wing of the Mudundu 40, however, received support from the Padiri Mayi-Mayi and strengthened its positions in the Burhale *groupement*. In March 2003, as the *rapprochement* between the RCD-Goma and the political wing of the Mudundu 40 had failed to undo the movement's military wing, Patient Mwendanga was dismissed from his post and the ANC, with the help of RDF reinforcements, launched an attack on the armed elements of the Mudundu 40 in the Walungu region. In this context, the Mapping Team documented the following alleged incidents.

- Between 5 and 13 April 2003, elements of the ANC/RDF used heavy weapons to attack the headquarters of the Mudundu 40 in Mushinga (the villages of Mwegerera, Lukumbo, Karhundu and Izirangabo) and the surrounding area, in the Burhale *groupement*, killing several tens of civilians. They also raped at least 27 women and caused the disappearance of six. They systematically pillaged the villages before they left. The bodies of several civilians and soldiers were buried in mass graves in Izirangabo, Butunza and Kibirira, close to the centre of the town of Walungu. To punish the population for its supposed support of the Mudundu 40, ANC soldiers intentionally and systematically destroyed educational institutions and healthcare facilities in the southern part of the centre of the town of Walungu.[824]

- On 31 January 2003, elements from the FNL Burundian Hutu armed group killed seven civilians, including minors, and pillaged and set fire to 41 houses in the village of Nyamwoma, 28 kilometres north of Uvira, in the Kabunambo *groupement* of the chiefdom of Bafuliro in the Uvira region. The victims were farmers who had refused to pay the tax demanded by elements of the FNL of Bitagi Umunyu, which controlled the Rukoko forest in Burundi. According to another source, the perpetrators of the crime were FNL deserters.[825]

[824] Interviews with the Mapping Team, South Kivu, March 2009; RODHECIC [Réseau d'organisations des droits de l'homme and d'éducation civique d'inspiration chrétienne], "INFO droits de l'homme no 36", 2003, p. 7 to 12 and 29; ANB [*African News Bulletin*], "Weekly News Issue", 14 April 2003, p. 1 to 4; MESEP [Messagers pour l'éducation and la sensibilisation des enfants à la paix], "Walungu après les Mudundu 40", 2003, p. 2.

[825] Interviews with the Mapping Team, South Kivu, February and April 2009.

- Between 1998 and 2003, over 1,660 cases of rape were recorded in the three areas of the Fizi region. All the armed groups operating in the area committed these acts. Of the 1,660 rapes recorded, 89 were rapes of men, mostly committed by the FDD. These figures naturally underestimate the scale of the phenomenon.[826]

- Between 1998 and 2003, elements of the FDD killed at least four, raped tens of people and pillaged civilian property in the village of Kalundja, seven kilometres from Baraka, in the Fizi region. Several cases of male rape were recorded in the village, which was ironically nicknamed "Dubai" because of the acts of pillaging committed practically every month against its inhabitants.[827]

- Between 2000 and 2003, local NGOs documented 2,500 cases of sexual violence in the chiefdom of Bakasi, in the Shabunda region, alone. Most of the violations took place in the villages of Mungembe, Matili, Nyalukungu, Lulingu, Chelamazi, Lugungu, Masanga and Kikamba. The perpetrators of these violations were firstly elements of the Mayi-Mayi and FDLR and to a lesser extent, elements of the ANC/APR.[828]

- Between 1998 and 2003, elements of the ANC/APR/RDF, Mayi-Mayi groups, and members of the ALiR/FDLR and FNL raped an unknown number of women, often collectively, in the Uvira region, in particular in the Ruzizi plain.[829]

F. Maniema

449. From 2001 onwards, the Mayi-Mayi groups in Maniema stepped up the number of attacks against ANC/APR troops. In response, the ANC/APR set up local self-defence forces made up of young Congolese militiamen. The civilian population was thus forced to side with either one camp or the other and was targeted by the ANC/APR and the Mayi-Mayi.

450. From February 2001, the Mayi-Mayi and ANC/APR troops fought for control of the village of Kasenga Numbi, 22 kilometres from Kindu. In this context, the Mapping Team documented the following alleged incidents.

- In March 2001, elements of the ANC/APR kidnapped five civilians from Kasenga Numbi in the Kailo region and killed them on the basis that they supported the Mayi-Mayi. Two days later, elements of the Mayi-Mayi groups went to the

[826] Interviews with the Mapping Team, South Kivu, April 2009.

[827] Interviews with the Mapping Team, South Kivu, February and April 2009.

[828] Interviews with the Mapping Team, South Kivu, June 2009.

[829] Interviews with the Mapping Team, South Kivu, March and April 2009; Réseau des femmes pour un développement associatif (RFDA), Réseau des femmes pour la défense des droits and la paix (RFDP) and International Alert (IA), "Le corps des femmes comme champ de bataille durant la guerre de la RDC, 1996-2003", 2004, p. 54.

village of Kasenga Numbi and buried a civilian accused of spying for the RCD-Goma alive. Before they buried him, the Mayi-Mayi cut off one of the victim's ears, forced his wife to fry it and finally, forced him to eat his own flesh.[830]

- During the night of 3 to 4 July 2001, on the orders of the security committee for the town of Punia chaired by the Administrator for the region, elements of the ANC/APR executed a minerals trader and 12 porters in Punia. The victims had arrived in Punia on 30 June accompanied by two other traders, with a sizeable cargo of coltan and gold and a large quantity of liquid silver. Accused of being spies working on behalf of the Mayi-Mayi, the victims were arrested and held in the central prison known as "Kigali". Two traders survived and were released after spending two and a half months in prison.[831]

- On 15 September 2001, elements of the ANC/APR bombarded the village of Lubao, in the Kailo region, with heavy weapons, killing six civilians and seriously wounding eight. The attack was intended to chase the Kabambe Mayi-Mayi from Lubao. The latter regained control of the village, however, on the following day. On 10 October 2001, ANC/APR troops launched a fresh attack on the village, killing four civilians and looting property.[832]

- In November 2001, elements of the ANC/APR killed at least 12 people in the village of Nyoka, 19 kilometres from Kindu, in the Kailo region. The victims, who had been accused of supporting the Mayi-Mayi, were shot during the night. One person managed to escape. The fate of two civilians arrested at the same time as the victims but who remained in prison on the night of the execution is still unknown.[833]

- On 29 December 2001, following a brief incursion by some Mayi-Mayi into the town of Kindu, elements of the ANC/APR killed seven civilians during a search operation in the Basoko neighbourhood.[834]

- In 2002, in Yumbi, 35 kilometres from Punia, elements of the ANC/APR shot and killed around 20 civilians in retaliation for the killing of the Administrator of the Punia region by elements of the Mayi-Mayi. The victims were killed after ANC/APR forces had chased the Mayi-Mayi from the village.[835]

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[830] Interviews with the Mapping Team, Maniema, March 2009.

[831] Interviews with the Mapping Team, Maniema, March 2009.

[832] Interviews with the Mapping Team, Maniema, March 2009.

[833] Interviews with the Mapping Team, Maniema, March and April 2009.

[834] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu, "Les exécutions sommaires, extrajudiciaires and les meurtres dans la province du Maniema (septembre 2001 à mai 2002)", 18 June 2002.

[835] Interviews with the Mapping Team, Maniema, March 2009.

- On 17 January 2002, elements of the Mayi-Mayi buried 15 civilians alive in Lubelenge, in the Kailo region. The victims were part of a group of 40 people travelling from Kibombo to Kindu. Having intercepted the group, the Mayi-Mayi separated the women from the men. The 15 men were each forced to dig a grave and were then buried alive in front of the women, many of whom were married to the victims. The 25 women were finally released.[836]

- In April 2002, elements of the ANC/APR set fire to 64 houses in the village of Makali, 12 kilometres from Kindu, in the Kailo region. The soldiers viewed the village as a Mayi-Mayi stronghold. Shortly before the incident, the convoy of the provincial Governor, escorted by the same members of the ANC/APR, had been attacked by the Mayi-Mayi in the village of Lengwa, nine kilometres from Kindu. Only the church in Makali was spared.[837]

- In April 2002, in the town of Kasongo, the administrative centre of the region of the same name, elements of the ANC/APR burned alive four members of a Mayi-Mayi group who were out of combat. The victims, who had been captured during Mayi-Mayi attacks on Kasongo, were all tortured and executed at the Palace Hotel.[838]

451. In May 2002, there was fighting in the Pangi region between Mayi-Mayi based in Kampene and the ANC/APR troops based in Kasongo.

- In May 2002, elements of the ANC/APR allegedly killed over 50 people in the village of Kitangi, 15 kilometres from Kampene, in the Pangi region. The killing took place after the Mayi-Mayi had been chased from the village by the ANC/APR. Rather than returning directly to Kitangi, the ANC/APR soldiers disguised themselves as Mayi-Mayi combatants. Having observed the enthusiasm with which they were greeted arriving disguised in this way, they arrested a large number of civilians, including some of the villagers as well as simple passers-by, who were rounded up along the roads. Most of the victims were killed by being struck on the back of the neck. In 2003, the villagers found the skulls of over 50 people, only 17 of which were identifiable.[839]

452. From 2001 onwards, Mayi-Mayi groups organised a blockade around Kindu in order to hamper the provision of fresh supplies to the ANC and force the APR to leave the town, which created a situation of ongoing food shortages. The people living in the

[836] Interviews with the Mapping Team, Maniema, March 2009.

[837] Interviews with the Mapping Team, Maniema, March 2009.

[838] Interviews with the Mapping Team, Maniema, March 2009.

[839] Interviews with the Mapping Team, Maniema, March 2009; Twelfth report of the Secretary-General on MONUC (S/2002/1180); CDJP-Kasongo, "La province du Maniema dans la tourmente de deux guerres dites de libération", June 2003; Kaki Za Binadamu, "Lecture de l'environnement and situation des droits de l'homme dans la province du Maniema (juin-juillet 2002)", 10 August 2002.

town were accused of supporting the Mayi-Mayi and suffered numerous atrocities at the hands of the ANC/APR/RDF troops and their allies in the local self-defence forces. They were also the victims of frequent attacks by the Mayi-Mayi, many elements of which acted criminally. To counter the blockade, the ANC/RDF[840] troops launched an operation known as "Kangola Nzela" (Open the Door) above and below Kindu. During the operation, the civilian populations living around Kindu were assumed to be Mayi-Mayi and targeted directly by the soldiers. In this context, the Mapping Team documented the following alleged incidents.

- Between 28 August and the first week of September 2002, elements of the ANC/RDF killed over 100 people, including women and children, on the islands of Nyonga and Katangila and in the village of Keko, in the Basongola community in the Kailo region. After one of their canoes had been attacked, the soldiers launched an offensive on the island of Katangila, killing at least 21 civilians, including women and children. Once they had returned to the right bank, the soldiers assembled the civilians from the villages of Hongelo, Okoko, Lubende, Kaseke and Nyonga and took them onto the island of Nyonga. On 30 August, the soldiers separated the men from the women and children and killed around 50 men. Some of the victims were shot, whilst others were killed with pickaxes or machetes. Their bones are still visible in various places on the island. After the killing, the soldiers set fire to numerous villages. The women and children who had been taken to the island of Nyonga were finally taken to Kindu. Over the same period, the ANC/RDF soldiers also arrested numerous civilians in the forests around the village of Keko. Having taken them back to the village, they killed the ten or so men in the group.[841]

- Between June and October 2002, elements of Mayi-Mayi groups kidnapped between 200 and 300 people, including women and children, and reduced them to slavery at their camp in Kipala, 29 kilometres from Kindu. They also whipped and killed five civilians with machetes after they refused to work as forced labourers. The victims were held by the Mayi-Mayi for two weeks before being released. Similar cases of kidnapping and cruel, inhuman or degrading treatment were observed in the Pangi region. Several dozen civilians, including women and children, were kidnapped from the villages of Avanga and Amikupi and reduced to slavery by the Mayi-Mayi in Mimbite and Lumembe.[842]

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[840] As mentioned previously, from June 2002, the Armée patriotique rwandaise (APR) was renamed the Rwandan Defence Forces (RDF).

[841] Interviews with the Mapping Team, Maniema, March 2009; CDJP [Commission diocésaine Justice et Paix]-Maniema "La province du Maniema (1998 à 2004) durant 7 ans de guerre and de conflits sanglants", 2006; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2003.

[842] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu "Lecture de l'environnement and situation des droits de l'homme dans la province du Maniema (juin à juillet 2002)", 10 August 2002.

453. On 30 July 2002, President Kabila and President Kagame entered into an agreement in Pretoria, providing for the withdrawal of the RDF from Congolese territory and the dismantling of the ex-FAR/Interahamwe over a period of 90 days. During the following weeks, Kinshasa prohibited the political activities of the FDLR in the area under its control. Between 17 and 18 September, the RDF left Kindu and the mining town of Kalima. On 19 September, the Mayi-Mayi groups active around Kindu entered into a ceasefire agreement with the leaders of the RCD-Goma, which was immediately welcomed by the population. During the day, however, an isolated incident between Mayi-Mayi elements and ANC soldiers degenerated into several violent incidents. In this context, the Mapping Team documented the following alleged incidents.

- From 19 or 20 September 2002, elements of the ANC and their allies in the local self-defence forces killed over 100 civilians in the Brazza neighbourhood in the town of Kindu, mostly around a barrier put up to filter the villagers as they returned from the fields. During the previous months, the Brazza neighbourhood had been the scene of regular confrontations between Mayi-Mayi and ANC/APR/RDF troops. At least 40 bodies were found on boulevard Joseph Kabila and over 70 on the road to Lwama.[843]

- Between September and October 2002, elements of the ANC and their allies in the local self-defence forces executed 20 civilians, including a baby and young schoolchildren, in the municipality of Alunguli in the town of Kindu. The victims were travelling into the centre of Kindu, having learnt that the Mayi-Mayi and the RCD had agreed a ceasefire. They were intercepted at the Alunguli barrier and executed with edged weapons on the grounds that they were collaborating with the Mayi-Mayi. Two mass graves containing 9 and 11 bodies were discovered in the municipality in 2007.[844]

- On 22 September 2002, elements of the ANC and their allies in the local self-defence forces killed seven civilians during a search operation in the Tokolote neighbourhood in the town of Kindu. Five of the victims were arrested at their homes during the night and executed on the grounds that they were collaborating with the Mayi-Mayi. In 2006, the local population discovered the mass grave that

[843] Interviews with the Mapping Team, Maniema, March and April 2009; Interview with MONUC's Human Rights Division, Kindu, April 2003; Les Amis de Desmond Tutu, *Rapport d'identification des tombeaux anonymes and des fosses communes au quartier de Brazza* May 2006; CDJP-Maniema, "La province du Maniema (1998 à 2004) durant 7 ans de guerre and de conflits sanglants", 2006.

[844] Interviews with the Mapping Team, Maniema, March 2009; Interview with MONUC's Human Rights Division, Kindu, April 2003; *Twelfth report of the Secretary-General on MONUC* (S/2002/1180), CDJP-Maniema, "La province du Maniema (1998 à 2004) durant 7 ans de guerre and de conflits sanglants", 2006; Haki Za Binadamu, "Lecture de l'environnement and situation des droits de l'homme dans la province du Maniema (juin-juillet 2002)", 10 August 2002.

contained their bodies. A file on the case was opened in 2004 at the Military Prosecutor's office but no trial has ever taken place.[845]

- On 25 September 2002, elements of the ANC killed 19 civilians, including women and children, in the Church of the Apostles in the village of Songwe, 24 kilometres south of Kindu, in the Kailo region. The victims had been accused by the soldiers of being Mayi-Mayi. Thirteen civilians managed to escape but the others were shot dead inside the church itself. The victims' bodies were buried by the villagers in five mass graves.[846]

- Also on 25 September 2002, elements of the ANC killed 22 civilians, including women and children, in the villages of Katalama and Mongali, 14 kilometres from Kindu. The killings took place after the ANC had chased the Mayi-Mayi from these villages. In Katalama, ANC soldiers found six women hiding in their houses, who agreed to help them flush the other villagers out of their hiding places. The soldiers then told the 17 civilians to gather for a census and shot them dead. In the neighbouring village of Mongali, the ANC troops found five civilians, whom they accused of collaborating with the Mayi-Mayi and killed.[847]

- Towards the end of 2002 and in early 2003, elements of the ANC occupying the town of Kibombo, 110 kilometres south of Kindu, executed at least 37 civilians suspected of supporting the Mayi-Mayi in the surrounding fields. The civilian population was seen as colluding with the enemy by both camps. The victims were killed in Kibombo by an ANC firing squad and their bodies thrown into two wells in the Kawelo neighbourhood (30 bodies) and the police district (seven bodies).[848]

- In early 2003, elements of the ANC from Kimbolo looted the village of Lubelenge and set fire to over 100 houses as well as places of worship (the United Methodist church, the Catholic church and the mosque) and health centres. The soldiers were trying to clear the Mayi-Mayi from the main road between Kibombo and Kindu as part of the "Kangola Nzela" (Open the Door) operation. Lubelenge

[845] Interviews with the Mapping Team, Maniema, March 2009; Twelfth report of the Secretary-General on MONUC (S/2002/1180); Haki Za Binadamu, "Lecture de l'environnement and situation des droits de l'homme dans la province du Maniema (juin-juillet 2002)", 10 August 2002; ACIDH [Action contre l'impunité pour les droits humains], "Pour un système judiciaire plus opérationnel and crédible au Maniema. Rapport sur l'observation du système judiciaire du Maniema à travers 13 cas ciblés", October 2008; Military Prosecutor at the Kindu garrison, *Rapport de l'instruction du dossier judiciaire* RMP 087/ KMB/ 04 MP c/ Longamba et consort, October 2006; CDJP-Maniema "La province du Maniema (1998 à 2004) durant 7 ans de guerre and de conflits sanglants. Quelles leçons tirées pour l'avenir?", 2006.

[846] Interviews with the Mapping Team, Maniema, March 2009.

[847] Interviews with the Mapping Team, Maniema, March 2009; CDJP-Maniema "La province du Maniema (1998 à 2004) durant 7 ans de guerre and de conflits sanglants", 2006.

[848] BNUDH, Mission report - discovery of two mass graves in Kibombo, 15 January 2007.

was the headquarters of a Mayi-Mayi group that regularly attacked ANC soldiers along this road.[849]

- Between 2001 and 2003, Mayi-Mayi raped a large number of women of all ages in the town of Kindu and the surrounding area. Between 2002 and 2003, for example, 238 cases of rape were recorded in the village of Lubelenge alone. The victims were mostly attacked when they were leaving the town to get fresh food supplies during the blockade in Kindu. Many women were also kidnapped and used for several months or even a year as sex slaves in the Mayi-Mayi camps. Cases of rape involving ANC/APR soldiers were also recorded, but in smaller numbers.[850]

- Between 2002 and the first quarter of 2003, Mayi-Mayi elements kidnapped, raped and used hundreds of women from Kalima and the surrounding area, in the Pangi region, as sex slaves. Most of the victims were kidnapped while they were on their way to Kamakozi, in the Kailo region, to till their fields there. They were often taken to the villages of Amisi and Kamakozi, where the Mayi-Mayi had their bases. The Mayi-Mayi also often kidnapped men, whom they then used for forced labour. Some women remained in the Mayi-Mayi camps for several days and others for several months. All of them were raped on a daily basis by several men and subjected to all kinds of cruel, inhuman and degrading treatment.[851]

- Between 1999 and 2003, elements of the Mayi-Mayi and ANC/APR raped over 2,500 women in the communities of Maringa, Mulu and Bakwange in the Kasongo region alone. Most of the victims were attacked when they were out looking for food or doing domestic chores. When the Mayi-Mayi took control of a village that had previously been occupied by the ANC/APR, they often forced members of the same family suspected of having cooperated with the RCD-Goma to have incestuous sexual relations in public. When they carried out a rape, the Mayi-Mayi forced the men in the victim's family to witness it.[852]

454. These figures are given by way of example and are likely to represent only a fraction of what happened in reality. As in the other provinces, many places are still inaccessible; sometimes victims and witnesses did not survive the violations or are still ashamed to speak about them. When they did survive rape, women were generally rejected by their husbands and families instead of being supported by their communities.

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[849] Interviews with the Mapping Team, Maniema, March 2009.

[850] Interviews with the Mapping Team, Maniema, March-April 2009; CDJP-Kasongo, "Des graves violations des droits de l'homme consécutives aux affrontements mai-mai and militaires du RCD (de juin à août 2002)", August 2002.

[851] Interviews with the Mapping Team, Maniema, March and April 2009; CDJP-Kasongo, "Au nom de toutes les miennes. SOS pour les femmes victimes des crimes sexuels and autres violences à Kalima", 2003.

[852] Interviews with the Mapping Team, Maniema, March 2009.

G. Rest of the country

1. Kinshasa

455. Between January 2001 and June 2003, the repression of political opponents and members of civil society continued. Although there were fewer cases of violations, the security forces continued to commit murder, summary and extrajudicial executions, rape and acts of torture with complete impunity. They also caused the disappearance of an unknown number of people. The conditions in which people were detained remained cruel, inhuman or degrading and likely to lead to heavy losses of human life.

456. During the period under consideration, over 30 reports of cases in Kinshasa were sent to the Government through the mechanisms provided by the Commission on Human Rights, including the Working Group on enforced or involuntary disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading punishments or treatments and the Working Group on arbitrary detentions.[853] A large number of these reports concerned human rights violations committed in relation to the pursuit of those suspected of playing a part in the assassination of President Kabila.

- On 16 January 2001, at Camp Kokolo, in Kinshasa, elements of the FAC summarily executed 11 Lebanese men suspected of being involved in the assassination of President Kabila. In the raids organised after the death of the President, a total of around 100 people were arrested and tortured. Some were held for over two years in various detention centres, in particular Building 1 of the CRPK, without being formally charged.[854]

- From 23 April 2001, 19 FAC soldiers, most of whom were originally from the provinces of North and South Kivu and had officially applied for asylum at the UNHCR office in Brazzaville, were transferred to Kinshasa in breach of legal procedures and then tortured and subjected to cruel, inhuman and degrading treatment in the ANR prisons. They had been accused of being involved in a plot to overthrow President Kabila. On 7 January 2003, they were sentenced to life imprisonment by the Military Court.[855]

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[853] Most of these reports, which relate to hundreds of people, were produced jointly with the Special Rapporteur on the situation of human rights in the DRC: E/CN.4/2002/74 /Add.2, E/CN.4/2002/76/Add.1, E/CN.4/2002/77, E/CN.4/2002/79, E/CN.4/2003/3/Add.1, E/CN.4/2003/8, E/CN.3/2003/68/Add.1, E/CN.4/2003/70, E/CN.4/2004/3, E/CN.4/2004/7/Add.1, E/CN.4/2004/56/Add.1 and E/CN.4/2004/58.

[854] Interviews with the Mapping Team, Kinshasa, March 2009; *Report on the situation of human rights in the DRC* (A/56/327); *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading punishments or treatment* (E/CN.4/2004/56/Add.1).

[855] *Torture and other cruel, inhuman or degrading punishments or treatment – Report presented by the Special Rapporteur* (E/CN.4/2002/76/Add.1); CODHO, "Des arrestations and détentions arbitraires à Kinshasa", 2003; AI, *DRC. A past that haunts the future*, 2003.

457. During the period under consideration, the security forces in general committed assassinations, extrajudicial executions, rapes and acts of torture directed against political opponents and ordinary civilians, with almost complete impunity. As the incidents are too numerous to list in full, a few alleged cases are reported below for illustrative purposes.

- Between February and September 2001, an unknown number of people were killed and subjected to cruel, inhuman or degrading treatment in the GLM building by the security services. Some people were taken out of their cells during the night and taken to the river bank, where they were executed. Other prisoners died as a result of torture.[856]

- In mid-December 2001, FAC soldiers arrested around 100 students following demonstrations organised to protest against the increase in university fees. The FAC raped three female students during the operation. Nine students seen as the leaders were tortured for three months in the various prisons in the town, including at the DGRS (Kin Mazière) and the CPRK. Soldiers also looted university halls of residence during the operation.[857]

2. Bas-Congo

458. The Bundu Dia Kongo (BDK) is a political, cultural and religious movement that fights for the defence of the Kongo people. In addition to the establishment of a federal State in the DRC, the BDK wants a redefinition of national boundaries on the African continent and recognition of an autonomous republic of Central Kongo, which would combine the parts of Angola, the Republic of the Congo and the DRC that belonged to the former kingdom of Kongo.

- On 22 July 2002, elements of the police and the FAC allegedly killed at least 14 civilians, primarily in Luozi and Moanda, and arrested over 40 people during demonstrations organised by the BDK. The security forces also arrested a large number of militants from the party who were arbitrarily detained and tortured for several months in prisons in the Bas-Congo region and Kinshasa. [858]

3. Kasai Occidental

459. From 2001 onwards, the stabilisation of the front line and the MONUC deployment all along it gradually restored calm to the province of Kasai Occidental. The

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[856] Interviews with the Mapping Team, Kinshasa and Lubumbashi, April 2009.

[857] Interviews with the Mapping Team, Kinshasa, April 2009; Bureau of Democracy, Human Rights and Labor, U.S. Department of State *Country Reports on Human Rights Practices*, 2001.

[858] Interview with the Mapping Team, Bas-Congo, March 2009; ASADHO*, Annual Report, 2002*; SCEPDHO [Structure de culture, d'éducation populaire and des droits de l'homme], Rapport sur les événements survenus suite à la marche du Bundu Dia Kongo, 2002; Bundu Dia Kongo newsletter, "Le Ministre Mashako and les massacres de Luozi", 2002.

FAC and soldiers from the ANC/APR, however, continued to commit atrocities directed at the civilian population in their respective areas. Several cases were reported but the land-locked nature of the region and lack of time meant it was not possible for the Mapping Team to cross-check all of them. One case is mentioned below for illustrative purposes.

- In July 2001, elements of the ANC/APR allegedly killed four civilians in the village of Mwanza, 12 kilometres from Kajiba, in the Dimbelenge region. The victims had been accused by the soldiers of collaborating with the FAC, primarily by providing them with information.[859]

4. Kasai Oriental

460. Between January 2001 and June 2003, following the introduction of the ceasefire and the MONUC deployment along the front line, peace was gradually restored to the south and east of Kasai Oriental. In spite of this, civilians continued to live in wretched conditions and women were still raped in large numbers.

461. In Mbuji-Mayi, hundreds of civilians, including very large numbers of young people, attempted to earn a living by clandestinely entering the *Minière des Bakwanga* (MIBA) mining concession, looking for any diamonds. In response, the MIBA and the provincial authority called on groups of security guards nicknamed Blondos to support the mine police.[860] During the period under consideration, elements of the FAC and, until their withdrawal from the DRC in 2002, Zimbabwean army (ZDF) troops, were also present at the MIBA concession. The situation at the mine quickly became anarchic as a result of the competition between the various armed groups who were supposed to protect the concession and the presence amongst the illegal diggers of certain so-called "suicide" armed elements.

- Between 2001 and 2003, MIBA guards allegedly killed and wounded several hundred civilians who had entered the mine illegally. The victims were either shot dead or buried alive in the holes they had hidden in. MIBA guards also held an unknown number of illegal diggers, including minors, in cruel, inhuman or degrading conditions in prisons on the concession. Several killings were reported during 2001. On 21 February 2001, MIBA guards surprised around 30 illegal diggers in the mine and are said to have opened fire. They also blocked up the entrance to the gallery where some of the diggers had hidden, using stones and jumpers. The following day, nine bodies were exhumed, including those of eight diggers who has suffocated and one who had been shot dead. On 27 February

[859] Interviews with the Mapping Team, Western Kasai, April 2009.

[860] In the remainder of the text, the term "MIBA guards" will be used to refer both to the armed police officers at the mine and the "Blondos". Officially, the Blondos were not armed but in practice they opened fire on the illegal diggers on numerous occasions.

2001, the Minister for Human Rights ordered an enquiry and referred the case to the Prosecutor at the Military Court. The MIBA guards claimed they had acted in self-defence, arguing that the diggers were armed. The case was finally dropped on the grounds that the victims had died as the result of a rockfall. On 10 June 2003, MIBA guards again killed an unknown number of illegal diggers in similar circumstances.[861]

462. During the period under consideration, the security situation in the north of the province (in the Katako-Kombe region) deteriorated significantly following the appearance of numerous Mayi-Mayi groups hostile to the presence of ANC/APR/RDF troops in the Sankuru region. Some groups were affiliated to Mayi-Mayi movements in neighbouring Maniema. Others, conversely, had remained more independent, although all were allied in practice with the Government in Kinshasa. Alongside the confrontations between ANC/APR/RDF soldiers and these Mayi-Mayi groups, civilians were subjected to numerous serious violations of their rights. In this context, the Mapping Team documented the following alleged incidents.

- In May 2001 and again from October 2001, elements of the ANC/APR/RDF killed at least seven civilians and tortured two in the town of Katako-Kombe. The victims were suspected of collaborating with the Mayi-Mayi.[862]

- In March 2002, soldiers from the ANC/APR/RDF raped two women and tortured 18 men in the village of Nyeme in the Katako-Kombe region. The soldiers also looted the village. The victims were members of the Kimbanguist church. The soldiers had accused them of collaborating with a minister who was in conflict with two ANC/APR leaders over a case of diamond-smuggling.[863]

- In August 2002, Mayi-Mayi from Lomassa executed one civilian, raped two women and wounded three civilians in the village of Omeoga in the Basambala area, in the Katako-Kombe region. The Mayi-Mayi also looted and set fire to the village. The Mayi-Mayi had accused the villagers of collaborating with the ANC/APR/RDF soldiers based in Katako-Kombe.[864]

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[861] Interviews with the Mapping Team, Kasai Oriental, April-May 2009; Centre d'étude et de formation populaire pour les droits de l'homme (CEFOP), "Journal Le Facilitateur", April-June 2001; CEFOP, Rapport sur les tueries au polygone minier de la MIBA, March 2003; Press release by human rights NGOs in the province of Kasai Oriental, 4 March 2003; RENADHOC, *Panorama de la situation des droits de l'homme en RDC, rapport annuel 2003,* March 2004, p. 15 and 16; AI, "The diamond trade in government-controlled DRC", 2002; IFHR, "Note de situation RDC: le far-west minier de Mbuji-Mayi n'a pas besoin d'un nouvel étouffement !", March 2003.

[862] Interviews with the Mapping Team, Kasai Oriental, May 2009; *L'Éclaireur* newspaper, "Tous seront disqualifiés par la CPI aux élections de 2005", 28 October 2004, p. 4.

[863] Interviews with the Mapping Team, Kasai Oriental, May 2009.

[864] Interviews with the Mapping Team, Kasai Oriental, May 2009.

- From April 1999 until 2003, ANC/APR/RDF soldiers recruited an unknown number of child soldiers (CAAFAG),[865] often by force in the Katako-Kombe region. Most of the victims were used to carry looted property or transport weapons and munitions. They were often tortured, subjected to cruel, inhuman or degrading treatment and raped. Some of the victims were given firearms and used either as bodyguards or combatants during confrontations with the Mayi-Mayi. To a lesser extent, local Mayi-Mayi groups and the FAC also recruited child soldiers in the region.[866]

CHAPTER V. LEGAL CLASSIFICATION OF ACTS OF VIOLENCE

463. Whilst the legal classification of the acts of violence identified ultimately relies on a judicial process, it is still necessary in order to establish the nature of the violations committed and to determine to what extent they are covered by international humanitarian law and human rights, as required by the Terms of Reference of the Mapping Exercise. Given the impossibility of classifying each of the hundreds of incidents described in the preceding chapters, the legal framework applicable to the main waves of violence has been identified in order to draw conclusions on the overall classification of the incidents or groups of incidents reported.

464. Several violations of international human rights law and international humanitarian law constitute crimes under international law as defined by the Rome Statute of the International Criminal Court, for which the perpetrators may be held criminally liable on an individual basis. The vast majority of the most serious incidents identified in this Exercise constitute crimes under international law, either war crimes or crimes against humanity, and often both at the same time. The question of the concomitant existence of some acts that could be classified as genocide, which is much more difficult to resolve, can not ,nonetheless, be ignored.

465. Although the inventory set out in the preceding pages includes serious violations of both human rights and international humanitarian law, it should be noted that the vast majority of the crimes reported were committed in the context of an armed conflict, domestic or international, or a widespread or systematic attack directed against a civilian population, and can thus be classified as war crimes and crimes against humanity respectively. In respect of the crime of genocide, it is important to define its constituent components carefully and question the extent to which it applies in the context of some of the incidents identified.

[865] Children associated with armed groups and forces.

[866] Interviews with the Mapping Team, Kasai Oriental, May 2009.

A. War crimes

466. The term "war crimes" is generally used to refer to any serious violations of international humanitarian law directed at civilians or enemy combatants during an international or internal armed conflict, for which the perpetrators may be held criminally liable on an individual basis. Such crimes are derived primarily from the Geneva Conventions of 12 August 1949 and their Additional Protocols I and II of 1977, and the Hague Conventions of 1899 and 1907. Their most recent codification can be found in article 8 of the Rome Statute of the International Criminal Court of 1998, which distinguishes four categories of war crime:

- Grave breaches of the Geneva Conventions committed against protected persons or property in an international armed conflict such as wilful killing, torture, wilfully causing serious injury to body or health and the destruction and appropriation of property (sect. *a*, para. 2 of article 8);
- Other serious violations of the laws and customs applicable in international armed conflict, such as intentional attacks on the civilian population, rape and sexual slavery, and enlisting or using child soldiers (sect. *b*, para. 2 of article 8);
- Serious violations of article 3 common to the four Geneva Conventions directed against people taking no active part in the hostilities in an internal armed conflict, such as violence to life and person, in particular murder, mutilation, cruel treatment and torture (sect. *c*, para. 2 of article 8);
- Other serious violations of the laws and customs applicable in an internal armed conflict, such as intentional attacks on the civilian population, rape and sexual slavery, and conscripting, enlisting or using child soldiers (sect. *e*, para. 2 of article 8).

467. According to this definition, the commission of a war crime requires evidence of four main elements, in addition to the psychological element required for each accused person:

a) **A prohibited act** (such as murder, causing bodily injury and rape);
b) Committed against **protected persons** (such as those taking no direct part in the hostilities);[867]
c) During **an armed conflict**, either internal or international;
d) And the existence of a **nexus** between the armed conflict and the act committed.

[867] Some war crimes can also be committed against combatants, in particular those relating to the prohibition of certain methods of waging war. However, this report will concentrate on crimes directed at "protected persons" in respect of serious violations of international humanitarian law.

1. Prohibited acts

468. Among the many acts prohibited under the definition of war crimes are those that constitute the core of the most serious human rights violations, in particular violations of the right to life, personal physical and moral integrity and personal freedom and security. In international humanitarian law, violations are treated as serious – and consequently as war crimes – when they endanger protected persons or property, or when they infringe important values.[868] The inventory set out in the previous chapters pointed to the commission of multiple prohibited acts, in particular:

- Murders and wilful killings;
- Causing injury to body or health;
- Rapes, sexual slavery or any other form of sexual violence constituting a serious breach of the Geneva Conventions;
- Torture;
- Intentional attacks directed against the civilian population or in the knowledge that they would cause a disproportionate loss of human life amongst civilians;
- Deportation or illegal transfer of a civilian population or a portion of such a population;
- Illicit and arbitrary looting, destruction and appropriation of civilian property;
- Conscription, enlisting and use of child soldiers.

2. Protected persons

469. The second element required for the classification of war crimes concerns the nature of the victims of the prohibited acts (or the property targeted), who must be part of a protected group as defined in the Geneva Conventions. The definition of these groups varies somewhat according to the different Conventions, the nature of the conflict and the prohibited acts directed against them. For the purposes of this Exercise, it has been assumed that it covers those not taking part in the hostilities,[869] in particular civilian populations, and those no longer able to fight as a result of illness, injury, detention or for any other reasons, including combatants who have laid down their weapons. The vast majority of the victims of the most serious violations of international humanitarian law committed in the DRC between March 1993 and June 2003 identified in this report belong to these protected groups, generally civilians who are not taking part in the hostilities. This applies in particular to people living in refugee camps, who constitute a

[868] See Jean-Marie Henckaerts and Louise Doswald-Beck, *Droit international humanitaire coutumier, Tome 1, Les Règles, CICR*, éditions Bruylant, Brussels, 2006, p. 752.

[869] Under international humanitarian law, the notion of "direct participation in the hostilities" refers to individual behaviour which, if displayed by civilians, suspends the protection they enjoy against the dangers inherent in military operations. In addition, whilst they are directly participating in the hostilities, civilians can be directly attacked as if they were combatants.

civilian population that is not participating in the hostilities, in spite of the presence of military personnel among them in some cases.[870]

3. Armed conflict

470. The prohibited acts directed against a protected group must be committed during an armed conflict. Armed conflict occurs when one or more States use armed force against another State, when government armed forces are in conflict with non-governmental armed groups or when there is an armed conflict between particular groups.[871]

471. International humanitarian law distinguishes two types of armed conflict: international armed conflict, which generally involves two or more States, and internal or non-international armed conflict, which involves fighting between government forces and non-governmental armed groups, or just between armed groups. Finally, in order to distinguish internal (non-international) conflict from internal unrest, internal tensions or banditry, international humanitarian law requires that the armed conflict should be prolonged, that it should be at a minimum level of intensity and that the parties involved should be organised to a minimum degree.[872] As far as the parties to the conflict mentioned in this report are concerned, the vast majority of those involved were certainly organised to the minimum degree required by international humanitarian law, insofar as these were regular state-controlled troops or had been before the conflict (for example, the ex-FAR) and armed rebel groups or militias that were often supported, trained and armed by the armed forces of neighbouring countries or by the Government in Kinshasa. The few possible exceptions to this general observation are examined in context below.

472. Although the distinction between an international armed conflict and an internal armed conflict is always essential in determining the legal regime applicable under the Rome Statute of the ICC, it is blurred in terms of the legal implications in this case. The distinction is still important in some respects, particularly as to the obligation on States to provide for universal jurisdiction on war crimes deemed to be "grave breaches",[873] the inclusion or not of certain prohibited acts, and so on, in their national legislation. However, as the ICRC study on customary law confirms,almost all violations of

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[870] See para. 3, art. 50 of Additional Protocol I to the Geneva Conventions of 12 August 1949; ICTY *Kordić et Cerke*, Appeals chamber, 17 December 2004, para. 50.

[871] ICTY, *The Prosecutor v. Dusko Tadić*, Judgment on the appeal by the defence challenging jurisdiction, no. IT-94-1-A, 2 October 1995, para. 70.

[872] See sect. *d* and *f*, para. 2 of article 8 of the Rome Statute of the ICC; see article 3 common to the Geneva Conventions of 12 August 1949; article 1 of Additional Protocol II adds that the armed group must control part of the territory; see also ICTY *Fatmir Limaj*, no. IT-03-66-T, 30 November 2005, para. 94 to 134, or D. Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI [Collected Courses of the Hague Academy of International Law], vol. 163, 1979-II, p. 147.

[873] See for example art.146 of the Fourth Geneva Convention of 1949. It is, however, broadly accepted that States can exercise their universal jurisdiction over other war crimes, in particular those committed during a non-international conflict.

[873] See the Rome Statute of the ICC, Elements of Crimes, under article 8.

international humanitarian law and the war crimes associated with them are the same, whether the context is one of international or internal armed conflict. The most serious violations described in this report would thus be classified as war crimes under either system, to take attacks on civilians, sexual violence and looting as just a few examples. In fact, the vast majority of violent incidents listed in the preceding chapters are the result of armed conflict, whether this is internal or international, and point to the commission of war crimes as serious violations of international humanitarian law.[874]

4. Nexus

473. Finally, there must be a nexus between the prohibited act and the armed conflict. There is thus a requirement that the perpetrator of the act should be aware of the existence of the armed conflict at the moment he/she commits the act, that the act should take place in the context of the armed conflict and that it should be "associated" with it.[875] In general terms, this nexus is clear in the incidents identified by the Mapping Team. Nonetheless, it will have to be demonstrated in respect of each individual prosecuted for war crimes before a judicial body to establish their personal criminal liability.

5. Issues around the classification of armed conflicts in the DRC

474. It is difficult to classify all of the various armed conflicts that affected the DRC all over its territory between 1993 and 2003. Depending on the time and place, the DRC experienced internal and international armed conflicts and internal conflicts that subsequently became international. Whilst, at times, the presence of foreign armed forces fighting on DRC territory points to the international nature of the conflict, at other times certain acts of ethnic violence in several regions seem to point more towards internal conflict. Similarly, whilst the war that led to the Mobutu regime being overturned by the AFDL originally appeared to be an internal conflict, it subsequently became apparent that it was more international in nature, with the acknowledged participation of foreign forces on both sides. In respect of the armed conflict between Rwandan and Ugandan forces in Orientale Province, the peace agreements signed by the belligerents with the DRC, in which they agreed to withdraw their troops from Congolese territory, clearly points to its

[874] "Violations are treated as serious – and consequently as war crimes – when they endanger protected persons or property, or when they infringe important values." Jean-Marie Henckaerts and Louise Doswald-Beck, *Droit international humanitaire coutumier, Tome 1, Les Règles, CICR*, éditions Bruylant, Brussels, 2006, p. 752.

[875] See the Rome Statute of the ICC, Elements of Crimes, under article 8. See *Kunarac et al.*, ICTY, Appeals chamber, no. IT-96-23/1-A, 12 June 2002, para. 58: "A link between cause and effect is not required between the armed conflict and the perpetration of the crime but at the very least, the existence of the armed conflict must have had a significant influence on the capacity of the perpetrator of the crime to commit it, their decision to commit it, the manner in which they committed it or the purpose for which they committed it.

international character.[876] Nonetheless, some time is required to determine the nature of certain conflicts reported in the previous pages and consequently, the legal regime applicable to them.

1993-1996: Regional crisis

Persecution of the Kasaians in Shaba (Katanga)

475. The numerous acts of violence directed against the Kasaians from March 1993 onwards, during a campaign of persecution that resulted in large numbers of victims, are not war crimes but crimes against humanity, which will be dealt with in the next section. It is difficult to see this dramatic episode in Congolese history as a conflict pitting two armed groups against each other, insofar as the Kasaians were not organised into an armed group capable of carrying out military operations. It would therefore be seen instead as internal unrest which, though highly intense, cannot be characterized as internal armed conflict.

[876] Peace agreements signed on 30 July 2002 in Pretoria (S/2002/914, appendix) and on 6 September 2002 in Luanda (available at: www.droitcongolais.info/files0426_accord_du_6_septembre_2002_rdc-ouganda_r.pdf).

Ethnic war in the Masisi region (North Kivu)

476 The legal classification of the acts of violence that took place before the arrival of the ex-FAR/Interahamwe, in July 1994, depends on the nature and degree of organisation of the militias involved and the intensity of the violence. The report of the Investigative Team of the Secretary-General in the DRC in 1998 concluded that the intensity of the violence resulting from the inter-ethnic fighting over land between Hunde and Banyarwanda in Masisi from 1993 onwards was "sufficiently serious to trigger the application of Common Article 3 of the Geneva Conventions, ratified by Zaire, which applies to non-international armed conflicts."[877] This statement is supported by the Mapping Exercise investigations, which revealed that several violent incidents that caused numerous victims took place between 14 February and 7 September 1993. Although the Team is not able to confirm the figures on the losses of human life and the massive displacement of populations, the fact that such figures were reported by reliable humanitarian workers operating on the ground is undoubtedly an indication that suggests a level of intensity beyond the minimum threshold required for such acts of violence to be classified as internal armed conflict. Assessing the degree of organisation of the Hunde and Hutu militias in North Kivu at this time is more complicated. The key questions on the existence within these militias of a clear command structure and their capacity to carry out real military operations would need to be examined in more detail. At first sight, the heavy toll of inter-ethnic violence which, according to some reports, resulted in the deaths of thousands of victims, caused hundreds of thousands of people to be displaced[878] and prompted the creation of ethnic enclaves seems to confirm that these were organised attacks rather than spontaneous violence. The MAGRIVI [*Mutuelle des agriculteurs du Virunga*] and other militias involved in the violence also proved their ability to lead coordinated attacks on several occasions. Furthermore, the fact that the MAGRIVI existed as a simple agricultural cooperative with an organisational structure and figures of authority, before it was radicalised, seems to indicate that it had the minimum level of organisation necessary to satisfy the criteria set out in international humanitarian law in relation to internal conflict. In this respect, the numerous intentional killings directed at the civilian population during this period could be classified as war crimes.[879]

477 The arrival, in July 1994, of refugees and foreign forces (the ex-FAR/Interahamwe) did not change the legal nature of the conflict or the acts of violence committed. An internal armed conflict cannot become an international armed conflict unless *a* a third-party State intervenes militarily in the conflict or if *b* some of the parties

[877] Report of the Investigative Team of the Secretary-General (S/1998/581), appendix, para. 91.

[878] MSF, for example, had reported in 1995 that these acts of violence had caused the deaths of 6,000 to 15,000 people and the displacement of 250,000 people. See MSF, "Populations en danger au Zaïre", 1995.

[879] Like most of the other crimes examined in this section, the widespread or systematic nature of the crimes committed during the ethnic war in North Kivu and the fact that they were committed against civilian populations in knowledge of the attack are elements that would also classify them as crimes against humanity. This category of crime is examined in further detail below.

to the conflict are acting in the name of said third-party State.[880] It cannot be argued that the ex-FAR were at this stage the army of a third-party State nor that they were acting in its name or as its agent.

478 The arrival of the ex-FAR and Interahamwe did, however, contribute dramatically to exacerbating inter-ethnic tension, increasing the level of violence and intensifying armed conflict within the region. The exponential proliferation of arms in the region probably increased the toll of violent incidents in Mutobo (17 November 1995), Bikenge (9 December 1995), Osso (3 February 1996) and Mokoto (12 May 1996).[881] The existence of military training camps organised by the ex-FAR/Interahamwe for the Hutu militias in the Masisi region helped them to organise more effectively. The numerous murders committed by the Hutu and Hunde militias at the time, in particular during the attacks on Mutobo and Bikenge in 1995, and on Osso and Mokoto in 1996,[882] could thus be classified as war crimes. The multiple atrocities committed during this period by the FAZ, directed against civilian populations, in particular in December 1995 in Masisi and in May and June 1996 as part of Operation Mbata (in Vitshumbi, Kibirizi and Kanyabayonga),[883] could also be classified as war crimes committed as part of an internal armed conflict.

1996-1998: First war

479 With all the information available today, the importance of the role of third-party States in the first war, which led to the overthrow of the Mobutu regime, cannot be dismissed. Although, in 1998, the Investigative Team of the Secretary-General in the DRC believed it was not in a position to classify the type of armed conflict that took place in the Congo during this period, whilst noting the active participation of Rwanda in the conflict,[884] this is no longer the case. The involvement of Rwanda and Uganda in the conflict, from the outset, in setting up and organising the AFDL, operational planning and logistical support, such as providing weapons and training to some of the combatants, is

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[880] *Tadić,* ICTY, Appeals Chamber, 15 July 1999, para. 84. See, however, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*
ICJ, 26 February 2007.

[881] See incident referred to in paragraphs 121 and 122.

[882] Ibid.

[883] See incidents referred to in paragraph 125.

[884] It limited itself to the observation that "elements of the armed forces of at least one neighbouring country, Rwanda, participated actively in the conflict", Report of the Investigative Team of the Secretary-General (S/1998/581), appendix, par. 16.

now recognised by the highest authorities in the countries concerned.[885] The military operations of the AFDL were placed under the command of Colonel James Kabarebe, a Rwandan officer who, by the end of the war, had become the *ad interim* Chief of Staff of the Congolese armed forces under the new Government.[886] The information gathered both by the Investigative Team of the Secretary-General and by the Mapping Team indicates that Rwandan officers were *de facto* commanders, particularly in Shabunda (South Kivu), Kisangani (Orientale Province) and Mbandaka (Équateur), even though Congolese officers from the AFDL were supposed to be senior in rank to them.[887] The active involvement of elements of the Ugandan armed forces (UPDF) was also confirmed in several places, such as Kitale, Kibumba and Mugunga, in North Kivu, Kiliba in South Kivu and in Orientale Province. All of this information serves to confirm the international nature of the armed conflict that took place in the DRC between 1996 and 1998, i.e. during what is commonly known as the first war.

480. It is fair to say that the exact timing of the start of the international armed conflict remains a moot point. Foreign troops were certainly operating in South Kivu at the time of the attack on Camp Runingu on 13 October 1996,[888] and even earlier, during the attack in Lemera, which began on 6 October 1996 and which involved the Rwandan army.[889] It is sufficient here, in terms of the generic classification of crimes, to conclude that from mid-October 1996, the war crimes described above took place in the context of an international armed conflict. During this period, the prohibited acts directed against civilian populations by all the warring groups could be classified as war crimes even though they were perpetrated far from the front line. The same applies to the numerous

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[885] In an interview with the *Washington Post* on 9 July 1997, the Rwandan President Paul Kagame (Minister of Defence at the time) acknowledged that Rwandan troops had played a key role in the AFDL campaign. According to President Kagame, the battle plan consisted of three elements: *a* dismantling the refugee camps, *b* destroying the organisational strauctur e of the ex-FAR and Interahamwe based in and around the camps and *c* overthrowing the Mobutu regime. Rwanda had planned the rebellion and had participated in supplying weapons, munitions and training facilities for the rebel Congolese forces. Operations, particularly critical operations, were led, according to Kagame, by mid-level Rwandan commanders. *Washington Post*, "*Rwandans Led Revolt in Congo*", 9 July 1997. See also the interview given by General James Kabarebe, the Rwandan officer who led the military operations of the AFDL, to the *Observatoire de l'Afrique centrale*: "*Kigali, Rwanda. Plus jamais le Congo*", Volume 6, number 10, 3 to 9 March 2003. See also the televised interviews with the President of Uganda, the President of Rwanda and General James Kaberere explaining in detail their respective roles in this first war, in "L'Afrique en morceaux", a documentary directed by Jihan El Tahri, Peter Chappell and Hervé Chabalier, 100 minutes, produced by Canal Horizon, 2000.

[886] General James Kaberebe is currently Chief of Staff of the Rwanda Defence Forces.

[887] Interviews with the Mapping Team, Équateur, South Kivu and Kisangani, 2008 and 2009; *Report of the Investigative Team of the Secretary-General* (S/1998/581), apendix, para. 117.

[888] See incident referred to in paragraph 155.

[889] Interviews with the Mapping Team, South Kivu, February 2009; Evidence gathered by the Investigative Team of the Secretary-General in the DRC in 1997/1998; *Report of the Investigative Team of the Secretary-General in the RDC in 1997/1998* (S/1998/581), p. 45; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6), para. 198; Palermo Bukavu Committee, **"**Les morts de la rébellion", 1997, p. 1; AI, "Hidden from scrutiny: human rights abuses in eastern Zaire", 1996, p. 5 and 6,

crimes committed by the FAZ as they withdrew to Kinshasa. Throughout the withdrawal, from the Uvira region to Kinshasa, the FAZ and ex-FAR/Interahamwe committed multiple killings, rapes and looting, as described in this report, which could be classified as war crimes.

1998-2001: Second war

481. This period is characterised by the intervention on DRC territory of the regular armed forces of several States, fighting with or against the Congolese armed forces, as well as the involvement of numerous groups of militiamen. As the Special Rapporteur on the situation of human rights in the DRC observed: "The DRC is bedevilled by various armed conflicts. Some international, others internal and yet other internal conflicts that have been internationalised (see E/CN.4/2000/42, para. 20). Participants in these conflicts include at least eight national armies and 21 irregular armed groups."[890] In spite of the signing of the Lusaka ceasefire agreement, in July 1999, by the DRC, Angola, Namibia, Uganda, Rwanda and Zimbabwe and to which the RCD and MLC rebel groups subsequently became party, providing for compliance with international humanitarian law by all parties and the definitive withdrawal of all foreign troops from the national territory of the DRC[891], the fighting continued. On 16 June 2000, the Security Council asked all parties to put an end to the hostilities and demanded that Rwanda and Uganda, which had violated the sovereignty of the DRC, should withdraw their forces from DRC territory.[892] It was not until 2002, following the signing of two new agreements, the Pretoria agreement with Rwanda and the Luanda agreement with Uganda, which provided for the withdrawal of their respective troops from DRC territory, that the withdrawal of foreign troops from the country actually began.[893] Thus, both the participation of foreign armed forces on Congolese territory and the direct support in terms of equipment, weaponry and combatants provided to several rebel groups throughout the period of the "second war" confirm that an international armed conflict was taking place in the DRC at the same time as internal conflicts between different groups of Congolese militiamen.

482. The numerous crimes committed by the RCD (and its various factions), Mayi-Mayi groups and the ex-FAR/Interahamwe against civilian populations, in particular the systematic murders, rapes and looting described in the preceding pages, could be classified as war crimes. This period was also marked by large-scale massacres, such as

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[890] *Report of the Special Rapporteur* (A/55/403), para. 15.

[891] Art. III, para. 12 of the Ceasefire Agreement. The Agreement was signed in Lusaka on 10 July 1999, by Angola, Namibia, Uganda, the DRC, Rwanda and Zimbabwe. Il It was then signed by Jean-Pierre Bemba, from the MLC, on 1 August 1999, and by 50 founder members of the RCD on 31 August 1999. The Organisation of African Unity, the United Nations and the Southern Africa Development Community were witnesses (see S/1999/815).

[892] See Resolution 1304 (2000).

[893] Art. 8, para. 3 of the Pretoria Peace Agreement of 31 July 2002 between the DRC and Rwanda (see S/2002/914), app.ix; art. 1 of the Luanda Peace Agreement of 6 Sept. 2002 between the DRC and Uganda.

those in Kasika[894] and Makobola[895], in South Kivu, as well as by numerous other massacres committed repeatedly in North and South Kivu, Maniema, Katanga and Orientale Province. The same applies to the murders, rapes and looting carried out by Rwandan and Ugandan forces, in particularly during their advance from Kitona, in the Bas-Congo region, to Kinshasa in August 1998,[896] and similar crimes committed by the *Forces armées angolaises* (FAA) all along the main Moanda-Boma-Matadi-Kisantu road,[897] in Bas-Congo. Stopping the turbines on the Inga dam, in the same province, which supplied electricity to a large part of the city of Kinshasa, by elements of the ANC/APR/UPDF, caused the deaths of numerous people.[898] "Making property essential to the survival of the civilian population unusable" in this way could be classified as a war crime under the rules of international humanitarian law.[899]

483. The air bombardments of Kinshasa by the Zimbabwean defence forces (ZDF) in August 1998[900] and of Businga and Gemena, in Équateur Province, by the FAC in December 1998[901] were also carried out in violation of the rules of international humanitarian law and could be classified as war crimes, both in themselves and taking into account the disproportionate effect from the point of view of losses of human life amongst the civilian population compared with the military advantage expected. Furthermore, the use on this occasion of highly imprecise home-made bombs, as in Businga, would also appear to violate the rules of international humanitarian law, which prohibit "attacks which employ a method or means of combat which cannot be directed against a specific military target, or the effects of which cannot be limited".[902]

484. During the confrontations between the Rwandan army and the Ugandan army for the control of the town of Kisangani, the use of heavy weapons in areas densely populated by civilians caused the death of several hundred civilians and the destruction of a large amount of civilian property. The first confrontation, between 14 and 17 August 1999, is thought to have caused the deaths of at least 30 people in the civilian population; the second, in May 2000, is thought to have resulted in the deaths of at least 24 people; the death toll of the third, in June 2000, varies between 244 and 760 depending on the source. These last two episodes have been categorically denounced by the Security Council, which has expressed its "outrage at renewed fighting… deploring the loss of

[894] See incidents referred to in paragraph 313.

[895] Ibid.

[896] See incidents referred to in paragraph 290.

[897] See incidents referred to in paragraph 292.

[898] See incidents referred to in paragraph 295.

[899] See Rule 54 of customary international humanitarian law and sect. *a* iii), para. 2 of article 8 of the Rome Statute of the ICC: "Wilfully causing great suffering, or serious injury to body or health". See also the rules on the principle of distinguishing civilian property from military property and the principle of the proportionality of the attack, Rules 7 to 10 and 14 (Customary international humanitarian law, vol. I: Rules, ICRC publication, 2006).

[900] See incidents referred to in paragraph 294.

[901] See incidents referred to in paragraph 341.

[902] See Rule 12 of customary international humanitarian law.

civilian lives, the threat to the civilian population and the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population."[903] Some of the acts committed by the two belligerents could constitute violations of international humanitarian law, in particular the obligation to respect the principle of distinguishing between civilians and combatants and between civilian property and military targets, and could thus be classified as war crimes. Whilst the UPDF forces made some effort to limit the loss of human lives, the International Court of Justice, in its decision on *DRC v. Uganda*, nonetheless considered that there was "credible evidence sufficient to conclude that the UPDF troops failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants".[904] This general observation can also be applied to APR troops, according to the information gathered by the Mapping Team.[905]

2001-2003: Towards transition

Ethnic conflict in Ituri

485. The acts of violence that shook the province of Ituri, in particular the ethnic conflicts between the Lendu and Hema, clearly reached a sufficient level of intensity to be classified as armed conflict. The ICC[906] and ICJ[907] have confirmed the international nature of the conflict. As a result, the crimes listed by the Mapping Team committed in

[903] See Resolution 1304 (2000) of 16 June 2000. See also *the third report of the Secretary-General on MONUC* (S/2000/566 and Corr.1), para. 79, which concludes that the Rwandan and Ugandan armed forces "should be held accountable for the loss of life and the property damage they have inflicted on the civilian population of Kisangani".

[904] Armed Activities on the Territory of the Congo (DRC *v.* Uganda), ICJ. 19 December 2005, para. 211.

[905] Ibid. Paragraph 208 of the ICJ decision cites a report of the interinstitutional evaluation mission that travelled to Kisangani under the terms of paragraph 14 of Security Council Resolution 1304 (2000) (see S/2000/1153), appendix, para. 15 and 16) and according to which, the fighting between Ugandan and Rwandan forces in Kisangani "reached the residential areas, which were bombarded for six days… Over 760 civilians were killed and 1,700 wounded. Over 4,000 houses were damaged, destroyed or rendered uninhabitable. Sixty-nine schools and other public buildings were hit by shells. The healthcare infrastructure and the cathedral suffered significant damage and 65,000 inhabitants of the town were forced to flee and take refuge in the neighbouring forests".

[906] *The Prosecutor* v. *Thomas Lubanga Dyilo.* Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06: "sufficient evidence giving substantial reasons to believe that as a result of the presence of the Republic of Uganda as an occupying power, the armed conflict that took place in Ituri can be classified as an international conflict from July 2002 to 2 June 2003, the date on which the Ugandan army effectively withdrew."

[907] Armed Activities on the Territory of the Congo (DRC *v.* Uganda),, ICJ, 19 December 2005, para. 179 and 180. The Court, which did not see its competence limited by its jurisdiction *ratione temporis* like the ICC, deemed that it had "sufficient evidence that Uganda had established and was exercising its authority in Ituri (the new province created in June 1999) as an occupying power… It also indicates that Uganda is accountable for all the acts and omissions of its armed forces on the territory of the DRC, which violate the obligations incumbent upon it under the relevant rules applicable to the situation in international human rights law and international humanitarian law".

Ituri between June 1999 and 2 June 2003,[908] directed against Congolese civilian populations, could be classified as war crimes committed in the context of an international armed conflict.[909] Similarly, the murder of two MONUC military observers in Mongbwalu, on 13 May 2003, by elements of the FNI could be classified as a war crime as an attack on personnel involved in a peacekeeping mission.[910] As regards the period after 2 June 2003, the date on which the Ugandan troops effectively withdrew, the continuing armed conflict met the criterion as to intensity and the level of organisation of the different armed groups involved.[911]

Regional conflict in Katanga

486. The period from the start of 2001 to the end of the time specified in the Mapping Team's Terms of Reference was characterised by open conflict in the province of Katanga between the FAC and Mayi-Mayi forces. The involvement of Rwanda in the operations carried out by the RCD and the APR itself in the area, and that of the ZDF alongside the FAC, give the conflict its international character. After the withdrawal of Rwandan troops from the DRC, following the Peace Agreement signed in Pretoria on 30 July 2002, the intensity of the conflict remained high and the level of organisation of the groups involved in the region was such, that it is possible to confirm that it was an internal armed conflict. In fact, some of the most serious incidents that took place during this period, in particular the bombardments that the FAC carried out indiscriminately in Ankoro, in November 2002, which cost the lives of over 100 civilians and caused the destruction, most frequently by fire, of over 4,000 houses, including schools and

[908] Some doubt therefore remains as to the nature of the crimes committed between 2 June 2003 (the date of the effective withdrawal of the Ugandan army) and 30 June 2003 (the time limit set out in the Mapping Exercise Terms of Reference). It is fairly clear that the armed conflict continued (and even intensified in some areas, because of the power vacuum left by the occupying power), but its international nature is more uncertain.

[909] Some of these crimes were committed against civilians on the basis of their membership of an ethnic group, which has given reason to believe that such crimes took place in the context of genocide. Although the Mapping Team does not exclude this possibility, it reserves judgement on this question, not having been able to gather sufficient information on the existence, or not, of a specific intention to destroy a group on the part of one or more of the actors involved in the conflict. The crime of genocide is discussed in further detail below.

[910] See sect. *b* iii) and sect. *e* iii), para. 2 of article 8 of the Rome Statute of the ICC, in respect of international and internal conflict respectively. These killings were censured by a military tribunal in Bunia on 19 February 2007, which classified them as war crimes committed during an internal armed conflict according to the Congolese Military Criminal Code and article 8 of the Rome Statute. See below: case of MONUC military observers (Milobs), sect. III, chap. II.

[911] *The Prosecutor* v. *Thomas Lubanga Dyilo*. Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06, para. 227 to 237.

hospitals, could be classified as serious violations of international humanitarian law and war crimes.[912]

487. As a result, some intentional killings, rapes, destruction and looting of property, as well as other crimes committed by the FAC and Mayi-Mayi between January 2001 and June 2003 could be classified as war crimes, whether it was deemed to be an international or internal conflict.

B. Crimes against humanity

488. The definition of crimes against humanity has become much more specific since it was first formulated in international law in the Statute of the Nuremberg Tribunal. Its recent codification in Article 7, Paragraph 1 of the Rome Statute of the ICC lists 11 acts which, when they are committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", constitute crimes against humanity. It emerges from this definition that three main elements must coexist for classification as a crime against humanity, in addition to the element of knowledge of the attack, which serves to establish individual criminal liability:

a) **A listed act** (such as murder, rape or serious injury to body or physical health);
b) Committed as part of a **widespread or systematic attack**;
c) Directed against any **civilian population**.

1. Listed acts

489. The 11 acts listed in the definition of crimes against humanity essentially reflect the most serious violations of human rights, in particular violations of the right to life, serious injury to personal physical and moral integrity and personal security. The inventory of serious violations set out in the preceding chapters revealed the commission of multiple acts listed in the definition of crimes against humanity, including:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of the population;
- Torture;

[912]Under international humanitarian law, it is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, Rule 14 of customary international humanitarian law. See also Rule 13 of customary international humanitarian law which prohibits: "Attacks by bombardment, by any methods or means, which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area, containing a similar concentration of civilians or civilian objects…". See also, in particular, sect. *b* iv) and *b* v) and sect. *e* i) and *e* iv), para. 2 of article 8 of the Rome Statute.

- Rape, sexual slavery or any other form of sexual violence of comparable gravity;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender grounds;
- Enforced disappearance of persons;
- Any other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. Widespread or systematic attack

490. For the acts listed previously to be classified as crimes against humanity, they must be committed as part of a widespread or systematic attack. An attack, according to the Rome Statute, consists of multiple acts of violence such as those listed in the definition. It does not necessarily have to consist of a military attack or armed conflict.[913] Nonetheless, a single act can constitute a crime against humanity if it is part of a larger attack. The widespread nature of the attack is based on its scale, the number of people targeted or "the cumulative effect of a series of inhumane acts or [through] the specific effect of a single, large-scale act".[914] Its systematic nature is inferred from the "organised character of the acts committed and [from] the improbability of their being random in nature".[915] The serious violations described in the preceding chapters point to the existence of multiple attacks launched by the various groups involved in the conflicts being widespread or systematic in nature.

3. Directed against any civilian population

491. The notion of crime against humanity is intended to protect civilian populations, hence the requirement that the widespread or systematic attack be directed against them. A civilian population is defined not only as people who are not in uniform and have no link to the public authorities, but all people who are "out of combat" and thus are not, or are no longer, taking part in the conflict.[916] The expression "civilian population" needs to be understood in its broad sense and refers to a population that is primarily made up of civilians. A population may be classified as "civilian" even if it includes non-civilians, provided that civilians are in the majority.[917] As a result, refugees in camps constitute a civilian population even if armed elements are also present. Again, it can be stated that the vast majority of victims in the cases listed were part of civilian populations.

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[913] See Rome statute, Elements of Crimes, under article 7.
[914] See *Kordić and Cerkezs,* ICTY, Appeals Chamber, no. IT-95-14/2-A, 17 December 2004, para. 94.
[915] Ibid.
[916] See *Mrkšić and Šljivančanin* , ICTY, Appeals Chamber, 5 May 2009, para. 32 and 33.
[917] See *Fatmir Limaj*, ICTY, Trial chamber, no. IT-03-66-T, 30 November 2005, para. 186.

4. Crimes against humanity

492. The multiple incidents described in the preceding chapters show that the vast majority of the acts of violence perpetrated during these years were part of waves of retaliation and campaigns of persecution and hunting down refugees, which in general terms translated into a series of widespread and systematic attacks against civilian populations. A very large number of the crimes listed above were committed as part of a widespread or systematic attack against a civilian population and can therefore be classified as crime against humanity. Mention should be made at this point, by way of illustration only, of the crimes against humanity that formed part of a campaign of persecution directed against certain groups, primarily for political or ethnic reasons. The crime of persecution encompasses a large number of acts, including, amongst others, those of a physical, economic or judicial nature depriving an individual of the exercise of their fundamental rights.[918] To be classified as a crime of persecution, said act must be 1) a manifest or flagrant denial, 2) for reasons of discrimination, 3) of a fundamental right protected by international customary or treaty law, 4) of the same degree of seriousness as the other acts listed in the definition of crimes against humanity.[919]

Directed against the Kasaians

493. The multiple acts of violence perpetrated against the Kasaians from March 1993 onwards offer a typical example of crimes against humanity committed outside of an armed conflict.[920] Several acts listed in the definition of crimes against humanity were perpetrated against the Kasaians, including murder, deportation or forcible transfer of the population and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. They also display the essential elements of persecution as a crime against humanity: the Kasaians were an identifiable group whose members were persecuted for reasons of political and ethnic order, the victims of a virulent anti-Kasaian campaign started by the most senior political officials in the province at the time.

494. The attacks on the Kasaian civilian population were quite clearly widespread and systematic. Between 1992 and 1995, the violence spread throughout the province, affecting thousands of victims, and was thus widespread in nature. The attacks were also systematic. They were orchestrated in a calculated manner by the military and political authorities. The extent of the violence, the organisation of trains for the deportations of the Kasaians, the anti-Kasaian campaign in Lubumbashi, during which some were hunted down in a context of "professional purification", and the multitude of individual attacks tolerated or organised by the authorities are all factors showing the "organised character

[918] *Tadić*, ICTY, Trial chamber, *Jugement*, 7 May 1997, par. 697 to 710.

[919] *Kupreskić*, ICTY, Trial chamber II, 14 January 2000, para. 621.

[920] As has been seen, the Kasaians did not constitute an armed group capable of carrying out military operations but were a rather a civilian population subjected to a campaign of persecution and violence.

of the acts committed and the improbability of their being random in nature."[921] Finally, the perpetrators, the majority of whom were members of a militia derived from the youth wing of a political movement, namely the Union des fédéralistes et républicains indépendants (UFERI), the JUFERI, were well aware that the acts committed were part of a wider context of an anti-Kasaian campaign launched by their political leaders, which was to be rapidly transformed into a widespread and systematic attack against the Kasaian population.

Directed against the Hutus

495. The Investigative Team of the Secretary-General in the DRC in 1997/1998 concluded that the systematic massacre of Hutu refugees by AFDL/APR forces was a crime against humanity, but reserved judgement on the question of the intention behind this series of massacres.[922] The information gathered to date makes it possible to confirm quite clearly that these were indeed crimes against humanity: the very high number of serious crimes listed, committed by the AFDL/APR against Hutu refugees, indicates the widespread nature of these attacks. The systematic, planned and widespread nature of these attacks is also demonstrated by the hunting-down of refugees that took place from east to west throughout the whole of the DRC, and the fact that these attacks were carried out against primarily civilian populations in spite of the presence of elements of the ex-FAR/Interahamwe being confirmed in several places.

496. The ethnic conflicts in North Kivu gave way during the first war to numerous attacks by the AFDL/APR against the Hutu populations established in the region for many years. The widespread and systematic nature of these attacks against Hutu civilian populations emerges clearly from the incidents described in the preceding pages, which could therefore be classified as crimes against humanity.

497. These crimes will be re-examined in the analysis of the specific question of the existence or not of an intention to partially destroy the group of Hutu refugees, which is the essential element in the crime of genocide as defined in international law.

Directed against the Tutsis

498. As victims for many years of campaigns of discrimination and forcible expulsion in South Kivu and repeated attacks by elements of the ex-FAR/Interahamwe in North Kivu, the Tutsis were particularly targeted from the start of the first war onwards, accused of collaborating with "Banyamulenge/Tutsi armed elements" and later with the AFDL/APR/FAB. The authorities, at both a national and local level, called on the

[921] See *Kordić and Cerkezs,* ICTY, Appeals Chamber, no. IT-95-14/2-A, 17 December 2004, para. 94.

[922] Having been seriously hampered in its work by the Zairian authorities, the Team was not able to gather sufficient information to reach a conclusion on this question, but it did not exclude the possibility that the massacres could be classified as genocide in law. See the *Report of the Investigative Team of the Secretary-General* (S/1998/581), appendix, para. 96.

population to hunt them down and asked the army to expel them by force. In this climate, the Tutsi population – an identifiable group according to the definition of persecution in the context of crimes against humanity – was the victim of murders, tortures, rapes and arbitrary detention, in particular in South Kivu and Kinshasa. Subsequently, following the breakdown of the relationship between President Kabila and his former Rwandan allies and the start of the second war, a new campaign against the Tutsis was launched by senior government officials, including the President himself, in Kinshasa and the other provinces under government control. Mr. Abdulaye Yerodia Ndombasi, the head of President Kabila's cabinet even called for the extermination of the "Tutsi vermin".[923] The numerous acts of anti-Tutsi violence identified during these two periods, first from September 1996 and subsequently from August 1998, combined elements that would enable them to be classified as acts of persecution in the context of the definition of crimes against humanity.

499. The widespread and systematic nature of the attacks on the Tutsis is demonstrated by the high number of victims and crimes committed in several regions in the country, the type of violations committed by the security forces or in which they were complicit, the role played by the political authorities, in particular public incitement to hatred and even the commission of crimes against the Tutsis, and the fact that no effort was made by the authorities to prevent, arrest or punish the multiple violations of rights committed against the Tutsi population. Again, it can be inferred that the perpetrators were clearly aware that their acts were part of a wider an anti-Tutsi campaign, which was translated on the ground into widespread attacks authorised by the most senior political leaders in the country at the time.

C. Crime of genocide

500. Since it was initially formulated in 1948, in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, the definition of the crime has remained substantially the same. It can be found in article 6 of the Rome Statute of the ICC, which defines the crime of genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". The definition is followed by a series of acts representing serious violations of the right to life and the physical or mental integrity of the members of the group. The Convention also provides that not only the acts themselves are punishable, but also conspiracy to commit genocide, direct and public incitement to commit genocide, the attempt to commit genocide and complicity in genocide.[924] It is the specific intention to destroy an identified group, either in whole or in part, that distinguishes the crime of genocide from a crime against humanity.

[923] International arrest warrant issued by Examining Magistrate Vandermeersch re. Mr Abdulaye Yerodia Ndombasi, of 11 April 2000.

[924] Article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide.

501. Essentially, the crime of genocide requires evidence of three distinct elements:
   a) The commission of a **listed act** (such as murder or serious injury to body or physical health);
   b) Directed against **a national, ethnic, racial or religious group;**
   c) With the **specific intention** to destroy the protected group, as such, either in whole or in part.

1. Listed acts

502. Of the five **listed acts** included in the definition of the crime of genocide, the following three have been used based on the inventory of incidents in the preceding chapters:

- Murder of members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

2. Directed against a national, ethnic, racial or religious group

503. The victims must belong to a **national, ethnic, racial or religious group.** "National groups" refer to people who have a distinct identity in terms of nationality or national origin. "Ethnic groups" would include people sharing the same language and with common traditions or a common cultural heritage.[925] The actual definition of groups used by the courts, however, is one that takes more account of the sense of belonging to a specific group than to its actual existence, applying the subjective criterion of the perception of other people and an individual's own perception as regards membership of the group.[926]

3. With the specific intention to destroy the protected group, as such, either in whole or in part

504. **The specific intention to destroy the protected group, as such, either in whole or in part**, is the key element in the crime of genocide, which is often described as a crime of intent, requiring a specific aggravated criminal intent (*dolus specialis*).[927] This second element can be split into three distinct parts: firstly, the intention to destroy, then in whole or in part, and finally, the group as such.

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[925] Report of the International Commission of Inquiry on Darfur (see S/2005/60), para. 494.

[926] Ibid., para. 498 to 501; see *Akayesu*, ICTR-96-4-T, Trial chamber, 1 and 2 September 1998, para. 170 to 172; *Kayishema and Ruzindana*, ICTR-95-1-T, Trial chamber, 2 and 21 May 1999, para. 98; *Musema*, ICTR-96-13-T, Trial chamber, 21 January 2000, para. 161; *Rutaganda*, ICTR-96-3-T, Trial chamber, 6 December 1999, para. 56; and *Jelisić,* ICTY, Trial chamber, no. IT-95-10-T, 14 December 1999, para. 70 and 71; *Krstić* ICTY, Trial chamber, no. IT-98-33-T, 2 August 2001, para. 556, 557, 559 and 560.

[927] See in general the case on the application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia-Herzegovina* v. *Serbia and Montenegro*), ICJ, 26 February 2007, para. 186 to 201, (hereafter ICJ, decision on genocide).

505. **The intention to destroy** assumes that the perpetrator knowingly wanted the prohibited acts to cause the destruction, in whole or in part, of the group as such and knew that their acts would destroy the group as such either in whole or in part.[928] It implies that the perpetrator of the crime must have acted with the specific intention of destroying the protected group, either in whole or in part. Intention is not synonymous with motivation. The personal motive of the perpetrator of genocide, for example, may be the prospect of personal economic benefit, political advantages or a particular form of power. The existence of a personal motive does not mean that the perpetrator may not also have the specific intention of committing genocide.[929]

506. The intention to destroy a named group, **even in part**, is sufficient to constitute a crime of genocide provided that it is the group or "a distinct fraction of the group" that is targeted and not "a multitude of isolated individuals belonging to the group".[930] Furthermore, the section of the group targeted must be substantial and thus reflect "both the mass nature of the genocide and the concern expressed in the Convention as to the impact that the destruction of the section of the group targeted would have on the survival of the group as a whole."[931] Its substantial nature is established on the basis "not only of the numerical size of the fraction of the group targeted but also its position within the group as a whole."[932]

507. Finally, the intention must be to destroy the group as such, either in whole or in part. As a result, victims "must be targeted as a result of their membership of a group";[933] it is therefore the group itself that is targeted, through the victim.

508. **Proof of the intention** to destroy a group as such, either in whole or in part, the key element in genocide, is without doubt the element that causes most difficulties. Whilst, in general, in criminal law, intention is rarely subjected to direct proof, but instead relies on inferences drawn from the facts and circumstances of the crime, proof of a specific intention, a "*dolus specialis*" is even more stringent insofar as it must establish the existence of the specific aim the perpetrator had in mind in committing the crime. Clearly, in the case of genocide, which is seen as the "crime of crimes", any inference as

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[928] *Report of the International Commission of Inquiry on Darfur* (see S/2005/60), para. 491.

[929] *Jelisić* decision, ICTY, Appeals chamber, no. IT-95-10-A, 5 July 2001, para. 49; ICJ, decision on genocide, para. 189: "It is also necessary to distinguish the specific intention from the other reasons or motives the perpetrator may have."

[930] *Brdanin* decision, ICTY, Trial chamber, no. IT-99-36-T, 1 September 2004, para. 700.

[931] *Krstić* arrest, ICTY, Appeals chamber, no. IT-98-33-A, 19 April 2004, para. 8; see also *Krstić*, ICTY, Trial chamber, no. IT-98-33-T, 2 August 2001, para. 590: The physical destruction may only be targeted at a geographically limited areas of a wider group, because the perpetrators of the genocide considered that the destruction envisaged was sufficient to annihilate the group as a distinct entity in the geographical area in question"; confirmed by the Appeals chamber, decision of 19 April 2004, para. 6 to 23; ICJ, decision on genocide, para. 198 to 2001.

[932] Ibid. para. 9. See in general ICJ, decision on justice, para. 198 to 201.

[933] *Krstić*, ICTY, Trial chamber, no. IT-98-33-T, 2 August 2001, para. 561

to an intention to destroy a group in whole or in part must be made very prudently.[934] As the Appeals Chamber of the ICTY has stated: "Genocide is one of the most abhorrent of all crimes, and the corollary of its gravity is the strict requirement to show a specific intention. A defendant can only be declared guilty of genocide if such an intention is clearly established."[935] In the same way, a similar inference or deducing of the existence of such an intention on the part of the defendant "must be the only reasonable possibility in light of the evidence gathered."[936]

509. Amongst the factors, facts and circumstances used by the international courts to infer or deduce a genocidal intention are: the general context, the perpetration of other reprehensible acts systematically directed against the same group,[937] the scale and number of atrocities committed,[938] the fact of targeting certain victims systematically because of their membership of a particular group, the fact that the victims had been massacred with no regard for their age or gender,[939] the consistent and methodical manner in which acts were committed,[940] the existence of a genocidal plan or policy and the recurrence of destructive and discriminatory acts.[941]

4. Crime of genocide

510. There has been extensive debate on the question of genocide directed at the Hutus, and to date it remains unresolved. It can only be decided by a court decision based on proof beyond all reasonable doubt. The Mapping Exercise is not a judicial mechanism and the evidence gathered is not sufficient to satisfy the high standard required by the courts. Nonetheless, as described previously, the Terms of Reference of the Mapping Exercise required it to carry out a general legal classification of the crimes committed, including genocide.

511. Two separate United Nations reports have examined the existence, or not, of crimes of genocide committed in respect of the Hutus in the DRC, whether refugees or others. In July 1997, a joint mission authorised by the Commission on Human Rights,[942] charged with investigating the allegations of massacres and other violations of human rights taking place in eastern Zaire since September 1996 reported to the General Assembly that:

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[934] "The greatest possible care needs to be taken, based on the facts, to conclude that there is sufficiently clear evidence of this intention." ICJ, decision on genocide, para. 189.

[935] *Krstić* decision, ICTY, Appeals chamber, no. IT-98-33-A, 19 April 2004, p. 134.

[936] Ibid, para. 41.

[937] *Jelisić* decision, ICTY, Appeals chamber, no. IT-95-10-A, 5 July 2001, para. 47.

[938] See *Akayesu,* ICTR-96-4-T, Trial chamber, 1 and 2 September 1998, para. 730.

[939] *Kayishema and Ruzindanda*, ICTR-95-1-T, Trial chamber, 2 and 21 May 1999, para. 531 to 533.

[940] Ibid.

[941] *Jelisić* decision, ICTY, Appeals chamber, no. IT-95-10-A, 5 July 2001, para. 47 and 48.

[942] *Report of the joint mission charged with investigating the allegations of massacres and other human rights violations taking place in eastern Zaire (now the DRC) since September 1996* (A/51/942), para 1.

> "There is no denying that ethnic massacres were committed and that the victims were mostly Hutus from Burundi, Rwanda and Zaire. The joint mission's preliminary opinion is that some of these alleged massacres could constitute acts of genocide. However, the joint mission cannot issue a precise, definitive opinion on the basis of the information currently available to it. An in-depth investigation in the territory of the DRC would clarify this situation."[943]

512. Subsequently, the Secretary-General sent an investigative team, charged with "investigating grave violations of human rights and international humanitarian law allegedly committed in the DRC (former Zaire) since 1 March 1993".[944] Although limited in its mandate, the Team concluded in its report that:

> "the systematic massacre of the Hutus remaining in Zaire was an abhorrent crime against humanity but the underlying rationale for the decisions is material to whether these killings constituted genocide, that is, a decision to eliminate, in part, the Hutu ethnic group. The underlying reason for the massacres of Zairian Hutus in North Kivu is also material. This aspect is the most momentous one included in the mandate given to the Team, and one which requires further investigation."[945]

513. The systematic attacks, in particular killings and massacres perpetrated against members of the Hutu ethnic group, are described extensively in section I of the report. These attacks resulted in a very large number of victims, probably tens of thousands of members of the Hutu ethnic group, all nationalities combined. In the vast majority of cases reported, it was not a question of people killed unintentionally in the course of combat, but people targeted primarily by AFDL/APR/FAB forces and executed in their hundreds, often with edged weapons. The majority of the victims were children, women, elderly people and the sick, who posed no threat to the attacking forces. Numerous serious attacks on the physical or pyschological integrity of members of the group were also committed, with a very high number of Hutus shot, raped, burnt or beaten. Very large numbers of victims were forced to flee and travel long distances to escape their pursuers, who were trying to kill them. The hunt lasted for months, resulting in the deaths of an unknown number of people subjected to cruel, inhuman and degrading living conditions, without access to food or medication. On several occasions, the humanitarian aid intended for them was deliberately blocked, in particular in Orientale Province, depriving them of assistance essential to their survival.[946]

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[943] Ibid, para. 80.

[944] *Report of the Investigative Team of the Secretary-General* (S/1998/581), appendix, para. 4.

[945] Ibid., para. 96.

[946] The Investigative Team of the Secretary-General concluded that blocking humanitarian aid was systematic in nature and constituted a crime against humanity; see *Report of the Investigative Team of the Secretary-General* (S/1998/581), appendix, para. 95.

514. At the time of the incidents covered by this report, the Hutu population in Zaire, including refugees from Rwanda, constituted **an ethnic group** as defined in the Convention on the Prevention and Punishment of the Crime of Genocide. Moreover, as shown previously, the intention to destroy a group **in part** is sufficient to be classified as a crime of genocide. Finally, the courts have also confirmed that the destruction of a group can be limited to a particular geographical area.[947] It is therefore possible to assert that, even if only a part of the Hutu population in Zaire was targeted and destroyed, it could nonetheless constitute a crime of genocide, if this was the intention of the perpetrators. Finally, several incidents listed also seem to confirm that the numerous attacks were targeted at members of the Hutu ethnic group **as such**. Although, at certain times, the aggressors said they were looking for the criminals responsible for the genocide committed against the Tutsis in Rwanda in 1994, the majority of the incidents reported indicate that the Hutus were targeted as such, with no discrimination between them. The numerous attacks against the Hutus in Zaire, who were not part of the refugees, seem to confirm that it was all Hutus, as such, who were targeted. The crimes committed in particular in Rutshuru (30 October 1996) and Mugogo (18 November 1996),[948] in North Kivu, highlight the specific targeting of the Hutus, since people who were able to persuade the aggressors that they belonged to another ethnic group were released just before the massacres. The systematic use of barriers by the AFDL/APR/FAB, particularly in South Kivu, enabled them to identify people of Hutu origin by their name or village of origin and thus to eliminate them. Hundreds of people of Hutu origin are thus thought to have been arrested at a barrier erected in November 1996 in Ngwenda, in the Rutshuru territory, and subsequently executed by being beaten with sticks in a place called Kabaraza. In South Kivu, AFDL/APR/FAB soldiers erected numerous barriers on the Ruzizi plain to stop Rwandan and Burundian refugees who had been dispersed after their camps had been dismantled.

515. Several incidents listed in this report point to circumstances and facts from which a court could infer the intention to destroy the Hutu ethnic group in the DRC in part, if these were established beyond all reasonable doubt. The apparently systematic and

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[947] *Brdjanin,* ICTY, Trial chamber, 1 September 2004, para. 703; *Krstić*, ICTY, Trial chamber, 2 August 2001, para. 590 and *Krstić,* Appeals chamber, 19 April 2004, para. 13; *Jelisić*, ICTY, Trial chamber, 14 December 1999, para. 8, which accepts that a geographical area can be limited "to a region... or municipality".

[948] Interviews with the Mapping Team, North Kivu, February and March 2009; Interviews with the Mapping Team, North Kivu, December 2008 and February and April 2009; Interviews with the MONUC Human Rights Division, North Kivu, October 2005; CREDDHO, "Appel urgent sur la découverte des fosses communes en territoire de Rutshuru", October 2005; APREDECI, *Mission of inquiry on the situation of human rights in the province of North Kivu*, p. 11 and 12; Interviews with the Mapping Team, January, March and April 2009; Interviews with the Mapping Team, North Kivu, November 2008 and February 2009; *Situation report on human rights in Zaire* (E/CN.4/1997/6/Add.2),7; Didier Kamundu Batundi, "Mémoire des crimes impunis, la tragêdie du Nord-Kivu", 2006, p. 76; Luc de l'Arbre, "Ils étaient tous fidèles, martyrs et témoins de l'amour en République démocratique du Congo", November 2005, p. 177; Interviews with the Mapping Team, December 2008 and February/April 2009; Evidence gathered by the Investigative Team of the Secretary-General in the DRC in 1997/1998; APREDECI, *Mission of inquiry on the situation of human rights in the province of North Kivu*, p. 13; CEREBA, Mission report in the Ushuru region, October 2005, p. 19; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p. 101 and 102.77

widespread nature of the attacks, which targeted very large numbers of Rwandan Hutu refugees and members of the Hutu civilian population, resulting in their death, reveal a number of damning elements that, if they were proven before a competent court, could be classified as crimes of genocide. Firstly, the scale of the crimes and the large number of victims are illustrated by the numerous incidents described above. The extensive use of edged weapons (primarily hammers) and the systematic massacre of survivors, including women and children, after the camps had been taken show that the numerous deaths cannot be attributed to the hazards of war or seen as equating to collateral damage.[949] The systematic nature of the attacks listed against the Hutus also emerges: these attacks took place in each location where refugees had been identified by the AFDL/APR, over a vast area of the country. Particularly in North Kivu and South Kivu but also in other provinces, the massacres often began with a trick by elements of the AFDL/APR, who summoned the victims to meetings on the pretext either of discussing their repatriation to Rwanda in the case of the refugees, or of introducing them to the new authorities in the case of Hutus settled in the region, or of distributing food. Afterwards, those present were systematically killed. Cases of this kind were confirmed in the province of North Kivu in Musekera, Rutshuru and Kiringa (October 1996), Mugogo and Kabaraza (November 1996), Hombo, Katoyi, Kausa, Kifuruka, Kinigi, Musenge, Mutiko and Nyakariba (December 1996), Kibumba and Kabizo (April 1997) and Mushangwe (around August 1997); in the province of South Kivu in Rushima and Luberizi (October 1996), Cotonco and Chimanga (November 1996) and Mpwe (February 1997) and on the Shabunda-Kigulube road (February-April 1997); in Orientale Province in Kisangani and Bengamisa (May and June 1997); in Maniema in Kalima (March 1997) and in Équateur in Boende (April 1997). Such acts certainly suggest premeditation and a precise methodology. In the region south of the town of Walikale, in North Kivu (January 1997), Rwandan Hutus were subjected to daily killings in areas already under the control of the AFDL/APR as part of a campaign that seemed to target any Hutus living in the area in question.

516. Several of the massacres listed were committed regardless of the age or gender of the victims. This is particularly true of the crimes committed in Kibumba (October 1996), Mugunga and Osso (November 1996), Hombo and Biriko (December 1996) in the province of North Kivu, Kashusha and Shanje (November 1996) in the province of South Kivu, Tingi-Tingi and Lubutu (March 1997) in Maniema Province, and Boende (April 1997) in Équateur Province, where the vast majority of victims were women and children. Furthermore, no effort was made to make a distinction between Hutus who were members of the ex-FAR/Interahamwe and Hutu civilians, whether or not they were refugees. This tendency to put all Hutus together and "tar them with the same brush" is also illustrated by the declarations made during the "awareness-raising speeches" made by the AFDL/APR in certain places, according to which any Hutu still present in Zaire must necessarily be a perpetrator of genocide, since the "real" refugees had already returned to Rwanda. These "awareness-raising speeches" made in North Kivu also incited the population to look for, kill or help to kill Rwandan Hutu refugees, whom they called

[949] See incidents referred to in paragraph 233 et seq.

"pigs". This type of language would have been in widespread use during the operations in this region.[950]

517. The massacres in Mbandaka and Wendji, committed on 13 May 1997[951] in Équateur Province, over 2,000 kilometres west of Rwanda, were the final stage in the hunt for Hutu refugees that had begun in eastern Zaire, in North and South Kivu, in October 1996. Among the refugees were elements of the ex-FAR/Interahamwe, who were disarmed by the local police force as soon as they arrived. In spite of everything, the AFDL/APR opened fire on hundreds of defenceless Hutu refugees, resulting in large numbers of victims. The behaviour of certain elements of the AFDL/APR in respect of the Hutu refugees and Hutu populations settled in Zaire at this time seems to equate to "a manifest pattern of similar conduct directed against that group", from which a court could even deduce the existence of a genocidal plan.[952] "Whilst the existence of such a plan may contribute to establishing the required genocidal intention, it is nonetheless only an element of proof used to deduce such an intention and not a legal element of genocide."[953]

518. There are a number of factors that could lead against a finding of the requisite intent, and hence the crime of genocide. *First,* is the need to establish that the intent of the alleged perpetrators was to destroy (a part of) the Hutu ethnic group 'as such', and distinguishing such intent, from the *discriminatory* (but not necessarily genocidal) intent to kill persons on account of their belonging to a group. The International Court of Justice, in ruling on the intent required, has emphasized that genocide requires the establishment of the intent to destroy the protected group, in whole or in part, 'as such'. It is neither enough to establish that deliberate unlawful killings of members of the group occurred, nor that members of the group were targeted because they belonged to the group, which only shows the alleged perpetrator had a discriminatory intent. The words 'as such' emphasize that intent to destroy the protected group[954].

519. *Second,* is the essential requirement to establish clearly, the intent to destroy the

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[950] Information provided during a confidential interview with the Mapping Team in North Kivu.

[951] See incidents referred to in paragraph 222 et seq.

[952] See Elements of Crimes of the International Criminal Court adopted by the Conference of State Parties at its first session, held in New York from 3 to 10 September 2002, *Official documents*, ICC-ASP/1/3, sect. *a,* para. 4 of article 6. Genocide by killing: The conduct is part of a manifest pattern of similar conduct directed against that group, or could produce such destruction in itself. On the subject of the contextual elements of the crime of genocide required by the Elements of Crime of the Rome Statute of the ICC: *The Prosecutor* v. *Omar Hassan Ahmad Al Bashir*, "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 4 March 2009, ICC-02/05-01/09, para. 117 to 133.

[953] *Krstić* decision, ICTY, Appeals chamber, no. IT-98-33-A, 19 April 2004, para. 225; *Jelisić* decision, ICTY, Appeals chamber, 5 July 2001, para. 48; *Akayesu* ICTR-96-4-T, Trials chamber, 1 and 2 September 1998, para. 520 and 523. See also Al Bashir, 4 March 2009, ICC-02/05-01/09, para. 119: "The Majority highlights that the case law of the ICTY and the ICTR has interpreted this definition as excluding any type of contextual element, such as a genocidal policy or plan".

[954] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia-Herzegovina* c. *Serbia and Montenegro*), ICJ, 27 February 2007, para. 187.

group. This clear view of the intent is critical to distinguish situations of targeting members of a group because of their group identity – which does not by itself constitute genocide – and intending to destroy the group in whole or in part, which does. In the absence of *direct* evidence of intent, a judicial assessor must observe stringent standards in drawing *inferences* from circumstantial evidence, in order to establish intent. The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia has ruled that such an inference may not be drawn unless it is 'the only reasonable inference available on the evidence', and that convictions for genocide can only be entered 'where the intent has been unequivocally established'.[955] When inferring intent from circumstantial evidence of the alleged perpetrator's conduct, the availability of a plausible alternative explanation for the conduct in question, makes it difficult to establish a clear intent to destroy a group in whole or in part.

520. *Third,* in the specific context of the events in Zaire in 1996 to 1997 documented in this report, a number of alternative explanations for the actions of the RPA/AFDL may be raised. If proven, these would militate against concluding that an intent to destroy Hutu 'as such' is the only inference that can reasonably be drawn from their actions as documented in this report. The RPA/AFDL attacks on the camps and fleeing Hutu in Zaire could be interpreted as a campaign of collective retribution against Hutu civilians in Zaire suspected of involvement or sympathy with the ex-FAR/*Interahamwe*, who perpetrated the 1994 genocide in Rwanda. The return to Rwanda of very large numbers of Rwandan Hutu refugees during the 1996 to 1997 RPA/AFDL attacks on the camps, may have reinforced the perception that those Hutu civilians remaining in Zaire did so either because they were part of, or in sympathy with, the ex-FAR/*Interahamwe*. The U.N. Secretary General's Investigative Team, which was deployed to the Democratic Republic of the Congo shortly after the events, demonstrated – in its final report – the challenge of inferring the clear intent underlying the killings of Hutu in DRC, as follows:

> "When the camps in North Kivu were attacked in October and November 1996, it is clear that one of the objectives was to force the refugee population in the camps to return to Rwandan territory. To some extent the return was voluntary, since many genuine refugees had been prevented from returning by the military elements in the camps. However, it also is clear that, at some times and in some areas, the attacks on former camp populations which fled westward into the interior of Zaire were not intended to force them to return but simply to eliminate them. (…) There are at least two possible interpretations of the intent to eliminate the Rwandan Hutus remaining in the country: either there was a decision to eliminate them rather than repatriate them, for whatever reason, or there was a decision to eliminate them because the breaking up of the camps in effect separated the 'good' Hutus from the bad: those who had little involvement in the 1994 genocide against Tutsis had returned and those who fled rather than return were those who had participated in or supported the genocide. In either case the

[955] *Krstić* decision, ICTY, Appeals chamber, no. IT-98-33-A, 19 April 2004, para. 134.

> systematic massacre of those remaining in Zaire was an abhorrent crime against humanity but the underlying rationale for the decisions is material to whether these killings constituted genocide, that is, a decision to eliminate, in part, the Hutu ethnic group. The underlying reason for the massacres of Zairian Hutus in North Kivu is also material. This question is the most momentous one included in the mandate given to the Team, and one which requires further investigation".[956]

521. *Fourth,* facts which tend to show that the alleged perpetrator spared the lives of members of the group whom they had the means and opportunity to kill, may militate against proof of a clear intent to destroy the group. As this report and previous inquiries (such as the Secretary General's Investigative Team in 1998) have noted, a very large number of Rwandan Hutu present in Zaire were able to return to Rwanda – including with the RPA's assistance – during the 1996-1997 RPA/AFDL military campaign in Congo. It should be noted that as of 15 November 1996, several tens of thousands of Rwandan Hutu refugees, many of whom had survived previous attacks, were repatriated to Rwanda with the help of the AFDL/APR authorities and that hundreds of thousands of Rwandan Hutu refugees were able to return to Rwanda with the consent of the Rwandan authorities prior to the start of the first war. Whilst, in general, the killings did not spare women and children, it should be noted that in some places, at the beginning of the first war, Hutu women and children were in fact separated from the men, and only the men were subsequently killed.[957]

522. In light of the competing considerations mentioned above, it is important that a full judicial investigation take place, in order to shed light on the reported incidents which occurred in the territory of the DRC in the period from 1996 to 1997. Only such an investigation and judicial determination would be in a position to resolve whether these incidents amount to the crime of genocide.

D. Serious human rights violations

523. As has been shown, almost all the crimes listed by the Mapping Team can be classified as "crimes under international law", being war crimes, crimes against humanity and possibly crimes of genocide. Certain other crimes were not committed in the context of an armed conflict or were not of such a widespread or systematic nature that they could be classified as crimes against humanity. Some of these, however, can be classified as serious violations of human rights, committed by the government authorities and their agents. This is the case, for example, with the numerous serious violations of human rights on the part of the Zairian security forces until 1997 and subsequently by the DRC security forces until 2003.

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[956] *Report of the Secretary-General's Investigative Team* (S/1998/581), para 96.
[957] This was documented in Mugunga (November 1996), in the province of North Kivu, and in Kisangani (March 1997), in Orientale Province.

524. Unfortunately, it was not possible for the Mapping Team to carry out detailed investigations to check the multitude of individual cases; certain cases are therefore documented in this report for illustrative purposes only. Nonetheless, it remains the case that there were hundreds or even thousands of individual incidents of serious violations perpetrated by the security forces, often with the consent of other State authorities, or even driven by them. These were serious violations of the rights recognised by the international human rights mechanisms ratified by Zaire/the DRC.

SECTION II. INVENTORY OF SPECIFIC ACTS OF VIOLENCE COMMITTED DURING THE CONFLICTS IN THE DRC

525. The aim of this section of the report is to produce an inventory of the specific acts of violence that were committed during the conflicts in the DRC, namely acts of violence committed against women (Chap. I), acts of violence committed against children (Chap. II) and acts of violence related to the illegal exploitation of natural resources (Chap. III). Given that the methodology used in Section I of the report would not enable full justice to be done to the numerous victims of these specific acts of violence, and would not appropriately reflect the scale of the violence practised by all armed groups involved in the different conflicts in the DRC, it was decided from the outset to devote an entire section of the report to these issues and to spend time seeking out information and documents that would support the multiple aspects of these acts of violence rather than confirming individual acts perpetrated against countless victims. This approach has highlighted the widespread and systematic nature of these violations and enabled a brief analysis to be produced.

526. It is important to stress that women and children were the main victims of the most serious violations of human rights and international humanitarian law committed primarily against the civilian population of the DRC between 1993 and 2003 and listed in Section I of this report. Women and children were therefore the main victims of violations of the right to life, to physical integrity and to safety. They were also particularly affected by forced deportations, slavery, looting and the destruction of goods and property. This over-exposure can be explained by their specific vulnerability and also by their demographic weight within the DRC's population.[958]

527. Finally, it would have been unthinkable to produce an inventory of the most serious violations of human rights and international humanitarian law committed within the DRC between March 1993 and June 2003 without considering, however briefly, the role played by natural resource exploitation in the perpetration of these crimes. In a significant number of cases, the struggle between different armed groups for access to, and control over, the DRC's resources served as a backdrop to the violations perpetrated against the civilian population.

528. The first two chapters will therefore analyse the fate of women and children in the DRC between 1993 and 2003 and focus particularly on the specific acts of violence to which they were subjected. The third chapter will be devoted to the link between the perpetration of violations of human rights and international humanitarian law and natural resource exploitation in the DRC.

[958] According to the National Institute of Statistics (INS) of the DRC's Ministry of Planning (figures from December 2006), young people under the age of 18 account for 48.5% and women 51% of the population.

CHAPTER I. ACTS OF VIOLENCE COMMITTED AGAINST WOMEN AND SEXUAL VIOLENCE

529. The acts of violence listed in the previous section clearly show that women and girls paid a particularly heavy price over the course of the decade. The widespread violence that took hold in Zaire, later the DRC, between 1993 and 2003 had particularly serious consequences for women because of their socio-economic and cultural vulnerability. It was also reflected in specific forms of violence, such as sexual violence, the main victims of which were women[959] and it is widely accepted that Congolese women and girls have been the target of widespread acts of violence since 1993.[960]

530. Violence in the DRC was accompanied by the systematic use of rape and sexual assault by the combatant forces. Although primarily committed under cover of an armed conflict in both occupied and combat zones, acts of violence also occurred in times of peace and in areas far removed from the conflict.

531. The successive and concurrent wars in the DRC contributed to widespread sexual violence both during the fighting, during the withdrawal of combatants, after the fighting, in areas where troops were stationed, in occupied areas, during patrols, during reprisals against the civilian population and during raids conducted by isolated and sometimes unidentified armed groups. These acts of sexual violence can be mainly attributed to armed actors in the field, although civilians did sometimes also take part in the abuse.

532. Impunity, a lack of discipline, ethnic hatred, the normalization of violence, mystical beliefs, mental coercion exercised over child soldiers, the passive or active encouragement of the institutional and rebel military hierarchies all help to explain the widespread sexual violence to which women of all ages, from girls sometimes as young as five to elderly women, were subjected. Men also suffered sexual violence, albeit to a lesser extent. The damage caused to the social fabric due to the collapse of national institutions and the repeated conflicts contributed to fostering an atmosphere of impunity and chaos.

533. The unequal place of women in society and the family also encouraged sexual violence in wartime. As stated by Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences, "Sexual violence in armed conflicts in the DRC is fuelled by gender-based discrimination in the society at large".[961] Congolese law and discriminatory customary practices with regard to women maintain them in a social

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[959] Acts of sexual violence involving men and boys, whilst being far less frequent in comparison to those involving women, will also be mentioned in this chapter.

[960] *Report of the Special Rapporteur on violence against women, its causes and consequences* (A/HRC/7/6/Add.4), 27 February 2008.

[961] Women face discrimination and suffer from oppression in virtually all areas. The country is 130th (out of 136) in UNDP's gender-related development index (GDI). *Report of the Special Rapporteur on violence against women* (A/HRC/7/6/Add.4), para. 96.

reality and mental pattern of domination.[962] Prior to the adoption of the new 2006 law on sexual violence,[963] the highly restrictive definition of rape thus covered only a limited number of the situations with which women might be confronted.

534. While cases of sexual violence have been more specifically and systematically documented for a number of years now, particularly those directly linked to the armed conflicts, the same cannot be said for cases that took place between 1993 and 2003. The Mapping Exercise was, nonetheless, able to find information relating to sexual violence committed over this period in general reports concerning violations of human rights and in some reports specifically addressing the issue of sexual violence.[964]

535. The limited amount of time (six months) and resources (five teams) available to cover the most serious violations of human rights and international humanitarian law committed throughout the DRC over the course of 10 years of armed conflicts meant that most effort had to be focused on incidents involving the deaths of a large number of victims. Aware that such a methodology prevents full justice from being done to the numerous victims of sexual violence and fails to reflect appropriately the widespread use of this form of violence by all armed groups involved in the different conflicts in the DRC, it was decided from the outset to seek information and documents supporting the perpetration of sexual violence in certain contexts rather than seeking to confirm each individual case, the victims being unfortunately too numerous and dispersed across the whole country.[965] This approach has enabled the recurrent, widespread and systematic nature of this phenomenon to be emphasised, as demonstrated in this chapter. It has also enabled some mass occurrences of sexual violence to be confirmed, such as the rape of women during the massacres of Hutu refugees by the AFDL/APR. Such events had previously been little documented.

536. The fact that some major incidents are not mentioned in this chapter certainly does not imply that they were not accompanied by sexual violence. Similarly, some armed groups committed acts of sexual violence that have not been mentioned here.

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[962] Ibid, para. 97. For example, the Congolese Family Code considers married woman as legal minors.

[963] Law on sexual violence, which comprises Law No. 06/018 of 20 July 2006, supplemented by Law No. 06/019 of 20 July 2006 modifying and supplementing the Decree of 6 August 1959 on the Code of Criminal Procedure.

[964] Réseau des femmes pour un développement associatif (RFDA*),* Réseau des femmes pour la défense des droits et la paix (RFDP) and International Alert (IA), *Women's bodies as a battleground. Sexual violence against women and girls during the war in the DRC*, 2004; Dignité des sans-voix (DSV), "*Femmes dans la tourmente des guerres en RDC*", 2002; MSF, *I Have no Joy, no Peace of Mind; Medical, Psychosocial and Socio-economic Consequences of Sexual Violence in Eastern DRC*, 2004; AI, *Surviving Rape: voices from the east*, 2004; AI, *Mass rape: time for remedies*, 2004; HRW, *The War within the War: sexual violence against women and girls in eastern Congo*, 2002; HRW, *Seeking justice. The prosecution of sexual violence in the Congo War*, 2005.

[965] Most of the available documentation only covers cases of individual violence based on anonymous evidence, deliberately incomplete for reasons of security and confidentiality. Because of this, it was often difficult to identify the places and dates of the violations with any accuracy. Each of the Mapping Exercise's teams of investigators was, however, asked to specifically question witnesses to the main incidents listed with regard to the use of sexual violence.

Finally, the figures given in this chapter only represent the tip of the iceberg. Many places still remain inaccessible, victims and witnesses have sometimes not survived the violations or are still too ashamed to talk about what happened. Finally, the documentation of sexual violence was not always sufficiently specific or systematic to be used in this report.

537. Whilst most of the acts of sexual violence examined in this report represent offences and crimes in national law as well as in human rights and international humanitarian law, the level of impunity is striking. Very few cases of sexual violence ever reach the justice system, few of those that do result in decisions, and even fewer in convictions. Finally, in the rare cases of convictions, the defendants almost invariably escape from prison.[966]

538. The first part of this chapter presents the national and international legal framework applicable to acts of sexual violence and briefly analyses the legal practice in this regard. Acts of sexual violence committed over the period 1993-2003 are then presented and analysed in the following sections and placed chronologically in time, according to the four periods used in the previous section.[967] Finally, certain specific features of the sexual violence in the DRC are studied in greater detail in order to highlight the indefensible, organised, widespread and systematic nature of the innumerable acts of sexual violence perpetrated.

A. Legal framework applicable to acts of sexual violence

l. Domestic law

539. Although the 2006 Constitution guarantees equality of status between men and women, this equality is not yet reflected in terms of implementing measures governing women's status. In actual fact, women do not enjoy the same rights as men and are legally subordinate to them.[968] In the particular area of sexual violence, the main innovation of

[966] *Report of the Special Rapporteur on violence against women* (A/HRC/7/6/Add.4).

[967] The first period, from March 1993 to September 1996, covers the violations committed during the last years of power of President Mobutu, marked by the failure of the democratisation process and the devastating consequences of the Rwandan genocide, particularly in the provinces of North and South Kivu. The second period, from July 1996 to July 1998, focuses on violations perpetrated during the first war and the first 14 months of the regime of President Laurent Désiré Kabila. The third period lists the violations committed between the start of the second war, in August 1998, and the death of President Kabila, in January 2001. Finally, the last period covers the violations perpetrated in a context of gradual respect for the ceasefire along the front line and the speeding up of the peace negotiations with a view to launching the transition period, on 30 June 2003.

[968] See: *Justice, Impunity, and Sexual Violence in Eastern DRC.* Report of the International parliamentary-expert mission, November 2008.

the Constitution can be found in Article 15, which classifies sexual violence committed against any person as a crime against humanity.[969]

540. This constitutional provision was supplemented in 2006 by revised Congolese criminal legislation on sexual violence, which introduces new crimes of sexual violence, notably rape with objects, something that had not been envisaged in the previous legislation. It also criminalises mass rapes.[970] This law does not, however, apply to the period 1993-2003.

541. Acts of sexual violence committed during this period are covered by the provisions of the 1940 Congolese Criminal Code.[971] This code contains a restrictive definition of rape that does not cover the full range of sex crimes. Other cases of sexual violence are covered by measures of "indecent assault" or "outrage against public dignity". The judge then has to cite aggravating circumstances where necessary.[972]

2. International law

542. Rape and other forms of sexual violence constitute a breach of the rules of international humanitarian law[973] and the international and regional human rights standards contained in a series of specific instruments adopted by the DRC.[974]

543. The recognition of rape and other acts of sexual violence as crimes under international law has been confirmed by their inclusion in the statutes of the different

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[969] Art. 15 of the Constitution: "The public authorities shall ensure the suppression of sexual violence. Without prejudice to international treaties and agreements, any sexual violence against any person, aimed at destabilising, or breaking up a family and of causing the disappearance of a whole people, is categorised as a crime against humanity, punishable by law."

[970] Law No. 06/018 of 20 July 2006 modifying and supplementing Decree of 30 January 1940 on the Congolese Criminal Code.

[971] See Congolese Criminal Code, Decree of 30 January 1940, updated on 30 November 2004, in Official Bulletin, Special Issue of 30 November 2004.

[972] The age of the victim, the official status of the perpetrator, or the threat, deceit or violence used to perpetrate the act may all constitute aggravating circumstances. When these aggravating circumstances are established, the punishment applicable to the perpetrator will be increased.

[973] The DRC has ratified the four Geneva Conventions and their Additional Protocols. Common Article 3 of the Geneva Conventions, among other things, prohibits "*a.* violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; […]; *c.* outrages upon personal dignity, in particular humiliating and degrading treatment; […]". The fourth Convention, relative to the protection of civilian persons in time of war, includes specific provisions on sexual violence and states that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

[974] The DRC is, in particular, a party to the UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women In 2006, the DRC also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in 2003. The States party to this Protocol are specifically required, under the terms of Article 11, to protect women in armed conflicts "against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction".

international courts and tribunals and in their legal interpretations. The statutes governing the ICTY[975] and the ICTR,[976] the Special Panels for Serious Crimes in East Timor[977], the Special Court for Sierra Leone (SCSL),[978] the Special Tribunal for Cambodia[979] and the Rome Statute of the ICC all list rape, and other expressly stated forms of sexual violence, as crimes under international law.

544. The DRC ratified the Rome Statute establishing the ICC on 11 April 2002. According to the Rome Statute, depending on the wider context in which the crimes are committed, rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilisation and any other form of sexual violence of a comparable severity can constitute a crime against humanity and a war crime.[980]

[975] The ICTY, section *g*, art. 5, lists rape as a crime against humanity.

[976] Indent *g* of Article 3 lists rape as a crime against humanity, and Article 4 lists rape, enforced prostitution and any indecent assault as a serious violation of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977.

[977] Indents *b* wwii) and *e* vi) of paragraph 1, section 6 list rape, sexual slavery, enforced prostitution, forced pregnancy….forced sterilisation and any other form of sexual violence as constituting a serious violation of Common Article 3 of the four Geneva Conventions.

[978] Indent *g* of Article 2 of the statute of the Special Court for Sierra Leone lists rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence as constituting a crime against humanity, and *e* of Article 3, outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault as a serious violation of Common Article 3 of the four Geneva Conventions and Additional Protocol II.

[979] Article 9 of the statute of the Special Tribunal for Cambodia lists crimes against humanity as defined in the Rome Statute.

[980] See indent *g*, para. 1 of Article 7 and indents *b* xxii) and *e* vi), para. 2 of Article 8 of the Rome Statute.

545. Apart from these explicit references to rape and other forms of sexual violence, the legal interpretations of the ICTY and the ICTR, the Special Panels for Serious Crimes in East Timor, the SCSL and the Elements of Crimes of the Rome Statute all anticipate that acts other than those expressly listed may also form the basis for convictions.[981] The case law of the ICTY and the ICTR thus demonstrates that acts of sexual violence may also be considered as acts of genocide,[982] of direct and public incitement to commit genocide,[983] of torture,[984] of persecution,[985] of slavery,[986] of inhuman acts,[987] of cruel[988] or inhuman[989] treatment in the context of crimes against humanity, and as outrages upon personal dignity[990] or slavery[991] in the context of war crimes. Moreover, even an individual case of serious sexual violence may be prosecuted as a crime against humanity if it was committed as an integral part of a more widespread and systematic attack on a civilian population.[992]

546. International human rights law also establishes a prohibition on acts of sexual violence in armed conflicts. In 1992,[993] the Committee on the Elimination of Discrimination against Women recognised that gender-based violence, which impairs or nullifies the enjoyment by women of individual rights and fundamental freedoms under general international law or under human rights conventions, was constitutes discrimination within the meaning of Article 1 of the Convention on the Elimination of

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[981] Patricia Viseur Sellers, *The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation*, OHCHR, 2008.

[982] Decision *The Prosecutor* v. *Akayesu*, (ICTR-96-4-T), 2 September 1998; Decision *The Prosecutor* v. *Muhimana*, (ICTR-95-1B-T), 25 April 2005.

[983] Decision *The Prosecutor* v. *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, (ICTR-99-52-T), December 2003.

[984] Decision *The Prosecutor* v. *Kvocka et al.* (IT-98-30), November 2001; Decision *The Prosecutor* v. *Delić et al.* (IT-96-21-T), November 1998. In this case, commonly known as the Celebici case, the rape was considered to have formed an act of torture.

[985] Decision *The Prosecutor* v. *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, (ICTR-99-52-T), December 2003.

[986] Decision *The Prosecutor* v. *Dragoljub Kunarac, Radomir Kovac and Zoran Vuković*, (IT-96-23-T and IT-96-23/1-T), February 2000, which convicted Kunarac and Kovac of slavery as a crime against humanity.

[987] Decision *The Prosecutor* v. *Alex Tamba Brima, Brima Bazzy Kamera and Santigie Borbor Kanu*, (SCSL-04-16-A), 22 February 2008, para 202.

[988] In the ICTY's first case, Decision *The Prosecutor* v. *Tadić*, (IT-94-1-T), 7 May 1997, it was decided that acts of sexual aggression committed against men, including mutilation, fellation, and indecent assault constituted inhuman and cruel treatment as war crimes and inhuman acts as crimes against humanity.

[989] Decision *The Prosecutor* v. *Tadić*, (IT-94-1-T), 7 May 1997.

[990] Decision *The Prosecutor* v. *Anto Furundzija*, (IT-95-17/1-T), 10 December 1998, in which the accused was convicted of enforcing nudity and humiliation, in addition to acts of rape; Decision *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamera and Santigie Borbor Kanu*, (SCSL-04-16-A), 22 February 2008 para. 1068/1188.

[991] Decision *The Prosecutor* v. *Dragoljub Kunarac, Radomir Kovac and Zoran Vuković*, (IT-96-23-T and IT-96-23/1-T) February 2000.

[992] According to the decision issued by the ICTY in the Kunarac case, it is sufficient to show that the act took place in the context of a series of acts of violence which, individually, could vary enormously in their nature and severity, para. 419.

[993] See General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, CEDAW on violence against women.

Discrimination against Women. These rights and freedoms include the right to equal protection, according to humanitarian standards, in time of international or internal armed conflict.[994]

547. In its Resolution 1325 (2000) of 31 October 2000, the Security Council reaffirmed the need to fully implement international humanitarian and human rights law that protects the rights of women and girls during and after conflicts and called on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.[995]

548. Moreover, with the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the definition of gender-based violence now includes a prohibition of all violence against women, in any political dimension and at any time, including armed conflict or war.[996]

549. In its Resolution 61/143 of 19 December 2006, the General Assembly stressed that States had to eliminate gender-based violence, particularly in order to ensure protection of the human rights of women and girls in situations of armed conflict, post-armed conflict settings and refugee and internally displaced person settings, where they are the main focus of violence.[997] This process culminated in the Security Council recognising, in its Resolution 1820 (2008) of 19 June 2008, that sexual violence was an issue of national security. This resolution notes that women and girls are the particular focus of sexual violence, and emphasises that such violence may significantly exacerbate conflicts and impede peace processes.

Legal practice

550. The combined action of national and international, conventional and customary legal instruments should therefore enable the acts of sexual violence committed in the DRC between 1993 and 2003 to be punished. All the more so given that, in the context of the International Conference on the Great Lakes Region's Protocol on the Prevention and Suppression of Sexual Violence against Women and Children,[998] the DRC has undertaken to punish the perpetrators of acts of sexual violence committed during armed conflict in particular. However, in practice, impunity is still the rule.

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[994] Indent *c,* para. 7 of General Recommendation no. 19.

[995] See UN Security Council Resolution 1325 (2000), sixth paragraph of the preamble and para. 10.

[996] See Art. 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, adopted at Maputo on 11 July 2003.

[997] General Assembly Resolution 61/143, para. 8.

[998] Available at: www.cirgl.org/documents_fr/humanitarian-social-issues/protocol.pdf.

551. A case study in South Kivu Province undertaken by MONUC's Human Rights Division in 2007[999] is enlightening and demonstrates the extent of the impunity that perpetrators of acts of sexual violence enjoy, along with the little importance given to, and delays in, the cases of sexual violence that do reach the courts. Between 2005 and 2007, 287 cases were recorded by the judicial authorities which, according to statistics obtained from hospitals, clinics and other medical centres in the province for 2005 alone, represented less than 1% of the cases of rape. Of those 287 cases that were referred to the justice system, investigations were underway in around 56% of them. In 60% of these cases, the investigations had been ongoing for more than one year. In the 60 cases that were ready to be tried by the courts in 2007, 80% of the alleged perpetrators were on conditional release and had failed to present themselves to the courts since their release. Only 64 cases had been tried, of which 58 resulted in convictions. Even in these cases, many of the perpetrators subsequently escaped and the victims never received the damages that the courts had awarded them by way of redress.[1000]

552. It should, however, be noted that, since the Rome Statute was ratified, some military courts have referred to its provisions in order to classify sexual violence as a crime under international law, as in the 2006 decisions relating to the cases of Songo Mboyo, and the Mbandaka and Lifumba-Waka mutinies.[1001]

553. In Orientale Province, despite the multitude of acts of sexual violence committed by all parties to the conflict, it would seem that the Gety and Bavi case in 2006 was the only one in which soldiers were convicted of rape as a war crime. In North Kivu, the 2009 Walikale trial was also a rare exception in the prevailing climate of impunity. In that case, the 11 FARDC defendants, six of whom were on the run, were convicted on 24 April 2009 by the Goma garrison Military Court of crimes against humanity for the rape of some 20 Pygmy women, in application of the Rome Statute. The judge referred to the case law of the international courts to define the principles of rape according to international criminal law.[1002] Importantly, the judge applied the provisions of the Rome Statute to hold the perpetrators' senior officers responsible, considering that "they tolerated the criminal actions of their subordinates when these latter were in violation of international law".

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[999] Human Rights Division of MONUC and OHCHR, *The human rights situation in DRC,* 2007. See also the *Report of the Special Rapporteur on violence against women* (A/HRC/7/6/Add.4).

[1000] "The disastrous state of the prison system, perhaps the weakest link in the justice chain, facilitates escapes of suspects and convicts, including high profile offenders who sometimes 'escape' with the connivance of the authorities". *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (see A/HRC/10/59), para. 63

[1001] For a fuller analysis of court practice in the DRC with regard to serious violations of international humanitarian law, see Sect. III, Chap. II.

[1002] The judge referred in particular to the *Furundzija* (ICTY) and *Akayesu* (ICTR) cases.

554. However, despite some progress and as with cases of sexual violence in general, most of these cases continue to suffer from a lack of impartiality and independence.[1003]

555. The fact that there are few or no charges relating to acts of sexual violence in the arrest warrants issued by the ICC only contributes to minimising the importance of these crimes and to confirming a culture of impunity that the Court was intended to overcome. It is therefore surprising that the cases being brought against Thomas Lubanga and Bosco Ntaganda include no charges for sex crimes and that, whilst those against Germain Katanga and Mathieu Ngudjolo Chui do include such charges, they do not reflect the widespread nature of this kind of violation beyond the Bogoro attack for which they are being prosecuted. In fact, as demonstrated by transcripts of the hearings from the Lubanga trial, the women conscripted into the armed groups were repeatedly raped and reduced to the position of sex slaves by their commanders.[1004]

B. March 1993 - September 1996: failure of the democratisation process and regional crisis

556. Whilst not reaching the levels experienced during periods of war, acts of sexual violence were not unknown during the regime of former President of Zaire, Mobutu Sese Seko, and were primarily perpetrated by Zairian State agents, including the *Forces armées zaïroises* (FAZ).

557. Senior civil servants and army officers enjoyed absolute power over civilians in their respective spheres of influence. In Bas-Congo, Kinshasa and Katanga, for example, senior officers frequently committed rape.[1005]

558. A number of sources report the existence of rape and enforced prostitution in prisons, such as, for example, in 1995 and 1996 in the Kisangani and Kinshasa detention centres,[1006] and in 1997 at Maniema, where a majority of the women detained were subjected to sexual, and often physical, abuse on the part of State agents.[1007]

559. Opposition party activists, along with the sisters, wives or daughters of political opponents, primarily from the *Parti lumumbiste unifié* (PALU) or the *Union pour la*

[1003] For a fuller analysis of the capacity of the legal system, see Sect. III, Chap. III.

[1004] Transcripts of hearings in the case *The Prosecutor* v. *Thomas Lubanga Dyilo*, No. ICC-01/04-01/06 from 3, 23 and 27 February and 6 and 19 March 2009.

[1005] Interviews with the Mapping Team, Bas-Congo, March 2009; Serge M'Boukou, "*Mobutu, roi du Zaïre. Essai de socio-anthropologie politique à partir d'une figure dictatoriale*", *Le Portique*, 2007; see also Decision of the Rotterdam District Court (Netherlands) on 7 April 2004 against Col. Sébastien Nzapali, known as the "King of Beasts". During the trial, the rape allegations could not be confirmed.

[1006] *Report on the situation of human rights in Zaire* (E/CN.4/1997/6); OMCT [World Organisation against Torture], "Convention on the Elimination of All Forms of Discrimination against Women - Republic of Zaire – Comments of the OMCT"; Committee on the Elimination of Discrimination against Women, Sixteenth session, 13-31 January 1997.

[1007] Haki Za Binadamu, "*Maniema SOS: les femmes en proie aux instincts sexuels des soudards*", 1997.

démocratie et le progrès social (UDPS) were allegedly kidnapped, raped or tortured by the security forces, particularly the *Brigade spéciale de recherche et de surveillance* (BSRS) from the Gendarmerie headquarters (Circo), the Civil Guard or President Mobutu's *Division spéciale presidentielle* (DSP).[1008] In 1996, when the Mobutu regime was beginning to come under threat, the armed forces and the police came down hard on people suspected of being involved in the rebellion. It is reported that several women were arrested in Kinshasa, Goma and Uvira either by the SARM[1009] or the SNIP[1010] intelligence services, or by the police force, and raped and beaten.[1011]

560. The frequency of the sexual violence allegedly committed by the FAZ clearly illustrates the tolerance of the military hierarchy towards these crimes. Over the course of two "pacification campaigns" conducted by the FAZ in North Kivu in 1995 and 1996, women suspected of being members of the Nande self-defence militia, the Ngilima, were reportedly arrested at roadblocks put up by the army in Rutshuru. Transferred to Goma, a 44-year-old mother was allegedly raped by several SARM soldiers using the barrels of guns and sticks of wood before being executed.[1012] In South Kivu, the FAZ reportedly established roadblocks near areas of mineral extraction and raped a number of women passing by on the pretext of searching their genitals for minerals.[1013] Sexual exploitation on the part of the FAZ was so widespread that the "Zairian contingent for camp security", tasked by the international community with disarming and maintaining peace in the Rwandan refugee camps in North and South Kivu, became known as "the Zairian contingent for camp sexuality".[1014]

561. In Maniema, elements of the police force, the Civil Guard and the FAZ allegedly committed dozens of rapes during the course of searches, looting and roadblock checks. In rural communities, gang rapes were reported.[1015]

562. Between 1993 and 1996, tribal militia is also reported to have committed rapes. During the ethnic conflict between the Banyarwanda[1016] and the Ngilima, which shook North Kivu in 1993, acts of sexual violence were reported. This included, for example, rapes of school children in Masisi in April 1993, although it was not possible to identify

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[1008] Interviews with the Mapping Team, Kinshasa, April 2009; Prison Fellowship, "*Rapport circonstancié sur les cas de violations de droits de l'homme au Zaïre*", 1997.

[1009] *Service d'actions et de renseignements militaires* (Military Intelligence and Action Service).

[1010] *Service national d'intelligence et de protection* (National Intelligence and Protection Service).

[1011] AI, *Violent Persecution by State and Armed Groups,* 1996; AI, *Lawlessness and Insecurity in North and South Kivu*, 1996.

[1012] HRW, *Forced to Flee, Violence against the Tutsi in Zaire*, 1996; AI, *Zaire: Lawlessness and Insecurity in North and South Kivu*, 1996

[1013] Interviews with the Mapping Team, South Kivu, April 2009

[1014] Jean-Paul Mari, "*Ici, on extermine les réfugiés*", in *Le Nouvel observateur*, 29 May 1997.

[1015] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu, "*Monitoring: cas types des violations des droits de l'homme au Maniema*", 1995; *Politique africaine*, "*Le Maniema, de la guerre de l'AFDL à la guerre du RCD*", No. 84, December 2001.

[1016] All the names of the ethnic groups have been used invariably.

the perpetrators or ascertain the extent of the atrocity.[1017] In the same region and over the same period, during the Binza massacre in 1993, groups of armed Hutu, supported by the FAZ, are alleged to have mutilated and disembowelled a pregnant woman, probably a Hunde.[1018] Moreover, isolated cases of rapes committed by Hutu refugees were reported by witnesses.[1019] In May 1996, men calling themselves Ngilima were reported to have raped women in Vichumbi village, near Lake Albert in retaliation for the death of one of their members.[1020] In September 1996, with the support of the FAZ, "armed Bembe elements" are said to have raped – and often gang raped - Banyamulenge women after murdering the men in the villages of Kabela[1021] and Lueba,[1022] in Fizi territory.

C. September 1996 - July 1998: first war and the AFDL/APR regime

563. This period was marked by acts of sexual violence by AFDL/APR[1023] troops during a war that ended in the seizure of power by the advancing ADFL/APR and the retreat of the FAZ. The first years of the AFDL regime were marked by numerous cases of rape as a result of abuses of power on the part of soldiers and the ensuing political repression.

564. With the arrival *en masse* of Burundian and Rwandan refugees in Kivu in 1993 and 1994, anti-Tutsi propaganda became widespread, particularly targeting the Banyamulenge living in South Kivu. When the authorities incited the population to chase out the Banyamulenge from Fizi territory in September 1996, a number of women and young girls were raped - sometimes by dozens of soldiers - and then killed along with their families during the violence instigated by the FAZ and "armed Bembe

[1017] "*Mémorandum des communautés hutu et tutsi du Nord-Kivu à la Commission d'enquête sur les massacres de Walikale, Masisi et Bwito en mars et avril 1993*", 25 April 1993.

[1018] Interviews with the Mapping Team, North Kivu, November 2008 and April 2009.

[1019] Confidential document of the Secretary-Generals' Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC, 1998.

[1020] AI, "Lawlessness and Insecurity in North and South Kivu", 1996.

[1021] Interviews with the Mapping Team, South Kivu, June 2009.

[1022] Interviews with the Mapping Team, South Kivu, November 2008 and February 2009; *Report on the human rights situation in Zaire* (E/CN.4/1997/6), para. 191; AI, *Hidden from scrutiny: human rights abuses in eastern Zaire*, 1996, p. 3.

[1023] As noted in Section I, given the heavy presence of APR soldiers among the troops and AFDL command posts – a reality later recognised by the Rwandan authorities - and the great difficulty experienced by the witnesses questioned by the Mapping Team in distinguishing between the members of the AFDL and the APR on the ground, reference will be made to armed elements of the AFDL and the soldiers of the APR engaged in operations in Zaire between October 1996 and June 1997 using the abbreviation AFDL/APR. When, in some regions, several sources witness the heavy presence, under cover of the AFDL, of Ugandan soldiers of the UPDF (as in some districts of Orientale Province) or of the FAB (as in some territories of South Kivu), the abbreviations AFDL/APR/UPDF, AFDL/APR/FAB or AFDL/UPDF and AFDL/FAB may also be used.

elements".[1024] In North Kivu, the armed forces are reported to have raped Tutsi women and permitted civilians to do the same.[1025]

565. The violations of international humanitarian law were so massive during the first war and cost the lives of so many victims, most of them women and children, that published reports covering this period have given little space to, or at least made little distinction between, crimes of sexual violence and other serious crimes committed at this time. This is a concrete example of a general trend towards the under-reporting of this kind of violence. For example, the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC notes, without giving any details, that rapes were likely to have been committed by the AFDL/APR during attacks on the five large refugee camps in North Kivu in October and November 1996.[1026] The Mapping Team was able to document alleged incidents of some women who were raped before being killed, e.g. in the course of the refugee massacres at Hombo, a village on the border between North and South Kivu, in December 1996;[1027] at Kausa near Nyamitaba in North Kivu in December 1996;[1028] at Humule, 50 kilometres from Goma, in April 1997;[1029] and at Kilungutwe, Kalama and Kasika, in Mwenga territory of South Kivu, in August 1998. Women were reportedly also tortured and subjected to mutilation, particularly sexual, during these massacres.[1030]

566. Moreover, during their advance, the AFDL/APR soldiers also are alleged of having raped numerous Zairian women, particularly in North Kivu during October and November 1996, and in Oriental Province, in Équateur and in Bandundu in May 1997.[1031]

[1024] Interviews with the Mapping Team, South Kivu, June 2009: A young 17-year-old Munyamulenge who was raped by 15 soldiers while she was being held in a house with a group of Banyamulenge, died following this gang rape; HRW, *Attacked by all sides, Civilians and the War in eastern Zaire*, 1997; AI, *Zaire: Lawlessness and Insecurity in North and South Kivu*, 1996.

[1025] Interviews with the Mapping Team, Goma, March 2009.

[1026] *Report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC* (S/1998/581), appendix.

[1027] Interviews with the Mapping Team, Goma, March 2009; Confidential document given to the Secretary-General's Investigative Team in the DRC in 1997/1998.

[1028] Interviews with the Mapping Team, North Kivu, December 2008 and January 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581), annex, p. 48; *Report on the situation of human rights in Zaire* (E/CN.4/1997/6/Add.2), p. 7; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006, p. 96; APREDECI, GVP, CRE, *L'Apocalypse au Nord-Kivu*, 1997, p. 34; La Grande Vision, *Rapport sur les violations des droits de l'homme dans la zone agropastorale de Masisi*, 1997, p. 4.

[1029] Statements gathered by the Secretary-General's Investigative Team in the DRC in 1997/1998; Peacelink, *Rapport sur la situation qui prévaut actuellement dans les provinces du Nord et du Sud-Kivu*, 1997.

[1030] Interviews with the Mapping Team, October-December 2008, February-March 2009; DRC's Ministry of Human Rights, *Livre Blanc: La guerre d'agression en RDC. Trois ans de massacres et de génocide à huis clos*, October 2001; Jean Migabo Kalere, *Génocide au Congo? Analyse des massacres des populations civiles*, Broederlijk Delen, 2002; CADDHOM *Massacres de Kasika au Sud-Kivu*, 1998; AI, *DRC: War against unarmed civilians*, 1998.

[1031] Interviews with the Mapping Team, Orientale Province, January and February 2009; *Report of the Secretary-General's Investigative Team* (S/1998/581), appendix; LINELIT, *Jungle ou état de droit*, 1997.

567. As they fled in the face of the advancing AFDL/APR soldiers, the FAZ allegedly also engaged in multiple rapes, sometimes also of men, and abducted women and young girls.[1032] Numerous alleged rapes committed by the FAZ, often gang rapes, have thus been documented along the whole length of the route they took during their retreat: mid-November 1996 in Butembo and Béni (North Kivu);[1033] November and December 1996 in Bunia, at Kisangani,[1034] in Opala,[1035] in the south-west of Orientale Province, on the border with Kasai Oriental and at Komanda, in Ituri district;[1036] between December 1996 and the end of February 1997 at Buta and Bondo, in Bas-Uélé in Orientale Province;[1037] from the end of February to early march 1997 in Kailo territory in Maniema;[1038] and, finally, in May 1997 in Équateur[1039] and Bandundu.[1040] Innumerable women were abducted, used as sex slaves and forced by the FAZ to act as bearers of looted goods. At Bunia, the FAZ allegedly raped the girls of Likovi secondary school so savagely and so systematically that seven of them died. They also reportedly raped women in the maternity unit of the town's hospital and raped and battered nuns in the town's convent.[1041]

568. A number of rapes committed by Rwandan Hutu refugees fleeing from the advancing AFDL/APR were reported, particularly in Mbandaka region, Équateur, in May 1997.[1042]

569. The installation of the new AFDL/APR regime in Kinshasa was marked by numerous abuses of power, and tolerance regarding the use of sexual violence by AFDL/APR soldiers and security forces, who enjoyed total impunity.

570. Once the new authorities were in place, the AFDL/APR soldiers besieged the military camps that had been deserted by the ex-FAZ. Many wives and female children of ex-FAZ were still living in these camps and are said to have been raped and forced to carry out domestic chores for the soldiers of the new government army, particularly in

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[1032] *Report of the Secretary-General's Investigative Team* (S/1998/581), appendix.

[1033] AI, *Zaire. Rape, killings and other human rights violations by the security forces*, 1997.

[1034] *Report of the Secretary-General's Investigative Team* (S/1998/581), appendix; AI, *Zaire. Rape, killings and other human rights violations by the security forces*, 1997.

[1035] Interviews with the Mapping Team, Orientale Province, January and February 2009; Groupe Lotus, *Violation des droits de l'homme à Opala*, 1998

[1036] Interviews with the Mapping Team, Orientale Province, January and February 2009; AI, *Zaire. Rape, killings and other human rights violations by the security forces*, 1997.

[1037] Interviews with the Mapping Team, Orientale Province, 2008.

[1038] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu, *Violence sexuelle au Maniema*, 1997.

[1039] Father Herman Van Dijck, *Rapport sur les violations des droits de l'homme dans le Sud-Équateur, 15 mars-15 septembre 1997*; AI, *Deadly Alliances in the Congolese Forests*, 1997.

[1040] Interviews with the Mapping Team, Bandundu, February 2009; IRIN, 5 May 1997; Odon Bakumba, *La bataille de Kenge*, pamphlet produced in Kenge, no date.

[1041] AI, *Zaire. Rape, killings and other human rights violations by the security forces*, 1997.

[1042] *Report of the Secretary-General's Investigative Team* (S/1998/581), annex.

Kinshasa and Bas-Congo.[1043] Some of them were reportedly gang raped, including one woman, for example, accused of having been the mistress of one of the FAZ soldiers by 17 AFDL/APR soldiers.[1044]

571. Following an AFDL decree banning women from wearing trousers, leggings or mini-skirts, some who flouted this ban were publicly humiliated, stripped, manhandled and even severely beaten with nail-studded pieces of wood. One female student in Lubumbashi was allegedly undressed, whipped and threatened with death by AFDL/APR soldiers for having worn trousers.[1045]

572. Once established in the different provinces, the FAC/APR[1046] soldiers reportedly engaged in sexual violence against women, young girls and even primary schoolgirls, as in North and South Kivu, for example.[1047] Around the military camps, at roadblocks or during routine patrols, numerous women were reportedly subjected to gang rapes and torture by the FAC/APR soldiers, particularly in Kinshasa, Goma and Lubumbashi.[1048] In one case, soldiers apparently poured burning wax on the genitals and body of a young woman they had gang raped at the Kokolo military camp in Kinshasa.[1049]

573. These situations were clearly the result of an abuse of power on the part of the new regime's security forces, particularly when an arrest or arbitrary detention for minor reasons was followed by rape. Some women were reportedly taken back to hotels by members of the security forces to rape them there.[1050] FAC/APR soldiers apparently abducted young girls from their families and raped them during operations in Mont-Ngafula commune of Kinshasa. Some women were also reportedly forced to work as domestic servants for FAC/APR officers.[1051] In 1997, in South Kivu, accusations of witchcraft were reportedly made against at least four women and two girls aged six and

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[1043] Interviews of the Mapping Team with the wives of ex-FAZ, Bas-Congo, March 2009; Colonel Kisukula Abeli Meitho, *La désintégration de l'armée congolaise de Mobutu à Kabila*, 2001.

[1044]Interviews with the Mapping Team, Kinshasa, March 2009; *Report of the Special Rapporteur on the situation of human rights in Zaire* (now the DRC) [A/52/496], 1997.

[1045] *Report of the Special Rapporteur* (A/52/496); ASADHO, *Appel urgent. SOS au Congo-Zaïre: les espaces démocratiques menacés,* 1997; ACPC, *30 jours de violation des droits de l'homme sous le pouvoir AFDL - Un véritable cauchemar*, June 1997; AI, *Deadly Alliances in the Congolese Forests*, 1997; UDPS/Belgium, *L'UDPS/Belgique accuse M. Kabila pour crimes contre l'humanité*, November 1998; available at: www.congoline.com/Forum1/Forum02/Kashala03.htm

[1046] From June 1997 onwards, the national army of the DRC took the name *Forces armées congolaises* (FAC). Until the start of the second war, in addition to AFDL and ex-FAZ soldiers, the FAC included numerous Rwandan and, to a lesser extent, Ugandan, soldiers. Given the difficulty in clearly distinguishing between Congolese and Rwandan soldiers at this time, the abbreviation FAC/APR has been used for the period covering June 1997 to August 1998.

[1047] Comité Palermo Bukavu, *Les morts de la libération*, June 1997.

[1048] Interviews with the Mapping Team, Kinshasa, March 2009; *Report of the Special Rapporteur* (A/52/496); AI, *Deadly Alliances in the Congolese Forests*, 1997.

[1049] Interviews with the Mapping Team, Kinshasa, March 2009.

[1050] *Report of the Special Rapporteur* (A/52/496); ACPC, *30 jours de violation des droits de l'homme sous le pouvoir AFDL - Un véritable cauchemar*, June 1997.

[1051] *Report of the Special Rapporteur* (E/CN.4/1999/31), February 1999.

seven. Arrested, they were allegedly severely tortured, mutilated, raped and stoned by FAC/APR soldiers. One of them did not survive.[1052]

574. Rape was also used to subdue civilian populations suspected of supporting the Mayi-Mayi. During brutal search-and-sweep operations in North Kivu in April 1998, the FAC/APR reportedly raped dozens of women and young girls and, on several occasions, forced men to sleep with their sisters and daughters.[1053]

575. Finally, the clampdown on any form of opposition led to the arrest of numerous women within, or perceived as being within, the immediate entourage of their opponents. Several of them were subsequently raped by the security forces. For example, in Kinshasa in December 1997, a group of soldiers allegedly spent the whole night beating and gang raping two sisters of a political dissident they had gone to arrest but had not found at home.[1054] Rape of women and electric shocks to the genitals of men are reported used as a means of torture in different detention centres, particularly in Kinshasa.[1055]

D. August 1998 - January 2001: Second war

576. This period was marked by numerous conflicts between government forces, rebel groups and foreign armies in a country divided in two with, in the west, a government-controlled zone and, in the east, a rebel-controlled zone.[1056] These successive and concurrent conflicts in the DRC contributed to the widespread sexual violence, which was primarily attributable to four main causes: the armed confrontations, persecutions of certain ethnic groups, the suppression of all forms of opposition and, finally, almost total impunity in the face of abuses of power and a lack of discipline on the part of the security forces, police and military intelligence services.

1. Government-controlled zone

577. During the different armed confrontations, the government forces and their allies committed acts of sexual violence when capturing towns, when stationed in certain regions or when retreating in the face of the enemy. Rapes, often gang rapes, frequently involved very young girls, sometimes even infants.

[1052] CADDHOM, "*Répression: mode de gouvernance du régime L. D. Kabila, cas de la province du Sud-Kivu, est de la RDC*", 1997.

[1053] Interviews with the Mapping Team, North Kivu, February 2009; ASADHO*, Annual Report,* 1998; Groupe des chercheurs libres du Graben, *Report on the massacres perpetrated at the Kikyo military camp*; AI, *A year of dashed hopes*, 1998.

[1054] Interviews with the Mapping Team, Kinshasa, April 2009; *Report of the Special Rapporteur* (E/CN.4/1998/65 and Corr.1).

[1055] *Report of the Special Rapporteur* (E/CN.4/1999/31); AI, *A year of dashed hopes*, 1998.

[1056] For more information on the political background, see Sec. I, Chap. III.

578. In Bas-Congo, during their brief incursion at the start of August 1998, members of the ANC (the armed branch of the RCD)[1057] politico-military movement and the APR allegedly committed rapes in the main towns of the province. In Boma, they requisitioned a hotel where they raped innumerable women and young girls for three days.[1058] During the recapture of towns in Bas-Congo, at the end of August 1998, the Kinshasa Government's allies, the Angolan Armed Forces (FAA), in turn allegedly committed systematic and widespread rapes against the civilian population.[1059] In Orientale Province, the FAC is reported to have carried out numerous rapes of women and young under-age girls in the regions in which they were stationed, such as Bondo,[1060] and to have taken some of them with them when they fled from Dingila.[1061] In Équateur, FAC soldiers apparently abducted 36 women from Bolima-Likote village and raped them in the forest.[1062] At Mange, the FAC reportedly raped some 20 women that they had taken prisoner, one of them subsequently dying from injuries she sustained during the rape.[1063] Other victims appear to have been abducted by the soldiers during their retreat from Équateur and were used for several months as sex slaves. One of the victims, aged 15, was reportedly taken by the soldiers to Kitona (Bas-Congo), then to Kalemie (Katanga).[1064] In Kasai Occidental, the FAC is said to have raped at least 20 women in the area around their base in Demba territory.[1065]

579. At this time, the government security forces were also persecuting anyone bearing physical resemblance to a Tutsi or suspected of supporting the rebellion. Women suspects were harassed, stripped of their belongings, arrested and detained. Several of them were raped during their detention, particularly in Kinshasa[1066] and Lubumbashi.[1067]

580. Repression against the opposition led to the arbitrary arrest of a number of women opposed to, or critical of, the regime and they were, on occasion, subjected to sexual violence. Women suspected of sympathising with the rebellion were reportedly arrested, paraded naked through the streets to the police station and held alongside the men.[1068]

[1057] Officially created on 16 August 1998, the RCD had as its objective ending Laurent-Désiré Kabila's presidency.

[1058] Interviews with the Mapping Team, Bas-Congo, March 2009; HRW, *Casualties of War*, 1999.

[1059] Ibid.

[1060] AI, *DRC: Killing Human Decency*, 30 May 2000.

[1061] Interviews with the Mapping Team, Orientale Province, January 2009.

[1062] Interviews with the Mapping Team, Équateur, April and May 2009.

[1063] Interviews with the Mapping Team, Équateur and Kinshasa, April 2009.

[1064] Interviews with the Mapping Team, Équateur and Kinshasa, April 2009; HRW, *Casualties of War*, 1999; AI, *DRC: Killing Human Decency*, 2000; MSF, *Quiet, we're dying. Witness accounts*, 2002.

[1065] Interviews with the Mapping Team,, Kasai Occidental and Kasai Oriental, April 2009

[1066] Interviews with the Mapping Team, Kinshasa, March 2009; HRW, *Casualties of War*, 1999.

[1067] Interviews with the Mapping Team, Katanga, October 2008 and March 2009; ASADHO, *RDC: Le pouvoir à tout prix. Répression systématique et impunité*, 1998; AI, *War against unarmed civilians*, 1999; Deutsche Presse-Agentur, "Massacres of Tutsis Reported as more DRC Peace Talks Tabled", 3 September 1998 and "Congo Rebels Bury Remains of Massacre Victims", 10 December 1998.

[1068] *Report of the Special Rapporteur* (E/CN.4/1999/31), annex VI; AI, "Government Terrorizes Critics", 2000.

One of them was apparently raped and whipped in detention and then taken to a Kinshasa hotel where she was raped for several days by a senior officer and soldiers of the DEMIAP (*Détection Militaire des Activités Anti-Patrie*) intelligence service.[1069] Sexual violence was reportedly also used against men as a means of torture and cruel or degrading treatment.[1070]

581. In the government prisons in Kinshasa, the warders appear to have abused their position of power over the women prisoners, who were frequently held alongside the men. The warders reportedly raped them regularly and forced them to perform domestic duties.[1071] Within the army, particularly among new recruits, there was a widespread lack of discipline. During arrests for questioning, arbitrary arrests or checks at roadblocks, soldiers would thus rape, hold to ransom and even demand young girls by way of payment. They would sometimes force their victims to undress in public. Rape was also used as a punishment when the victim or her husband refused to hand over money or as a way of suppressing popular demonstrations.[1072] Young street children, abandoned or separated because of the war, were also victims of sexual exploitation allegedly at the hands of members of the FAC, who took advantage of the extreme vulnerability of these victims.[1073]

2. Rebel-controlled zone

582. The multiple armed confrontations between different groups in the rebel-controlled zone targeted the civilian population indiscriminately, a population made up primarily of women and children who were always suspected of supporting one side or the other. The soldiers of the ANC and APR and their allies engaged in massacres and reprisals against the civilian population along with search-and-sweep operations aimed at seeking out the enemy in the towns they had just conquered or defended. Many women and young girls were raped during these different operations and then, sometimes, killed.[1074]

[1069] AI, *DRC: Killing Human Decency*, 30 May 2000.

[1070] AI, *DRC: A Year of Dashed Hopes*, 15 May 1998.

[1071] Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999.

[1072] ASADHO, "RDC. Une guerre prétexte au pillage des ressources et aux violations des droits de l'homme", *Annual Report 2000*; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999.

[1073] Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000.

[1074] Particularly in Kabalo territory in Katanga (Interviews with the Mapping Team, Katanga, November 2008), in Kasongo territory in Maniema (Interviews with the Mapping Team, Maniema, March 2009; Politique africaine, "Le Maniema, de la guerre de l'AFDL à la guerre du RCD", No. 84, December 2001) and at Lubutu and Opala in Orientale Province (Interviews with the Mapping Team, Orientale Province, January 2009; Memorandum from the FOCDP to the Secretary-General of the United Nations, 2001; Report by Groupe Justice et Libération, 1999; Report produced by the President of Wanie Rukula civil society, 2009).

583. In August 1999, and then again in May and June 2000, the latent crisis between Rwanda and Uganda for control of the political party RCD degenerated into open conflict,[1075] and this led to a series of clashes for control of Kisangani during the course of which elements of both armies committed rapes. On 17 July 1999, before the first war broke out, five girls trapped in the Maranatha church, Kabondo commune, were allegedly raped by elements of the ANC/APR.[1076] Rapes were also reportedly committed by Rwandan, Ugandan and Congolese soldiers during the two ensuing wars, in 2000.[1077]

584. During the course of the conflict between the ANC/APR and the Mayi-Mayi, and in some regions controlled by the CNDD-FDD,[1078] women paid a heavy price, with each group attempting to outdo the other in terms of the cruelty of the sexual violence to which they subjected their victims in retaliation for their alleged support of their opponents.

585. For example, in South Kivu, in August 1998, elements of the ANC/APR are reported to have raped women in the villages of Kilungutwe, Kalama and Kasika, in Mwenga territory. Brutal rapes, disembowelling and rape with sticks of wood were suffered by an unknown number of victims.[1079] At Bitale, in Kalehe territory, in February 1999, elements of the ANC/APR allegedly raped women and young girls whom they accused of supporting the Mayi-Mayi operating in the region.[1080] In Mwenga town centre, in November 1999, elements of the ANC/APR are said to have buried 15 women alive. Before being buried, the victims were tortured, raped, some with wooden sticks, and subjected to cruel, inhuman and degrading treatment consisting particularly of inserting hot pepper into their genitals. Some victims were paraded naked through the village.[1081] During the counter-attack led by the ANC/APR against the Mayi-Mayi and CNDD-FDD in Baraka region, in June 2000, soldiers from the ANC/APR reportedly

[1075] In March 1999, against a backdrop of increasing disagreement between Rwanda and Uganda as to the strategy to follow in relation to President L. D. Kabila, the RCD broke into a pro-Rwandan wing (RCD-Goma) and a pro-Ugandan wing (RCD-ML).

[1076] Groupe Lotus, *Les conséquences de la contradiction des alliances et des factions rebelles au nord-est de la RDC – La guerre de Kisangani*, 1999.

[1077] Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000 and 2001; François Zoka, Pierre Kibaka, Jean-Pierre Badidike, *La guerre des alliés à Kisangani et le droit de la paix*, 2000.

[1078] The *Forces pour la défense de la démocratie* (FDD) were the armed branch of the Burundian Hutu movement of the *Centre national pour la défense de la démocratie* (CNDD).

[1079]Interviews with the Mapping Team, South Kivu, October, November and December 2008 – February and March 2009; CADDHOM, *Massacres de Kasika au Sud-Kivu*, 1998; Migabo, *Génocide au Congo? Analyse des massacres des populations civiles*, 2002; AI, *War against unarmed civilians*, 1998.

[1080] Interviews with the Mapping Team, South Kivu, February and March 2009; HRW, *Eastern Congo ravaged*, May 2000, p.10.

[1081] Interviews with the Mapping Team, South Kivu, November 2008 and March 2009; Jean Migabo Kalere, *Génocide au Congo? Analyse des massacres des populations civiles*, 2002; Ambroise Bulambo, *Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD*, 2001; Application instituting proceedings at the International Court of Justice by the DRC against Rwanda on 28 May 2002.

raped and killed several women and burned houses.[1082] Other cases of rape committed by elements of the ANC/APR during attacks and containment activities are likely to have taken place in Kalehe territory in 1999 and in territories in the regions of Baraka[1083] and Fizi[1084] in 2000.

586. Elements of the ANC/APR are reported to have raped women in front of their husbands, their families and their communities during attacks on villages such as Kilambo, in Walikale territory (North Kivu).[1085] The women of North and South Kivu were not, however, alone in suffering this violence: a large number of women were allegedly raped in Maniema, particularly by elements of the ANC/APR.[1086]

587. For their part, the Mayi-Mayi are reported to have committed atrocities during attacks against villages and in the context of reprisals. Rapes were thus committed in Uvira, in Kalehe, Walungu and Mwenga territories in South Kivu and in Maniema[1087], accompanied by unimaginable cruelty. In Kamituga and Walungu (South Kivu), the militia allegedly cut off women's breasts and forced them to eat them before executing them as punishment for their alleged support of the RCD-G or their refusal to undertake forced labour.[1088]

588. The Mayi-Mayi also allegedly engaged in rapes during patrols, during movements, when putting up fences or when they were near national parks, including the Kahuzi-Biega National Park (South Kivu and North Kivu), and the Virunga National Park (North Kivu).[1089] Women working in the fields or on their way to them were frequently targeted. The Mayi-Mayi also committed abuses (murder, rape and torture) against women accused of witchcraft such as, for example, in Mwenga and Kitutu (South

[1082] Interviews with the Mapping Team, South Kivu, February 2009; *Report of the Special Rapporteur* (A/55/403), 2000; AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000.

[1083] Interview with the Mapping Team, South Kivu, February and March 2009; HRW, "DRC, Eastern Congo ravaged", 2000.

[1084] Interviews with the Mapping Team, South Kivu, February 2009; *Report of the Special Rapporteur* (A/55/403); AI, *Rwandese-controlled eastern DRC: Devastating human toll*, 2001; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000.

[1085] HRW, *Eastern Congo ravaged*, 2000; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 2000.

[1086] Interviews with the Mapping Team, Maniema, March 2009; Haki Za Binadamu, *Situation des droits de l'homme au Maniema, RDC Congo, Monitoring d'octobre 1998 à juin 2000*, 2000.

[1087] Interviews with the Mapping Team, South Kivu, April 2009; Documents from October 2002 provided to the Mapping Team in South Kivu by local NGOs, April 2009.

[1088] Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999; AI, *DRC: Killing human decency*, 2000.

[1089] Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999.

Kivu) in 1999;[1090] at Musenge, in Walikale territory (North Kivu) in 1999;[1091] and at Wabikwa, in Pangi territory (Maniema) in March 1999.[1092]

589. From the end of 1999 to mid-2000, acts of sexual violence in the conflict between the RCD-G and the Mayi-Mayi in South Kivu were such that it is estimated that at least 2,500 to 3,000 women were raped – often brutally gang-raped - over this period.[1093]

590. The Hutu militia, both Rwandan (AliR/FDLR)[1094] and Burundian (FDD/CNDD), allegedly also committed widespread and systematic rapes of a bestial brutality. Many women, mainly young girls, were abducted to act as sex slaves.[1095] Between 1998 and 2001, for example, the Rwandan Hutu militia is reported to have attacked and plundered several villages in Kalehe and Mwenga territories (South Kivu) and Masisi territory (North Kivu) from the forests in which they were hiding. During the course of these attacks, they apparently raped and abducted women and young girls, some of whom were forced to carry the spoils of their pillaging.[1096] In some cases, such as at Mabingu, Kabamba and Mantu (South Kivu) in 1999, the women were raped with such brutality that some of them died. In July 2000, Burundian militia (FDD) reportedly raped a number of women in Lusenda village (South Kivu) and abducted girls in North Kivu.[1097]

591. In a vicious spiral, whenever they recaptured a territory, the Rwandan Hutu militia as well as the ANC/APR, would engage in reprisals, including rapes, against the population. Always suspected of hiding or supporting one group or the other, the population was subjected to alternating attacks from the different sides, such as for example in 1998 at Chivanga; in Kabara territory (South Kivu);[1098] in 1999 in Mwitwa, in Walikale territory (North Kivu); and in 2000 near Kilambo, in Masisi territory. In

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[1090] COJESKI, *Les violations caractérisées des droits de l'homme dans le Kivu - Rapport narratif des forfaits pour la période allant du 1er octobre 1999 au 29 février 2000*, 2000; CADDHOM, *Les atrocités commises en province du Kivu de 1996 à 199*8, July 1998.

[1091] AI, *DRC: Killing Human Decency*, 30 May 2000.

[1092] Haki Za Binadamu, *Situation des droits de l'homme au Maniema, RDC*, 2000.

[1093] Office for the Coordination of Humanitarian Affairs, *Shabunda Mission Report*, June 2001; HRW, *DRC – The War Within the War*, 2002.

[1094] With the start of the second war, in 1998, the ex-FAR/Interahamwe and "armed Hutu elements" reorganised within the *Armée de libération du Rwanda (*ALiR), which was absorbed into the FDLR at the end of 2000.

[1095] Interviews with the Mapping Team, South Kivu, March 2009; CDJP, "Flash spécial - Les Interahamwe massacrent la population de Bushwira dans le territoire de Kabare", 29 November 2002; IRIN, "Central and Eastern Africa Weekly Round-Up 26*"*, 30 June 2000; AI, *DRC: Killing Human Decency*, 30 May 2000.

[1096] HRW, *Eastern Congo ravaged*, May 2000.

[1097] HJ, "Une population désespérée, délaissée et prise en otage", archives, 2001, available at www.heritiers.org/ (consulted in March 2009).

[1098] HRW, *DRC – The War Within the War*, June 2002.

Kilambo, for example, ANC/APR soldiers reportedly tied up the men and raped their wives in front of them before killing them.[1099]

592. In North Kivu, the Ugandan rebels of the ADF/NALU [Allied Democratic Forces/National Army for the Liberation of Uganda][1100] allegedly attacked and looted several villages in Beni territory, abducting children, young girls and women whom they used as slaves, including sex slaves.[1101]

593. On returning to their lands in Fizi and Uvira territories in South Kivu in 1999, Banyamulenge soldiers also reportedly engaged in abductions and rapes of women as they were on the way to their fields.[1102]

594. In all regions under the control of the RCD-G, opponents were brutally and arbitrarily suppressed. Hundreds of women accused of helping the militia and rebel movements, suspected of providing intelligence to the FAC or who had simply criticised the RCD-G were subjected to sexual violence in their own homes, sometimes in front of their children and husbands, and were frequently arrested. The wives or female relatives of men being sought were sometimes arrested instead of their partner or brother. Held in prisons or in containers, they were reportedly systematically raped, beaten and then some of them murdered.[1103] Whilst this repression affected above all women in North and South Kivu, women in other regions under RCD-G control were also affected, such as in Oriental Province and in Maniema.[1104] The use of torture in RCD-G detention centres involved sexual elements of the crimes committed during some massacres of civilian

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[1099] *Report of the Special Rapporteur* (E/CN.4/1999/31), annex XIII; DSV, "*Femmes dans la tourmente des guerres en RDC*", March 2003; SOPROP, "La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion", October 1998; HRW, *Eastern Congo ravaged*, 2000; AI, "Torture as weapon of war", 2001; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices,* 1999; AI, *DRC: Killing Human Decency*, 30 May 2000.

[1100] The result of a regrouping of former rebellions, the ADF-NALU appeared in the second half of the 1980s after President Yoweri Museveni took power in Uganda. During the 1990s, the ADF-NALU benefited from the support of President Mobutu and used North Kivu as a refuge.

[1101] Interview with Mapping Team, North Kivu, March 2009; ASADHO, "L'Ouganda sacrifie la population civile congolaise", February 2001.

[1102] HJ, archives 1999. Available at: www.heritiers.org/ (consulted in March 2009).

[1103] Numerous sources document these particular cases: interviews with the Mapping Team, South Kivu, March and May 2009; *Report of the Special Rapporteur* (E/CN.4/1999/31), annex XIII; ASADHO, "*RDC: le pouvoir à tout prix. Répression systématique et impunité*", 1998; DSV, "Femmes dans la tourmente des guerres en RDC", March 2003; COJESKI, *Vue synoptique sur les violations massives des droits de l'homme pendant les trois premiers mois d'agression du Sud-Kivu/RD*, 1998; COJESKI, *Cinq mois d'invasion de la RDC: Les droits de l'homme en péril dans les provinces occupées de l'est du Congo,* 1999; SOPROP, "La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion", October 1998; HRW, *Casualties of War*, February 1999; HRW, *Eastern Congo ravaged*, May 2000; AI, *War against unarmed civilians*, 1998; AI, *DRC: Killing Human Decency*, 30 May 2000.

[1104] *Report of the Special Rapporteur* (E/CN.4/1999/31), annex XIII; DSV, *Femmes dans la tourmente des guerres en RDC*, 2003; Haki Za Binadamu, *Situation des droits de l'homme au Maniema*, 2000; Groupe Lotus, *RDC – D'un régime autoritaire à une rébellion*, October 1998.

populations, such as rape, the insertion of hot pepper into the sexual organs and genital mutilation.[1105]

595. In zones under the control of the ANC/APR and their allies, the behaviour of armed elements stationed in towns, during transfers or during operations was characterised by a lack of discipline, an abuse of power and brutality. Women and girls who were in or walking to their fields, to market, to fetch water, in the forest collecting wood or walking to school were victims of rape and abduction and frequently forced into sexual slavery. Cases of rapes of young girls, often gang rapes, were widespread in the towns and close to military camps, such as, for example, around the camps of Saïo and Bagira at Bukavu, Kabare and Kitshanga in Masisi.[1106]

596. Soldiers, particularly from Mutwanga camp (North Kivu), reportedly abducted women into slavery.[1107] Even the wives of soldiers on the frontline were allegedly raped by those remaining back at base.[1108] The rare women brave enough to dare to refuse these advances were often murdered, along with other family members, to set an example.[1109] Congolese employees of international organisations were not spared: women working for HCR and WHO were also raped.[1110]

597. Gang rape was widespread everywhere. It is reported that in Maniema, at Kayuyu in Pangi territory, most of the rapes reported between October 1999 and January 2000 were gang rapes.[1111] The brutality knew no bounds. In October 1999, in Kasai Oriental, at Musangie, 22 kilometres from Kabinda, 10 women were allegedly whipped then raped by a number of soldiers from the ANC/APR.[1112] In 2000 at Tshalu, in the same region, while raping four women, elements of the ANC/APR reportedly subjected their partners, friends and parents to cruel and inhuman treatment. In South Kivu, women are said to

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[1105] SOPROP, *La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion jusqu'au 21 septembre 1998*, 1998; COJESKI, *Cinq mois d'invasion de la RDC: Les droits de l'homme en péril dans les provinces occupées de l'est du Congo*, 1999.

[1106] *Report of the Special Rapporteur* (E/CN.4/1999/31), annex XIII; COJESKI, *Vue synoptique sur les violations massives des droits de l'homme pendant les trois premiers mois d'agression du Sud–Kivu*, 1998; DSV, "Femmes dans la tourmente des guerres en RDC", March 2003; CADDHOM, "Rapport sur la situation des droits de l'homme au Congo-Kinshasa: Une année d'occupation et de rébellion au Kivu", August 1999; HRW *DRC – The War Within the War*, 2002.

[1107] ASADHO, *RDC: le pouvoir à tout prix. Répression systématique et impunité*, 1998.

[1108] COJESKI, *Cinq mois d'invasion de la RDC: Les droits de l'homme en péril dans les provinces occupées de l'est du Congo*, 1999; SOPROP, *La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion jusqu'au 21 septembre 1998*, 1998.

[1109] *Report of the Special Rapporteur* (E/CN.4/1999/31), annex XIII; DSV, "Femmes dans la tourmente des guerres en RDC", March 2003.

[1110] AI, *War against unarmed civilians*, 1998.

[1111] Haki Za Binadamu, *Situation des droits de l'homme au Maniema*, 2000.

[1112] Interviews with the Mapping Team, Kasai Occidental and Kasai Oriental, April and May 2009; DSV, "*Femmes dans la tourmente des guerres en RDC*", March 2003.

have been regularly raped by dozens of soldiers.[1113] At Baraka, in Fizi territory, a young 17-year-old girl was apparently raped by some 40 soldiers.[1114]

598. During this period, the situation in the zones controlled by the RCD-G and its allies was so volatile, with so many and changing armed groups and alliances, that it was in some cases difficult to identify the perpetrators of the rapes. Sexual violence took on unbearable proportions and cruelty and the many abuses seemed merely to increase in number exponentially. The soldiers frequently engaged in gang rapes and some women and young girls were also raped with sticks, stakes and guns. In some cases, the perpetrators of the rapes wrapped the barrel of their gun in cloth and inserted it into their victim's vagina to clean it before passing her onto the next rapist.[1115] Armed men sometimes fired into the genitals of their victims, causing damage to both internal and external sex organs. In 2000, at Ngweshe, in Walungu territory (South Kivu), a pregnant woman was reportedly trampled on by soldiers in order to bring about a premature labour.[1116]

E. January 2001-June 2003: Towards the transition

1. Government-controlled zone

599. As in the previous period, members of the army, FAC recruits, the police and prison staff continued to perpetrate acts of sexual violence, more often than not expressions of an abuse of power and lack of discipline, committed in complete impunity. During the suppression of student demonstrations in Kinshasa, for example, FAC members allegedly raped some female students.[1117]

600. In the areas under government control, the behaviour of the FAC stationed in the towns, during movements or on operations was characterised by indiscipline, sexual violence and brutality. In Kasai Oriental and Kasai Occidental,[1118] Maniema[1119] and in Katanga,[1120] for example, the FAC reportedly committed rapes in the areas in which they were stationed and during reprisals against armed opposition groups, almost always targeting the civilian population.

[1113] Ibid.

[1114] DSV, "Femmes dans la tourmente des guerres en RDC", March 2003; HJ, archives 1999. Available at: www.heritiers.org/ (consulted in March 2009); AI, *DRC: Killing Human Decency*, 30 May 2000.

[1115] RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004.

[1116] DSV, "Femmes dans la tourmente des guerres en RDC", March 2003.

[1117] Interviews with the Mapping Team, Kinshasa, April 2009; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, *Country Reports on Human Rights Practices*, 1999; AI, *DRC: Killing human decency*, 2001.

[1118] Interviews with the Mapping Team, Kasai Occidental and Kasai Oriental, April 2009.

[1119] Interviews with the Mapping Team, Maniema, March-April 2009; CDJP-Kasongo, "Des graves violations des droits de l'homme consécutives aux affrontements Mai Mai and militaires du RCD", August 2002.

[1120] Interview with the Mapping Team, Katanga, November 2008; document provided to the Mapping Team on 24 February 2009: "Les faits saillants des incidents du territoire de Kabalo".

2. Rebel-controlled zone

601. Although numerous cease-fire agreements were signed over this period between the different warring factions, the people of Maniema, Katanga, Orientale Province and, above all, North and South Kivu continued to suffer the consequences of the conflicts. Violence intensified in Ituri in particular, in the context of the conflict between the Hema and the Lendu, and in South Kivu. Armed groups proliferated and alliances between them were constantly made and unmade, amplifying the chaos and confusion and creating an environment conducive to increasingly brutal acts of sexual violence.

Orientale Province

602. In Orientale Province, women were the victims of widespread sexual violence following the occupation of the south of the province by the RCD-G, in the context of the conflict in Ituri and during military operations undertaken by the ALC (the MLC's armed wing) and its allies against the RCD-ML and its army, the *Armée du peuple congolais* (APC).[1121]

603. Elements of the ANC/APR allegedly engaged in numerous rapes, particularly in the context of attacks on the civilian population of several villages near to Masimango, Ubundu territory, aimed at punishing them for their supposed support of Mayi-Mayi groups,[1122] or during isolated incidents, particularly in Opala territory.[1123] During the brutal suppression of the Kisangani mutiny on 14 May 2002, APR elements defending the RCD-G reportedly committed numerous rapes in Mangobo commune and in the area around the airport, abducted women and raped them at the airport and subjected men to sexual mutilation.[1124]

604. The inter-community violence that erupted in Ituri in 1999 affected women in particular, and there was renewed violence caused by the over-armament of the politico-military groups that arose out of the Hema and Lendu militias and self-defence groups in

[1121] For more information on the political background, see Section I, Chapter II.

[1122] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Groupe justice et libération, *Massacres des populations civiles dans les villages de Masimango, Kababali et Abali*, 2001; Memorandum from the FOCDP to the Secretary-General of the United Nations, 2001.

[1123] Interviews with the Mapping Team, Orientale Province, January 2009.

[1124] Interviews with the Mapping Team, Orientale Province, December 2008; *Eleventh report of the Secretary-General on MONUC* (S/2002/621); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to the DRC* (E/CN.4/2003/3/Add.3); François Zoka, Pierre Kibaka, Jean-Pierre Badidike, *Vraie ou fausse mutinerie de Kisangani et le massacre des populations civiles*, 2002; FIDH–ASADHO–Ligue des électeurs–Groupe Lotus, *État des libertés et des droits de l'homme en RDC à l'aube de la transition*, 2003; HRW, "War Crimes in Kisangani", August 2002.

2001 and 2002. During this destructive conflict, sexual violence was a significant component of the attacks waged by these ethnic and political rivals.[1125]

605. Numerous rapes were thus reportedly committed by the Lendu militia, which subsequently became the FNI and the FRPI, and by the Hema of the UPC, over the course of successive battles to capture Bunia. Women and girls were abducted and taken to military quarters or private houses to be raped by elements of the UPC. At Songolo and at Nyakunde, women and girls were systematically raped and hundreds more forced into slavery by the assailants during violent attacks conducted by the UPC and the Ngiti and Lendu militias respectively in these areas. In May 2003, Lendu militia, supported by the APC (the RCD-ML's army) apparently engaged in mutilation and sexual torture during their offensive against the UPC for control of Bunia. Cases of female mutilation are said to have been common during attacks carried out by both camps. At Fataki in March 2000, for example, Hema corpses were found in the streets with their arms tied, a stick inserted into their anus and certain parts of their bodies, such as their ears, cut off. After the attack on the Mambisa community in Nizi by the FNI and the FAPC in June 2003, 22 bodies, mainly women and children, were found in Nizi. The bodies had been mutilated, disembowelled and their organs, including genitalia, removed.[1126]

606. During the many offensives conducted against civilian populations by elements of the FNI and UPC, numerous woman and young girls, sometimes no more than ten years of age, were forced into sexual slavery. In fact, rapes were encouraged, if not directly ordered, by the UPC's commanding officers.[1127] In March 2003, in the mining region of Kilo and Mongbawbu, members of the FNI allegedly raped and forced Hema women into slavery. They apparently cut off the breasts and genitalia of Hema and Nyali women who were too exhausted to carry their loads any further.[1128] Between May and December

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[1125] Everything that follows has been taken from the following sources: Interviews with the Mapping Team, Ituri, March to May 2009; *Interim report of the Special Rapporteur on the situation of human rights in the DRC* (A/58/534); *Special Report of the United Nations Organization Mission in the DRC on the events in Ituri (January 2002 - December 2003)* [S/2004/573]; Transcription of the hearings in *The Prosecutor* v. *Thomas Lubanga Dyilo*, No. ICC-01/04-01/06, 3 February 2009; HRW, *Covered in blood*, 2003; HRW, *The Curse of Gold*, 2005; AI, "On the precipice: the deepening human rights and humanitarian crisis in Ituri", 2003; AI, "Ituri: A need for protection, a thirst for justice", 2003; FIDH, *Persévérance de la haine ethnique et des violations massives et systématiques des droits de l'homme à Bunia*, 2003; Lisette Banza Mbombo, Christian Hemedi Bayolo and Colette Braeckman, *Violences sexuelles contre les femmes, crimes sans châtiment*, 2004; U.S. Department of State, Country Reports on Human Rights Practices, 2003.

[1126] Ibid.

[1127] See transcription of the hearings in the Lubanga case (ICC-01/04-01/06), 27 February 2009.

[1128] Everything that follows has been taken from the following sources: Interviews with the Mapping Team, Ituri, March to May 2009; *Report of the Special Rapporteur* (A/58/534); *Special report on the events in Ituri* (S/2004/573); Transcription of hearings in *The Prosecutor* v. *Thomas Lubanga Dyilo*, ICC-01/04-01/06, 3 February 2009; HRW, *Covered in blood*, 2003; HRW, *The Curse of Gold*, 2005; AI, *On the precipice: the deepening human rights and humanitarian crisis in Ituri*, 2003; AI, *Ituri: A Need for Protection, a Thirst for Justice*, 2003; FIDH, *Persévérance de la haine ethnique et des violations massives et systématiques des droits de l'homme à Bunia,* 2003; Lisette Banza Mbombo, Christian Hemedi Bayolo and Colette Braeckman, *Violences sexuelles contre les femmes, crimes sans châtiment*, 2004; U.S. Department of State, *Country Reports on Human Rights Practices*, 2003.

2003, the *Médecins sans frontières* health post in Bunia treated 822 rape victims aged between 13 and 25.[1129]

607. In the context of the "Erasing the Board" operation that took place from Orientale Province through to North Kivu, ALC/MLC troops allegedly committed systematic and widespread rapes and sexual violence, particularly during violent clashes with the APC/RCD-ML. Rapes and sexual mutilation were thus committed by the ALC/MLC in the area around Madesi and Masebu (Rungu territory) in the context of clashes between the MLC and RCD-N armies and those of the RCD-ML in July-August 2004.[1130] Pygmy women in the region paid a heavy price during the advance of the MLC, RCD-N and UPC towards Beni and Butembo, and again during their retreat. Some 70 rapes were committed during the capture and occupation of Mambasa town and surrounding villages. Superstition and abject ritual beliefs led to Pygmy women being raped, murdered, disembowelled, and sometimes even eaten.[1131] Other rapes were committed allegedly by soldiers from the ALC/MLC and the APC/RCD-ML during the course of 2002, for example in Watsa territory, in the area around the lines separating the zones controlled by the RCD-N and MLC from those of the APC/RCD-ML and the FAPC,[1132] by soldiers from these camps.[1133]

North Kivu Province

6068 In North Kivu, the RCD-Goma was still fighting the Mayi-Mayi and the FDLR and, from 2003 on, also the RCD-ML in Lubero in an attempt to establish its control over the northern part of North Kivu. During these offensives, numerous rapes were allegedly perpetrated by all parties to the conflict and women were forced into sexual slavery. In the RCD-Goma's military camp at Mushaki,[1134] west of Goma, girl soldiers reportedly "served as the wives" of adult soldiers. They were also reportedly raped several times a night by a number of men and it was reported that a senior officer abducted a school girl in order to imprison and rape her.[1135]

[1129] MSF, *Enough is enough, sexual violence as a weapon of war*, 2004.

[1130] Interviews with the Mapping Team, Orientale Province, January and February 2009; Voix des Opprimés, *Rapport sur les événements du Haut-Zaïre entre 1993 et 2003*, 2008.

[1131] Interviews with the Mapping Team, Orientale Province, November 2008*; Report of the Special Investigation Team on the events in Mambasa* (S/2003/674); *Special report of MONUC on the events in Ituri (January 2002-December 2003)*, [S/2004/573]; Minority Rights Group International, *Erasing the Board: Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern DRC*, 2004; HRW, *Covered in blood*, 2003; Lisette Banza Mbombo, Christian Hemedi Bayolo and Colette Braeckman, *Violences sexuelles contre les femmes, crimes sans châtiment*, March 2004; J. P. Remy, *Actes de cannibalisme au Congo*, 2002.

[1132] The "*Force armée populaire du Congo*" was an armed group active in the territories of Aru and Mahagi in Ituri district.

[1133] Interviews with the Mapping Team, Orientale Province, January and February 2009.

[1134] *Special report of MONUC on the events in Ituri* (January 2002-December 2003), [S/2004/573].

[1135] ACPD, *Violations des droits de l'homme et du droit humanitaire: état des contradictions des parties armées au regard du processus de paix en RDC*, 2003; HRW, *The War Within the War*, 2002; U.S. Department of State, Country Reports on Human Rights Practices, 2001.

609. As in the previous period, the Mayi-Mayi militias and the FDLR also continued to rape and abduct women. At Kitchanga in Masisi, women were reportedly abducted, used to carry looted goods to market, then repeatedly raped by elements of the FDLR.[1136] In some cases, the rapes were apparently aimed at causing forced pregnancies in order to increase the proportion of Kinyarwandan speakers in the region.[1137]

610. During the Mambasa events of 31 December 2002 to 20 January 2003, women from the Nande and Pygmy communities were particularly targeted and at least 95 rapes were committed in the towns of Beni, Butembo, Mangina, Oicha and Erengeti.[1138]

South Kivu Province

611. Over the 2001-2003 period, although South Kivu was officially under the control of the RCD-Goma, various groups were clashing, the warring factions were many and their alliances were in a constant state of flux. All had one thing in common, however: the use of sexual violence.[1139] This violence took place under cover of a climate of widespread impunity and insecurity, and the perpetrators were often difficult to identify. The cases are too numerous to mention and the level of violence unspeakable. What follows gives just a few representative examples of the crimes and their perpetrators and is not intended to be exhaustive. Nor is it able to describe in detail the severity of the phenomenon of sexual violence suffered by the women of South Kivu.

612. Wherever they went, the soldiers and officers of the RCD-Goma, whether stationed or on patrol, used the backdrop of war to abuse their power and rape women and young girls. This violence was accompanied by the breaking and entering of victims' houses, theft and looting. The situation was particularly appalling for women in detention.

613. Baraka, in Fizi territory, was the site of a disturbing number of rapes of women, girls and men. Between July and August 2002, in the context of so-called operation "Soap" or "Palm oil", elements of the CNDD-FDD allegdly raped at least 22 men in a number of villages on the Ubwari peninsula. The victims were accused of supporting the RCD-Goma.[1140]

[1136] HRW, *The War Within the War*, 2002.

[1137] AI, *DRC – Mass rape: time for remedies*, 2004.

[1138] *Report of the Special Investigation Team on the events in Mambasa* (S/2003/674), annex I; HRW, *Covered in blood*, 2003; J. P. Remy, *Actes de cannibalisme au Congo*, 2002.

[1139] In a survey of 492 victims of sexual violence in South Kivu conducted between 1996 and 2003, 27% of all sexual violence was attributed to the Rwandan militia, 26.6% to the Burundian militia, 20% to the RCD-Goma and 16% to the Mayi-Mayi; see RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004; see also HRW, *Seeking justice: the Prosecution of Sexual Violence in the Congo War*, 2005.

[1140] Interviews with the Mapping Team, South Kivu, March and April 2009; confidential report provided to the Mapping Team by NGOs from Uvira, October 2002.

614. In 2003, during the offensives against the Mudundu-40 and civilians suspected of supporting this Mayi-Mayi group, ANC/RDF[1141] troops allegedly raped a significant number of women. In a number of villages in Walungu territory, elements of the ANC/RDF gathered the women together in the huts and raped them for a whole night. During the month of April 2003 alone, 300 women were reportedly raped in the context of these campaigns.[1142]

615. The ALiR/FDLR apparently also committed rapes, particularly in the Irhambi-Katana area north of Bukavu[1143] and abductions during looting, particularly in Kalehe territory. Numerous women were thus abducted and forced to live months, even years, in their camps where they were forced into sexual slavery.[1144]

616. From May to October 2000, elements of the ALiR/FDLR allegedly carried out repeated attacks on the civilian population of villages in the Bushwira (Igobegobe, Cishozi and Citungano) and Kagabi (Mukongola and Kabare itself) areas of Kabare territory. In most cases, the ALiR/FDLR attacked the villages in order to loot them and rape the women. In this context, reports indicate that in 2003, at Bunyakiri, in Kalehe territory, six girls were abducted from the village by the ALiR/FDLR. They were repeatedly raped by several soldiers for four months. According to one of the victims, the soldiers would tie a rope around her hips so that she could not escape. They would place their machetes and knives on the ground, near the bed, and threaten the victims with death if they refused to have sex. In some cases, women who resisted were scalded with boiling water, mutilated or beaten with branches. Some had their throats slit in front of the other women.[1145]

617. From 2001 to 2002, the Mayi-Mayi, particularly the Mudundu-40, allegedly raped and tortured women and young girls, who were then forced into domestic labour.[1146] In 2001, at Nundu south of Uvira, some Mayi-Mayi killed a woman accused of being the partner of an RCD-G soldier and cut off her genitalia.[1147] The town of Shabunda is unusual in that a large number of women and girls have publicly admitted being raped by Mayi-Mayi militia. Despite the fact that these latter claimed to fight against "*les inciviques*" (a euphemism for those who prey on vulnerable communities), they abducted a large number of women, holding them for long periods, sometimes more than a year.

[1141] As mentioned previously, from June 2002, the Armée patriotique rwandaise (APR) was renamed the Rwandan Defence Forces (RDF) or Forces rwandaises de défense (FDR).

[1142] Interviews with the Mapping Team, South Kivu, March 2009; RODHECIC in cooperation with the Groupe Jérémie/Bukavu and Kinshasa, "Violation massive des droits de l'homme au Sud-Kivu, Cas des affrontements entre les RCD-APR et Mudundu 40", 27 May 2003.

[1143] Interviews with the Mapping Team, South Kivu, March, April and May 2009.

[1144] Interviews with the Mapping Team, South Kivu, March, April and May 2009; AI, "DRC: Surviving Rape: Voices from the East", 26 October 2004.

[1145] Interviews with the Mapping Team, South Kivu, March 2009; HRW *The War Within the War*, 2002.

[1146] HRW, *The War Within the War*, 2002; ANB-BIA, "Nouvelles violences au Kivu", 14 April 2003, available from: www.lists.peacelink.it/africa/msg02474.html (date accessed: March 2009).

[1147] Interviews with the Mapping Team, South Kivu, April 2009.

The women and girls were sometimes raped with objects such as sticks or hot peppers. Some of them required medical attention for prolapsed uteruses, severe vaginal tears or fistulas.[1148] Accused of spying for the Rwandans, one woman and her husband were whipped and their genitals burned with a lighted torch at Shabunda. [1149]

618. Between 1998 and 2003, elements of the ANC/APR/RDF, Mayi-Mayi groups, ex-FAR/Interahamwe/ALiR/FDLR and FNL allegedly raped an unknown number of women in Uvira territory, particularly on the Ruzizi Plain. Most of the women were attacked while working in their fields or on their way to market. Some of the victims were gang raped for several hours at a stretch.[1150]

619. In 2003, people living in Fizi territory suffered several waves of violence accompanied by the rape of women and men. Amongst the hundreds of victims, some had their anuses ripped with a knife. Some of the perpetrators of the rapes were identified as elements of the FDD.[1151]

620. Pygmy women from the region of Bunyakiri and from Masisi (on the borders of South and North Kivu) were regularly targeted because of myths regarding the beneficial effects of having sexual relations with a Pygmy woman. Such sex, often brutal, and abusive, is supposed to cure back pain and other illnesses.[1152]

621. Although reliable statistics on sexual violence are difficult to obtain, the cases documented by local NGOs in the different parts of South Kivu give an indication of the severity and scale of the phenomenon. Between 1998 and 2003, more than 1,660 cases of rape, all armed groups combined, were recorded in the three sectors of Fizi territory. Of these 1,660 rapes, 89 were committed against men, mostly by the FDD. These figures clearly under-estimate the phenomenon. Between 2000 and 2003, 2,500 cases of sexual violence were documented by local NGOs in the Bakasi area of Shabunda territory. The main perpetrators of these acts were allegedly the Mayi-Mayi, the ALiR/FDLR and, to a

[1148] HRW gives the following definition of fistula: "A fistula is a direct and abnormal connection that develops between two of the body's organs. Recto-vaginal fistulas connect the rectum and the vagina and result in faecal matter passing through the fistula to the vagina and thus are often accompanied by faecal incontinence and infections; vesico-vaginal fistulas connect the vagina and the bladder and may result in urinary incontinence and infections."

[1149] MSF, *DRC, Quiet, we're dying*, 2002.

[1150] Interviews with the Mapping Team, South Kivu, March and April 2009; RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004.

[1151] Interviews with the Mapping Team, South Kivu, February and April 2009; CENADEP, "Alerte: viols et sodomie font rage dans le territoire de Fizi", 25 July 2003.

[1152] Minority Rights Group International, "Erasing the Board: Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern DRC", 2004.

lesser extent, the ANC/APR/RDF.[1153] According to one NGO, 3,500 cases of rape were recorded in 2003 throughout the province as a whole.[1154]

Maniema Province

622. The Maniema forests provided shelter to a multitude of Mayi-Mayi groups who were waging a guerrilla war against the ANC/APR/RDF. Whilst it is true that some elements of the ANC/APR/RDF did commit acts of sexual violence, particularly in Kasongo territory and in and around Kindu,[1155] the scale of the rapes and abductions perpetrated by the different Mayi-Mayi groups is striking.[1156] In 2002 and 2003, 238 cases of rape were recorded in the small village of Lubelenge alone.[1157]

623. Sexual violence apparently became a *modus operandi* of the Mayi-Mayi. Women and girls going about their daily tasks ran a constant risk of being raped or abducted. At Kindu, victims were most often attacked when they left town to seek food supplies during the blockade. The presence of their husband or a neighbour did not dissuade the aggressors; quite the opposite, they would not hesitate to rape a woman in front of them. The Mayi-Mayi often also used to force members of the same family to have sex in public. Gang rapes are said to have been regularly committed in public, during looting and reprisals. Men were also subjected to acts of sexual violence. This was generally accompanied by other violence, such as murder or cruel, inhuman and degrading treatment, including whipping.

624. Between 2002 and the first quarter of 2003, the Mayi-Mayi allegedly kidnapped, raped and used hundreds of women in and around Kalima as sex slaves. Taken to the camps, some women remained there for days, other for months, being raped daily by several men. They were subjected to all kinds of humiliating and degrading treatment. Rapes of pregnant women often resulted in the loss of the baby or serious complications during labour.[1158]

[1153] Interview with the Mapping Team, South Kivu, June 2009; OCHA, Shabunda Mission Report, June 2001.

[1154] Héritiers de la justice, "Situation des droits de l'homme en RDC: cas du Sud-Kivu", Annual Report 2003; Service des Églises protestantes pour les droits humains and la paix, South Kivu , January 2004, See also MSF, "I have no Joy, no Peace of Mind; Medical, Psychosocial and Socio-economic Consequences of Sexual Violence in Eastern DRC", 2004.

[1155]MALI, "Rapport de l'identification des cas de violences sexuelles à l'égard de la femme dans la province du Maniema. Enquête du 1er septembre 2003 au 31 janvier 2004", 2004.

[1156] AI, *Mass rape: Time for Remedies*, 2004.

[1157] Interviews with the Mapping Team, Maniema, March and April 2009; CDJP-Kasongo, "Des graves violations des droits de l'homme consécutives aux affrontements Mayi-Mayi and militaires du RCD", 2002.

[1158] Interviews with the Mapping Team, Maniema, March and April 2009; CDJP-Kasongo, "*Des graves violations des droits de l'homme consécutives aux affrontements Mayi-Mayi et militaires du RCD*", August 2002; CDJP-Kasongo, "*Au nom de toutes les miennes. S.O.S pour les femmes victimes des crimes sexuels et autres violences à Kalima*", November 2003.

625. A local NGO gave a figure of 2,500 women raped by the Mayi-Mayi and ANC/APR/RDF soldiers in the communities of Maringa, Mulu and Bakwange in Kasongo territory between 1999 and 2003.[1159] Even if the accuracy of this figure cannot be ascertained, it is nonetheless indicative of the tragic scale of the sexual violence committed against women in Maniema.

Katanga Province

626. At Malemba Nkulu, in North Katanga, elements of the Mayi-Mayi and the FDLR, fighting alongside each other in Nyunzu, Tanganyika, allegedly committed numerous rapes. Women were often ambushed while travelling from one town to another, while walking to their fields or to the market. Between 2001 and 2003, in Malemba Nkulu territory, different Mayi-Mayi groups are reported to have abducted dozens of young girls between 8 and 12 years of age. These girls were forced to help the Mayi-Mayi carry their looted goods, cook and carry out domestic chores. At night they served as sex slaves and were forced to have sex with several Mayi-Mayi.[1160] Some Mayi-Mayi groups also committed sexual mutilation. Witnesses have thus reported that Mayi-Mayi combatants, particularly in Sola village, Kongolo territory, would carry hands, breasts, genitalia or ears as protective amulets.[1161]

627. As previously noted, the FAC apparently also committed rapes at their encampments or during reprisals against the Mayi-Mayi. These campaigns targeted nearly the whole civilian population, as was the case, for example, at the village of Ngwena Mai in Kabalo territory in March 2002.[1162]

628. A 2002 report sponsored by UNIFEM illustrates the daily life of women: "From Pweto down near the Zambian border right up to Aru on the Sudan/Uganda border, it's a black hole where no one is safe and where no outsider goes. Women take a risk when they go out to the fields or on a road to a market. Any day they can be stripped naked, humiliated and raped in public. Many, many people no longer sleep at home, though sleeping in the bush is equally unsafe. Every night there is another village attacked, burned and emptied. It could be any group, no one knows, but always they take women and girls away."[1163]

629. Over the course of this ten-year period and to this day, many women were raped several times, by different groups, ironically in retaliation for having supported an "enemy" at the hands of who they had in fact suffered. If they survive these rapes, instead

[1159] Interviews with the Mapping Team, Maniema, March 2009.

[1160] Interviews with the Mapping Team, Katanga, December 2008.

[1161] Interviews with the Mapping Team, Katanga, November and December 2008.

[1162] Interview with the Mapping Team, Katanga, November 2008; document provided to the Mapping Team on 24 February 2009: "*Les faits saillants des incidents du territoire de Kabalo*".

[*1163*] Rehn and Johnson Sirleaf, "The Independent Experts' Assessment on the Impact of Armed Conflict on Women and the Role of Women in Peace-building", UNIFEM, 2002.

of being supported by their communities, the women are generally rejected by their husbands and families. With neither moral nor financial support, they have to face the consequences of rape - sometimes including the birth of a child – in the wake of being mutilated, impoverished, traumatised and ostracised. Women are therefore victims several times over: once when the crime is committed, again when they are rejected by their family and community, and yet again because of the near-total impunity enjoyed by the perpetrators of these crimes.

F. Multiple aspects of sexual violence

630. Between 1993 and 2003, sexual violence was a daily reality from which Congolese women gained no respite. Whether schoolgirls or mothers, engaged, married or widowed; simple farmers or wives of political leaders, former army members or civil servants; opposition party activists, humanitarian workers or members of non-governmental organisations, they were all subjected, regardless of social class or age, and for a variety of reasons, to the most diverse forms of sexual violence. Whilst not claiming to categorise these forms of sexual violence, it is nonetheless possible to list some of their characteristic features. The majority of the acts described in the previous sections can be placed into a number of arbitrarily created categories in order to highlight the different facets of sexual violence in the DRC. This list of different forms of sexual violence does not claim to be either exhaustive or exclusive.

1. Sexual violence as an instrument of terror

631. Sexual violence was frequently used to terrorise and subjugate the population. The different armed groups committed acts of sexual violence that could be likened to veritable campaigns of terror.

632. Public rapes, gang rapes, systematic rapes, forced incest, sexual mutilation, disembowelling (in some cases of pregnant women), genital mutilation and cannibalism were all techniques of war used against the civilian population in the conflicts between 1993 and 2003.[1164]

[1164] Interviews with the Mapping Team, Orientale Province, January and February 2009; Interim *Report of the Special Rapporteur* (A/58/534), 2004; CDJP-Kasongo, *Quelques cas de tueries à l'est de la RDC*, 2002; CADDHOM, "Rapport sur la situation des droits de l'homme au Congo-Kinshasa: Une année d'occupation et de rébellion au Kivu", August 1999; Héritiers de la justice, *Une population désespérée, délaissée et prise en otage,* 2001*;* COJESKI*, Cinq mois d'invasion de la RDC: Les droits de l'homme en péril dans les provinces occupées de l'est du Congo*, 1999; AI, *Killing Human Decency*, 2000; AI, *Torture: a Weapon of War against Unarmed Civilians*, 2001; AI, *Ituri: A Need for Protection, a Thirst for Justice,* 2003; Rassemblement pour le progrès, *Pour que l'on n'oublie jamais* 2001; Lisette Banza Mbombo, Christian Hemedi Bayolo and Colette Braeckman, "Violences sexuelles contre les femmes, crimes sans châtiment", March 2004; MSF, *DRC, Quiet, we're dying*, 2002; U.S. Department of State, *Country Reports on Human Rights Practices*, 1999; HRW, *Eastern Congo ravaged*, 2000; HRW, *Covered in blood*, 2003; HRW, *The Curse of Gold*, 2005; J. P. Remy, *Actes de cannibalisme au Congo*, 2000.

Torture and humiliation

633. From 1993 to 2003, acts of sexual violence were committed in order to torture women and men because of their links to an opposition party, their supposed or proven links to the enemy, their links to the former regime of Mobutu, their active involvement in the union movement, in politics or in civil society, or their ethnic origin. Public rapes were thus committed to reinforce the humiliating nature of the torture, and gang rapes to inflict more humiliation, suffering and destruction.

634. In many cases, the soldiers attempted to outdo each other in terms of the cruelty of the sexual violence to which they subjected their victims, by introducing objects into the genitals. Sticks, bottles, green bananas, wooden batons coated in pepper or chilli and the barrels of guns were all inserted into the genital organs of victims. In South Kivu, 12.4% of the 492 victims questioned by two women's networks had suffered this kind of torture.[1165]

635. It can be affirmed that, over the course of the different conflicts in this period, all warring parties used sexual violence as a form of torture and engaged in cruel, inhuman or degrading acts. Nevertheless, rapes while in detention were primarily perpetrated by employees of the Congolese state[1166] and by the RCD-G. The detention conditions and acts of torture reported in the RCD-G's jails were particularly cruel.[1167]

Forced rape between victims

636. Assailants often forced members of the same family to have incestuous sex, between mother and son, father and daughter, brother and sister, aunt and nephew, etc. While this kind of rape was committed all over the country, the most numerous evidence

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[1165] RFDA, RFDP and International Alert, *Le corps des femmes comme champ de bataille*, 2004; HRW, *The War Within the War*, 2002.

[1166] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment informed the government that he had received information that rapes of women and abuse of a sexual nature inflicted on men was common practice in official and secret detention centres. See *Conclusions and recommendations of the Special Rapporteur* (E/CN.4/2001/66).

[1167] SOPROP, *La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion jusqu'au 21 septembre 1998*, 1998. This report indicates that "the torture methods used by the RCD and its foreign allies consist primarily of suspending men by their genitalia, preventing detainees from urinating or defecating, rape, flagellation, leaving detainees to rot in water-filled holes, scrubbing their genitalia with stones, and leaving them naked. Some detainees were also reportedly forced to sleep in a room with the bodies of other people who had died in detention. Detainees stated that they had been forced to lick the blood oozing from the bodies. Women detainees in detention centres of the army and the security services of the RCD and its allies were often raped". See also COJESKI, *Cinq mois d'invasion de la RDC: les droits de l'homme en péril dans les provinces occupées de l'est du Congo*, 1999; Haki Za Binadamu, *Situation des droits de l'homme au Maniema*, 2000; ACPD, *Violations des droits de l'homme et du droit humanitaire: état des contradictions des parties armées au regard du processus de paix en RDC*, 2003; DSV, "Femmes dans la tourmente des guerres en RDC", March 2003; AI, *Killing Human Decency*, 2000; AI, *Torture: a Weapon of War against Unarmed Civilians*, 2001; HRW, *Eastern Congo Ravaged: Killing Civilians and Silencing Protest*, 2000.

of cases came from North[1168] and South Kivu, particularly Shabunda territory[1169] and Maniema.[1170] Families were also forced to witness gang rapes of one of their members, most often their mother or sister(s). The victim's family members were sometimes forced to dance naked, to clap to or sing obscene songs during the rape. In South Kivu, at Bitale in Kalehe territory, the FDLR regularly raped women and girls. Arriving at a village by night, they would forcibly enter a house, order the husband to light a torch and then rape his wife in front of him and his children. They would then force the children to rape their mother or their sisters in front of the family. Some women were also raped by several soldiers in turn.[1171]

Deliberate policy of spreading HIV/AIDS

637. According to some victims in South Kivu, there was a deliberate policy among the warring factions of spreading HIV/AIDS to as many women as possible so that they would, in turn, infect the rest of their community.[1172] The same strategy of deliberate infection was denounced in Maniema[1173] and in other provinces.

Acts of sexual violence during victories or defeats

638. Retreating armies often committed rapes and abductions of the civilian population during their withdrawal, particularly in retaliation for their defeat. The most striking example is that of the FAZ retreat in the face of the AFDL/APR in 1996 and 1997, which allegedly involved numerous cases of gang rapes. The FAC apparently did the same when retreating from Équateur and Orientale Province in 1999.

639. The conquering soldiers themselves committed rapes during the capture of a town or territory.[1174] Commanding officers sometimes "offered" rape as a reward to their troops: in Ituri, after the battles for Lipri and Barrière in 2003, the UPC's commanding officers thus reportedly authorised their troops to loot and to rape women and girls among the civilian population.[1175] Acts of sexual violence were also used as a way of subjugating the defeated population, as was the case, for example, following the capture of Kinshasa in 1997 and after the suppression of the Kisangani mutiny in 2002.

[1168] Interviews with the Mapping Team, North Kivu, February 2009.

[1169] RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004.

[1170] Interviews with the Mapping Team, Maniema, March 2009.

[1171] Interview with the Mapping Team, South Kivu, March 2009.

[1172] RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004.

[1173] Document provided to the Mapping Team by the Commission justice et paix, Rapport de mission Kindu, 2005.

[1174] Interviews of the Mapping Team with the wives of ex-FAZ, Bas-Congo and Kinshasa, March 2009; *Report of the Special Rapporteur on the situation of human rights in the DRC* (A/52/496), 1997; Colonel Kisukula Abeli Meitho, *La désintégration de l'armée congolaise de Mobutu à Kabila*, 2001; Héritiers de la justice, *Une population désespérée, délaissée et prise en otage*, 2001; DSV, "Femmes dans la tourmente des guerres en RDC", March 2003; COJESKI, *Les violations caractérisées des droits de l'homme dans le Kivu*, narrative report, 2000.

[1175] See the transcriptions of the Lubanga trial hearings (ICC-01/04-01/06), 27 February 2009.

640. Uvira, in South Kivu, is a representative example of the sexual violence to which women were subjected at the hands of the different groups during the successive captures and recaptures of a town. Women were reported subjected to rapes at the hands of the ANC/APR/FAB in 1998,[1176] the Mayi-Mayi and rebel Banyamulenge soldiers in October 2002 and then the ANC/RDF again in retaliation for their supposed support of the Mayi-Mayi.[1177]

2. Sexual slavery

641. Women were frequently abducted, viewed as the spoils of war, and forced into sexual slavery. The Mayi-Mayi, the Interahamwe/ex-FAR/ALiR/FDLR, the ADF/NALU and Burundian (FDD) rebels apparently all engaged in large-scale abductions, generally of young girls.[1178] As sex slaves they were mistreated, imprisoned, tied up, ill-fed and humiliated. Some of them witnessed fellow prisoners being disembowelled, and acts of cannibalism.[1179] Women abducted from Bogoro following the attack of the Lendu and Ngitis militia of the FNI and FRPI reported that some of them were thrown into water-filled holes from which they were regularly removed to be raped by soldiers and their commanding officers. The female prisoners were sometimes also raped by other prisoners.[1180]

[1176] Interviews with the Mapping Team, South Kivu, November 2008 and February and April 2009; HRW, *Casualties of War*, 1999; AI, *War against unarmed civilians*, 1999; Jean Migabo Kalere, *Génocide au Congo*, 2002.

[1177] Human Rights Law Group, *Exposé écrit présenté conjointement par International Human Rights Law Groups, ONG dotée du statut consultatif spécial, lors de la cinquante-neuvième session de la Commission des droits de l'homme*, (E/CN.4/2003/NGO/193), 2003.

[1178] For the Mayi-Mayi: Interviews with the Mapping Team, Katanga and Maniema, December 2008 and January 2009; CDJP, *Rapport sur les violations des droits de l'homme dans le diocèse de Kasongo de juillet à décembre 2003*, 2003; MALI, *Rapport de l'identification des cas de violences sexuelles à l'égard de la femme dans la province du Maniema en RDC*, 2004; HRW, *Eastern Congo Ravaged: Killing Civilians and Silencing Protest*, 2000; HRW, *The War Within the War*, 2002; U.S. Department of State, *Country Reports on Human Rights Practices 2003*. For the ex-FAR/Interahamwe/ALiR/FDLR: RFDA, RFDP and International Alert, *Le corps des femmes comme champ de bataille*, 2004; Héritiers de la justice, *Une population désespérée, délaissée et prise en otage*, 2001; ACPD, *Violations des droits de l'homme et du droit humanitaire: état des contradictions des parties armées au regard du processus de paix en RDC*, 2003; MSF, *DRC, Quiet, we're dying*, 2002. For ADF/NALU: Interviews with the Mapping Team, North Kivu, February 2009; Interviews with the Mapping Team, Maniema, March 2009; ASADHO, *L'Ouganda sacrifie la population civile congolaise*, 2001; CRAF, *Viols et violence sexuelle au Sud- Kivu*, 2005. For the FDD: Héritiers de la justice, *Situation des droits de l'homme en RDC: cas du Sud- Kivu*, 2003; AI, *Rwandese-controlled Eastern DRC: devastating human toll*, 2001; HRW, *The War Within the War*, 2002.

[1179] CRAF, *Viols et violence sexuels au Sud-Kivu*, 2005; CDJP, *La Province du Maniema durant 7 ans de guerres et de conflits sanglants*, Kindu, 2004; MALI, *Rapport de l'identification des cas de violences sexuelles à l'égard de la femme dans la province du Maniema en RDC*, 2004; Diocese of Kasongo, *Au nom de toutes les miennes. S.O.S. pour les femmes victimes de crimes sexuels et autres violences à Kalima*, Maniema, 2003; AI, *Mass rape – time for remedies*, 2004; AI, *Surviving Rape: Voices from the East*, 2004.

[1180] Holes dug in the ground and filled with water served as prisons. See the witness statements of W132, W 249 and W 287 during the hearing to confirm the charges against Germain Katanga and Ngujolo Chui, ICC-01/04-01/07CPI, 26 September 2008.

642. Elements of the FAZ, the AFDL, the APR/RDF, the FAC, the ANC and the UPC also reportedly abducted young girls in order to use them as sex slaves. They were held, and regularly raped by several men in turn.[1181]

Particular case of child soldiers

643. The acts of sexual violence committed against children associated with armed forces and armed groups (CAAFAGs) were particularly appalling as they were in addition to the multitude of other violations to which these children were subjected. During their "enlistment", many of them witnessed their mothers and sisters being raped. It was reported that elements of the ANC/APR/RDF raped young girls for the whole night and whipped them if they tried to run away.[1182]

644. The few witness statements heard since the start of the hearings in the Lubanga trial highlight the cases of sexual violence committed against female CAAFAGs. It was common practice that female CAAFAGs would act as sex slaves for the commanding officers. Witnesses have reported that it was only girls that were raped in the military training camps. Some girls also had to fulfil domestic tasks for the commanding officers and soldiers. In the UPC camps, the officers would force young pregnant girls to abort their babies.[1183]

645. Male CAAFAGs, known as *Kadogo* ("little ones" in Swahili), were forced to commit acts of brutality, including rapes, to "toughen them up". During attacks, girls would be taken to them so that they could rape them in the presence of villagers and adult soldiers. If they refused, the *Kadogo* would be executed.[1184]

3. Sexual violence committed on the basis of ethnicity

646. From 1993 onwards, acts of sexual violence began to appear as a facet of inter-ethnic conflict. Such was the case of the conflict between the Banyarwanda and the Ngilima in North Kivu. Tutsi and Banyamulenge women were twice victims of anti-Tutsi

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[1181] For the FAZ and FAC: Interviews with the Mapping Team, Orientale Province, Maniema and Équateur, 2009; Groupe Lotus, *Violations des droits de l'homme à Opala,* 1998*;* AI, *Rape, killings and other human rights violations by the security forces* 1997; AI, *Deadly Alliances in Congolese Forests*, 1999. For the RCD/ANC/APR/RDF: Interview with the Mapping Team, North Kivu, January 2009; Héritiers de la justice, *Situation des droits de l'homme en RDC: cas du Sud-Kivu*, 2004; CRAF, *Viols et violence sexuels au Sud-Kivu*, 2005; Haki Za Binadamu, *Situation des droits de l'homme au Maniema*, 2000; HRW, *The War Within the War*, 2002; HRW, *War Crimes in Kisangani: The responses of Rwanda Backed Rebels to the May 2002 Mutiny*, 2002. For the RCD/N: VDO pour les droits de l'homme, *Les violations massives des droits de l'homme commises dans le district du Haut-Uélé, de 1994 à 2003*, 2008. For the Ugandan Army: Interview with the Mapping Team, North Kivu, March 2009; AI, *Mass rape: Time for Remedies*, 2004. For the UPC: *Special Report on Events in Ituri* (S/2004/573); HRW, *Covered in blood* 2003; AI, *Ituri: A need for protection, a thirst for justice*, 2003.

[1182] AI, *Children at War*, 2003.

[1183] Transcription of hearings, ICC Lubanga (ICC-01/04-01/06), 3 February, 27 February and 6 March 2009.

[1184] AI, *Mass rape: Time for Remedies*, 2004.

propaganda on the part of the government authorities, in 1996 and again in 1998. Several of them were allegedly raped in Kinshasa by government soldiers and in South Kivu by Bembe militia. During the hunt for Rwandan Hutu refugees, AFDL/APR troops sometimes reportedly raped women before killing them, as occurred during the refugee massacres at Hombo (North Kivu) in 1996, for example, and at Kilungutwe, Kalama and Kasika (South Kivu) in August 1998. In Ituri, Hema or Lendu women were successively targeted by the different armed groups because of their ethnic grouping. Nande, Pygmies and women from other ethnic groups such as the Nyala subsequently received the same treatment.

4. Sexual violence committed in the name of ritual practices

647. Some abject superstitions and beliefs claim that sexual relations with virgins, children, pregnant or breast-feeding women or even Pygmies can cure illnesses or make the perpetrator invincible.

648. The Mayi-Mayi, known for their ritual practices aimed at protecting them from misfortune, reportedly raped some women in order to become invincible and obtain so-called "magical powers". Rape was also thought to neutralise the magical powers of elderly women, the "guardians of charms". Moreover, the Mayi-Mayi often demonstrated great cruelty, torturing to death women accused of having put a curse on them.[1185]

649. It was also common for the Mayi-Mayi to use parts of their victims' bodies to make into charms and amulets. Some fetishists, in Katanga for example, apparently cut off and dried the genitalia of both women (vulva and breasts) and men to make into fetishes; others used foetuses. Militia in South Kivu also reportedly collected vaginal fluids in order to make charms and amulets. For their part, elements of the MLC and the RCD-N also reportedly made amulets out of smoked/cured sex organs.[1186]

[1185] Interviews with the Mapping Team, Katanga, December 2008; *Report of the Special Rapporteur on the situation of human rights in the DRC* (E/CN.4/1999/31); RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004; CADDHOM, *Répression: mode de gouvernance du régime Kabila. Cas de la province du Sud-Kivu*, 1997; CADDHOM, *Rapport sur la situation des droits de l'homme au Congo-Kinshasa: une année d'occupation et de rebellion au Kivu*, 1999; Haki Za Binadamu, *Situation des droits de l'homme au Maniema*, 2000*;* Bureau of Democracy, Human Rights and Labor*,* U.S. Department of State*, Country Reports on Human Rights Practices*, 1999*;* HRW*, Eastern Congo Ravaged: Killing Civilians and Silencing Protest* 2000; HRW, *Covered in blood. Ethnically-targeted violence in northern DRC*, 2003; AI , *Killing Human Decency*, 2000.

[1186] Interviews with the Mapping Team Katanga, December 2008; RFDA, RFDP and IA, *Le corps des femmes comme champ de bataille*, 2004; J. P. Remy, *Actes de cannibalisme au Congo*, 2002.

650. In some cases, women from the Batwa and Bambuti (Pygmy) communities were targeted because of particular beliefs; in fact, raping a Pygmy woman was seen as a cure for certain ailments or way to make the perpetrator invincible.[1187]

Conclusion

651. Acts of sexual violence enjoy blatant impunity in the DRC. Few cases reach the justice system, even fewer lead to trials and fewer still to convictions. Even in the rare cases where convictions are obtained, the defendants almost always escape from prison.[1188] Because of the near-total impunity that has reigned in recent years, the phenomenon is continuing in areas where the fighting has ended and has increased in areas where the fighting is still ongoing.

652. It seems clear that brutalities such as those described in this chapter could not have taken place without the consent, at least tacit, of those people in positions of power who allowed impunity to become established. Acts of sexual violence were committed at roadblocks, near military camps, during patrols, during prison visits, at police stations and in the homes of both victims and perpetrators. People in positions of power, teachers, police officers and civil servants, also took advantage of the institutional decay and widespread impunity to commit rapes.

653. There is absolutely no doubt that the scale and gravity of acts of sexual violence are directly proportional to the victims' lack of access to justice and that the impunity that has reigned in recent decades has made women even more vulnerable than they were before. In 2006, in its concluding comments, the Committee on the Elimination of Discrimination against Women was concerned that, "in the post -war transition period, the promotion of women's human rights and gender equality is not seen as a priority, in particular in efforts to address the consequences of the armed conflict and in the peace building and reconstruction processes."[1189]

654. Resolution 1820 (2008) of the Security Council dated 19 June 2008 highlighted that "sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against

[1187] In a recent ruling in the so-called "Walikale" case, the Goma garrison Military Court sentenced 11 FARDC soldiers to life imprisonment for crimes against humanity in relation to the rape of some 20 Pygmy victims. The ruling denounced "the false beliefs among the soldiers that led them to believe that the consummation of carnal relations with a Pygmy woman or man could give them immunity from illness and strengthen their combativeness or protect them from the risks of war", RP356/209, RMP 0042/KNG/09, 24 April 2009. See also Report of the Special Investigation Team on the events in Mambasa (S/2003/674), annex I; Minority Rights Group International, "Erasing the Board: Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern DRC", 2004.

[1188] *Report of the Special Rapporteur on violence against women, its causes and consequences* (A/HRC/7/6/Add.4), 2008.

[1189] Concluding comments of the Committee on the Elimination of Discrimination against Women: DRC, 25 August 2006, CEDAW/C/COD/CO/5.

civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security". The high prevalence of sexual violence during and after the different conflicts in the DRC thus calls for transitional justice mechanisms to be established that take into account this issue, the needs of the victims and of their communities, and the need to rebuild a future for Congolese society in which women are stakeholders, and in which the traditional political and structural inequalities are corrected.[1190] Finally, to effectively combat sexual violence, reforms of the justice and security sectors will be necessary. To achieve this, however, firm political commitment and coordinated efforts will be required from all given that, due to the near-total impunity that has reigned in recent years, the phenomenon continues today even in areas where the fighting has ended and has increased in those areas where fighting is still ongoing.

[1190] For concrete proposals see, in particular: *Justice, Impunity, and Sexual Violence in Eastern DRC* Report of the International Parliamentary-expert Mission, November 2008.

CHAPTER II. ACTS OF VIOLENCE COMMITTED AGAINST CHILDREN

655. The acts of violence described in Section I of this report were suffered by a very large number of children, for many reasons and in many different ways. When crimes under international law are committed against civilians, children are always affected given that they represent almost half of the population.[1191] Further, they are the exclusive victims of some crimes, such as the recruitment and use of child soldiers in the hostilities and are sometimes forced to commit crimes themselves. In areas of conflict, they are often even more vulnerable because the violence wipes out their first line of defence: their parents. Even when they are not the direct victims, witnessing their parents being raped or killed, their property looted and their homes burned is deeply traumatising for them. Having to repeatedly move home makes them more vulnerable to malnutrition and disease. Their young age and their virginity make them the target of abject beliefs and superstitions, particularly the belief that sex with children can cure some illnesses or make the rapist invincible. Lastly, war generally deprives them of their right to education and thus has a lasting and negative impact on their future.[1192]

656. In 1996, Graça Machel's study on the impact of armed conflict on children[1193] showed how armed conflicts are devastating for them, injuring them physically and destroying their spirit. The horrors of war continue to affect children long after the fighting has ended, particularly because of the precarious existence of refugees and internally displaced persons (IDPs), the presence of anti-personnel mines, the destruction of infrastructure and the spread of HIV/AIDS.

657. Throughout the DRC as a whole, from 1993 to 2003, children were not spared the successive waves of violence that spread across the country. Quite the contrary, they were the primary victims.

A. Impact of armed conflict on children

658. The violations listed in the first section of this report affected children and adults equally. Often suspected of supporting the enemy, the civilian population – and therefore children – paid a heavy price during the successive wars. Children were not protected in war zones and were even sometimes deliberately killed or mutilated by the parties to the conflict, often in particularly barbaric ways.

[1191] According to the National Institute of Statistics (INS) of the DRC's Ministry of Planning (figures from December 2006), young people under the age of 18 account for 48.5% of the population.

[1192] According to the World Bank, in 2003 the DRC was one of the five countries in the world with the greatest number of children not enrolled in school. Figure quoted in: Watch List, *The Impact of Armed Conflict on Children in the DRC*, 2003. See also *Report of the Committee on the Rights of the Child, Concluding Observations: DRC* (CRC/C/COD/CO/2).

[1193] *Report on the impact of armed conflict on children* (A/51/306), 1996.

1. Children victims of widespread attacks on the civilian population

659. During the refugee massacres of 1996 and 1997, the AFDL/APR[1194] troops allegedly killed men, women and children indiscriminately, some with hammer blows to the head.[1195] From 1998, during campaigns against the civilian population, elements of the armed branch of the RCD, the ANC and the Rwandan Army (APR) reportedly attacked groups of primarily women and children and killed or mutilated them (North Kivu),[1196] attacked women and children in churches (Maniema),[1197] set fire to huts and houses with civilians – including children – locked inside them (Katanga)[1198] and even decapitated children (Orientale Province).[1199]

660. The ex-FAR/Interahamwe also allegedly deliberately killed children, as in Équateur, for example, in April and May 1997, in retaliation for the Zairians refusal to give them food, or their bicycles in some cases.[1200] In North Kivu, ALiR/FDLR[1201] troops are said to have attacked entire villages killing all the inhabitants, children included.[1202] They also attacked camps of internally displaced people, primarily women and children.[1203]

[1194] As noted in Section I, given the heavy presence of APR soldiers among the troops and commanding officers of the AFDL - a reality later recognised by the Rwandan authorities – and the great difficulty noted by the witnesses questioned by the Mapping Team in distinguishing between members of the AFDL and the APR on the ground, reference will be made to the armed elements of the AFDL and soldiers of the APR engaged in operations in Zaire between October 1996 and June 1997 using the acronym AFDL/APR. When several sources attest to the heavy presence of Ugandan soldiers under cover of the AFDL in certain regions (as in some districts of Orientale Province), or of the *Forces armées burundaises* (as in some territories of South Kivu), the acronyms AFDL/APR/UPDF, AFDL/APR/FAB or AFDL/UPDF and AFDL/FAB may also be used.

[1195] Particularly during the October 1996 massacres in Rutshuru territory (Interviews with the Mapping Team, North Kivu, February and March 2009), during the massacres around Mutiri village on 29 July 1997 (Interviews with the Mapping Team, North Kivu, December 2008 and January 2009); APREDECI, "L'Apocalypse au Nord-Kivu", October 1997, p 56-57).

[1196] Interviews with the Mapping Team, North Kivu, December 2008; AI, *Killing Human Decency*, 2000.

[1197] Particularly during the massacre at Songwe village on 25 September 2002 (Interviews with the Mapping Team, Maniema, March 2009).

[1198] Particularly during the massacre at Mazembe on 3 July 1999 (Interviews with the Mapping Team, Katanga, January-March 2009) and during the Makele massacre in January 2000 (Interviews with the Mapping Team, Katanga, February 2009).

[1199] On 24 October 1998, elements of the ANC/APR beheaded several children during an attack on Makoka village, where the attackers suspected a Mayi-Mayi presence. Interviews with the Mapping Team, Orientale Province, January 2009.

[1200] Interviews with the Mapping Team, Mbandaka and Kinshasa, February, March and April 2009; AI, "Deadly Alliances in Congolese Forests", 1999.

[1201] With the start of the second war in 1998, the ex-FAR/Interahamwe and "armed Hutu elements" reorganised within the *Armée de libération du Rwanda* (ALiR), which was absorbed into the FDLR at the end of 2000.

[1202]Massacre in and around Luke village in January 2000 (Interview with the Mapping Team, North Kivu, January 2009; Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006).

[1203] Attack on a camp of internally displaced persons at Sake in July 2000; *Report of the Special Rapporteur on the* DRC (A/55/403); ASADHO*, Annual Report,* 2000; AI, *Rwandese-controlled Eastern DRC: devastating human toll*, 2001; International Crisis Group, *Scramble for the Congo: Anatomy of an Ugly War*, 2000].

661. The regular armies also reportedly committed crimes against children, including, for example, the *Forces armées angolaises* (FAA), allied to the Kinshasa Government, in Bas-Congo in 1998,[1204] and the *Forces armées congolaises* (FAC) in Maniema and Katanga.[1205] On one occasion, FAC soldiers allegedly killed seven boys who refused to hand over their bikes.[1206]

662. In Ituri district, numerous children were horrifically killed or mutilated by armed groups, for example at Mambasa and at Nyakunde.[1207] According to the report of the Special Investigation Team on the events in Mambasa, children were often the victims of acts of extreme violence. Some were reportedly cut into pieces and parts of their bodies eaten by the soldiers.[1208] Pygmy children were particularly targeted due to local beliefs in their supernatural powers.[1209]

663. Children were also the victims of other violations of human rights and international humanitarian law, particularly during the indiscriminate shelling of refugee camps with heavy artillery by the AFDL/APR, such as in Kitumba, Mugunga and Katale in 1996[1210] or of civilian populations by the *Forces armées zaïroises* (FAZ) during the battle for Kenge in Bandundu[1211] in 1997, or during the shelling of working class districts of Kinshasa in 1998 by the Zimbabwean Army (ZDF) or during the FAC shelling in Équateur in 1999 and 2000.[1212]

664. Places that traditionally harbour children were not respected by the warring parties. A large number of schools, hospitals, orphanages and the premises of several humanitarian organisations were the sites of massacres of children, who were rarely spared by the combatants. Thus at the end of 1995, the FAZ campaigns against the

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[1204] Interviews with the Mapping Team, Kinzau Mvwete, Bas-Congo, March 2009; HRW, *Casualties of War*, 1999.

[1205] Particularly in Maniema during the massacre in Demba territory in September 1999 (Interviews with the Mapping Team, Maniema, March 2009) and in Katanga during the massacre in Malemba Nkulu territory on 27 February 2002 (Interviews with the Mapping Team, Katanga, December 2008), and the massacre in Kabalo territory in March 2002 (Interview with the Mapping Team, Katanga, November 2008; document provided to the Mapping Team on 24 February 2009: *Les faits saillants des incidents du territoire de Kabalo*) and the massacre in Malemba Nkulu territory in May 2002 (Interviews with the Mapping Team, Katanga, December 2008).

[1206] Village of Buburu: Interview with the Mapping Team, Équateur, April 2009.

[1207] *Report of the Secretary-General on children and armed conflict* (A/58/546 and Corr.1 and 2).

[1208] See *Report of the Special Investigation Team on the events in Mambasa* (S/2003/674).

[1209] Minority Rights Group International, "Erasing the Board: Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern DRC", 2004.

[1210] Interviews with the Mapping Team, North Kivu, November 2008; *Report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC* (S/1998/581), annex; see also OIJ, *Recueil de témoignages sur les crimes commis dans l'ex-Zaïre depuis octobre 1996*, 1997; APREDECI, *Rapport circonstanciel: novembre 1996 et ses événements*, 1996.

[1211] Interviews with the Mapping Team, Bandundu, February 2009.

[1212] Interviews with the Mapping Team, Équateur, April 2009.

different ethnic militia in North Kivu allegedly caused a fire at a school in which the schoolchildren were burned alive.[1213] In May 1997, at Wendji in Équateur, soldiers from the AFDL/APR apparently killed unaccompanied children at the offices of the local Red Cross.[1214] In 1998, when the ANC/APR cut off Kinshasa's and Bas-Congo's main source of electricity, dozens of children died in the hospitals due to lack of care.[1215] In Goma in 1998, the ex-FAR/Interahamwe/ALiR entered an orphanage and killed around ten children.[1216] In 1999, as children were participating in a vaccination campaign organised by the public authorities in Masisi territory, they were killed and mutilated allegedly by ANC/APR soldiers.[1217] In Ituri, patients in the Nyakunde (September 2002)[1218] and Drodro (April 2003)[1219] hospitals, including numerous children, were reportedly systematically killed by Lendu and Ngiti militia.

2. Children victims of ethnic violence

665. Children did not escape the ethnic violence that swept the different regions of the country. In 1993, several Hunde children were allegedly killed by Hutu militia.[1220] In South Kivu in 1996, a number of Banyamulenge children and infants were reportedly stabbed to death during the massacres committed by armed Bembe elements, with the complicity of the FAZ.[1221] In 1997, during the attacks on Rwandan Hutus and, sometimes, on Nande by AFDL/APR soldiers, children and adults were apparently killed indiscriminately, sometimes in particularly cruel ways, with blows from hatchets or with their head smashed against a wall or tree trunk, for example.[1222] Others were reported

[1213] ASADHO, *Nord-Kivu: État d'urgence*, 1996.

[1214] Interviews with the Mapping Team, Équateur, March and April 2009; confidential witness statements given to the Mapping Team; Howard W. French, "Refugees From Congo Give Vivid Accounts of Killings", *New York Times*, 23 September 1997.

[1215] Interview with the Mapping Team, Kinshasa, April 2009; ICRC press releases dated 19 and 28 August and 9 September 1998; *Report on the situation of human rights in the DRC* (E/CN.4/1999/31).

[1216] Interviews with the Mapping Team, North Kivu, February and March 2009; ASADHO, Annual Report 1998; SOPROP, *La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion jusqu'au 21 September 1998*, 1998.

[1217] Interviews with the Mapping Team, North Kivu, December 2008; AI, *Killing Human Decency*, 2000.

[1218] Interview with the Mapping Team, Ituri, April 2009, AI, *On the precipice: the deepening human rights and humanitarian crisis in Ituri*, 2003; HRW, *Covered in blood. Ethnically-targeted violence in northern DRC*, 2003.

[1219] Interviews with the Mapping Team, Ituri, March 2009; United Nations Organization Mission in the DRC, *Special Report on events in Ituri (January 2002 - December 2003)* [S/2004/573].

[1220] Interview with the Mapping Team, North Kivu, November 2008; *Mémorandum des communautés hutu et tutsi à la Commission d'enquête sur les massacres de Walikale, Masisi et Bwito (Rutshuru) en mars et avril 1993*, 1993; Léon Batundi Ndasimwa, *Recensement des victimes hunde des massacres et affrontements interethniques de 1993 à nos jours*, undated.

[1221] Such as, for example, at Baraka, Lueba and Mboko in Fizi territory, and at Bukavu. (Interviews with the Mapping Team, South Kivu, March 2009).

[1222] Massacres in the area of Chanzerwa, 7 May 1997 (Interviews with the Mapping Team, North Kivu, April 2009).

burned alive in their homes, along with their families.[1223] After the second war broke out, children were not spared in the persecutions of Tutsis, Banyamulenge and people of Rwandan origin that took place in government zones. At Kalemie (Katanga), Tutsi children were held with their mothers for several weeks in inhumane detention conditions.[1224] In the area under the control of the RCD-Goma, ex-FAR/Interahamwe/ALiR allegedly killed a group of around ten Tutsi children in an orphanage in Goma.[1225]

664. In Ituri, against a backdrop of ethnic conflict, elements of the UPC and different Lendu and Ngiti militia reportedly systematically killed children on the basis of their ethnic belonging.[1226]

Attacks on refugees

667. During various attacks on Rwandan Hutu refugees in camps and on roadsides, members of the AFDL/APR allegedly made no distinction between armed elements and refugees, amongst whom there were numerous children. More serious still, the AFDL/APR is said to have frequently attacked camps that had already been deserted by the ex-FAR/Interahamwe and which contained the weak and the vulnerable – typically unaccompanied children, the elderly, women and the wounded.[1227]

668. At Mugunga camp in North Kivu, children and infants were shot and stabbed to death.[1228] During the massacres in Chambucha and Biriko, children were killed by blows to the head from hammers and hoes.[1229] In South Kivu in 1997, elements of the AFDL/APR allegedly abducted 50 child refugees whom they had found in the Lwiro health centre, and tortured them. The health centre nurses were beaten for having treated

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[1223] Kazuba massacre, 13 March 1997 (Interviews with the Mapping Team, North Kivu, December 2008 and February 2009; CEREBA, "Rapport de mission dans le territoire de Rutshuru", October 2005); Rubaya massacre, 23 February 1997 (Interview with the Mapping Team, North Kivu, March 2009, Didier Kamundu Batundi, *Mémoire des crimes impunis, la tragédie du Nord-Kivu*, 2006).

[1224] Interviews with the Mapping Team, Katanga, October 2008 and March 2009; ASADHO, *RDC: Le pouvoir à tout prix. Répression systématique et impunité*, 1998; AI, *War against unarmed civilians*, 1999; Deutsche Presse-Agentur, "Massacres of Tutsis Reported as more DRC Peace Talks Tabled", 3 September 1998, and "Congo Rebels Bury Remains of Massacre Victims", 10 December 1998.

[1225] Interviews with the Mapping Team, North Kivu, February and March 2009; ASADHO*, Annual Report,* 1998; SOPROP, *La situation des droits de l'homme dans la ville de Goma et ses environs depuis l'éclatement de la rébellion jusqu'au 21 septembre 1998*, 1998.

[1226] Interviews with the Mapping Team, Ituri, March to May 2009; HRW, *Ituri: covered in blood. Ethnically targeted violence in north-eastern DR Congo*, 2003.

[1227] AFP, "Les volontaires de la Croix-Rouge chargés du ramassage des cadavres", 19 November 1996.

[1228] *The Toronto Star*, "Bloodied Corpses Litter Camp - Signs of Massacre Found in Deserted Refugee Camp", 16 November 1996.

[1229] Particularly during the massacre at Chambucha around 9 December 1996 (Interviews with the Mapping Team, North Kivu, November-December 2008 and April 2009; confidential documents provided to the Mapping Team) and during the Biriko massacre around 17 December 1996 (Interviews with the Mapping Team, North Kivu, November-December 2008 and April 2009; CADDHOM, "Les atrocités commises en province du Kivu au Congo-Kinshasa (ex-Zaïre) de 1996-1998", July 1998).

refugee children.[1230] During the widespread massacres of Mboko, Kasika, Kilungutwe, Kalama and Makobola in 1998, a large number of children were killed apparently by the AFDL/APR.[1231] During the Makobola II, Bangwe, Katuta, Mikunga and Kashekezi massacres that left more than 800 dead between 30 December 1998 and 2 January 1999, elements of the ANC/APR/FAB[1232] are also reported to have killed numerous children.[1233] In Tingi-Tingi camp at Maniema, AFDL/APR troops allegedly indiscriminately murdered the last of the camp occupants, including many unaccompanied children, with knife blows to the head.[1234] During attacks in Orientale Province, children were killed alongside the adults, particularly during the attacks on Biaro and Kasese camps.[1235] Even children under the protection of humanitarian organisations were not spared. At Wendji in Équateur, soldiers from the AFDL/APR reportedly entered the offices of the local Red Cross and killed unaccompanied children waiting to be repatriated.[1236]

3. Sexual violence committed against children

669. As noted in the chapter on violence against women, sexual violence was a daily reality from 1993 to 2003, and one that children also suffered. Used as an instrument of terror, on the basis of ethnicity or to torture and humiliate, sexual violence often targeted young girls and children, some no more than five years old. Contemptible beliefs and superstitions led to children being targeted for their virginity, in the conviction that sexual relations with children could cure certain diseases (HIV/AIDS) or make the perpetrator invulnerable. Children were particularly affected by slavery and sexual slavery, a practice allegedly widespread among the Mayi-Mayi, ex-FAR/Interahamwe/ALiR/FDLR, UPC,

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[1230] *Report of the Secretary-General's Investigative Team* (S/1998/581), annex; confidential documents provided in 1997/1998 to the Secretary-General's Investigative Team; IRIN, "Emergency Update No.159 on the Great Lakes", 26-28 April 1997; MSF, "L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre", April 1997.

[1231] Interviews with the Mapping Team, South Kivu, October, November and December 2008 – February-March 2009; see also the Ministry of Human Rights of the DRC, "Livre Blanc: La guerre d'agression en RDC: trois ans de massacres et de génocide à huis clos", October 2001; CADDHOM *Massacres de Kasika au Sud-Kivu*, 1998; COJESKI, January report 1999; AI, *DRC: War against unarmed civilians*, 1998; Jean Migabo Kalere, *Génocide au Congo? Analyse des massacres des populations civiles*, 2002.

[1232] *Forces armées burundaises*.

[1233] Interviews with the Mapping Team, South Kivu, February 2009; see also Ambroise Bulambo, *Mourir au Kivu, du génocide tutsi aux massacres dans l'est du Congo RCD*, L'Harmattan, 2001; AI, *DRC: Human dignity reduced to Zero*, 2000; Proceedings instituted by the DRC against Rwanda at the International Court of Justice, 28 May 2002.

[1234] Interviews with the Mapping Team, Maniema, March 2009; AI, *Deadly Alliance*, 1999; MSF, "*L'échappée forcée: une stratégie brutale d'élimination à l'est du Zaïre*", 1997.

[1235] Interviews with the Mapping Team, Orientale Province, November 2008, January-May 2009; confidential documents provided to the Secretary-General's Investigative Team in 1997/1998; C. McGreal, "Truth Buried in Congo's Killing Fields", *Guardian*, 19 July 1997; John Pomfret, "Massacres Were a Weapon in Congo's Civil War; Evidence Mounts of Atrocities by Kabila's Forces", *Washington Post*, 11 June 1997; IRIN, Emergency Update No.155 on the Great Lakes, 22 April 1997; IRIN, Emergency Update No.157 on the Great Lakes, 24 April 1997.

[1236] Interviews with the Mapping Team, Mbandaka, March-April 2009; confidential statements made to the Mapping Team; Howard W. French, "Refugees from Congo Give Vivid Accounts of Killings", *New York Times*, 23 September 1997.

and armed Ugandan (ADF/NALU) and Burundian (CNDD-FDD and FNL) groups.[1237] Girls recruited and used by all parties to the conflict as children associated with armed forces or armed groups (CAAFAG) were virtually all victims of sexual violence.[1238]

670. Sexual violence has a devastating impact on children, both in psychological and physical terms, and is a key factor in the spread of HIV/AIDS and the exclusion of children from their communities. Early pregnancy, forced abortions and stigma are all reasons why young survivors of sexual violence never recover from the trauma they have suffered. Children born of rapes are often infected with the HIV/AIDS virus and rejected by their community.

4. Infant mortality

671. In addition to being subjected to direct attacks, children also suffered the indirect consequences of the armed conflicts. More vulnerable than adults, children more than any other group have suffered the consequences of a war that has devastated the country. Repeated displacements, malnutrition and disease affected children to such an extent that, in 2001, the International Rescue Committee concluded that those under the age of five accounted for one-third of the civilian deaths caused by the conflicts in eastern DRC between August 1998 and May 2000.[1239] The infant mortality rate was particularly high during the persecution of Kasaiens in 1993, especially during their forced deportation under inhumane conditions. In South Kivu, in 2003, Oxfam estimated that, in some regions, one-quarter of all children were dying before their fifth birthday.[1240] UNICEF reports that these terrible statistics make the DRC one of the three most dangerous countries in the world in which to be born. In 2006, more children under the age of five were dying each year in the DRC than in China, despite the Chinese population being 23 times larger than the Congolese.[1241]

[1237] For more information, see the chapter on violence against women.

[1238] See, for example, the transcription of hearings, ICC Lubanga (ICC 01/04 01/06), 3 February, 27 February and 6 March 2009.

[1239] Report quoted in "A critical analysis of progress made and obstacles encountered in increasing protection for war-affected children" (A/55/749). The International Rescue Committee (IRC) conducted four studies into mortality rates in the DRC between 1998 and 2004. According to the IRC, from the start of the second war in August 1998 to the end of April 2004, around 3.8 million people are thought to have died as a direct or indirect consequence of the war and armed conflicts. It should be noted, however, that the methodology used by the IRC to establish the number of indirect deaths is based on epidemiological studies and estimates of demographic growth and that these have been questioned. Given its mandate, its limited time and resources, it is not for the Mapping Exercise to give an opinion on the total number of people dead or murdered due to the situation in the DRC over the period in question.

[1240] Oxfam International, "The War in the DRC is at a Critical Juncture: Submission to the UN Security Council", 25 April 2002.

[1241] See www.unicef.org/french/infobycountry/media_34942.html.

5. Anti-personnel mines[1242]

672. When conflict dies down, children are often the main victims of anti-personnel mines left in the area by combatants. In the DRC, the different armed groups and forces used mines at different times, mainly in the east, in Équateur Province, and along the frontlines that divided the country in two from north-west to south-east. According to the UN Mine Action Coordination Centre (UNMACC), unexploded mines and artillery caused the deaths of at least 1,798 people in the DRC between 1996 and April 2006, including many children.[1243]

B. Specific case of children associated with armed groups and forces [1244]

673. The wars in the DRC were also marked by the systematic use of children associated with armed groups and forces (CAAFAG) by all parties to the conflict.[1245] According to child protection agencies working in the disarmament, demobilisation and reintegration (DDR) of children, at least 30,000 children were recruited or used by the armed forces or groups during the conflict.[1246] These statistics make the DRC one of the countries in the world with the highest incidence of CAAFAG.[1247]

674. Although international attention with regard to CAAFAG peaked during the conflict in Ituri in May 2003, with the temporary deployment of a European multinational force, the recruitment and use of CAAFAG was already undoubtedly commonplace in the DRC from 1996 onwards. While sources also indicate that children are likely to have been recruited and used as CAAFAG prior to 1996, this phenomenon took on a hitherto unprecedented scale at the start of the AFDL/APR insurrection in eastern Zaire.

675. Although the Optional Protocol to the Convention on the Rights of the Child does not define the term "recruitment and use of children as soldiers", nor the term "direct participation in hostilities", the commonly accepted definition of CAAFAG is that which was given at a conference organised by UNICEF in South Africa in 1997. The "Cape Town Principles" define CAAFAG as follows:

[1242] The DRC signed the Mine Ban Treaty on 2 May 2002, ratifying the Ottawa Treaty on 1 November 2002.

[1243] See www.unicef.org/drcongo/french/humanitarian_assistance.html.

[1244] With regard to children involved in armed conflicts, the Paris Principles adopted in 2007 by UNICEF preferred the term "children associated with armed forces or armed groups" (CAAFAG) to the more simplistic "child soldiers" as this approach also enables girls recruited for sexual purposes to be included. The acronym CAAFAG does not therefore refer exclusively to children who are armed or who have carried weapons.

[1245] The fact that some armed groups are not mentioned in this chapter does not mean that they did not recruit CAAFAG.

[1246] United Nations Mission in the DRC, Child Protection Section, *La justice et le recrutement et l'utilisation d'enfants dans des forces et groupes armés en RDC*, 2005. Available from: www.unhcr.org/refworld/pdfid/46caaafcd.pdf.

[1247] AI, *Children at War*, 2003.

> "any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms".[1248]

676. This broad definition is important given the multitude of roles that children play within armed groups. The inclusion of non-combatants is crucial, particularly during post-conflict periods. It was taken up in the Operational Framework for CAAFAG of the National Disarmament, Demobilisation and Reintegration Programme in the DRC.

1. Legal framework

Prohibition of child recruitment in international law

677. A number of international human rights and humanitarian law treaties ratified by the DRC explicitly prohibit child recruitment. The Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions (applicable to internal and international armed conflicts) require States that have ratified them to refrain from recruiting children under the age of 15. The DRC has also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which prohibits any recruitment or use of children under the age of 18 by armed groups and bans the forced recruitment and participation of children under 18 in the regular army. Finally, the Security Council adopted five resolutions on children and armed conflict, condemning the recruitment of children by armed forces and groups.[1249]

678. Although these treaties establish an obligation on ratifying States and armed groups to refrain from recruiting and using children, they do not establish these as acts entailing individual criminal responsibility. The States party to treaties are, however, required to take the necessary measures to prevent these acts, which implicitly calls on them to criminalise child recruitment, in order to investigate and prosecute such cases.

Criminal responsibility for child recruitment in international law

679. The Rome Statute of the ICC, ratified by the DRC in 2002, made significant

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[1248] UNICEF, "Cape Town Principles and best practices on the prevention of recruitment of children into the armed forces and on demobilisation and social reintegration of child soldiers in Africa", 27-30 April 1997. Because of the need to update the Cape Town Principles and obtain their approval outside the sphere of actors specialising in the defence of children's rights, two documents were produced and adopted in February 2007 in Paris: "The Paris Commitments" to protect children from unlawful recruitment or use by armed forces or armed groups, and "The Paris Principles" on children associated with armed forces or armed groups, which contains more detailed directions for people responsible for programme implementation. The DRC was represented at the Conference and adopted both documents.

[1249] Resolutions 1261 (1999) 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005).

progress in this area by expressly recognising as a war crime any conscripting or enlisting of children under the age of 15 into the national armed forces or into armed groups or of using them to participate actively in hostilities, in either international or internal armed conflicts.

680. In May 2004, the Special Court for Sierra Leone ruled that the recruitment of children under the age of 15 into the armed forces or their use as participants in the hostilities could be considered a crime under customary international law, for which a person could be held individually criminally responsible, and this since at least 1996.[1250]

681. Thomas Lubanga, the first defendant to have been transferred to the ICC, is accused of war crimes for having enlisted children under the age of 15 into the ranks of the *Forces patriotiques pour la libération du Congo* (FPLC). He is also accused of having involved these children in the fighting in Ituri between September 2002 and August 2003. The ICC is also accusing Germain Katanga, one of the commanders of the *Forces de résistance patriotique en Ituri* (FRPI) and Mathieu Ngudjolo Chui, one of the leaders of the allied forces of the *Front des nationalistes et intégrationnist*es (FNI) of war crimes for having involved children enlisted in their movement in the fighting in Ituri. Bosco Ntaganda, former deputy head of the General Staff of the FPLC, the armed branch of the UPC (*Union des patriotes congolais*) is accused by the ICC of having used his authority to implement the FPLC's policy regarding the enlistment and conscription of children under 15 and of having involved them actively in the hostilities in Ituri from July 2002 to December 2003. Ntaganda is also accused of having exercised *de jure* and *de facto* authority in the Bule, Centrale, Mandro, Rwampara, Irumu, Bogoro and Sota child soldier training camps. Finally, he is also accused of having taken part in FPLC attacks in which child soldiers were involved.

Child recruitment under Congolese law

682. Up until 2009, the recruitment and use of children was not established as a crime in the DRC's criminal code. Child abduction and slavery were, however, considered as such. In June 2000, Decree Law 066 ordered the demobilisation and family or socio-economic reintegration of children associated with the armed forces or groups, girls and boys, under the age of 18.

683. This failure to criminalise the recruitment and use of children has resulted in few soldiers being convicted of such actions, even on charges of child abduction and enslavement. Even when a conviction was handed down, in the Jean-Pierre Biyoyo case, for example, it had no effect on his promotion within the Congolese military hierarchy. In fact, Jean-Pierre Biyoyo was appointed Lieutenant-Colonel in the Congolese Army after receiving a death sentence from a military court in March 2006 for desertion and fleeing

[1250] *The Prosecutor* v. *Samuel Hinga Norman*, Case No. SCSL-2004-14-AR729E, Court of Appeal of the Special Court for Sierra Leone, "Decision on Preliminary Motion Based on Lack of Jurisdiction (child recruitment)", May 2004, p.27

abroad in times of war, organizing an insurrection movement, and the arbitrary arrest and illegal detention of children.[1251] Moreover, on 10 January 2004, the Congolese Head of State appointed five former warlords from Ituri district to the post of general in the national army. Four of the five new generals – Jérôme Kakwavu, Floribert Kisembo, Bosco Ntaganda and Germain Katanga – had been identified in different reports as being responsible for serious human rights violations, in particular the recruitment and use of CAAFAG. As for Bosco Ntaganda, he was reintegrated into the Congolese Army in January 2009, despite an ICC arrest warrant dated 22 August 2006 for war crimes relating to the enlistment and use of child soldiers in the hostilities.

684. Yet, over the same period, the new law of January 2009 on child protection criminalised the recruitment and use of children in armed forces and groups and in the police force (Articles 71 and 187) and, for the first time, set out penalties for this (between 10 and 20 years in prison).

2. Recruitment and use of children from 1993 to 2003[1252]

685. There are various reasons explaining why children were recruited on such a large scale during the different conflicts in the DRC. Some factors are intrinsic to armed conflicts in general and occur in conflicts the world over. Rebel groups often justify child recruitment with the need to overthrow the government and have armies of at least equal number – as in the case of the AFDL/APR in 1996. Moreover, armed groups in the DRC lack military training and professionalism and do not therefore generally develop complex military strategies. Many battles were thus won simply by virtue of superior numbers. The more child soldiers an armed group could recruit, the better their chances of military victory.[1253] Rebel armies and groups also use children because of their availability and malleability in a drawn-out conflict. Generally paid little or nothing, they are a very low cost factor, all the more so as they are equipped with cheap arms. Their obedience and their limited awareness of danger are often cited by commanders when explaining their interest in recruiting children, as can be seen from a statement by Col. Ntambo Mutchaïl of the AFDL/APR following the capture of Lubumbashi in 1997:

> "They are the best. At this age there is total obedience. They are not distracted. They haven't yet experienced a private life. They are devoted to one thing: to the Alliance. They have nothing else in their heads. They are not worried by morals. They are devoted to the Alliance"[1254].

[1251] Biyoyo was tried and convicted by the Bukavu garrison Military Court on 17 March of desertion and fleeing abroad in times of war, organizing an insurrection movement, and the arbitrary arrest and illegal detention of children in South Kivu in April 2004.

[1252] This section does not attempt to be exhaustive; the fact that some armed groups are not mentioned does not mean that they did not recruit and use child soldiers.

[1253] AI, *Children at War*, 2003.

[1254] "Zaïre: le fleuve de sang", French documentary, La marche du siècle, June 1997; Jean-Marie Cavada, third report, "Premiers jours au nouveau Congo"; Jean-Francois Gringoire and Lionel de Coninck "À minute 01:21, le colonel Ntambo Mutchaïl de l'AFDL s'exprime devant la caméra au sujet des *Kadogo*".

686. The children often enlist into the army or a rebel group of their own accord, either spontaneously or following an intensive recruitment drive. There are many factors behind the phenomenon of "voluntary recruitment".[1255] Most of the children see this as the only option for protecting themselves or surviving economically. Some see it as an act of patriotism, a contribution to the cause; others sign up to avenge the death of their parents or on the basis of their ethnic belonging. In Kivu and in Ituri, in particular, recruitment was frequently justified by the need to defend a community from external attacks. Thousands of boys and girls were also, however, recruited against their will and that of their family. Children were forcibly abducted either at night or in broad daylight, in the town or even at home or at school. Children that were separated from their families or that had been displaced were also easy targets for the recruiters.[1256]

687. Although the phenomenon of child recruitment existed prior to 1996, it was not widely known, as demonstrated by the curiosity and astonishment of Zairians during the AFDL's advance. The large number of *Kadogo* (meaning "little ones" in Swahili) among the troops that marched on Kinshasa in May 1997 surprised both the local people and the international media. What was incorrectly described as a new phenomenon at the time was then taken up by all the other armed groups in the DRC during the conflicts of 1998 to 2003.

Recruitment and use of CAAFAG before 1996

688. The ex-FAR/Interahamwe were allegedly recruiting children in the Rwandan refugee camps in the east of Zaire and Tanzania between 1994 and 1996.[1257] They used active recruitment methods, such as going from door to door, but would also forcibly abduct children. Children questioned by Save the Children all indicated that they had had no choice, even when they expressly refused to be recruited.[1258] In 1995, researchers from Human Rights Watch noted that the ex-FAR were using CAAFAG in at least two camps, Panzi and Lac Vert.[1259]

Recruitment and use of CAAFAG during the first war

689. As previously noted, the recruitment and use of CAAFAG in Zaire escalated rapidly in 1996 when the AFDL/APR began to attack North and South Kivu. Over the course of 1996, several thousand children were recruited allegedly by the AFDL/APR in South Kivu, particularly on Idjwi Island, at Uvira and in the Hauts Plateaux region. Some

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[1255] *A critical analysis of progress made and obstacles encountered in increasing protection for war-affected children* (A/55/749).

[1256] HRW, "Reluctant recruits: children and adults forcibly recruited for military service in North Kivu", May 2001; AI, *Children at War*, 2003.

[1257] ICG, *Rwandan Hutu Rebels in the Congo: A New Approach to Disarmament and Reintegration*, 2003.

[1258] Save the Children, *Crossing the Border*, July 2004.

[1259] HRW, "Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide", May 1995.

received military training in Bukavu.[1260] In Bukavu itself, most children were recruited around Avenue Maniema, where the AFDL's headquarters were located. The recruits received basic military training at Kidoti, in Uvira territory, before being sent to the front.[1261]

690. At the end of 1996, the AFDL/APR apparently also began to recruit large numbers of children in North Kivu, in Rutshuru and Masisi territories. The AFDL/APR conducted these recruitment drives by going directly into schools. In some cases, the recruiters promised children food or money; in others, children were forcibly enlisted. Some of them were scarcely 10 years old. Once enlisted, they were unable to leave. Most of the region's recruits received minimal military training at Matebe camp near Rutshuru town.[1262] During the course of its advance on Kinshasa, the AFDL/APR systematically recruited CAAFAG in order to expand troop numbers. Once the Mobutu regime had been overthrown, these children were largely integrated into the new government army, the FAC, or – with the start of the second war in 1998 – into the ANC/APR.

691. During the first war, the Mayi-Mayi, particularly in North Kivu, allegedly also forcibly and voluntarily recruited minors, girls and boys, many of them no more than 11 years old.[1263]

Recruitment and use of CAAFAG during the second war

692. The second war was marked by numerous conflicts between the government forces and a multitude of rebel groups and foreign armies, in a country divided in two. In 2003, 12 parties to the conflict[1264] were cited as having recruited and used CAAFAG in the Report of the Secretary-General on children and armed conflict.[1265] The FAC/FARDC have been cited in every report since 2002.[1266]

[1260] Confidential document provided to the Mapping Team by the local NGO MESEP, South Kivu, March 2009.

[1261] Interviews with the Mapping Team, South Kivu, March 2009.

[1262] Interviews with the Mapping Team, North Kivu, March and April 2009.

[1263] Interviews with the Mapping Team, North Kivu, February 2009.

[1264] The *Forces armées congolaises* (FAC), the *Rassemblement congolais pour la démocratie–Goma* (RCD-G), the *Mouvement national de libération du Congo* (MLC), the *Rassemblement congolais pour la démocratie–Kisangani/Mouvement de libération* (RCD-K/ML), the *Rassemblement congolais pour la démocratie–National* (RCD-N), the Hema militia (UPC and PUSIC), the Lendu/Ngiti militia (FNI and FPRI), the *Forces armées populaires congolaises* (FAPC), the Mayi-Mayi, Mudundu 40, Masunzu's forces and the ex-*Forces armées rwandaises* (ex-FAR) and Interahamwe.

[1265] *Report of the Secretary-General on children and armed conflict (A/58/546–S/2003/1053 and Corr. 1 and 2).*

[1266] *Reports of the Secretary-General on children and armed conflict*: S/2002/1299, A/58/546-S/2003/1053 and Corr. 1 and 2, A/59/695-S/2005/72, A/61/529-S/2006/826 and Corr.1, A/62/609-S/2007/757 and A/63/785-S/2009/158 and Corr.1.

***Forces armées congolaises* (FAC)**

693. Not only did the Government apparently incorporate most of the *Kadogo* who had fought in the AFDL/APR into the new government army but also, with the start of the second war, began to actively recruit children once more. An official announcement broadcast on the national radio on 7 August 1998 invited children and youths between the ages of 12 and 20 to enlist in the armed forces following the commencement of the second war. In addition to Kinshasa, recruitments took place at the Mbuji-Mayi airport in Kasai Occidental and in Katanga.[1267] Despite a presidential decree of June 2000 on the demobilisation of children and announcements made by Joseph Kabila in June 2001, child recruitment continued unabated. By 2003, the UN estimated that 10% of the FAC was made up of CAAFAG and the Minister of Human Rights admitted that there were 3,000 CAAFAG waiting to be demobilised within the FAC.[1268]

***Rassemblement congolais pour la démocratie* and local defence forces linked to the RCD**

694. The army of the RCD (and later that of the RCD-G), the ANC, with the support of the APR, were among those groups with the most CAAFAG in their ranks. The ANC used a wide range of methods to recruit children, some focusing on voluntary recruitment and others on forced. Numerous children were abducted both day and night, from their homes, from schools or at the market.[1269]

695. After the second war broke out in August 1998, ANC/APR soldiers reportedly recruited large numbers of children into their ranks in South Kivu, along with a hundred or so minors who had previously been demobilised by UNICEF. To begin with, child recruitment into the ANC took place on a voluntary basis in the context of an awareness raising campaign aimed at parents. When this failed, the ANC soldiers proceeded to conduct systematic forced recruitments. Many children were abducted as they left their schools or while at the market. The recruits were forced to undergo military training in the DRC or Rwanda, under the command of APR soldiers. In 2002, there were still more than a thousand children in the ranks of the ANC/APR. Despite official denials, the forced recruitment of children continued until at least June 2003.[1270]

696. In addition to its main forces, the RCD-Goma had a paramilitary force under its control known as the *Forces de défense locale* (FDL), which claimed to have 10,000 members, and which operated along the same lines as forces that had existed in Rwanda

[1267] HRW, *Casualties of War*, February 1999.

[1268] AI, *Children at War*, 2003.

[1269] *Additional report of the Special Representative of the Secretary-General for children and armed conflict* (E/CN.4/2000/71); *Fifth report of the Secretary-General on MONUC* (S/2000/1156); HRW, "Reluctant recruits: children and adults forcibly recruited for military service in North Kivu", May 2001.

[1270] Interviews with the Mapping Team, South Kivu, February, March 2009; HRW, *Casualties of War*, 1999; Child Soldiers, *CRC Country Briefs*, 2004; Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2001 – DRC*, 2001.

and Uganda for several years. The FDL was made up of numerous CAAFAG who received only rudimentary military training and who were rarely paid.[1271]

***Mouvement national de libération du Congo* (MLC)**

697. The MLC's army, the ALC, with the backing of the Ugandan Army, the UPDF, allegedly also recruited children, primarily in Mbandaka, Équateur Province. In 2001, the MLC admitted to having 1,800 CAAFAG within its ranks.[1272] The child soldiers were involved in ALC offensives during which serious violations of human rights and international humanitarian law were committed. This was particularly the case in the attacks carried out within the context of the "Erasing the Board" operation.[1273]

***Rassemblement congolais pour la démocratie–Kisangani/Mouvement de libération* (RCD-K/ML)**

698. According to MONUC, a considerable number of children were recruited, both voluntarily and forcibly, by the APC, the military wing of the RCD-K/ML. Abducted children are reported to have sometimes been taken to Uganda to undergo military training.[1274]

Mayi-Mayi Groups

699. In 2002, a number of organisations estimated that one-half of all Mayi-Mayi forces were children, including some scarcely eight years of age.[1275] The different Mayi-Mayi groups did allegedly abduct and recruit children, particularly in North and South Kivu, in Ituri, Maniema and Katanga.[1276] Between 2001 and 2003, groups operating in Malemba Nkulu territory, Katanga, abducted and recruited several dozen CAAFAG. Most of these were used to carry looted goods and munitions, to do the cooking and to act as sex slaves. Some of them received guns and served as guards while others participated in the hostilities against the ANC/APR and then later against the FAC.[1277] Other Mayi-Mayi

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[1271] AI, *Children at War*, 2003.

[1272] Ibid.

[1273] Minority Rights Group International, *Erasing the Board: Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern DRC*, 2004.

[1274] Interviews with the Mapping Team, Orientale Province, January–February 2000. At the end of 2000, some 165 Congolese children were abducted from Bunia, Beni and Butembo and deported to Uganda. *Fifth report of the Secretary-General on MONUC* (S/2000/1156); *Report of the Special Representative of the Secretary-General for children and armed conflict* (A/56/453).

[1275] Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004 – DRC, 2004*; Watch List, *The Impact of Armed Conflict on Children in the DRC*, 2003.

[1276] Interviews with the Mapping Team, North Kivu, South Kivu, Katanga, Maniema, 2008 and 2009; AI, *Children at War*, 2003.

[1277] Interviews with the Mapping Team, Katanga, December 2008.

also used CAAFAG, particularly the Gédéon Kyungu Mutanga group, which was accompanied by numerous CAAFAG at the time of its surrender to MONUC.[1278]

Allied Democratic Forces-National Army for the Liberation of Uganda (ADF/NALU)

700. The ADF/NALU made widespread use of CAAFAG. In 2000, for example, north of Beni and at Bulongo, a town at the foot of the Ruwenzori Mountains (North Kivu), the ADF/NALU allegedly abducted and enslaved hundreds of civilians, and conducted widespread forced recruitments of CAAFAG. The people abducted, including children, were forced to carry looted goods over long distances. The ADF/NALU obliged the men and boys to undergo military training in order to fight in their ranks.[1279]

Ex-*Forces armées rwandaises* (ex-FAR) and Interahamwe, ALiR and FDLR

701. During their attacks on civilian populations, the ex-*Forces armées rwandaises* (ex-FAR) and Interahamwe, along with members of the ALiR and FDLR, reportedly abducted a large number of children and also conscripted their own children into their ranks.[1280]

The Ituri militia (UPC, FNI, FRPI, FAPC and PUSIC)

702. Between 2001 and 2003, the armed groups in Ituri (UPC, FNI, FRPI, FAPC and PUSIC) between them recruited thousands of children on the basis of their ethnic belonging. Thousands of Hema children allegedly recruited by the UPC underwent military training in the Mandro, Katoto and Bule camps. During this training, they were often tortured and subjected to inhuman and degrading treatment. In 2000, at least 163 of these children were sent to Uganda to undergo military training in the UPDF camp at Kyankwanzi. Between 2002 and 2003, some children associated with the UPC were abducted and taken to Rwanda to undergo military training in the APR camps. An unknown number of Lendu children were taken to military training camps in North Kivu. Other communities were also affected by this phenomenon, particularly the Alur, primarily in Mahagi territory.[1281] Thomas Lubanga (UPC), Bosco Ntaganda (UPC) Germain Katanga (FRPI) and Mathieu Ngudjolo Chui (FNI) are, moreover, all accused by the ICC of having involved children actively in the hostilities in Ituri. The *Forces*

[1278]Gédéon was convicted of, among other things, crimes against humanity, including the recruitment of child soldiers, 5 March 2009.

[1279]Interviews with the Mapping Team, North Kivu, February 2009.

[1280] Interviews with the Mapping Team, South Kivu, March and April 2009; confidential document provided to the Mapping Team in South Kivu by the NGO MESEP, March 2009.

[1281] Interviews with the Mapping Team, Orientale Province, April and May 2009; confidential documents provided to the Mapping Team in South Kivu; MONUC, *Special report on the events in Ituri* (S/2004/573); BBC News, "UN finds Congo Child Soldiers", 21 February 2001; BBC News, "DR Congo Awash with Child Soldiers", 17 February 2003.

armées populaires congolaises (FAPC) reportedly also recruited an unknown number of minors, particularly during 2003.[1282]

Other armed groups

703. Masunzu's forces, the RCD-N and Mudundu-40[1283] were also cited in the report of the Secretary-General on children and armed conflict[1284] as having recruited and used child soldiers. All the Burundian political groups, along with the *Forces armées burundaises* (FAB), recruited and used child soldiers.[1285]

3. Acts of violence committed against CAAFAG

704. As previously noted, many battles were won in the DRC simply on the basis of a superiority of numbers. The armed groups therefore often recruited children to serve as cannon fodder.[1286] Some were even sent into combat without any arms. Their commanding officers would order them to create a loud diversion, using wooden sticks and branches, in order to act as a human shield, thus protecting the adult soldiers from enemy troops.[1287] When they did not die in combat, the CAAFAG were often forced to commit crimes during or after an attack. In order to force them to overcome their sensitivities and unwillingness to kill, they were brutalised by their superiors and forced to commit particularly horrific crimes. If they refused, they would be executed. On capturing an area, girls would sometimes be taken to child soldiers for them to rape in front of the villagers and adult soldiers.[1288] This strategy of "toughening them up" was also used in training camps, where children were forced to kill and commit atrocities in public.

705. Even the children's military training – along with its inherent indoctrination – was dominated by suffering and violations. The CAAFAG were ill-treated, tortured and executed if they resisted or failed to perform. Being particularly vulnerable, the children were also more prone to disease and malnutrition. In 1996, for example, in the AFDL/APR's Matabe camp near Rutshuru town, CAAFAG were being subjected to

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[1282] MONUC, *Special report on the events in Ituri* (S/2004/573).

[1283] The head of this militia group, Jean-Pierre Biyoyo, was convicted by a military court in March 2006 of, among other things, the arbitrary arrest and *illegal detention of children in South Kivu in April 2004. Interim Report of the Group of Experts on the DRC* (S/2009/253).

[1284] *Report of the Secretary-General on children and armed conflict* (A/58/546–S/2003/1053 and Corr. 1 and 2).

[1285] Confidential document provided to the Mapping Team in South Kivu by the NGO MESEP, March 2009; AI, *Children at War*, 2003.

[1286] Interview with the Mapping Team, Bandundu, February 2009, concerning the battle for Kenge on 5 May 1997; AI, *Children at War*, 2003.

[1287] HRW, *Reluctant recruits: children and adults forcibly recruited for military service in North Kivu*, May 2001.

[1288] AI, *Mass rape: Time for Remedies*, 2004.

torture and other inhuman treatment and were receiving very little food. They were sent to the front without any real military training.[1289] After the AFDL/APR's entry into Kisangani on 15 March 1997, around a thousand *Kadogo* and Mayi-Mayi were stationed in the Kapalata training camp when an epidemic of diarrhoea broke out, causing around 400 deaths among them. The 200 to 300 child survivors, transferred to an orphanage in Kisangani in 1998 following pressure from the international community, were abducted in June 1998 by Congolese soldiers and have not been seen since.[1290]

706. During the first war, those CAAFAG recruited – generally forcibly - by the Mayi-Mayi were subjected to secret initiation ceremonies and tattooed in order to perpetuate their association with the group. Their living conditions were largely deplorable and they were subjected to a regime of terror.[1291] In 2000, in North Kivu, the ADF/NALU forces allegedly abducted children to carry pillaged goods over long distances. Many died from exhaustion or were executed during these forced marches, some of which lasted several weeks. The survivors suffered from malnutrition and received inhuman treatment, and many of them died in detention.[1292]

707. Armed groups also committed serious violations of international humanitarian law against CAAFAG from opposing camps, such as, for example, after the battles around Isiro in Orientale Province between 31 July and 2 August 2002, when elements of the ALC mutilated and tortured CAAFAG from the APC.[1293]

708. Even outside of combat, the mortality rate was very high among both male and female CAAFAG, as they were pushed to the limits of their physical and emotional endurance.

Sexual violence committed against CAAFAG [1294]

709. Nearly all female CAAFAG were raped, often gang raped, or sexually exploited by the officers and soldiers of all the previously mentioned armed groups. Some male CAAFAG also told of similar experiences.

710. The Ituri militia allegedly committed acts of sexual violence against the girls associated with their group, both abducted and enlisted.[1295] The few witness statements given since the start of the hearings in the Lubanga trial are representative of the sexual

[1289] Interviews with the Mapping Team, North Kivu, March and April 2009.

[1290] Interviews with the Mapping Team, Orientale Province, November 2008; Groupe Horeb*, Annual Report,* 1999.

[1291] Interviews with the Mapping Team, North Kivu, February 2009.

[1292] Interviews with the Mapping Team, North Kivu, February 2009.

[1293] Interviews with the Mapping Team, Orientale Province, January and February 2009; Voix des opprimés, *Rapport sur les événements du Haut-Zaïre entre 1993 et 2003*, 2008.

[1294] On this subject, see also the chapter on violence against women.

[1295] MONUC, *Special report on the events in Ituri* (S/2004/573).

violence committed against female CAAFAG. The enslavement of female CAAFAG by commanding officers was common practice. In the UPC camps, commanding officers would force young pregnant girls to abort their babies.[1296]

711. The different Mayi-Mayi groups also reportedly abducted and used girls, some as young as eight years of age, as sex slaves. By day, the young girls would be forced to help the Mayi-Mayi carry their pillaged goods, cook and do the housework. By night they would be forced to have sex with several Mayi-Mayi.[1297] In North Kivu, the ADF/NALU apparently used women and girls as a source of labour and as sex slaves. Most of the victims suffered from malnutrition and inhuman treatment. Many died in detention.[1298]

712. The feeling of loss and trauma caused by the violence they suffered, by the crimes to which they were exposed or which they were forced to commit has had a devastating impact on the physical and mental integrity of these children.

4. Crimes committed by CAAFAG and youth justice

713. A direct consequence of the widespread use of CAAFAG between 1993 and 2003 was that numerous children were involved in serious violations of human rights and international humanitarian law.

714. It is crucial to bear in mind the fact that, in many cases, the CAAFAG were used, brutalised or threatened with death in order to force them to commit the most unspeakable of crimes. In other cases, they were actively encouraged to commit them. Although they may have been the authors of serious crimes, these children still remain first and foremost the victims. When children commit violations, it is essential first to pursue the political and military leaders responsible for the crimes committed by CAAFAG under their command, based on the principle of hierarchical superiority and the person with the most responsibility, as well as to investigate the extent to which the children were forced to act or were influenced by their adult superiors. Even taking this into consideration, some children may, however, still be considered responsible for their crimes and, in these specific cases, they could be prosecuted through the domestic courts in accordance with the norms and principles of international law on fair trials for children under 18 years of age, in which the best interest of the child is established as a priority.[1299] In any case, the rehabilitation and reintegration of children into society should take precedence over punishment.

[1296] Transcription of hearings, ICC Lubanga (ICC 01/04 01/06), 3 February, 27 February and 6 March 2009.

[1297] Interviews with the Mapping Team, Katanga, December 2008.

[1298] Interviews with the Mapping Team, North Kivu, February 2009.

[1299] See Arts. 37 and 40 of the Convention on the Rights of the Child along with General Comment No. 10 (2007) of the Committee on the Rights of the Child, *Children's rights in juvenile justice* (CRC/C/GC/10).

715. It must be noted that these principles were not respected by the Congolese military courts, which have sole competence to hear crimes under international law.[1300] In fact, a number of CAAFAG were detained,[1301] prosecuted and sometimes sentenced to death by the Military Order Court (*Cours d'ordre militaire*),[1302] which has been criticised for its injustices, in violation of all principles of international law with regard to fair trials for children under the age of 18, in particular the Convention on the Rights of the Child. Seven children were tried separately in Kinshasa, Mbandaka and Matadi between 1999 and 2002 and sentenced to death. They were convicted of "conspiracy", "first-degree murder", "squandering of weapons" and "murder in times of war". In six of these cases, the sentence was commuted to life imprisonment by presidential decree but one child was executed in Kinshasa on 15 January 2002, only 30 minutes after his sentence had been passed.[1303]

5. Demobilisation and reintegration

716. The first demobilisation efforts date back to 1998, and all peace accords and ceasefire agreements since the 1999 Lusaka Accord have constantly highlighted the obligation on armed groups to demobilise CAAFAG and bring their recruitment and use to an end.

717. In the face of national and international pressure to end the recruitment and use of CAAFAG, most of the armed groups' leaders have stated their opposition to this practice and given commitments to bring child recruitment to an end. Yet the demobilisation of CAAFAG has often been more a symbolic, public relations-oriented exercise than a sincere commitment. A large proportion of demobilised CAAFAG were, in fact, later re-recruited.[1304]

718. In 2000, in his report on children and armed conflict, the Secretary-General estimated that there were between 10,000 and 20,000 children under 15 years of age in the various fighting forces in the DRC.[1305] That same year, President Kabila signed a decree banning the recruitment of children under 18 years of age into the armed forces and the deployment of child soldiers in combat zones. During the same period, the RCD-

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[1300] Since the 2002 reform, military courts have not had the authority to hear cases involving children (Art. 114 of the Military Judicial Code). Previously, as soon as they were enrolled in a military school or were serving under the flag, they could be tried before the military courts (Art. 129 of the Military Justice Code).

[1301] Child soldiers arrested in Bas-Congo in 1998 reportedly remained in detention for more than five years without appearing before a judge. See CODHO, *Des arrestations et détentions arbitraires à Kinshasa*, 2003.

[1302] On 1 May and 20 August 2001 and 22 May 2003, the Special Rapporteur on extrajudicial, summary or arbitrary executions, in association with the Special Rapporteur on the situation of human rights in the DRC sent urgent appeals to the Government of the DRC in relation to the death sentences passed on five minors by the Military Order Court (E/CN.4/2002/74/Add.2 and E/CN.4/2004/7/Add.1), *Tenth report of the Secretary-General on MONUC* (S/2002/169); AI, *Children at War*, 2003.

[1303] MONUC, Child Protection Section, September 2002.

[1304] For concrete cases of "false demobilisations" and "re-recruitment", see AI, *Children at War*, 2003.

[1305] *Report of the Secretary-General on children and armed conflict* (A/55/163-S/2000/712).

Goma issued an instruction creating a committee for the demobilisation and reintegration of child soldiers in the territory under its control.[1306] And yet the results were not forthcoming on either side. In May 2001, the Special Representative of the Secretary-General for children and armed conflict, Mr Olara Otunnu, visited the DRC and met with President Joseph Kabila, with the leaders of the RCD and with the leaders of the *Front pour la libération du Congo* (FLC), led by Jean-Pierre Bemba.[1307] Following this visit, both the Government and the RCD produced action plans for the demobilisation of CAAFAG. At the start of 2001, the Government agreed to demobilise a total of 4,000 CAAFAG; however, a year later, only around 300 had actually been released.[1308] At the same time, the RCD estimated that there were 2,600 CAAFAG within its forces.[1309] Transit and orientation camps were established in Kisangani, Goma and Bukavu. Yet again, despite these claims, the armed groups continued to enlist children. The ANC/APR, for example, incorporated CAAFAG who had been serving in the local defence forces (FDL) into its army.[1310] Only around 650 CAAFAG were demobilised by the RCD-Goma between December 2001 and November 2003.[1311]

719. Rwandan children were also recruited and used by various groups, above all the ex-FAR/Interahamwe/ALiR/FDLR, different Mayi-Mayi groups and, in part, the RCD. Between May 2001 and July 2004, more than 550 of them were demobilised. Many of them had left Rwanda with their families during or immediately after the 1994 genocide. They were recruited or abducted from refugee camps or from the villages in which they were living.[1312]

720. CAAFAG were also abandoned or released by different armed groups in an ad-hoc manner.[1313] At the start of 2003, the RCD-ML gave NGOs access to some camps and dozens of CAAFAG were released and entrusted to a local NGO with a view to reintegrating them into their communities.[1314] This scant progress was continually thwarted by persistent parallel recruitments, however, including the abduction of girls for sexual purposes - in particular in Maniema, Katanga, in North and South Kivu and Ituri[1315] - and the continuing and widespread use of CAAFAG.[1316] The intensification of

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[1306] *Fourth report of the Secretary-General on MONUC* (S/2000/888 and Corr.1).

[1307] *Report of the Special Representative of the Secretary-General for children and armed conflict* (A/56/453).

[1308] *Tenth report of the Secretary-General on MONUC* (S/2002/169); Beth Verhey, *Going Home. Demobilising and Reintegrating Child Soldiers in the DRC*, Save the Children, 2003, which indicates that the number of children associated with the government forces in 2001 was 280.

[1309] Beth Verhey, *Going Home. Demobilising and Reintegrating Child Soldiers in the DRC*, Save the Children, 2003.

[1310] *Eleventh report of the Secretary-General on MONUC* (S/2002/621).

[1311] *Report of the Secretary-General on children and armed conflict* (A/58/546–S/2003/1053 and Corr.1 and 2).

[1312] Save the Children, *Crossing the Border*, July 2004.

[1313] *Fourteenth report of the Secretary-General on MONUC* (S/2003/1098).

[1314] AI, *Children at War*, 2003.

[1315] *Fourteenth report of the Secretary-General on MONUC* (S/2003/1098).

the conflict in Ituri in May 2003, for example, gave rise to a significant increase in CAAFAG recruitment drives by all parties to the conflict.[1317]

721. The lack of a national DDR plan until July 2004 meant that the demobilisation of CAAFAG remained fragmentary and difficult. A large number of demobilisations were achieved through the direct negotiation of specific cases.[1318] A resumption in recruitments, the continuing insecurity, a lack of local capacity to receive children and the absence of viable alternatives for young people were all obstacles to their effective reintegration, obstacles that persist to this day.

722. Despite all these difficulties, the large number of children that were demobilised from 2004 onwards, more than 30,000, confirms the scale of the CAAFAG problem.[1319] It is important to note that very few female CAAFAG were demobilised: as of 2003, Save the Children had counted only nine![1320] Although the girls were not always as visible as the soldiers, it is estimated that thousands formed part of the armed groups, particularly for the purposes of sexual exploitation. Most of the girls chose to self-demobilise when they got the chance, through fear of stigma, although many of them were not released by their commanding officers and were declared as "wives".

Conclusion

723. All parties to the conflict in the DRC recruited and used CAAFAG. Between 1993 and 2003, these and other children were subjected to indescribable violence, including murder, rape, torture, cruel, inhuman and degrading treatment, forced displacements and the destruction of their villages, and were deprived of all their rights. This situation continues to this day.

724. At the time of writing this report, the recruitment and use of CAAFAG is still continuing. In May 2009, the Group of Experts on the DRC denounced the repeated recruitments of children, particularly forced, being conducted by the CNDP, Mayi-Mayi groups, PARECO, the FDLR and the FARDC.[1321] During her visit to the DRC in April 2009, the Special Representative of the Secretary-General on children and armed conflict, Radhika Coomaraswamy, regretted the continuing impunity with regard to serious violations committed against children.[1322] At the same time, parties to the conflict in the

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[1316] *Report of the Secretary-General on children and armed conflict* (A/58/546-S/2003/1053 and Corr. 1 and 2).

[1317] Ibid.

[1318] Ibid.

[1319] The MDRP estimated the total number of demobilised children at 30,219. Multi-Country Demobilization and Reintegration Program (MDRP), Quarterly Progress Report, April-June 2006; MDRP fact sheet on the DRC, August 2008.

[1320] Beth Verhey: *Going Home. Demobilising and Reintegrating Child Soldiers in the DRC*, Save the Children, 2003.

[1321] *Interim Report of the Group of Experts on the DRC (*S/2009/253).

[1322] "DRC: Children to be Released from Armed Forces and Groups in the East*"*, New York, Kinshasa, 21 April 2009, available from: http://www.un.org/children/conflict/english/drc-april-2009.html

DRC were cited in the Report of the Secretary-General on children and armed conflict for the seventh year running. Representatives of 62 parents' associations in Goma and Congolese organisations from eastern DRC took this opportunity to express their concern at the tragedy of the children in this conflict zone, particularly in terms of the sexual violence perpetrated against them, the attacks on schools and the fact that almost a generation of Congolese children had now missed out on an education.[1323]

725. Children in the DRC have suffered far too much and, if this situation is allowed to continue, there is a risk that a new generation will be created that has known nothing but violence, and violence as a means of conflict resolution, thus compromising the country's chances of achieving lasting peace.

[1323] Letter from parents in Eastern DRC to the Security Council, available from: www.hrw.org/en/news/2009/04/22.

CHAPTER III: ACTS OF VIOLENCE LINKED TO NATURAL RESOURCE EXPLOITATION

726. It would be impossible to produce an inventory of the most serious violations of human rights and international humanitarian law committed within the DRC between March 1993 and June 2003 without considering, however briefly, the role of natural resource exploitation in the perpetration of these crimes. In a significant number of events, the struggle between the different armed groups for control of the DRC's natural assets served as a backdrop to numerous violations directed against the civilian population. Nonetheless, while the Mapping Team's investigations in the field revealed the existence of serious violations of human rights and international humanitarian law related to natural resource exploitation, it became clear that a detailed analysis of this complex phenomenon would not be possible, due to a lack of time and expertise. It was therefore decided from the outset, as with the other thematic chapters, that time would be spent on researching specialist information and documentation in order to highlight the connection between the abuses committed by all parties to the conflict and natural resource exploitation. It should be noted that most reports and documents focusing on natural resource exploitation in Zaire and, later, the DRC are fairly recent. An awareness of this inter-connection has only developed over the last few years and, with the exception of studies conducted by some historians and economists, detailed documentation of the multiple facets and effects of this exploitation has only been available since around 2000, in response to research and campaigning work conducted by Congolese and international NGOs. The reports of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC also contributed significantly to bringing this issue to the fore.[1324] Whilst all these studies have primarily focused on an economic analysis of the issue, they have nonetheless enabled the existence of a link, indirect but very real, to be noted between the illegal or unregulated exploitation of natural resources and violations of human rights and international humanitarian law.

[1324] The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo, established following a request from the Security Council in June 2000, was critical in raising the international community's awareness of the issue of the illegal exploitation of the DRC's natural resources, particularly in terms of fuelling the armed conflict. Although it did not investigate specific incidents of human rights violations, its reports highlighted the fact that the parties responsible for some of the gravest violations of human rights and international humanitarian law during this period were motivated in large part by the scramble for natural resources. From its very first report, the Panel of Experts did not shy away from exposing the networks behind the illicit exploitation of resources, drawing tough conclusions and proposing bold recommendations. Disappointingly, despite the extensive work of the Panel of Experts and its damning conclusions, its finding were never acted upon and the abusive exploitation of natural resources documented in its reports continued almost unchanged in the years that followed. In 2004, the Panel of Experts was succeeded by a Group of Experts with a narrower mandate: its primary task was to monitor the arms embargo in force against armed groups in eastern DRC, although its secondary purpose was to investigate the natural resource trade as a source of finance for these armed groups. Like the Panel, the Group of Experts has documented the way in which the natural resource trade has enabled armed groups to survive.

727. The conclusions of these studies, coupled with the cases documented by the Mapping Teams, will be presented in this chapter. The inter-connection between natural resource exploitation and violations of human rights and international humanitarian law will be analysed from three distinct angles:

- The violations of human rights and international humanitarian law committed by the parties to the conflict in the context of the struggle to gain access to and control the richest areas of the country, along with the roads, border posts and trading centres.

- The human rights abuses committed by armed groups during their long-term occupation of an economically rich area. The regimes of terror and coercion established in these regions gave rise to a whole range of human rights abuses, ranging from the use of forced and child labour to all kinds of abuses of power, including violations of the right to life, along with sexual violence, torture and the forced displacement of civilians. In many cases, the extremely hazardous working conditions imposed on miners were in violation of their economic and social rights and the international labour standards to which the DRC is a party.

- Finally, the huge profits generated from the exploitation of natural resources fuelled and helped fund the conflicts, which were themselves a source and cause of the most serious violations of human rights and international humanitarian law.

1993- 2003: An overview

728. The DRC is home to an abundance of natural resources ranging from a multitude of minerals – including diamonds, gold, copper, cobalt, cassiterite (tin ore) and coltan – to timber, coffee and oil. This vast natural wealth has scarcely benefited the Congolese people, however, and has in contrast been the cause of numerous serious human rights abuses and violations of international humanitarian law. The issues of natural resource exploitation and human rights have been very closely linked in the DRC for many years, dating back to colonial times, and the three decades of President Mobutu Sese Seko's rule.

729. The DRC has huge economic potential: it accounts for around 17% of global production of rough diamonds, for example.[1325] The copper belt that runs through Katanga and Zambia contains 34% of the world's cobalt and 10% of the world's copper. Moreover, 60% - 80% of global coltan reserves, used in the manufacture of mobile phones, computers and other electronic equipment, can be found in North and South

[1325] See "Annual Global Summary, 2007. Production, Imports, Exports and KPC Counts", available from: https://mmsd.mms.nrcan.gc.ca/kimberleystats/publicstats.asp).

Kivu.[1326] Yet the successive governments of the last few decades have not exploited this potential to the benefit of the Congolese people. Very little of the revenue from natural resource exploitation has been ploughed back into the country to contribute to its development or to raise living standards. In 2003, the DRC ranked 167th out of 177 countries in the UN Human Development Index, with a life expectancy of no more than 43 years.[1327]

730. During Mobutu's rule, natural resource exploitation in Zaire was characterised by widespread corruption, fraud, pillaging, bad management and a lack of accountability. The regime's political/military elites put systems in place that enabled them to control and exploit the country's mineral resources, thereby amassing great personal wealth but contributing nothing to the country's sustainable development.[1328]

731. The two Congolese wars of 1996 and 1998 represented a further major setback to development, causing the destruction of a great deal of infrastructure and propagating the practice of resource pillaging inherited from Mobutu's kleptocratic regime, under the pretext of funding the war effort. Given the importance of diamonds to the country's economy, the way in which President Mobutu and, later, President Kabila managed this sector was symptomatic of the bad management and looting that took place under the country's successive governments.[1329]

732. 1996 marked an important turning point in two respects:

- With the start of the first war, natural resource exploitation became heavily militarised. Under Mobutu, the forestry and mining sectors had been primarily controlled by civilians, even though some of the profits were channelled to the military; after 1996, however, these sectors fell gradually under the control of the new national army, foreign armies and different armed groups. As a result, the mining, forestry and trading regions became increasingly militarised, leading to escalating violence against the civilian population.
- A growing number of foreign actors became directly involved in exploiting the DRC's natural resources. Rebel groups and armies from neighbouring countries all participated, some (such as Zimbabwe) with the blessing of the Congolese authorities, others (such as Uganda and Rwanda) either through the intermediary

[1326] Global Witness, *Same Old Story - A Background Study on Natural Resources in the DRC*, 2004; Le Potentiel, "Guerre économique en RDC: Global Witness appelle au boycottage du 'coltan du sang'", 18 February 2009; see also "Du sang dans nos portables", French documentary, Canal Plus, broadcast on 13 December 2007.

[1327] UNDP, *Human Development Report*. International cooperation at a crossroads: aid, trade and security in an unequal world, 2005.

[1328] For more information on the way in which Mobutu's regime exploited the country's natural resources, see for example Emmanuel Dungia, *Mobutu et l'argent du Zaïre, révélations d'un diplomate, ex-agent des services secrets*, 1993, and Philippe Madelin*, L'or des dictatures*, 1993.

[1329] See Christian Dietrich, *Hard Currency: the Criminalised Diamond Economy of the DRC and its Neighbours*, 2002.

of their Congolese partners or connections or by directly occupying a part of the country. Given the weakness and corruption of the central government, the DRC's wealth was within the grasp of any group violent and determined enough to impose its control by force.

733. The warring parties' reasons for being involved in the conflicts changed over time. Initially, in 1996, the conflict appeared to be driven primarily by political, ethnic and security considerations. During the second war, however, natural resource exploitation became increasingly attractive, not only because it enabled these groups to finance their war efforts but also because, for a large number of political/military leaders, it was a source of personal enrichment. Natural resources thus gradually became a driving force behind the war.[1330]

734. Control over these resources was established and maintained by force. This gave rise to extortion at mining sites, on the main roads and at borders, along with the imposition of formal or semi-formal systems of taxation, licences and fees, and frequent requisitioning of stockpiles of precious timber and minerals. Other more organised systems were also established, such as, for example, the creation of "front" companies and networks enabling foreign armies to exploit the county's resources in collaboration with the rebel groups they supported, without being visibly involved.[1331]

735. The increasing importance of the economic factor partly explains the shifting alliances between different armed groups throughout the conflict. The lure of money was one of the reasons why opposing groups would sometimes suddenly join ranks or why the closest allies would unexpectedly turn against each other, as in North and South Kivu, for example, and Orientale Province. Even though strategic differences and rivalries also played a part, the fighting between the Rwandan and Ugandan forces at Kisangani (described below) was perhaps the starkest illustration of this phenomenon.

736. More ironic still, opponents could become business partners while continuing to fight each other on the ground. In North and South Kivu, battlefield enemies momentarily overcame their differences for the sake of extracting maximum profits from the minerals trade. For example, in Walikale territory, businessmen linked to the RCD-Goma and the Rwandan army systematically bought minerals, in this case coltan, from ALiR/FDLR rebels, some of whom had been involved in the 1994 genocide in Rwanda, or from Mayi-

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[1330] *Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/1072); AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003.

[1331] *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357). Section III B of this report describes how the warring parties financed their war.

Mayi groups, thus helping finance their rebel activities.[1332] The Panel of Experts described this situation as a lucrative "win-win" situation for all belligerents, the only losers being the Congolese people.[1333]

737. The importance of the economic agenda in the conflicts that ravaged the DRC can be clearly seen in the battles that were waged for the control of mines or lucrative customs posts. On every occasion, civilians were either directly targeted by one or both sides or ended up caught in the crossfire. Fighting around the gold mining town of Mongbwalu in Ituri (described below) was one of the most striking examples of this phenomenon but almost all parties to the conflict were involved in similar confrontations.[1334]

A. Violations of human rights and international humanitarian law linked to the struggle for control of natural resources

738. It is no coincidence that the most serious violations of human rights and international humanitarian law were committed in the provinces of North and South Kivu, Maniema, Orientale and Katanga. These regions, rich in natural resources, came under the control of a succession of national and foreign armed groups, along with foreign armies, spurred on by the lure of these natural resources.

739. Some of these actors had far-reaching strategies aimed at occupying these areas, which they implemented by means of military operations.[1335] Others, such as some of the smaller Congolese rebel groups and the different factions into which they had splintered, were more opportunistic and seized the chances offered to them by collaborating with the highest bidder. Whatever their level of organisation, all actors inflicted serious suffering on the civilian population. The warring parties all used the same practices to seize and maintain control of the coveted territories: massacres of unarmed civilians, rape, torture, arbitrary arrests and detentions, along with forced displacements. There was widespread and systematic use of forced and child labour in the mines.

[1332] Interview with the Mapping Team, North Kivu, December 2008 and January 2009; *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146), paras. 66-69; IPIS; "Network War: An Introduction to Congo's Privatised War Economy", October 2002; AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003.

[1333] *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357).

[1334] *Reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357, S/2001/1072 and S/2002/565); IPIS, *Network War: an Introduction to Congo's Privatised War Economy*, 2002.

[1335] See *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357).

1. North Kivu, South Kivu and Maniema Provinces

740. The main minerals found in these three provinces are coltan, cassiterite and gold. While the plunder of natural resources in the first war was far less well documented than in the second, there is little doubt that the first war demonstrated to the groups involved in the conflict how easy it was to seize control of the natural resources and make vast profits from their trade.[1336] When the price of coltan rose sharply in 2000, this mineral became the most attractive of all.[1337]

741. Given the lucrative nature of illegal exploitation, the armed groups used military force and committed serious human rights abuses against civilian populations in order to maintain control of these regions. The financial issues at stake and the presence of armed men responsible for maintaining this kind of hold over resource extraction inevitably gave rise to serious human rights violations, and the cost of this plundering in terms of human life was enormous.

742. Civilians who attempted to resist the theft of their natural resources, or who did not collaborate with those in power, were subjected to attacks. Entire villages were displaced to make way for mineral or timber exploitation and armed groups engaged in massacres, sexual violence and cruel and inhuman treatment in the process.[1338] They also attacked and burned villages in order to seize coltan that had been mined artisanally by the residents.[1339]

743. The battles for Lulingu in South Kivu are a clear example. The fighting for control of Lulingu, a relatively small and isolated village in Shabunda territory, between soldiers of the National Congolese Army (ANC) (the armed wing of the RCD-G) and the Mayi-Mayi in 2000, at the height of the coltan rush, can partly be explained by a desire to

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[1336] Ibid.

[1337] Ibid, para. 9. For more information on the coltan trade in areas controlled by the RCD see IPIS, "Supporting the War Economy in the DRC: European Companies and the Coltan Trade", January 2002; for estimates of the profits made by the RCD, Rwanda and Uganda in the coltan trade, see IPIS, "European companies and the Coltan Trade, part 2", September 2002.

[1338] *Interim Report of Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/565); AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003, p. 39.

[1338] *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146), para. 93.

[1338] Interviews with the Mapping Team, South Kivu, April 2009.

[1338] Interviews with the Mapping Team, South Kivu, April 2009.

[1338] HRW, "Uganda in Eastern DRC: Fueling Political and Ethnic Strife", March 2001, p. 44.

[1338] AI, *Our brothers who help kill us: Economic exploitation* and the *Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/565); AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003, p. 39.

[1339] *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146), para. 93.

gain control of its coltan mines.[1340] At least ten clashes took place between the Mayi-Mayi and the ANC, supported by troops from the Rwandan Army (APR), each time resulting in the massacres of dozens of civilians, displacements of the civilian population and looting of their belongings.[1341] In North Kivu, in revenge for an attack on their convoy of Mayi-Mayi coltan on the road between Mangurejipa, an important mining area, and Butembo, Ugandan soldiers from the UPDF allegedly killed 36 inhabitants of the village nearest to the place of ambush.[1342]

744. Coltan traders were also the victims of murder, torture, ill-treatment and arbitrary detention.[1343] In July 2001, for example, soldiers from the ANC reportedly killed a mineral trader and twelve porters at Punia, in Maniema Province, on the orders of the local authorities, in order to seize a large cargo of coltan and gold, along with a substantial amount of cash. The victims were accused of spying for the Mayi-Mayi.[1344]

745. It would be wrong, however, to assume that the warring parties competed only for coltan and other raw materials. The Virunga (North Kivu) and Kahuzi-Biega (South Kivu) national parks were a particular magnet for rebel and military forces because of the wildlife found there, and the ivory that could be obtained from poaching elephants. The trade in "*makala*", or charcoal, the main cooking fuel used in the DRC, is worth several million dollars in Goma region alone, and was the cause of numerous clashes between armed groups present in the region and the park guards from the Congolese Institute for Nature Conservation (ICCN). In Virunga National Park alone, 87 ICCN guards were murdered between 1993 and 2003, mostly during confrontations with armed or rebel groups.[1345]

2. Orientale Province

746. With its diamond and gold mines, its vast expanses of forest with valuable timber and barely explored oil reserves, Orientale Province was the scene of numerous conflicts.

747. Under Mobutu, Zairian soldiers of the SARM[1346] could often be found around the exit to the OKIMO company's gold extraction factory at Durba, where the company's

[1340] Interviews with the Mapping Team, South Kivu, April 2009.

[1341] Interviews with the Mapping Team, South Kivu, April 2009.

[1342] HRW, "Uganda in Eastern DRC: Fueling Political and Ethnic Strife", March 2001, p. 44.

[1343] AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, April 2003, pp 32, 33, 35 and 38.

[1344] Interviews with the Mapping Team, Maniema, March 2009.

[1345] Figures provided to the Mapping Team by UNESCO on 28 May 2009; *Interim Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/565), paras. 51-52.

[1346] *Service d'actions et de renseignements militaires* (Service for Action and Military Intelligence).

directors would pay them to apprehend staff trying to steal gold.[1347] UPDF soldiers later requisitioned gold from the same company.[1348]

748. The violent battles for control of Kisangani between 1999 and 2000 and the associated violations of human rights and international humanitarian law can be explained, at least in part, by the struggle to maintain control of its economic resources. The town of Kisangani is in a region that is not only rich in diamonds and timber; being situated on a river it also forms an important trading and transport crossroads, linking eastern DRC with the rest of the country. The Rwandan and Ugandan armies and the RCD-Goma obtained significant revenue from trading diamonds in and around Kisangani. During the three wars for control of Kisangani, competition for the region's natural resources and the town's strategic importance were both factors that precipitated the fighting. In 2001, the Special Rapporteur on the situation of human rights in the DRC stated: "The cause of the conflict [was] both economic (both armies want[ed] the huge wealth of Orientale Province) and political (control of the territory)".[1349]

749. In 2001, the confrontations between soldiers from the ANC/APR and Mayi-Mayi groups in the diamond-bearing region of Masimango, south of Ubundu territory, allegedly resulted in numerous massacres of civilians, including children.[1350]

750. The conflict in Ituri between the Hema and Lendu ethnic groups - originally a dispute over land – began in 1999, but it was not until the Ugandan and Rwandan armies became involved that the violence escalated to unprecedented levels. From 2002 onwards, Ituri became the scene of some of the bloodiest events of the second war, resulting in tens of thousands of deaths.

751. The presence of gold and timber was a major factor in fuelling the conflict in Ituri and the plunder of these resources was at least as violent as it had been in North and South Kivu. In 2003, the Special Rapporteur on the situation of human rights in the DRC stated: "Despite the conflict's ethnic appearance, its root causes are of an economic nature".[1351] Some have described the competition for control of natural resources by combatant forces as "a major - if not the main - factor in the evolution and prolongation of the crisis in Ituri". [1352]

752. Although most of the human rights abuses in Ituri in 2002 and 2003 were carried out on an ethnic basis, reflecting the original tensions between Hema and Lendu, the

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[1347] Interviews with the Mapping Team, Orientale Province, January-February 2009.

[1348] Interviews with the Mapping Team, Orientale Province, January-February 2009.

[1349] *Report of the Special Rapporteur on the situation of human rights in the DRC* (E/CN.4/2001/40).

[1350] Interviews with the Mapping Team, Orientale Province, December 2008 and January 2009; Groupe justice et libération, *Massacres des populations civiles dans les villages de Masimango, Kababali et Abali*, 2001; FOCDP Memorandum to the Secretary-General, 2001.

[1351] *Interim Report of the Special Rapporteur on the situation of human rights in the DRC* (A/58/534).

[1352] AI, **"**On the precipice: The deepening human rights and humanitarian crisis in Ituri", 2003, p. 3.

economic agendas of the parties to the conflict became increasingly obvious as events unfolded. The economic and political agendas of Uganda and Rwanda gave rise to changing and contradictory alliances, along with military support for very violent rebel groups, causing massive and widespread violations of human rights and international humanitarian law.[1353] The different armed groups and militia multiplied, by splitting into different factions and through their rearmament. Other armed groups, such as the *Armée de libération du Congo*, the armed branch of the MLC, originally based in Équateur, gradually became involved in the conflict. In 2001-2002, during the violent clashes between soldiers of the RCD-National and MLC alliance with soldiers of the *Armée du peuple congolais* (the armed branch of the RCD-ML) in the context of the "Erasing the Board" campaign, numerous atrocities were committed against the civilian population and soldiers. Although the origins of this fighting lay in a context of political positioning, it must also be noted that the battles took place primarily in areas rich in raw materials or in regions providing access to such zones.[1354]

753. Events in and around the town of Mongwalu, in Ituri, the heart of the gold mining area, clearly illustrate the link between human rights abuses and the scramble for resources. Mongwalu changed hands several times in 2002 and 2003 and, when the Hema armed groups of the UPC fought the Lendu of the FNI for its control, each group allegedly carried out widespread killings of civilians along with rapes, torture, arbitrary arrests and detentions. Tens of thousands of people were forced to flee their homes.[1355]

754. As the conflict spiralled, other armed groups joined in. Their involvement was largely dictated by economic interests and the lure of the gold mines.[1356] A MONUC report thus described Mongwalu as "a town to conquer for its natural resources".[1357] Aside from the prospects of personal enrichment, the armed groups made no secret of the fact that they were using the proceeds from gold extraction to buy weapons and ammunition.[1358]

755. The gold mining town of Mabanga, in the local *collectivité* of Mambisa, Djugu territory, was also the scene of bloody clashes. In August 2002, Hema Gegere militia linked to the UPC allegedly killed several dozen "non-native" inhabitants with machetes and nail-covered sticks. They were suspected of helping the Lendu militia, who were seeking to control the region's mines and had previously committed massacres.[1359]

[1353] HRW, *Ituri. Covered in Blood.,* 2003.

[1354] MONUC, *Special report on the events in Ituri* (S/2004/573), paras. 105-112; HRW, *Ituri. Covered in Blood*, 2003, pp. 36-38; AI, **"**On the precipice: The deepening human rights and humanitarian crisis in Ituri", 2003, pp.17-19.

[1355] HRW, *Ituri. Covered in Blood*, 2003; HRW, *The Curse of Gold*, 2005.

[1356] HRW, *Ituri. Covered in Blood*, 2003, pp. 23-26. Similar trends were documented at Durba, in Haut-Uélé, see HRW, *The Curse of Gold*, 2005.

[1357] MONUC, *Special report on the events in Ituri* (S/2004/573).

[1358] HRW, *The Curse of Gold*, 2005, p. 55-56.

[1359] Interviews with the Mapping Team, Ituri, March 2009; MONUC, *Special report on the events in Ituri* (S/2004/573); HRW, *Ituri. Covered in Blood*, 2003.

756. The villages around the Kilomoto gold mines in Watsa territory of Haut-Uélé district also suffered repeated and devastating attacks. In January 2002, UPDF troops and Hema militia apparently opened fire on the inhabitants of Kobu village (Walendu Djatsi *collectivité*, in Djugu territory) in order to force the people away from the gold mines. During this incident, 35 Lendu civilians were killed.[1360] During October 2002, members of the FNI from Walendu Djatsi *collectivité* reportedly killed 28 people and abducted 23 women from the Kilomoto mining site. During these attacks, the militia mutilated numerous victims, committed large-scale looting and burnt many buildings, including the local authority's offices, schools and a hospital.[1361] In February 2003, members of the UPC coming from Mwanga and Kunda allegedly killed and raped an unknown number of civilians during attacks on villages in the areas of Ngongo Kobu, Lipri, Nyangaraye and Bambou, around Kilomoto. During the course of these attacks, the militia also destroyed infrastructure belonging to the Kilomoto mining company, including schools and hospitals.[1362] Between the end of 2002 and mid-June 2003, members of the *Forces armées du peuple congolais* (FAPC) and the FNI reportedly also killed and raped dozens of civilians around the Kilomoto gold mine.[1363] The attacks were aimed at destroying the UPC camp and chasing out the Hema who were controlling the Kilomoto mining company.[1364]

757. Whilst the FAPC did not commit massacres on the same scale as some other armed groups in Ituri, they apparently were nevertheless responsible for several particularly cruel human rights abuses, many of them directly related to the gold trade. In addition to repeated attacks on the Kilomoto mining site and surrounding area, the FAPC also reportedly killed and raped dozens of civilians at the Nizi mining site in Djugu territory and in the village of Djalusene, Mahagi territory, where they also looted and burnt numerous houses.[1365] Constantly changing sides during the Ituri conflict, the FAPC collaborated, at various times, with the RCD-ML, the UPC and the FNI, always with a view to maximising their profits from the gold trade and retaining control of the border with Uganda. It has been calculated that the border posts under FAPC control, particularly the Mahagi and Aru posts, generated some US$ 100,000 per month in taxes

[1360] Interviews with the Mapping Team, Ituri, April 2009; ASADHO, *Annual Report 2002*, March 2003, p. 28.

[1361] Interview with the Mapping Team, Ituri, April 2009; MONUC, *Special report on the events in Ituri* (S/2004/573); HRW, *Ituri. Covered in Blood*, 2003.

[1362] Ibid.

[1363] Interviews with the Mapping Team, Orientale Province, January and February 2009.

[1364] Interview with the Mapping Team, Ituri, April 2009; MONUC, *Special report on the events in Ituri* (S/2004/573); HRW, *Ituri. Covered in Blood*, 2003.

[1365] Interviews with the Mapping Team, Orientale Province, January, February and April 2009; MONUC, *Special report on the events in Ituri* (S/2004/573); HRW, *Ituri. Covered in Blood*, 2003.

for this armed group over the period 2002-2004.[1366] In Orientale Province, the national parks were also targeted for their resources, such as the Garamba National Park, for example, where the Sudanese rebels of the SPLA were involved in ivory poaching.[1367]

3. Katanga

758. Although related primarily to a political conflict between Mobutu and Tshisekedi,[1368] the persecution and forced expulsions of Kasaiens from Katanga between 1991 and 1995 clearly had an economic aspect as well. For many Katangans, it was a question of regaining control of the local mining sector, beginning with the main mining company in the province, Gécamines, which employed a large number of Kasaiens, particularly within the company's management.[1369]

B. Human rights violations related to natural resource exploitation

759. Once a strategic area had been captured or retaken, the armed group in question would engage in human rights violations. The regimes of terror and coercion established in these areas led to a wide range of violations, ranging from forced labour, child labour[1370] and the exploitation of minors to abuses of power resulting in murder, sexual violence, torture and civilian displacements.

760. In North and South Kivu, the ANC and the APR reportedly established a system of forced labour in the coltan mines, including the use of children, and made the local population abandon agriculture in favour of mining.[1371] In 2002, the Panel of Experts reported that: "The bulk of coltan exported from the eastern DRC, as much as 60 to 70 per cent, has been mined under the direct surveillance of APR mining *détachés* (…) A variety of forced labour regimes are found at sites that have been managed by APR

[1366] Sources indicate that the FAPC collected several million US dollars every week at the Mahagi and Aru customs posts, a certain percentage of which was shared with "an elite network linked to Uganda": confidential section V of the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (S/2001/357); see also Koen Vlassenroot and Tim Raeymakers, "Le conflit en Ituri", in *L'Afrique des Grands Lacs. Annuaire 2002-2003.*

[1367] Démocratie et civisme pour le développement intégral (DECIDI), "Génocide au Parc national de Garamba", 12 August 2004.

[1368] Étienne Tshisekedi led the largest opposition party, the *Union pour la démocratie et le progrès social* (UDPS).

[1369] See the passage on Shaba Province (Katanga) in Section I of the report. Interviews with the Mapping Team, Katanga, January 2009, Kasai Oriental and Occidental March-April 2009; AZADHO, *Périodique des droits de l'homme,* No. 5, May-June 1993; HRW Africa, "Zaïre inciting hatred", June 1993; La voix du Centre des droits de l'homme et du droit humanitaire (CDH), No. 1, January-February-March 1994; Donatien Dibwe Dia Mwembu and Marcel Ngandu Mutombo, *Vivre ensemble au Katanga*, L'Harmattan, 2005, pp. 378-379.

[1370] The DRC has ratified the Convention concerning Forced or Compulsory Labour and the Convention on the Worst Forms of Child Labour in particular.

[1371] Interviews with the Mapping Team, North Kivu, December 2008 and January 2009; *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/1072 et S/2002/1146); AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003, p. 36.

mining *détachés*, some for coltan collection, some for transport, others for domestic services".[1372] According to numerous sources, they also made wide use of prisoners from Rwanda, particularly in the mines around Numbi, a village in Kalehe territory, South Kivu. [1373]

761. MLC troops allegedly also used forced labour and violence against artisanal miners who refused to work for them, for example in the diamond mines in Orientale Province.[1374] In Ituri, the UPC and the FNI are also said to have used forced labour in the gold mines during 2002 and 2003,[1375] including children, particularly in mines controlled by the UPC.[1376] Child labour, under duress or because of extreme poverty, was also widespread in the Katanga mines,[1377] in Kasai Occidental[1378] and in North Kivu,[1379] where thousands of children were put to work, some no more than seven or eight years old.

762. The prevailing violence around the mining sites was also a breeding ground for sexual violence. For example, in South Kivu, in the 1990s, members of the Forces armées zaïroises (FAZ) allegedly set up barriers close to the mines and raped women as they passed, under the pretext of searching for minerals in their genitals.[1380] Women suspected of smuggling were raped in revenge. In March 2002, soldiers from the ANC/APR reportedly raped two women in Nyeme village, Katako-Kombe territory, Kasai Occidental, accusing them of collaborating with a pastor who was in dispute with the heads of the ANC/APR over a diamond trafficking issue.[1381]

[1372] *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146) para. 23.

[1373] Interview with the Mapping Team, South Kivu, April 2009; *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357, para. 60 and S/2002/1146, para. 75); AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003, p. 35; Carina Tertsakian, *Le Château: the Lives of Prisoners in Rwanda*, Arves Books, 2008, p. 232.

[1374] AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003, p. 39.

[1375] HRW, *Ituri. Covered in Blood*, 2003, p. 26; HRW, *The Curse of Gold*, 2005, pp. 33-34.

[1376] MONUC, *Special report on the events in Ituri* (S/2004/573), para. 155.

[1377] UNICEF and the WFP estimate the number of children working in the mining sector in Katanga at around 50,000, see Groupe One, *Le secteur minier artisanal au Katanga. Reconversion et lutte contre le travail des enfants*, 2007. See also Report of the Committee on the Rights of the Child, Concluding Observations: DRC (CRC/C/COD/CO/2), para. 80; *Congo River: Au-delà des ténèbres*, Documentary by Thierry Michel, 2006.

[1378] In 2008, Caritas-Développement Kananga estimated that almost 6,000 children were working in the mining sector in the town of Tshikapa alone. See Courrier International, RDC: *6 000 enfants travailleurs des mines en danger à Tshikapa*, 31 January 2008; see http://afrikarabia2.blogs.courrierinternational.com/archive/2008/01/31/rdc-6-000-enfants-travailleurs-des-mines-en-danger-a-tshikap.html.

[1379] The director of a coltan mine in Numbi, North Kivu, told the Pole Institute that he accepted children from 12 years of age. Pole Institute, *The Coltan Phenomenon: How a Rare Mineral has Changed the Life of the Population of War-Torn North-Kivu Province in the East of the DRC*, 2002.

[1380] Interviews with the Mapping Team, South Kivu, April 2009.

[1381] Interviews with the Mapping Team, Kasai Oriental, May 2009.

763. The extremely dangerous working conditions to which the miners were subjected and the absence of any adequate regulations represented violations of their economic and social rights[1382] and of the international labour standards ratified by the DRC.

764. Much of the mining in the DRC takes place in the informal sector, carried out by more than a million artisanal miners. This accounts for the vast majority of the DRC's mineral production, as much as 90% according to some estimates.[1383] The artisanal mining sector is unregulated. Artisanal miners are thus extremely vulnerable to exploitation and abuse, and they work in very difficult and dangerous conditions.[1384] It has been estimated that several hundred miners died between 1993 and 2003, particularly following subsidence. The victims often included young children.[1385] According to experts, several thousand people are likely to have been exposed to radiation in the DRC's uranium mines.[1386]

Specific cases of human rights violations committed in the diamond "polygone" of the Minière des Bakwanga (MIBA) company

765. The "*polygone*", an area located in the Minière des Bakwanga (MIBA) company's diamond mining concession in Kasai Oriental, was the scene of repeated violent clashes between artisanal miners and law enforcement officials. Hundreds of civilians, many of them young, were trying to make a living by illegally entering the MIBA concession in search of diamonds. In response, MIBA and the provincial authorities called in groups of security guards known as "*Blondos*" to back up the mine police.[1387] The Forces armées congolaises (FAC), along with Zimbabwean soldiers, were also present on the MIBA concession. The situation of the mining *polygone* rapidly degenerated into anarchy due to competition between the different groups supposed to be protecting the concession and due to the presence among the illegal miners of certain armed elements known as "suicidals". Between 2001 and 2003, MIBA guards apparently summarily executed or wounded several hundred civilians who had illegally entered the mining *polygone*. The

[1382] See articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

[1383] World Bank, **"**DRC: Growth with Governance in the Mining Sector", May 2008.

[1384] A number of people questioned by the Pole Institute about coltan mines in North Kivu in 2000 and 2001 gave the risk of landslide as one of their main concerns. See Pole Institute, **"**The Coltan Phenomenon: How a Rare Mineral has Changed the Life of the Population of War-Torn North-Kivu Province in the East of the DRC"**,** 2002; Global Witness reports, **"**Digging in corruption: fraud, abuse and exploitation in Katanga's copper and cobalt mines", July 2006, and **"**Rush and Ruin: the Devastating Mineral Trade in Southern Katanga, DRC", September 2004.

[1385] AI indicates that a 9-year-old boy was one of five victims buried alive in the diamond concession of the Mbuji-Mayi *polygone* and that members of MIBA bulldozed over the holes without checking if anyone was down the mine at the time. See AI, **"**Making a Killing: The Diamond Trade in Government-Controlled DRC", 2002.

[1386] IRIN, "RDC: Des milliers de personnes exposées à des risques d'irradiation, selon des experts", 21 July 2004.

[1387] In the rest of this chapter, the term "MIBA guards" will be used to refer both to the armed mine police and the "*Blondos*". Officially, the *Blondos* were not armed but, in practice, they often fired at illegal miners.

victims were shot or buried alive in the holes where they were hiding. The MIBA guards also held an unknown number of illegal miners, including children, in cells located on the concession, under life-threatening conditions. A number of massacres were notified during 2001 but the most infamous incident was that of 21 February 2003. On that day, MIBA guards reportedly surprised some thirty illegal miners and opened fire on them. Some of the miners managed to escape but others hid in an underground gallery. The MIBA guards then blocked the entrance to the gallery with stones and metal bars. On 22 February, nine bodies were brought out. Eight of the people had died from suffocation and one from gunshot wounds. On 27 February, the Minister for Human Rights ordered an inquiry and referred the matter to the Prosecutor of the Military Order Court. The MIBA guards pleaded legitimate defence, arguing that the miners had been armed. The case was eventually dropped on the grounds that the victims had died in a landslide. The human rights violations thus continued and, in June 2003 for example, MIBA guards reportedly killed an unknown number of illegal miners under similar circumstances.[1388]

C. Natural resource exploitation as a factor in the prolongation of the conflict

766. The profits from natural resource exploitation were such that, within a short space of time, the war had become self-financing. All the parties to the conflict, including the Congolese Government, raised significant amounts through the natural resource trade, using a variety of means, including formal or semi-formal systems of taxation, licences and fees; extortion at mining sites, roadblocks and borders; and requisitioning of stockpiles of timber and minerals. There were also other more organised systems such as the arrangements set up between the Congolese Government and the parastatals, the creation of front companies and networks set up by the Rwandan and Ugandan armies in collaboration with the RCD and other rebel groups they supported. All these arrangements were documented, in particular by the Panel, and later Group, of Experts[1389] and will not be expanded upon in this chapter, which is based on the conclusions of these inquiries. The population benefited very little from this natural resource exploitation and the revenues from trafficking of all kinds of goods were used to sustain the war effort or for the personal enrichment of all parties to the conflict.

[1388] Interviews with the Mapping Team, Kasai Oriental, April-May 2009; AI, *Making a Killing. The Diamond Trade in Government-Controlled DRC*, 2002; Press release from human rights NGOs in Kasai Oriental Province, 4 March 2003; Centre d'étude et de formation populaire pour les droits de l'homme (CEFOP/DH), *Rapport sur les tueries au polygone minier de la MIBA*, March 2003; FIDH, "Note de situation RDC: le far-west minier de Mbuji-Mayi n'a pas besoin d'un nouvel étouffement!", March 2003; RENADHOC, "Panorama de la situation des droits de l'homme en RDC", Annual Report 2003, March 2004, pp. 15-16.

[1389] *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357). Section III B of the report explains how the different parties to the conflict financed the war; IPIS, "Network War: An Introduction to Congo's Privatised War Economy", October 2002.

1. Financing the conflict through natural resource exploitation

767. In 2002, the Panel of Experts came to the conclusion that all coltan mines in the east of the DRC were benefiting either a rebel group or foreign armies.[1390]

768. Ample evidence indicates that Rwanda and Uganda were financing their military expenditure with the profits from natural resource exploitation in the DRC. According to some estimates, the income Rwanda received provided 80% of all the APR's expenditure in 1999.[1391] The Ugandan army also enjoyed a considerably larger budget due to profits from the DRC's wealth, particularly in the districts of Ituri and Haut-Uélé, from 1998 to 2002.[1392] A large part of the gold produced in Ituri was exported through Uganda, then re-exported as if it had been produced domestically – a similar model to that used for diamond exports.[1393]

769. The MLC also financed a significant proportion of its war efforts through taxes on exports of tea, coffee, timber and gold coming from Équateur and Orientale provinces.[1394] Like other armed groups, and like the Congolese Government, the MLC granted mining concessions on the territories it controlled in exchange for military equipment and other forms of support, primarily from Uganda.[1395] Diamonds, which could be easily smuggled to neighbouring countries such as the Central African Republic, were also an important source of finance for the MLC. [1396]

770. Also in Équateur, soldiers from Chad's national army requisitioned stocks of coffee, particularly in Gemena, and sold them on.[1397]

[1390] *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146), para. 80.

[1391] *Reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146, paras. 70-71 and S/2001/357, para. 127); AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003, p 12; Global Witness, "Same Old Story – A Background Study on Natural Resources in the DRC", June 2004, p 21.

[1392] *Reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357, paras. 110-121 and 180 and S/2002/1146, para. 122).

[1393] Interviews with the Mapping Team, Orientale Province, January-February 2009; HRW, *Ituri. Covered in Blood*, 2003, p. 12-13; HRW, *The Curse of Gold*, 2005, p. 105-111.

[1394] *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357), par. 13; Global Witness, "Same Old Story – A Background Study on Natural Resources in the DRC", June 2004, p. 36; ICG, "Scramble for the Congo: Anatomy of an Ugly War", December 2000, pp. 36-35.

[1395] *Reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357, paras. 122-123 and S/2002/565).

[1396] For more information on relations between the MLC and the RCA with regard to diamond trafficking, see Christian Dietrich, *Hard Currency: The Criminalised Diamond Economy of the DRC and its Neighbours*, 2002, pp. 21-22 and 41.

[1397] Interviews with the Mapping Team, Équateur, April 2009.

2. Contributions of State-owned companies to Kabila's war effort

771 State-owned companies, such as MIBA, Gécamines, the gold mining company OKIMO and oil companies, made direct financial contributions to the Government's war effort.[1398] Income from the sale of diamonds was also used to buy arms for the Congolese army and pay the salaries of Zimbabwean army troops.[1399]

3. Paying back the war debt

772. The military intervention and political support of certain countries of the Southern African Development Community (SADC) [Zimbabwe, Angola and Namibia] was critical to President Laurent-Désiré Kabila during the second war. In order to repay his debt to Zimbabwe, Kabila granted President Robert Mugabe's Government the rights to significant diamond, copper, cobalt and timber concessions in the DRC. In 2001, the Panel of Experts described Zimbabwe as the most active government ally in terms of the exploitation of natural resources.[1400] But it was not only Zimbabwe that was handsomely repaid for its military support. Kabila reportedly also rewarded his other allies, Angola and Namibia, with favourable diamond and oil deals.[1401]

4. Illegal or unfavourable contracts

773. The illicit exploitation of natural resources in the DRC and the accompanying serious violations of human rights and international humanitarian law could not have taken place on such a large scale had there not been customers willing to trade in these resources. Indeed, there was never any shortage of foreign buyers willing to handle these goods, despite the existence of reports denouncing the serious violations of international law committed by their trading and financial partners. Buyers included not only traders in the DRC and neighbouring countries but also private companies registered in other countries, including multinationals.[1402]

[1398] *Reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357, para. 153 and S/2002/1146, para. 55); AI, "Making a Killing: The Diamond Trade in Government-controlled DRC", 22 October 2002.

[1399] *Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/1072), paras. 66-69; *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2002/1146), para. 54.

[1400] *Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/1072), para. 14.

[1401] ICG, *Scramble for the Congo: Anatomy of an Ugly War*, 2000, p. 57; Christian Dietrich, *Hard Currency: The Criminalized Diamond Economy of the DRC and its Neighbours*, 2002, pp. 42-44.

[1402] See IPIS, *Supporting the War Economy in the DRC: European Companies and the Coltan Trade*, 2002; Global Witness, *Undermining Peace. Tin: the Explosive Trade in Cassiterite in Eastern DRC*, 2005, p. 23, and Global Witness, "Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises", 20 February 2007.

774. When the AFDL/APR launched its rebellion in 1996, one of its priorities was to take over and, in many cases, cancel or modify, mining contracts that had been signed by President Mobutu. During the AFDL's advance on Kinshasa in 1996, before he had even formed a government, Kabila was allocating mining concessions to private companies.[1403] Many of these transactions were conducted illegally. The consequences for the country as a whole were serious, as millions of dollars were tied up in these unfavourable contracts for several decades.

775. During the second war, foreign companies rarely controlled the source of the minerals or other goods they were purchasing, and sometimes paid the armed groups directly.[1404] In a number of cases, foreign or multinational companies were directly involved in negotiations with perpetrators of serious human rights abuses, paying armed groups or providing them with facilities or logistics in order to exploit natural resources.[1405]

5. Links with the arms trade

776. Trafficking of natural resources in the DRC, particularly during the conflict, was closely intertwined with other criminal networks, in particular those involved in arms trafficking. The Panel of Experts and research institutes have documented some of these links and identified key arms traffickers and trafficking routes.[1406] The Panel of Experts concluded that: "It is very difficult to stem or halt illegal exploitation without also tackling the issue of arms trafficking" and highlighted the interconnection between these two activities, the conflict, insecurity and impunity.[1407] Connections with these networks enabled the perpetrators of human rights abuses in the DRC to smuggle natural resources out of the country without any difficulty, using the profits to purchase arms and commit yet further human rights abuses. The arms trafficking networks in turn used the same

[1403] IRIN "Emergency Update No. 151 on the Great Lakes", 16 April 1997; For more information on Kabila's allocation of concessions to private companies, see *Report of the Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357); Global Witness, *Same Old Story - A Background Study on Natural Resources in the DRC*, 2004; Dena Montague, "Stolen Goods: Coltan and Conflict in the DRC", SAIS Review, 2002, pp. 108-111. See also Associated Press, "Angry Businessmen Side with Congo's Rebels", 14 September 1998; *The Globe and Mail*, "Barrick, Anglo Joint Ventures South African Conglomerate to Manage Barrick's African Mining and Exploration Projects", 11 May 1998.

[1404] *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/357), paras. 47-54; HRW, *The Curse of Gold*, 2005.

[1405] Greenpeace International, "Carving up the Congo", April 2007; Global Witness, *Same Old Story – A Background Study on Natural Resources in the DRC*, 2004; HRW, *The Curse of Gold*, 2005.

[1406] See for example IPIS, *Network War: an Introduction to Congo's Privatised War Economy*, 2002.

[1407] *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/1072), paras. 46-47.

transport network; certain airline companies were known to fly minerals out of, and arms back into, the DRC.[1408]

Conclusion

777. The impunity of crimes committed in the context of natural resource exploitation in the DRC reflects the broader absence of justice for violations of human rights and international humanitarian law throughout the country.

778. The Kilwa case demonstrated the difficulty in proving the legal responsibility of private companies in the perpetration of human rights abuses and violations of international humanitarian law, even when they are supplying arms or logistical support to armed groups. This case also showed that political interference[1409] and a lack of impartiality are all the more striking when economic interests are at stake.[1410] In this incident in 2004, at least 73 people were killed apparently by the Congolese army (FARDC) in Kilwa, a town in Katanga that had fallen into the hands of a rebel group.[1411] An Australian-Canadian mining company was accused of supplying the army with logistics and transport during its military operation. In 2007, in the first case of its kind, nine Congolese soldiers and three expatriate employees of the mining company were charged with war crimes and complicity in war crimes, respectively, in connection with these events. The case could have set an important precedent in terms of corporate accountability. Instead, all the defendants were acquitted of the charges relating to the events in Kilwa, in a trial by a military court that failed to meet international standards of fairness. [1412]

779. In a break with the general climate of impunity for crimes committed in this context, in December 2005, the International Court of Justice pronounced its judgement on a case brought against Uganda by the Government of the DRC. The case included numerous accusations relating to the conduct of Ugandan troops in eastern DRC, including the illegal exploitation of natural resources. The Court found that Uganda had "by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the DRC and by

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[1408] IPIS, *Network War: an Introduction to Congo's Privatised War Economy*, 2002; IPIS, *Supporting the War Economy in the DRC: European Companies and the Coltan Trade*, 2002. Local airlines operating in North and South Kivu reportedly flew minerals out of and arms back into the country; see AI, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east*, 2003.

[1409] MONUC Human Rights Division, "The human rights situation in the DRC during the period of July to December 2006", 8 February 2007.

[1410] For a more detailed analysis of the Kilwa case and legal practice in the DRC, see Section III.

[1411] MONUC, *Report on the conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa (Province of Katanga) on 15 October 2004*, paras. 24 to 29.

[1412] OHCHR, "High Commissioner for Human Rights concerned at Kilwa military trial in the DRC", 4 July 2007; Joint Report by Global Witness, RAID, ACIDH and ASADHO/KATANGA, "Kilwa Trial: a Denial of Justice", 17 July 2007, available from: www.globalwitness.org/media_library_detail.php/560/fr/le_process_de_kilwa.

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 DRC under international law." Although the Court also found that Uganda had violated its obligations under international human rights law and international humanitarian law "by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population [...] incited ethnic conflict and failed to take measures to put an end to such conflict", it did not make the connection between natural resource exploitation and the perpetration of these abuses. The Court concluded that Uganda was under an obligation to provide reparation to the DRC.[1413] The DRC government submitted a similar case to the ICJ against Rwanda but the Court ruled that it did not have the jurisdiction to hear the case.[1414]

780. The abundance of natural resources in the DRC and the absence of regulation and responsibility in this sector have created a particular dynamic that has clearly contributed directly to widespread violations of human rights and international humanitarian law. In its final report in October 2003, the Panel of Experts stated: "Illegal exploitation remains one of the main sources of funding for groups involved in perpetuating conflict".[1415] Its successor, the Group of Experts, reached a similar conclusion concerning the period 2004 to 2008, illustrating how the trade in natural resources still underpins some of the most serious abuses in eastern DRC.[1416]

781. It must be noted, however, that most of the reports published on this issue have focused primarily on economic policy, without dwelling on the issue of human rights or demonstrating the inter-connection between these two issues.

782. The mandate of the Mapping Exercise prevents this issue from being considered beyond this chapter and there is thus a need for a detailed analysis of the connection between natural resource exploitation and the perpetration of these abuses.

[1413] ICJ, "Armed activities on the territory of the Congo" (*DRC* v. *Uganda*), 19 December 2005.

[1414] ICJ Judgment, "Armed Activities on the Territory of the Congo (New Application: 2002) [*DRC* v. *Rwanda*]", Jurisdiction of the Court and Admissibility of the Application, 3 February 2006. The application could not be entertained by the Court as Rwanda challenged its jurisdiction, and its consent was necessary for the Court to consider the case.

[1415] *Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC* (S/2001/1072), para. 44.

[1416] See the Group of Experts' reports published between 2004 and 2008.

SECTION III. ASSESSMENT OF THE JUSTICE SYSTEM IN THE DRC

783. The first phase to "conduct a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003" being completed, the next stage in the Mapping Exercise's Terms of Reference is to "assess the existing capacities within the national justice system to deal with such human rights violations that may be uncovered". The aim is not to make an exhaustive evaluation of the justice system in the DRC[1417] but rather to analyse the extent to which the national justice system can deal adequately with the serious crimes described in the Sections I and II in order to begin to combat the problem of impunity.

784. This assessment of the justice system looks particularly at the **current capacity** of the national courts and tribunals to deal with large-scale crimes committed in the DRC in the context of an internal or international armed conflict or in the context of a widespread or systematic attack. This assessment will therefore first examine the legal framework for crimes committed between March 1993 and June 2003 in order to establish the law applicable to those crimes, the recognised legal guarantees and the competent courts. It will take into account both the DRC's obligations to punish these crimes under international law and the content of applicable domestic law. It will then also examine Congolese case law in relation to war crimes and crimes against humanity in order to gain a better appreciation of the challenges and the legal and procedural obstacles that characterise the jurisdictional context of criminal proceedings in the DRC. It will thus be possible to draw conclusions as to the actual capacity of the domestic justice system to address serious violations of human rights and international humanitarian law committed in the DRC.

[1417] Among the reports assessing the DRC's judicial system, see Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Mission to the DRC* (A/HRC/8/4/Add.2); Mid-term evaluation of the REJUSCO Programme, Final report, 19 March 2009 (the mission responsible for auditing the judicial system was the result of a European Commission initiative jointly with Belgium, France, the United Kingdom, MONUC, UNDP and the OHCHR); Joint Multi-Donor Mission, "Audit organisationnel du secteur de la justice en RDC, Rapport d'état des lieux", May 2004, p. 7. See also, *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (A/HRC/10/59).

CHAPTER I. LEGAL FRAMEWORK APPLICABLE TO CRIMES UNDER INTERNATIONAL LAW COMMITTED IN THE DRC

785. In order to identify the body of law to be applied by the domestic courts when prosecuting and judging war crimes, crimes against humanity and the crime of genocide, an analysis of the legal framework is necessary. This will focus initially on the DRC's binding international obligations. It will then consider the substantive law provisions in force throughout the period in question, namely 1 March 1993 to 30 June 2003, particularly in terms of the definitions of these crimes under international law contained within the different legal codes applicable in the DRC, both international and domestic. Lastly, the analysis will focus on jurisdictional and procedural law in order to identify the fundamental legal guarantees recognised by the different legal instruments in force in the DRC and the Congolese courts with jurisdiction to try war crimes, crimes against humanity and the crime of genocide.

786. In order to establish the rules of law applicable in the DRC, the hierarchy of sources of law laid down in Articles 153, 213, 214 and 215 of the February 2006 Constitution of the DRC must be considered. Indent 4 of Article 153 of the Constitution stipulates that, "The courts and tribunals, both civil and military, shall apply duly ratified international treaties, laws and regulatory acts, provided they are in accordance with the laws and with custom, provided this is not contrary to public order or good morals". Article 215 of the Constitution clearly sets out the supremacy of norms resulting from international treaties and agreements in these terms, "Duly concluded international treaties and agreements shall have, following publication, higher authority than laws, provided each treaty or agreement is applied by the other party".[1418] These constitutional provisions are in line with the principle of monism[1419] that is characteristic of the

[1418] The clause "provided that each treaty or agreement is applied by the other party" contained in Article 215 of the Constitution is not applicable either to international humanitarian law agreements or human rights conventions as these are multilateral treaties the commitments of which cannot be subject to reciprocity clauses. For example, the Geneva Conventions expressly provide that the parties undertake to respect and ensure respect for international humanitarian law, even in the absence of reciprocity. It is clear that this phrase therefore refers only to the provisions of bilateral treaties.

[1419] In a monistic system, the legal order comprises an integral body of laws without distinction between national and international law. Ratified treaties are incorporated directly into the domestic order without the need for any law of transposition. The provisions of treaties are automatically incorporated into the Congolese domestic legal order once published in the Official Bulletin. In a dualistic system, the national and international orders form two distinct legal spheres. In this system, a treaty's contents must be transposed into the domestic order by means of a law.

Congolese legal order.[1420] Treaties are thus incorporated into the Congolese domestic legal order once published in the Official Bulletin.

A. The DRC's binding international obligations

787. In order to determine the legal framework that existed during the period considered by the Mapping Team, the applicable legal norms that were already in force for war crimes and crimes against humanity over the period 1993 to 2003 need to be considered. It is useful to distinguish between obligations arising from international laws and those arising from domestic laws. In terms of the DRC's international obligations, the two main systems of international law applicable between 1993 and 2003 (and which remain applicable today) were international human rights law and international humanitarian law. These two systems, complementary yet distinct, have the shared objective of protecting life and human dignity. These two corpuses lay down the essential rules for protecting the right to life and the physical and moral integrity of persons, along with fundamental legal guarantees, which will be considered later. The main distinction is in their field of application: international human rights law provides constant protection whilst international humanitarian law is applicable only during periods of armed conflict. The DRC is also bound by customary rules of international humanitarian law, including those covering internal armed conflict. Violations of these can, in some cases, constitute a crime under international law. It should also be noted that, during the period in question, the DRC signed three peace agreements that have the status of international treaties, namely the Lusaka (1999),[1421] Pretoria (2002)[1422] and Luanda (2002)[1423] Agreements.

1. Obligations under international human rights law

788. It should be noted that all the country's constitutions since independence have more or less fully incorporated the human rights norms resulting from the international instruments to which the DRC is a party. Between 1965 and 1990, Zaire acceded to/ratified most of the international human rights conventions.

[1420] The primacy of treaties over domestic laws was anticipated in previous constitutions through a standard clause that has been present in all of the country's constitutions since independence. See Article 9 of the Independence Constitution adopted on 1 August 1964; Article 68 of the Constitution of 24 June 1967; Article 109 of Law No. 90-002 of 5 July 1990 revising a number of constitutional provisions; the two "transitional" constitutions. Article 112 of the Constitutional Act for the Transition of the Republic of Zaire (1994-1997), in the *Official Bulletin of the Republic of Zaire*, thirty-fifth year, special issue, April 1994; Article 193 of the Transitional Constitution of 1 April 2003. This enables one to conclude that the country's legal system has always been monistic.

[1421] The Lusaka ceasefire agreement, signed on 10 July 199 by Angola, Namibia, Uganda, the DRC, Rwanda and Zimbabwe. South Africa, the OAU and the UN signed as witnesses. In August 1999, two rebel groups, the MLC and the RCD, added their signatures. For the text of the agreement, S/1999/815, annex.

[1422] Peace agreement between the governments of the DRC and Rwanda on the withdrawal of Rwandan troops from the DRC's territory and the dismantling of the forces of the ex-FAR and Interahamwe in the DRC, signed in Pretoria on 30 July 2002. For the text of the agreement, see S/2002/914, annex.

[1423] Agreement between the DRC and Uganda, signed in Luanda on 6 September 2002, available from: www.droitcongolais.info/files/0426_accord_du_6_septembre_2002_rdc_ouganda_r.pdf.

789. The main human rights conventions ratified by the DRC and directly applicable in domestic law are given in the following table:

Human Rights Convention or Treaty	**Ratification/ Accession**
International Covenant on Civil and Political Rights	01-11-1976
Optional Protocol to the International Covenant on Civil and Political Rights	01-11-1976
International Covenant on Economic, Social and Cultural Rights	01-11-1976
Convention on the Rights of the Child	27-09-1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	11-11-2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	11-11-2001
Convention on the Elimination of All Forms of Discrimination against Women	17-10-1986
Convention relating to the Status of Refugees	07-07-1965
Protocol relating to the Status of Refugees	04-10-1967
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	18-03-1996
International Convention on the Suppression and Punishment of the Crime of Apartheid	11-07-1978
International Convention on the Elimination of All Forms of Racial Discrimination	21-08-1976
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	31-05-1972
OAU Convention governing the specific aspects of refugee problems in Africa	20-06-1974
African Charter on Human and Peoples' Rights	20-07-1987
Ouagadougou Protocol creating an African Court on Human and Peoples' Rights, June 1998	28-03-2001
African Charter on the Rights and Welfare of the Child	29-03-2001

790. By way of summary, the provisions of treaties applicable in the DRC and which are of relevance to the serious human rights violations committed between 1993 and 2003 include, in particular, the following fundamental rights:

- **The right to life**: Article 6 of the International Covenant on Civil and Political Rights, Article 4 of the African Charter on Human and Peoples' Rights.
- **The right to physical integrity:** Article 4 of the African Charter on Human and Peoples' Rights.
- **The right to liberty and security of the person:** Article 9 of the International Covenant on Civil and Political Rights, Article 6 of the African Charter on Human and Peoples' Rights.

- **The right to freedom from torture or cruel, inhuman or degrading punishment or treatment:** Article 7 of the International Covenant on Civil and Political Rights, Article 5 of the African Charter on Human and Peoples' Rights.
- **The right to property**: Article 14 of the African Charter on Human and Peoples' Rights.

791. Although Article 4 of the International Covenant on Civil and Political Rights anticipates that States may take measures derogating from their obligations under the Covenant in officially proclaimed times of public emergency that threaten the life of the nation, such measures must not be inconsistent with their other obligations under international law and must not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin. Moreover, these measures must not allow for any derogation from Articles 6 (right to life), 7 (prohibition on torture), 8 (prohibition on slavery), 11 (ban on imprisonment through inability to fulfil a contractual obligation), 15 (no penalty without law), 16 (right to legal status) and 18 (freedom of thought, conscience and religion).

2. Obligations under international humanitarian law

792. The rules of international humanitarian law applicable to the DRC are grounded in the international treaties of international humanitarian law and in customary international humanitarian law. The main legal instruments governing violations of international humanitarian law are the 1949 Geneva Conventions, almost universally accepted given their ratification by virtually all States,[1424] their two additional Protocols from 1977,[1425] the Hague Conventions of 1907 and 1954 and the 1948 Convention for the Prevention and Punishment of the Crime of Genocide. Although the 1998 Rome Statute of the International Criminal Court only came into force in July 2003, it is accepted that most of its criminal provisions did reflect, as of 17 July 1998 (the date it was signed by 120 States), the current state of customary international law as gradually affirmed since the 1949 Geneva Conventions. This is the first treaty to lay down rules of international

[1424] In fact, 198 States ratified the four Geneva Conventions of 1949 (1 – Geneva Convention for the amelioration of the wounded and sick in armed forces in the field, 2 - Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, 3 - Convention relative to the treatment of prisoners of war, 4 - Convention relative to the protection of civilian persons in time of war); ICRC information as of 24 February 2009, available from: www.icrc.org/IHL.

[1425] 168 States have ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and 164 States have ratified Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); ICRC information as of 24 February 2009, available from: www.icrc.org/IHL.

criminal law, giving shape to and codifying already existing rules of international customary humanitarian law.[1426]

793. The main humanitarian law conventions ratified by the DRC and directly applicable within the Congolese legal order are as follows:

International Humanitarian Law Convention or Treaty	**Ratification/ Accession**
The 1949 Geneva Conventions on the protection of victims of armed conflicts	24-02-1961
Additional Protocol I and Declaration in accordance with article 90 of Additional Protocol I	03-06-1982 / 12-12-2002
Additional Protocol II (1977) to the four Geneva Conventions of 1949	12-12- 2002
The Hague Convention of 1954	18-04-1961
Additional Protocol to the Hague Convention of 1954 (Protection of cultural property in the event of armed conflict)	03-06-1982
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	11-11-2001
Convention on the Prevention and Punishment of the Crime of Genocide	31-05-1962
Rome Statute of the International Criminal Court (signed on 8 September 2000)	11-04-2002

794. In addition to the international conventions to which it is party, the DRC is also bound by customary rules of international humanitarian law. This was emphasised particularly by the ICJ in its ruling of 19 December 2005 in a case relating to armed activities on the territory of the DRC. In this ruling, the Court held that although the DRC (and Uganda) were not parties to certain instruments relating to the international law of armed conflicts, these instruments were nonetheless applicable and binding upon the two States as rules of customary international law.

795. It is also important to note that Common Article 3 of the Geneva Conventions summarises the main customary rules of international humanitarian law that are binding upon all States, as well as any insurgent group that has attained some measure of organised structure, both during an internal or an international conflict.[1427]

[1426] As of 1 June 2008, 108 States had ratified the Rome Statute of the ICC (A/CONF.183/9). It was adopted on 17 June 1998 by 210 signatory States. It came into force on 1 July 2002. It is available from www.icc-cpi.int. The DRC ratified the Rome Statute following the adoption of Decree Law No. 003/2002 of 30 March 2002 authorising ratification of the Rome Statute on 17 July 1998. With regard to its publication, the Rome Statute of the ICC was published in the Official Bulletin of the DRC on 5 December 2002, nearly eight months after its ratification (Special issue: "International and regional human rights instruments ratified by the DRC").

[1427] Darfur Report, para. 157. ICJ Judgment *Nicaragua (substance)* [1986], para. 218.

796. Recent developments in international humanitarian law have demonstrated that the protections and fundamental guarantees formerly reserved solely for international conflicts are now also applicable to internal conflicts as customary rules of international humanitarian law.[1428]

797. The establishment of different international tribunals for the former Yugoslavia, Rwanda and Sierra Leone also considerably improved international humanitarian law by encouraging application of their basic rules - which draw on "elementary considerations of humanity" - to conflicts of any kind. The Security Council's adoption of the Statute of the International Tribunal for Rwanda in 1994 enabled violations of Common Article 3 of the Geneva Conventions and Additional Protocol II to be criminalised.[1429] In its first judgment in 1995, the Appeal Chamber of the ICTY held: "That the main body of international humanitarian law also applied to internal conflicts as a matter of customary law, and that in addition serious violations of such rules constitute war crimes".[1430]

798. The adoption of the Rome Statute of the ICC in 1998 was to confirm this trend and codify two important customary rules of international humanitarian law to the effect that:

a) Internal conflicts are now subject to a set of general rules of international humanitarian law;
b) Serious violations of these rules constitute crimes under international law.

799. In terms of identifying the content of rules of customary international law, it is important to consider the comprehensive study published in 2005 by the ICRC which took over 10 years to be completed. This study establishes the existence of 161 customary rules of international humanitarian law applicable to international and non-international armed conflicts.[1431]

800. The relevant provisions of international humanitarian law, conventional or customary, applicable to the DRC in terms of the serious violations described in Section I of this report, and which can be defined as war crimes, crimes against humanity or genocide, can be found in the following paragraphs. These consider the applicable law and fundamental guarantees in terms of due and fair process according to domestic Congolese legislation. It is important to recall that international laws prevail over domestic ones by virtue of Article 215 of the 2006 Constitution. Should there be any conflict between the provisions of domestic law and those of international law,

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[1428] Darfur Report, paras. 156 to 167.
[1429] See Resolution 955 (1994) of the Security Council dated 8 November 1994; Article 4 Statute of the ICTR.
[1430] Darfur Report, para. 161; see ICTY, *The Prosecutor* v. *Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, paras. 96 to 127 and 128 to 137.
[1431] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, two volumes, Volume I. Rules, Volume II. Practice (Two Parts), Cambridge University Press, 2005.

particularly with regard to fundamental guarantees, the courts should therefore apply international standards.

3. Rules and obligations arising from the Peace Agreements

801. The Lusaka (1999), Pretoria (2002) and Luanda (2002) peace agreements signed by the DRC confirmed the international character of the armed conflicts that wrought havoc in the country. In the first Agreement, signed in Lusaka, all signatories undertook to respect the 1949 Geneva Conventions and 1977 Additional Protocols, along with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. In terms of measures governing crimes under international law, Article 22 of the Lusaka Agreement envisages the possibility of an amnesty, albeit "not in the case of suspects of the crime of genocide". In addition, it was anticipated (Art. 8.2.2 of the annex) that the United Nations force deployed under Chapter VII of the UN Charter would "screen mass killers, perpetrators of crimes against humanity and other war criminals". The subsequent Pretoria and Luanda agreements confirm the international nature of the conflict by anticipating the withdrawal of Rwandan and Ugandan troops respectively from the DRC's territory.[1432]

802. To conclude, it is useful to note the important global and inclusive agreement on the transition in the DRC that emerged from the Inter-Congolese dialogue,[1433] signed in Sun City (South Africa) on 17 December 2002 and which opened the path to peaceful transition and reunification of the DRC. In terms of criminal sanctions for the crimes under international law committed during the war, the Sun City Agreement said nothing. However, the Agreement anticipated that an amnesty would be granted only for "acts of war, political and opinion breaches of the law, with the exception of war crimes, genocide and crimes against humanity …".[1434] Two amnesty laws were adopted close on the heels of this Agreement. First, Decree Law No. 03-001 of 15 April 2003, which granted an amnesty for "acts of war, political or opinion breaches" to all Congolese citizens living in the country or abroad and accused of, being prosecuted for or having been convicted by a court of a crime committed during the period 20 August 1996 to 4 April 2003. Amnesty Law No. 05/23 of 19 December 2005 subsequently replaced this decree law and extended the period covered by the amnesty to 30 June 2005, i.e. the

[1432] Article 8(3) of the Pretoria Agreement of 31 July 2002 between the DRC and Rwanda; Article 1 of the Luanda Agreement 6 September 2002 between the DRC and Uganda.

[1433] Agreement signed in Pretoria on 16 December 2002 by the six parties to the conflict, the Government of the DRC, the RCD, the MLC, the political opposition, the RCD/ML, the RCD/N and the Mayi-Mayi, before representatives of the UN and the President of South Africa and the serving President of the OAU.

[1434] Point 11/8 of the global and inclusive Pretoria Agreement stipulates that "To achieve national reconciliation, amnesty shall be granted for acts of war, political and opinion breaches of the law, with the exception of war crimes, genocide and crimes against humanity. To this effect, the transitional national assembly shall adopt an amnesty law in accordance with universal principles and international law". See Point III.8 of the global and inclusive agreement.

starting date of the transition.[1435] Article 2 of the Amnesty Law stipulates that acts of war are "acts inherent to military operations authorised by the laws and customs of war and which, during the war, caused harm to others".[1436] In this regard, the President of the Military High Court of the DRC confirmed to the Mapping Team that acts of war is understood as meaning incidents occurring during the war which are justified by customs of war and which cannot later form the object of legal proceedings.[1437] The amnesty thus clearly excludes war crimes, which are not simple acts of war but rather serious violations of international humanitarian law. This is confirmed in Article 3 of the law, which clearly stipulates that the amnesty does not relate to war crimes, crimes of genocide or crimes against humanity.

B. Applicable substantive law: war crimes, crimes against humanity and genocide in Congolese law

803. The substantive law provisions governing the main violations of human rights and international humanitarian law in Congolese domestic law now need to be identified, setting out the existence of both the rights that have been violated and the crimes committed. These provisions involve both affirming the main human rights abuses that underpin crimes under international law and defining and identifying the constituent elements of war crimes, crimes against humanity and crimes of genocide. As this relates to crimes under international law committed between 1993 and 2003, it is important to identify the relevant legal provisions that were in force and applicable at that time in the DRC, including international standards that complete and interpret Congolese law on sanctioning the crimes as describe in the inventory in Section I. The DRC's constitutional provisions protecting the right to life and other basic individual rights are also relevant in terms of reconstructing the applicable legal framework.

804. In Congolese law, it is the military justice system that is exclusively responsible for trying crimes under international law. Moreover, Congolese law-makers have not included any provisions relating to war crimes, crimes against humanity or the crime of genocide in the ordinary criminal code. Congolese laws defining war crimes, crimes against humanity and the crime of genocide applicable to violations committed between

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[1435] Law No. 05/23 of 19 December 2005, Articles 1 and 5. The period envisaged in Decree Law No. 03-001 of 15 April 2003 was shorter, covering the period 20 August 1996 to 4 April 2003.

[1436] Law No. 05/23 of 19 December 2005, Article 2. Article 2 also defines the concept of political offences as "actions threatening the organisation and functioning of the public authorities, acts of administration and management or in which the perpetrator's motive or the circumstances inspiring him/her are of a political nature" and the concept of opinion offences as "acts committed during the exercise of freedom of thought or expression and which, during the war, caused harm to others".

[1437] The President of the Military High Court gave, by way of example of act of war, civilians who are killed when found inside a target forming a military objective. When asked if there were a general understanding of what constituted a military target (and thus what could fall within the concept of "acts of war") and what did not - in the context of the law of armed conflicts - the First President stated that the armed forces and the Congolese military judicial authorities were indeed able to distinguish between a civilian target and a military target. Interviews of the Mapping Team with Brigadier Nyembo Buzilu Lulilwa, First President of the Military High Court in the DRC, Kinshasa, 19 January 2009.

1993 and 2003 can be summed up as the 1972 Military Justice Code[1438] for offences committed prior to 25 March 2003, and the Military Criminal Code[1439] and Military Judicial Code[1440] of 18 November 2002 for subsequent crimes.[1441] Article 166 of the 1972 Military Judicial Code states that public action is not subject to the statute of limitations for war crimes or crimes against humanity. This is a very important provision in that it lays the foundations for all criminal proceedings that should take place with regard to crimes under international law committed on the territory of the DRC over the period in question.

1. Recognition of the main human rights in Congolese constitutional law

805. The new Constitution of the DRC was adopted on 18 February 2006. This Constitution, which follows the 2003 transitional Constitution,[1442] marks the DRC's passage to a constitutional order based on democracy, the primacy of law and the separation of State powers. The institution of a rule of law and the war on impunity appear in the Constitution as major concerns governing the establishment of the DRC's new institutions.[1443] The Constitution of February 2006 provides a list of individual rights and guarantees that are applicable both in times of peace and war.[1444]

806. Heading II is entitled "Human rights, fundamental freedoms and duties of the citizen and the State". In essence, this reflects the fundamental rights and guarantees recognised in the International Covenant on Civil and Political Rights to which the DRC acceded in 1976. In particular, it stipulates that the public authorities and all individuals shall respect the human rights and fundamental freedoms enshrined in the Constitution (Art. 60). Article 16 of the Constitution states that, "human life is sacred" and that "the State has a duty to respect and protect it". It clearly establishes "the right to life and physical integrity" and prohibits slavery, forced labour and cruel, inhuman or degrading

[1438] Decree Law No. 72/060 of 25 September 1972 establishing the Military Justice Code.

[1439] Law No. 24-2002 of 18 November 2002.

[1440] Law No. 23/2002 of 18 November 2002.

[1441] The entry into force of these two laws was set by decree as 25 March 2003. See Decree No. 032/2003 of 18 March 2003 establishing the date of entry into force of Law No. 023/2002 of 18 November 2002 on the Military Legal Code and Decree No. 033/2003 of 18 March 2003 establishing the date of entry into force of Law No. 024/2002 of 18 November 2002 on the Military Criminal Code.

[1442] In line with the stated wishes of those involved in the Inter-Congolese Dialogue and the global and inclusive Agreement, signed in Pretoria (South Africa) on 17 December 2002, and Article 104 of the 2003 transitional Constitution, the draft of the new Constitution of the Congolese State was adopted in the form of a constitutional proposal subject to popular referendum. See Constitution of the DRC, February 2006, Preamble.

[1443] See Heading 3 of the Constitution of February 2006 which contains a list of "Primary Concerns" governing the establishment of institutions. Heading 3 of the Constitution, "On organising the exercise of power" states that the new institutions of the DRC shall be the President of the Republic, Parliament, Government, the Courts and Tribunals.

[1444] The four main constitutional texts (August 1992, April 1994, May 1997, April 2003) that governed the periods of political transition (1990–2006) guaranteed the obligations and privileges resulting from international and regional human rights conventions, albeit with different wording.

treatment. Article 17 stipulates "the right to freedom" and Article 34 enshrines the "right to private property".

2. War crimes

807. The first definition of war crimes appears in Congolese law in the 1972 Military Justice Code[1445] (hereinafter CJM-1972). In Section VI of this code, entitled "War Crimes and Crimes against Humanity", Article 502 gives the definition of war crimes as "any violations of the laws of the Republic of Zaire that are not justified by the laws and customs of war". This definition draws directly from Article 6 of the London Charter of the International Military Tribunal of Nuremberg, 8 August 1945, which summarily likened war crimes to "violations of the laws or customs of war".[1446]

808. The new 2002 Military Criminal Code (CPM-2002) made few changes to the general definition of war crimes, specifying only that offences had to be "committed during a war". New Article 172 of the CPM-2002 thus defines a war crime as "any violations of the laws of the Republic committed during a war and not justified by the laws and customs of war".

809. A literal interpretation of these two very concise articles is thus able to confirm that any action whatsoever that is illegal under the laws of Zaire (or of the DRC), and also contrary to (and thus not justified by) the laws and customs of war, forms a war crime. Even though the 1972 definition did not specify it, it is clear that war crimes must be committed during an armed conflict since they are not justified by "the laws and customs of war". In defining war crimes, these two articles of Congolese law make two referrals: first to violations of Congolese laws, in whatever form, and, secondly, to what is not justified, in other words what is banned, by the laws and customs of war. When both Congolese law and the laws and customs of war are violated, an action can therefore be defined as a war crime.

810. The first reference to "violations of the laws of Zaire or of the Republic" counters the criticism that, by not anticipating any specific punishments, this definition of war crimes in Congolese law hinders the principle of *nulla poena sine lege* (no penalty without law). Given that punishments are anticipated for different specific offences in Congolese law, these will therefore also apply when, not being justified by the laws and customs of war, these offences are also defined as war crimes.

[1445] Decree Law No. 72/060 of 25 September 1972 establishing the Military Justice Code.

[1446] The London Charter of 8 August 1945 defines war crimes as follows: "*(b)* violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity".

811. It thus emerges from the definition of war crimes in Congolese law that violations of both the ordinary Criminal Code and the Military Code (CJM-1972 and CPM-2002) can be classified as war crimes in Congolese law provided they are also in violation of the laws and customs of war. This is, moreover, envisaged in Article 388 which introduces the section of the CJM-1972 that incorporates the chapter on war crimes and crimes against humanity: "Without prejudice to criminal punishment of actions that constitute common law crimes, particularly those that are contrary to the laws and customs of war and to international conventions, the following military offences shall be punished in accordance with the provisions of this Text".

812. The second referral in the definition of war crimes established in Congolese law - to "the laws and customs of war" - opens the door to the application of international humanitarian law, both conventional and customary. Since Nuremberg, the laws and customs of war have been considered as crystallised in customary law.[1447] Similarly, the Rome Statute of the ICC defines war crimes as including, in particular: "serious violations of the laws and customs applicable in international armed conflict… ".[1448] In contrast, contrary to the Rome Statute, by which States will take care to clearly list the acts constituting war crimes that are prohibited under international humanitarian law, Congolese laws refer only generally to acts that are unjustified, and hence prohibited, by the laws and customs of war.

813. In summary, all violations of Congolese laws that are also prohibited by the laws and customs of war constitute war crimes within the context of the Congolese military law applicable during the period 1 March 1993 to 30 June 2003.

814. For the purposes of the Mapping Exercise, the following were the main violations of Congolese laws in force over this period:

- Wilful murder or homicide (Art. 44-45 of the 1940 Criminal Code);
- Death in reprisal, which is in the same category as murder (Art. 523 of the CJM-1972 and Art. 171 of the CPM-2002);
- Attacks on physical integrity, mutilation (Art. 46-47 of the 1940 Criminal Code);
- Rape (Art. 170 of the 1940 Criminal Code);
- Violence against civilians (Art. 472 of the CJM-1972 and Art. 103 of the CPM-2002);[1449]

[1447] The International Military Tribunal of Nuremberg ruled that violations of the Hague Convention constituted war crimes, given that - at the time of the Second World War - these conventional rules were crystallised in customary law. CIHL Study, p 756.

[1448] Article 8(2) of the Rome Statute of the ICC.

[1449] Article 472 of the CJM-1972 anticipates that any soldier guilty of violence or serious cruelty towards the civilian population in times of war – or in a region in which a state of siege or state of emergency has been proclaimed – shall receive the death penalty.

- Looting or damage to foodstuffs, merchandise or belongings (Art. 435-436 of the CJM-1972 and Art. 63 of the CPM-2002);[1450]
- Forced labour of civilians and the deportation of an individual interned or detained without a final lawful conviction having been delivered in the eyes of the laws and customs of war (Art. 526 of the CJM-1972 and Art. 192 of the CPM-2002);[1451]
- The use of prisoners of war or civilians for the purposes of protection (Art. 524 of the CJM-1972 and Art 172 of the CPM-2002);
- Arrests, detentions or kidnapping of any persons, during hostilities, undertaken without the orders of the established authorities and outside the cases anticipated by law (Art. 527 of the CJM-1972 and Art. 193 of the CPM-2002);[1452]
- The imposition of collective fines, abusive or illegal requisitions, confiscations or spoliations, the import or export from the territory of the Republic of any resources or assets of any kind (Art. 525 of the CJM-1972 and Art. 191 of the CPM-2002).

815. With regard to what conduct "is not justified by the laws and customs of war", international treaties and customary international humanitarian law list a series of prohibited acts which, when committed against a protected group,[1453] notably civilians, during an internal or international armed conflict, constitute a war crime. When these acts, prohibited by the laws and customs of war, also constitute violations "of the laws of Zaire or the DRC", they can therefore be classified as war crimes under Congolese law. The list that follows sets out some of the main actions prohibited by international humanitarian law applicable under Congolese domestic law: **(**GC: Geneva Convention; AP: Additional Protocol; ICC: Rome Statute of the International Criminal Court; CIHL: Customary international humanitarian law according to the ICRC study).

- **Attacks on life, particularly killing in all its forms:** [Common Article 3(1)(a) to the GC I-IV; GC I, Art. 50; GC II, Art. 51; GC III, Art.130; GC IV, Art. 147; AP

[1450] Committed in gangs by soldiers or involved individuals, either employing arms or obvious force, or with breaking of doors and external closures, or committing violence against individuals (as anticipated in Article 435 of Section II, Violations of Honour or Duty). It is thus provided in Article 436 of the 1972 Military Justice Code that if looting is committed during times of war or a state of siege or emergency, those guilty of these crimes shall receive the death penalty.

[1451] These offences are anticipated in Article 526 (which appeared in the section on different offences). Those guilty of these crimes shall be punished with 15 to 20 years in prison and the death penalty if the actions were accompanied by cruelty, torture or followed by another offence.

[1452] These offences, anticipated in Article 527, also appeared under the section on “different offences” and not under the specific section on war crimes. They are punishable by prison sentences ranging from 15 to 20 years or life if the detention or kidnapping lasted more than 15 days and took place under aggravating circumstances.

[1453] The Geneva Conventions and their Protocols protect, among other things, people not involved in the hostilities (civilians, healthcare workers and religious workers or humanitarian organisations) and also those no longer taking part in international combat (the wounded, sick and shipwrecked, prisoners of war), and people who find themselves under the control of a party to the conflict of which they are not a national.

I, Art. 75(2); AP II, Art. 4(2)(a); ICC, Art. 8(2)(a)(i) and 8(2)(c)(i); CIHL Study, Rule 89].

- **Bodily injury, particularly mutilation, cruel treatment, torture or torment:** [Common Article 3(1)(a) to GC I-IV;GC I, Art. 50; GC II, Art. 51; GC III, Art.130; GC IV, Art. 147; AP I, Art. 75(2); AP II, Art. 4(2)(a); ICC, Art. 8(2)(a)(ii) and 8(2)(c)(i); CIHL Study, Rules 90 and 92].
- **Attacks on personal dignity, particularly humiliating and degrading treatment:** [Common Article 3(1)(c) to GC I-IV; AP I, Art. 75(2)(b) and Art. 85 (4)(c); ICC Art. 8(2)(b)(xxi) and Art. 8(2)(c)(ii); CIHL Study, Rules 90 and 91].
- **Rape, sexual slavery and other forms of sexual violence:** [Common Article 3 (1)(c) to GC I-IV; GC IV, Art. 27 (2); AP I, Art. 75(2) (b) and art 76(1); AP II, Art. 4(2)(e) and (f); ICC Art. 8(2)(b)(xxii) and 8(2)(e)(vi); CIHL Study, Rule 93].
- **Intentionally directing attacks against the civilian population:** [AP I, Art. 85(3)(a); AP II, Art. 13(2); ICC Art. 8(2)(b)(i) and 8(2)(e)(i); CIHL Study, Rule 1].
- **Indiscriminate attacks or attacks in the knowledge that they will cause disproportionate loss of civilian life:** [AP I, Art. 85(3)(b) and 51(5)(b); ICC Art. 8 (2)(b)(iv); CIHL Study, Rule 14].
- **Attacks aimed at spreading terror among civilians:** [GC IV, Art. 33; AP I, Art. 51(2); AP II, Art. 4(2)(d) and 13(2); CIHL Study, Rule 2].
- **Intentional attacks against personnel, installations, material, units or vehicles employed in the context of a humanitarian assistance or peacekeeping mission in accordance with the UN Charter:**[1454] [AP I, Art. 71(2); AP II, Art. 9 and 11(1); Convention on the safety of UN and associated personnel (1994), Art. 7 (1) and 9; ICC, Art. 8(2)b)(ii) and 8(2)(e)(ii); CIHL Study, Rules 31, 32 and 33].
- **Forced displacements of populations:** [GC IV, Art. 147; AP I, Art. 85(4)(a); AP II, Art. 17(1); ICC, Art. Art. 8(2)(b)(viii) and 8(2)(e)(viii); CIHL Study, Rules 129 and 130].
- **Intentionally directing attacks against civilian objects, i.e. objects that are not military targets:** [AP I, Art. 52(1); ICC, Art. 8(2)(b)(ii); CIHL Study, Rules 7 and 10].
- **Looting, destruction and appropriation of property not justified by military necessity or carried out unlawfully and wantonly on a large scale:** [GC I, Art. 50; GC II, Art. 51; GC IV, Art. 147; AP II, Art. 4(2)(g); ICC, Art. 8(2)(a)(iv), 8(2)(b)(xiii), 8(2)(e)(xii) and 8(2)(e)(v); CIHL Study, Rules 50, 51 and 52].

[1454] The Convention on the safety of UN and associated personnel (1994) came into force on 15 January 1999. Art. 7, para. 2: 1. The intentional commission of: (a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel; (b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty; shall be made by each State Party a crime under its national law. 2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature. United Nations, *Treaty Series*, Vol. 2051, No. 35457.

- **Conscripting, enlisting or using child soldiers:** [AP I, Art. 77(2); AP II, Art. 4(3)(c); Convention on the Rights of the Child, Art. 38 (2) and (3); ICC, Art. 8(2)(b)(xxvi) and 8(2)(e)(vii); CIHL Study, Rules 136 and 137]

3. Crimes against humanity

816. The first definition of crimes against humanity in international law can be found in Article 6 of the Statute of the Nuremberg International Military Tribunal of 8 August 1945.[1455] At the request of the UN General Assembly,[1456] the International Law Commission adopted the Nuremberg Principles, which defined crimes against humanity as crimes in international law.[1457] In its definition of crimes against humanity in its first article, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity of 26 November 1968 refers only to the Nuremberg Statute, adding nonetheless that these crimes may be committed "in times of war or peace", thus paving the way for what was to become a rule of international customary law.[1458] Crimes against humanity are next mentioned in the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), which defines apartheid as a crime against humanity, and in the International Convention for the Protection of all Persons from Enforced Disappearance (2006, not yet in force), Article 5 of which stipulates that: "The widespread or systematic practice of enforced disappearance constitutes a crime against humanity".

817. It was finally the statutes of the international tribunals that gave clear shape to the definition of crimes against humanity in international law (Article 3 of the ICTY and Article 3 of the ICTR) before it was finally codified in Article 7 of the Rome Statute of the ICC in July 1998.[1459] In essence, this article consolidated the concept of crime against

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[1455] Crimes against humanity: namely, murder, extermination, enslavement, deportation, and any other inhuman act committed against civilian populations before or during the war, or persecution for political, racial or religious grounds when those acts or persecutions, whether a violation of the domestic law in which they are committed or not, were committed following any crime falling within the competence of the Tribunal, or in coordination with this crime.

[1456] Resolution 95(1) of the General Assembly dated 11 December 1946.

[1457] Principle 6: The crimes hereinafter set out are punishable as crimes under international law: Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such
persecutions are carried on in execution of or in connection with any crime against peace or any war crime, Report of the International Law Commission on its second session, 5 June to 29 July 1950, see *Official Records of the General Assembly, Fifth Session, Supplement No. 12* (A/1316), p.12-16.

[1458] *The Prosecutor* v. *Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 141: "It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict".

[1459] For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced

Contd.

humanity, the basis of which can be found in general principles of criminal law recognised by all civilised nations and which forms a part of customary international law.

818. Congolese law-makers thus defined crimes against humanity in Article 505 at the end of the 1972 Military Justice Code as:

> "Any inhuman act committed against civilian populations before or during the war, such as: murder, extermination, enslavement, genocide" (Article 6 of the London Charter of 8 August 1945; Resolution of the United Nations dated 13 February 1946).

819. In terms of the context of crimes against humanity, the article specifies that "unlike war crimes, crimes against humanity are not necessarily connected to a state of war and may be committed not only by people of a different nationality but even by and between subjects of the same State."

820. Although the definition of crimes against humanity set out by Congolese law-makers in 1972 does not correspond exactly to that of Article 6 of the Statute of the Nuremberg International Military Tribunal to which it refers, it nevertheless remains sufficient to be applicable to the serious human rights abuses committed within the DRC between March 1993 and June 2003, particularly when they fall within the context of a widespread and systematic attack. It reflects the particularly odious nature of a crime against humanity as an "inhuman act" committed against a civilian population, without attaching an obligatory connection to an armed conflict. The list of prohibited acts, although limited, remains open to the inclusion of other types of conduct that can be described as inhuman.

821. The new definition of crime against humanity given in the Military Criminal Code that came into force on 23 March 2003 is wider than that of the 1972 Military Justice Code. It extends to three articles. By way of introduction, Article 165 of the CPM-2002 states that "crimes against humanity are serious violations of international humanitarian law committed against any civilian populations before or during the war", thus hinting from the outset at a confusion with war crimes.

822. In fact, Article 166 of the CPM-2002 classifies crimes against humanity as those which international law stipulates as being war crimes, namely "the serious crimes listed hereinafter and harming, by action or by omission, the people and property protected by the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977"

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pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or community on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

and proposes a list of eighteen prohibited acts[1460] reflecting certain rules of customary international law in this area, as codified in Article 8 of the Rome Statute of the ICC, which deals with war crimes. This confusion, which creates a source of legal uncertainty, has frequently been criticised by recent Congolese case law in this regard.[1461]

823. Finally, Article 169 of the CPM-2002 in essence incorporates the definition of Article 7 of the Rome Statute of the ICC, adding to this the fact that acts may be committed "in times of peace or of war" and that a widespread and generalised attack may be launched "against the Republic". This latter addition also explains the inclusion of acts of "serious destruction of the wildlife, plant life, soil or sub-soil resources" (indent

[1460] Article 166, CPM . "1. Torture or inhuman treatment, including biological experiments; (2) Wilfully causing great suffering, or serious injury to body or health; (3) Compelling a prisoner of war or other person protected by the conventions or additional protocols regarding the protection of civilians during war to serve in the forces of a hostile Power; (4) Wilfully depriving a prisoner of war or other person protected by the conventions or additional protocols regarding the protection of civilians during war of the rights to fair and regular trial according to the requirements of these provisions; (5) Unlawful deportation, transfer or displacement, unlawful confinement of a person protected by the conventions or additional protocols regarding the protection of civilians during war; (6) Taking of hostages; (7) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (8) Acts or omissions that are not legally justified and which are likely to compromise the health and physical or mental integrity of persons protected by the conventions or additional protocols regarding the protection of the wounded, sick or shipwrecked, particularly any medical act not justified by the state of health of these people and not in accordance with generally recognised medical rules; (9) Unless justified under the conditions anticipated in point 8, acts consisting of practising on the people noted in point 8, even with their consent, physical mutilations, medical or scientific experiments or the removal of tissue or organs for transplants, unless relating to blood donations for transfusions or skin donations for grafts, insofar as these donations are voluntary, agreed and intended for therapeutic purposes; (10) Directing attacks against the civilian population as such or against individual civilians; (11) Launching an indiscriminate attack on the civilian population or civilian property in the knowledge that such attack will cause loss of life or injury to civilians or damage to civilian objects that would be excessive in relation to the concrete and direct overall military advantage anticipated, without prejudice to the criminality of the attacks the harmful effects of which, even if proportionate to the expected military advantage, would be incompatible with the principles of international law, as arising from established use, principles of humanity and the requirements of public conscience; (12) Directing attacks against works or facilities containing hazardous substances, in the knowledge that such attack will cause loss of life or injury to civilians or damage to civilian objects that would be excessive in relation to the concrete and direct overall military advantage anticipated; (13) Attacking undefended areas or demilitarized zones; (14) Subjecting a person to an attack in the knowledge that s/he is out of combat; (15) The transfer by the Occupying Power of part of its own civilian population into the territory it occupies, in the case of an international armed conflict, or by the occupying authority in the case of an internal armed conflict; (16) Unjustifiable delay in the repatriation of prisoners of war or civilians; (17) Engaging in practices of apartheid or other inhuman or degrading practices based on racial discrimination and giving rise to affronts to human dignity; (18) Directing attacks against clearly recognised historic monuments, archives, works or art or religious places that form the cultural or spiritual heritage of people and with regard to which special protection has been granted by virtue of a specific arrangement when there is no proof of violation by the other party of the ban on using these assets in support of the military effort and that these goods are not located within the immediate proximity of military targets".

[1461] In the case of the *Mbandaka rebels*, the Court thus noted that the Military Criminal Code "entertains a confusion between crime against humanity and war crime that is otherwise clearly defined in the Rome Statute of the ICC". Mbandaka Garrison Military Court, case of the *Mbandaka Rebels*, 12 January 2006, RP 086/05. Mbandaka Garrison Military Court, case of the *Mbandaka Rebels*, 20 June 2006, RP 086/05 - RP 101/06. In its judgement before ruling in the *Songo Mboyo* case, the same Court again noted the differences between the definition of crime against humanity in the Statute and in the Military Criminal Code. Mbandaka Garrison Military Court, *Songo Mboyo* case, 12 April 2006, RP 084/05; Équateur Military Court, *Songo Mboyo* case, 7 June 2006, RPA 014/06; See the following chapter for a more detailed consideration of these cases.

9) and of "destruction of the universal natural or cultural heritage" (indent 10), which relates more directly to the Republic than to the civilian population. It should also be noted that the crime of torture now appears in Congolese domestic law as a crime against humanity.[1462] While an act of torture, to be a crime against humanity, must be committed in the context of a widespread and systematic attack, it does not necessarily have to be inflicted "by a state employee or any other person acting in an official capacity".[1463] In contrast, Article 169 of the CPM omits the acts listed as crimes against humanity such as "forced disappearances of persons" and, in particular, the important residual clause that includes "any other similar inhuman act intentionally causing great suffering or serious harm to physical integrity and physical or mental health".

4. Crime of genocide

824. The definition of crime of genocide has not changed in international law since its original formulation in Article 2 of the Convention for the Prevention and Punishment of the Crime of Genocide in 1948. The same definition can be found in full in Article 6 of the Rome Statute of the ICC.[1464] The crime of genocide forms a part of international customary law and, as the International Court of Justice recently recalled, "The norm prohibiting genocide was assuredly a peremptory norm of international law (*jus cogens*)".[1465] Although the Congolese law-makers mention genocide in the definition of crimes against humanity, they nonetheless also define it specifically in Article 530 of the CJM-1972:

> "Genocide is understood as being the complete destruction of an ethnic, religious or political group. This destruction may take place by means of their physical liquidation (physical genocide) or by the slow suffocation of the group, by limiting or preventing births, for example through systematic sterilisation measures (biological genocide), or by the gradual elimination of ethnic and cultural characteristics (intellectual genocide)."

825. The same article contains a reference to the 1948 UN Convention on the Crime of Genocide, to which the DRC acceded in 1962. Although this reference bears witness to the desire of Congolese law-makers to transpose the obligations of the Convention into

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[1462] Torture was only previously envisaged in Congolese law as an aggravating circumstance of forced labour. See Article 526 CJM-1972.

[1463] In contrast to the requirement stated by the definition in Article 1 of the Convention against Torture; see the Brdanin judgement, ICTY, Trial Chamber, No. IT-99-36-T, 1 September 2004, paras. 488-489.

[1464] For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

[1465] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia-Herzegovina* c. *Serbia and Montenegro*), ICJ, 27 February 2007, para. 161.

domestic law, the definition contained in Article 530 is unsatisfactory in a number of regards. It does not stipulate that the destruction of a group may be partial, it does not include racial or national groups and it does not incorporate all constituent acts of genocide as listed in the Convention. The adoption of Article 164 of the 2002 Military Criminal Code corrects the main deficiencies of the previous definition, with the exception of the words "as such", which should follow the list of given groups. Finally, it should be noted that the Congolese law-makers have, since 1972, included the group "political" among the protected groups in their definition of the crime of genocide.

5. Other serious human rights abuses

826. The other serious human rights abuses committed by the government authorities and their agents constitute "crimes under international law or for which international law demands that States provide criminal punishment, such as torture, forced disappearances, extrajudicial executions and slavery".[1466]

827. The DRC has been a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 18 March 1996, and this requires that it ensures that all acts of torture are offences punishable by appropriate sentences.[1467] Despite its ratification, however, the country's ordinary and military criminal legislation has still not been adapted in this regard. Whilst the incorporation of torture as a crime against humanity in the Congolese Military Criminal Code is noteworthy, it still needs to be included as a distinct crime, as do the other acts constituting cruel, inhuman or degrading treatment or punishment, which are absent from the definition of crimes against humanity.

C. Jurisdictional law and basic procedural safeguards

828. An analysis of the jurisdictional law and basic procedural safeguards applicable in the DRC will determine which courts are competent to hear crimes under international law and identify the existing legal rules that guarantee a fair trial.

1. Jurisdiction of the military courts and tribunals

829. According to current Congolese domestic law, only military courts and tribunals have the authority to hear crimes under international law, whether war crimes, crimes

[1466] See Updated Set of principles for the protection and promotion of human rights through action to combat impunity (hereinafter "UN Principles on Impunity") [E/CN.4/2005/102/Add.1], 8 February 2005. For the definition of "serious crimes in international law", see p. 6.

[1467] Articles 4 and 16 of the Convention. Article 5 requires each State Party to establish its jurisdiction over offences committed by its nationals, to take criminal action or, when the presumed author of the crime is present in any territory under its jurisdiction, to extradite him or her to one of the States with jurisdiction to hear these crimes (in the absence of an extradition treaty, the Convention forms the legal basis for extradition regarding crimes covered by the Convention).

against humanity or the crime of genocide.[1468] As previously noted, ever since they were recognised in Congolese law, crimes under international law have been governed by military criminal legislation: they are defined in the 1972 Military Justice Code and again in the 2002 Military Criminal Code, whilst the authority to pass sentence is given to the military courts and tribunals by virtue of Article 76 of the 2002 Military Judicial Code and Articles 161 and 162 of the 2002 Military Criminal Code.[1469]

830**.** The military courts' **"subject matter" jurisdiction** (*ratione materiae)* to hear crimes under international law currently stems from Article 76 of the CJM-2002, which stipulates that: "Military courts and tribunals within the Republic's territory shall have jurisdiction to decide on crimes of a military nature punishable in application of the provisions of the Military Criminal Code".[1470] Although crimes under international law do not strictly speaking constitute "crimes of a military nature", Congolese law only classifies such crimes within the 2002 Military Criminal Code (and the previous 1972 Military Justice Code), and this definition governs war crimes, crimes against humanity and the crime of genocide.[1471] Moreover, Article 161 of the CJM-2002 states that: "Should crimes be indivisible from or related to crimes of genocide, war crimes or crimes against humanity, the military courts shall have sole competence".

831**.** The military courts' **personal jurisdiction** (*ratione personae*) establishes the kinds of people that can be prosecuted through the military justice system. Competence is restricted to individuals (Art. 73 CJM-2002)[1472] over the age of eighteen (Art. 114 CJM-2002) and can be exercised by default (Art. 326 CJM-2002).[1473] Quite clearly, military courts and tribunals will have competence over "soldiers of the Congolese Armed Forces and similar",[1474] including members of the National Police Force (Art. 106 CJM-2002),

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[1468] This situation may change with the adoption of the March 2008 draft bill of law implementing the Rome Statute of the ICC, which gives sole jurisdiction over international crimes to the Civil Court of Appeal.

[1469] Military courts and tribunals are provided for and organised by Law No. 023/2002 of 18 November 2002 on the Military Judicial Code and Law No. 024/2002 of 18 November 2002 on the Military Criminal Code. Their organisation, operations and authority are governed by Article 1 of the Military Judicial Code, which stipulates that military justice in the DRC shall be delivered by: the military police tribunals, the military garrison tribunals, the military and operational military courts, and the Military High Court.

[1470] Article 207 of the Military Criminal Code also stipulates that: "Subject to the provisions of Articles 117 and 119 of the Military Judicial Code, only military courts and tribunals shall hear the crimes classified in this Code".

[1471] Definitions of international crimes can be found in the 2002 Military Criminal Code under HEADING V: CRIMES OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES, while military crimes *per se* can be found under HEADING II: CRIMES OF A MILITARY NATURE.

[1472] Legal entities or companies are excluded from the provisions of Article 73 of the CJM, which stipulates that: "The military courts and tribunals shall have full jurisdiction to try individuals brought before or referred to them for the crimes provided for and punishable by law" (author's own emphasis).

[1473] When a defendant that is due to be brought before or referred to the military courts and tribunals for a crime either cannot be arrested, has escaped or, when duly summoned, did not appear, the ruling in the case shall be delivered by default.

[1474] "Similar" is taken to mean members of the National Police Force and nation builders in relation to acts committed during training or while exercising their duties within the National Service (Art. 106 *in fine*, CJM).

along with civilians employed by the armed services, the police force, Ministry of Defence and National Service (Art. 108 CJM-2002).

832. Article 112 of the CJM-2002 extends the personal jurisdiction of the military courts to certain groups of people not linked to the Congolese Armed Forces or National Police Force, namely:

- "Prisoners of war" (indent 5);
- "Members of rebel groups" (indent 6), which applies to any group committing "any act of collective violence likely to endanger the Institutions of the Republic or threaten the integrity of the National Territory" (Art. 136 CPM-2002);
- "Those who, even if not a part of the army, provoke, engage in or assist one or more soldiers or similar to commit a crime that is against the law or military regulations" (indent 7);
- "Those who, even if not a part of the army, commit crimes against the army, the National Police Force, National Service, their equipment, premises, or within the army, National Police Force or the National Service" (indent 7 *in fine*).[1475]

833. A further provision, which considerably extends the personal jurisdiction of the military courts and tribunals in the DRC beyond their traditional sphere, states that: "They shall also have authority over those who, whilst not soldiers, commit crimes using military weapons" (Art. 111 CJM-2002). It should, finally, be noted that, in the case of "defendants not forming part of the army", competence also extends to "the perpetrator, co-perpetrator or accomplice" (Art. 79 CJM-2002).

834. This whole remit relating to the military courts and tribunals' personal jurisdiction clearly applies to the crimes under international law defined in military law, namely war crimes, crimes against humanity and genocide. Moreover, in terms of war crimes, the Military Criminal Code extends the personal jurisdiction of the military courts to all those "in the service of the enemy or an enemy ally … who are guilty of crimes committed since the commencement of hostilities … either against a national, a foreigner or a refugee … or to the detriment of the property of any of the above individuals or any national corporation, when these crimes, even committed at the time of or under the pretext of a state of war, are not justified by the laws and customs of war" (Art. 174 CPM). A similar provision in the Military Judicial Code extends this authority to all crimes under international law, provided they constitute "crimes committed since the commencement of hostilities, by nationals … either against a national or a Congolese protected person … or to the detriment of the property of any of the above individuals … when these crimes … are not justified by the laws and customs of war" (Art. 80 CJM-2002).

[1475] See also Article 111 CJM-2002, which in relation to looting extends the personal jurisdiction of the military courts to "all those … having belonged to former armies, rebel groups, insurrectional groups or armed militia".

835. In terms of **individual criminal responsibility,** the Military Criminal Code punishes the perpetrators and co-perpetrators of crimes (Art. 5 CPM),[1476] accomplices in crime (Art. 6 CPM),[1477] and also the perpetrators of attempted crimes (Art. 4 CPM).[1478] In relation to war crimes and crimes against humanity, the principle of irrelevance of official status and related immunities is anticipated in Article 163 of the CPM. The concept of the responsibility of superiors is given in Article 175 of the CPM: "When a subordinate is prosecuted as the main perpetrator of a war crime and his or her hierarchical superiors cannot be investigated as co-perpetrators, they are considered accomplices if they tolerated the criminal actions of their subordinate". Article 81 of the CJM applies this same concept of the responsibility of superiors to all crimes under international law that constitute crimes according to Article 80 of the CJM, i.e. those "committed by nationals since the commencement of hostilities against a national or Congolese protected person…".

836. In summary, as regards crimes under international law, the personal jurisdiction of the military courts essentially covers all perpetrators of the violence committed between 1993 and 2003: the Congolese Armed Forces, the National Police Force, rebel groups, any person or national in the service of the enemy and any person committing a crime with the use of military weapons. In terms of individual criminal responsibility, the Congolese military courts can prosecute the perpetrators, co-perpetrators and accomplices of crimes under international law, including attempted crimes, along with their hierarchical superiors, who are presumed to be accomplices if they tolerated the criminal actions of their subordinates.

[1476] According to Article 5 of the Military Criminal Code, the following shall be considered the authors of a crime: "- those who executed the crime or who cooperated directly in its execution; - those who, through any action, provided support for its execution, and without which the crime could not have been committed; - those who, through offers, gifts, promises, threats, abuses of authority or power, conspiracy or reprehensible deception, directly caused the crime; - those who, through speeches given at meetings or in public places, or through stated proclamations, either written, printed or not, and sold or distributed, or through drawings or symbols, directly caused its perpetration, without detriment to the sentences that may be applicable by decrees or orders against the authors of criminal provocation, even in cases where such provocation is of no effect".

[1477] According to Article 6 of the Military Criminal Code, the following shall be considered accomplices to a crime: - "those who gave instructions for its perpetration; - those who procured arms, instruments or any other resources for use in the crime, in the knowledge that they were to be used in this way; - those who, apart from the case given in indent 3 of Article 22 of the Criminal Code, first book, knowingly aided or abetted the author or authors of the crime in the actions they were preparing, facilitating or in those they perpetrated; - those who, aware of the criminal conduct in undertaking armed robbery or violence against State security, public peace, people or property, generally provided the criminals with accommodation, a place of refuge or a meeting place".

[1478] Article 4 of the CPM 2002 stipulates that: "An attempted crime is punishable when the intention to commit the crime has been demonstrated by previous actions initiating execution of this crime, actions that were only suspended or only lost their effect through circumstances beyond the perpetrator's control. The attempt is punishable with the same sentence as if the crime had actually been committed".

2. Basic procedural safeguards

837. Basic procedural safeguards are rules that must be applied to ensure a fair trial. In criminal terms, this relates in particular to respect for the rights of the accused and to the exercise of judicial power by a competent, independent and impartial court in order to ensure due process. When the DRC adopted its new Constitution in 2006, it took the opportunity to include in it the basic judicial and procedural safeguards stipulated in international law.

Constitution of February 2006

838. In terms of safeguards relating to the functioning of the judicial system, Article 150 of the Constitution recognises the judiciary as the guarantor of the individual freedoms and fundamental rights of citizens. In accordance with the principle of a separation of powers, Article 149 of the Constitution emphasises the fact that: "The judiciary is independent of the legislature and executive". In exercising their tasks, judges are thus subject only to the authority of the law (Art. 150). In this regard, Article 151 anticipates that: "The executive cannot give directions to a judge when exercising his authority, nor rule on disputes, nor hinder the course of justice, nor oppose the implementation of a court decision"[1479] and that: "The legislature cannot rule on jurisdictional disputes nor modify a court decision, nor oppose its implementation".

839. The independence of the judiciary has been strengthened with the establishment of a new Supreme Council of the Judiciary composed exclusively of judges responsible for producing the judicial system's budget (Art. 149) and making "proposals for the appointment, promotion and removal of judges" (Art. 152). The Constitution also guarantees the security of tenure of the presiding judge. Article 149 prohibits the establishment of extraordinary or special tribunals of any kind, although it does anticipate that specialist courts can be created by law.

840. Articles 19 to 21 of the Constitution of 19 February 2006 establish important principles with regard to fair trials, particularly the principle of "lawful court" (no-one can be removed or diverted, against their will, from the court assigned to them by law, Art. 19), the right to a defence at all stages of the criminal proceedings (Art. 19), the right to a public hearing in the courts and tribunals (Art. 20), the obligation to put in writing and give reasons for a ruling and the right to appeal against such ruling (Art. 21).

[1479] It should be noted that important aspects of the new constitutional provisions regarding this ban on injunctions have not yet resulted in the harmonisation of all rules of criminal and military procedure in the direction intended by the Constitution's authors. In terms of military justice, in particular, the power of injunction is recognised to the Attorney-General's Office (Higher General Military Auditor) and also to the Ministry of Defence. Similarly, ordinary law provisions that should eliminate the Ministry of Justice's power of injunction have not yet resulted in new texts reforming criminal law, which are still in the process of being formulated. See Section III, Chapter 3 of this report.

841. Article 17 of the Constitution establishes the principles of the non-retrospective nature of criminal law and the legality of sentences: "No-one may be prosecuted for an action or omission that was not a crime at the time it was committed or at the time of its prosecution"; "No-one may be sentenced for an action or omission that was not a crime at the time it was committed or at the time of sentencing"; "No sentence may be imposed that is harsher than that applicable at the time the crime was committed" and the principle that: "Should the sentence be reduced by virtue of a law subsequent to the judgement, the sentence shall be executed in accordance with the new law". This article also confirms the existence of the presumption of innocence: "All persons accused of a crime shall be presumed innocent until their guilt has been established by final court ruling" and of individual criminal responsibility: "No-one shall be prosecuted, arrested, detained or sentenced for the actions of others".

842. Finally, the defence of "following orders" when committing crimes under international law is excluded by Article 28, which stipulates that all individuals, all government employees, can avoid implementing a manifestly unlawful order, particularly if that order represents a clear abuse of human rights: "No-one is required to implement a manifestly unlawful order. All individuals, all government employees, are released from their duty to obey when the order received is in clear violation of respect for human rights and public freedoms, and public decency. It is for the person who refuses to implement the order to prove that it was manifestly unlawful".

International conventions

843. Being a party to the most important human rights conventions, the DRC is bound by their main requirements governing fair trials, particularly those given in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR), namely:

- **The right to be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law:** ICCPR, Art. 14(1); ACHPR, Art. 7(1) and Art. (26);
- **The right to be presumed innocent:** ICCPR, Art. 14(2); ACHPR, Art. 7(1)(b);
- **The right to a full and complete defence:** ICCPR, Art. 14 (3); ACHPR, Art. 7(1)(c);
- **The right not to be held guilty of an act or omission that did not constitute a criminal offence at the time when it was committed:** ICCPR, Art. 15; ACHPR, Art. 7(2);
- **The right to liberty and security of person, including not being subjected to arbitrary arrest or detention**: ICCPR, Art. 9; ACHPR, Art. 6;
- **The right to effective remedy in case of serious human rights violations**: ICCPR, Art 2(3); ACHPR, Art. 7(1);

- **The right to reparation for human rights violations:** ICCPR Art. 2(3), 9(5) and 14(6);[1480]
- **The obligation to bring the perpetrators of human rights violations to justice:** ICCPR, Art. 2(3);[1481] Art. 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.

844. International humanitarian law also establishes rules governing basic judicial guarantees. These are binding upon the DRC both by virtue of the treaties it has signed and the applicable international customary law. These rules relate particularly to States' obligations to punish war crimes and the applicability of the perpetrator's individual criminal responsibility:

- **States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects**: GC I, Art. 49; GC II, Art. 50; GC III, Art.129; GC IV, Art. 146; AP I, Art. 85; AP II, Art. 14(2); Convention on Genocide (1948), Art. VI; ICC, preliminary recitals, CIHL Study, Rule 158;
- **Individuals are criminally responsible for war crimes they commit**: GC I, Art. 49; GC II, Art. 50; GC III, Art.129; GC IV, Art. 146; AP I, Art. 85; AP II, Art. 14(2); ICC, Art. 25(2), CIHL Study, Rule 151;
- **Commanders and other superiors are criminally responsible for war crimes committed by their subordinates:**[1482] AP I, Art. 86(2), ICC, Art. 28, CIHL Study, Rule 153;
- **Every combatant has a duty to disobey a manifestly unlawful order and obeying a superior order does not relieve a subordinate of criminal responsibility:**[1483] ICC, Art. 33, CIHL Study, Rules 154 and 155;

[1480] According to General Comment No. 31 of 26 May 2004 of the Human Rights Committee, "Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged." (CCPR/C/21/Rev.1/Add.13, para. 16).

[1481] See General Comment No. 31 of the Human Rights Committee, the terms of which state: "A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy" (para. 15), and "Where the investigations [into alleged human rights violations] reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7, 9 and, frequently, 6)" (para. 18).

[1482] "… if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible", CIHL Study, Rule 153.

[1483] " … if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered", CIHL Study, Rule 155.

Conclusion

845. An analysis of the applicable legal framework in the DRC with which to address the most serious violations of human rights and international humanitarian law committed between March 1993 and June 2003 confirms that a significant corpus of legal rules and measures does exist, both in international and domestic law, and that this is sufficient to begin to put an end to impunity for the crimes documented in this report.

846. Indeed, the DRC is bound by the most important human rights and international humanitarian law conventions, ratified in most cases long before the conflicts of the 1990s.[1484] It should be recalled that these treaties are, by virtue of the Constitution, directly applicable in domestic law and have higher authority than domestic law.

847. Any gaps that might exist in domestic law in this regard would therefore be filled by the existence of a significant number of rules of customary international humanitarian law, which are also binding upon the DRC.

848. The Constitution of February 2006 is eloquently clear on the protection of human rights and basic judicial safeguards. It incorporates the main international standards in this regard.

849. As regards Congolese domestic legislation, it defines war crimes, crimes against humanity and the crime of genocide. Although these definitions are brief, incomplete even, particularly prior to the partial reform of Congolese military criminal legislation in 2002, they do nonetheless enable the majority of the most serious violations of human rights and international humanitarian law committed between 1993 and 2003 to be punished.[1485] Whilst the lack of jurisdiction of the civil courts is to be regretted in this regard, it is important to note that the military courts do have the authority to try all those responsible for crimes under international law committed within the territory of the DRC between 1993 and 2003.

[1484] With the exception of Additional Protocol II (1977) to the Geneva Conventions, ratified in 2002, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 1996, and of course, the Rome Statute of the ICC, signed in 2000 and ratified in 2002.

[1485] As confirmed by an audit of the justice sector in the DRC in 2004, there is "a corpus of domestic legal texts and international instruments that urgently requires no significant structural amendments nor substantial additions". Joint multi-donor mission, *Audit organisationnel du secteur de la justice en RDC*, European Commission, Belgium, France, United Kingdom, MONUC, UNDP and OHCHR, 2004.

CHAPTER II. JUDICIAL PRACTICE IN THE DRC RELATING TO SERIOUS VIOLATIONS OF HUMAN RIGHTS AND OF INTERNATIONAL HUMANITARIAN LAW

850. Having stated the legal framework that is applicable in the DRC, it is now useful to examine how the legal norms relating to serious violations of human rights and of international humanitarian law has been applied by Congolese courts and tribunals to date. By doing this, it will be possible to evaluate the extent to which the Congolese justice system is capable of dealing with the multiple violations committed within the territory of the DRC between March 1993 and June 2003. This is a good opportunity to state that the aim of this report is not to evaluate the individual capacities of Congolese judges. Despite the wars, and the lack of support and recognition granted to the judicial system, a group of excellent legal professionals trained in the DRC and elsewhere are still present in the country.

851. Between 1996 and 2003, the DRC saw a succession of armed conflicts, which disrupted the functioning of all institutions and in particular judicial institutions. The need for justice has only grown during this period, but the general dysfunction in judicial institutions has left millions of victims with nowhere to turn and no opportunity to have their voices heard. In general, it has been observed that serious violations of human rights and international humanitarian law that were committed between 1993 and 2003 have remained unpunished.

A. Pre-transition period

852. The pre-transition period was marked by the use of special military tribunals which provided summary justice and which did not adhere to international standards that are designed to guarantee fair and impartial trials. In 1997, a Military Order Court was set up, and this functioned until it was abolished in 2003, as recommended in the Sun City Agreements. This institution received strong criticism because of its lack of impartiality and failure to respect fundamental judicial guarantees.[1486] It interpreted its own jurisdiction very broadly, and tried several civilians, who had been critical of the regime, for political offences. In particular, note should be taken of the 2001 case involving 80 people from Kinshasa who were transferred to a division of this jurisdiction based in Katanga province, where they underwent a summary trial in which they were deprived of their most basic rights to a fair and impartial trial.[1487] In March 2002, the Military Order

[1486] See *Report of the United Nations High Commissioner for Human Rights to the Security Council on the Situation of Human Rights in the DRC, presented on 13 February 2003* (S/2003/216). "The Military Order Court (Cour d'ordre militaire), an arbitrary jurisdiction that functions in Government-controlled areas, has sentenced to death and caused the execution of a large number of persons (including civilians) without any possibility of judicial review or appeal" (para. 8). See also the reports on the situation of human rights in the DRC submitted by the Special Rapporteur (E/CN.4/1999/31, para. 90, 91 and 137 and E/CN.4/2000/42, para. 63, 122 and 137; A/55/403, para. 71; A/56/327, para. 67, and E/CN.4/2003/43).

[1487] See *General Assembly Official Records, Fifty-sixth Session, Supplement no. 36* (A/56/36), para. 14: "According to reports, most of the defendants were held incommunicado and were subjected to torture."

Court also tried 130 people, both military personnel and civilians, for the assassination of President Laurent-Désiré Kabila. The fundamental rights of the accused were openly violated throughout the trial, which resulted in 30 of the accused being sentenced to death in March 2003.[1488]

853. In the occupied territories, justice was also badly administered. When questioned by the international community following the massacres committed by their armies,[1489] the military jurisdictions falling under the authority of the RCD-Goma and the MLC held a number of trials that were described as "show trials"[1490] by the Special Rapporteur of the Commission on Human Rights, and which were carried out in front of authorities that obviously lacked independence.

854. In Kisangani, despite the damning reports from the United Nations concerning the massacres of 14 May 2002 which resulted in the murders of 103 civilians and the extrajudicial killing of at least 60 soldiers by the RCD-Goma authorities,[1491] a "conseil opérationnel de guerre" ("operational council of war") tried nine military personnel and junior police officers, six of whom were acquitted and the three who were sentenced later escaped. None of the high-ranking soldiers or civilians who were identified by several witnesses and in reports written by international organisations and NGOs were investigated by the authorities, and some were even promoted following the incidents.[1492] In Gbadolite on 18 February 2003, a war council issued 19 sentences against charges which did not "reflect the seriousness of the massacres that had been committed".[1493] Six of those sentenced were subsequently acquitted on appeal to the Higher War Council.

B. Post-transition period

855. It was not until after the Sun City Agreements and the establishment of a government of national unity that the fight against impunity began, albeit very timidly.

[1488] See *Annual Report 2002*, Observatory for the Protection of Human Rights Defenders, www.fidh.org. See ASADHO report, José Ndjemoti, Military Order Court: an instrument of repression and of death in the DRC, ASADHO, Case: Olenga Nkoy and associates, 5-19 May 1998.

[1489] See resolution 1417 (2002) of the Security Council dated 14 June 2002, and resolution 1468 (2003) of the Security Council dated 20 March 2003, para. 3: "*Stresses* that the military officers whose names are mentioned in the report of the United Nations High Commissioner for Human Rights in connection with serious violations of international humanitarian law and human rights should be brought to justice, through further investigation, and if warranted by that investigation, held accountable through a credible judicial process."

[1490] See *Report by the Special Rapporteur concerning the human rights situation in the DRC, presented in accordance with 2002/14 of the Commission on Human Rights resolution* (E/CN.4/2003/43), para. 50.

[1491] See the conclusions of the *Report of the United Nations High Commissioner for Human Rights on the events that occurred in Kisangani* (DRC), on 14 and 15 May 2002, presented to the Security Council (S/2002/764), p. 9.

[1492] See *Interim Report of the Special Rapporteur on the situation of human rights in the DRC* (A/58/534), para. 87; see *Report of the United Nations High Commissioner for Human Rights to the Security Council on the situation of human rights in the DRC* (S/2003/206), paras. 30 and 31.

[1493] *Interim report of the Special Rapporteur on the situation of human rights in the DRC* (A58/534), para. 55.

The adoption of the Transitional Constitution in 2003, the coming into force of laws to reform military justice (and abolish the Military Order Court) and the ratification of the ICJ Rome Statute in 2002 all served to strengthen the legal framework and provide Congolese jurisdictions with new tools to punish the most serious violations of human rights and international humanitarian law. Also in response to growing pressure from civil society and local and international NGOs, the United Nations and some States, Congolese military jurisdictions took up several cases concerning war crimes and crimes against humanity.

856. Of the 12 identified cases in which Congolese jurisdictions have dealt with acts described as war crimes or crimes against humanity, only two were incidents that occurred before June 2003; the **Ankoro case**,[1494] judgement issued 20 December 2004 concerning incidents that occurred in Katanga in 2002, and the **Milobs case**,[1495] judgement issued on 19 February 2007 concerning incidents that occurred in May 2003 in Ituri.

857. In the **Ankoro case**, the investigations carried out by MONUC revealed that violent confrontations between the FAC and the Mayi-Mayi, in November 2002, had caused the deaths of at least 70 people. Thousands of homes were set on fire and destroyed, and hundreds of public and private buildings including hospitals, schools and churches were pillaged. In December 2002, 28 FAC (Forces armées congolaises) soldiers were arrested and handed over to the military judicial authorities. Seven of these were accused of "serious violence and ill-treatment towards the civilian populations... burning, looting, injuring and killing members of the civilian population" (art. 472 of the Zaire Military Justice Code, 1972) and crimes against humanity, "being inhuman acts against the civilian population, burning almost all their houses and massacring them with shells and bombs." (art. 505 of the Zaire Military Justice Code, 1972). The trial was delayed for many months while a panel of officers who were qualified to try a lieutenant-colonel was formed. In its final summing-up, the military public prosecutor asked the judge to acquit five of the seven who were accused of crimes against humanity and serious violence and abuse against the civilian population, and recommended that the two others be sentenced to 20 months in prison for ordinary crimes of murder and arson. The Court acquitted six of the accused and sentenced the seventh to a lenient sentence of 20 months imprisonment for murder. The Ministry, satisfied with the judgement, did not appeal.

858. A close reading of this decision reveals a lack of impartiality and independence. To give some examples: the sudden change of attitude of the prosecutor; an overly demanding burden of proof was imposed on victims, who were asked to give a positive identification of the military personnel who had bombarded their villages; it was not accepted that commanders bore responsibility for acts committed by their subordinates; there was inadequate access to a "legitimate defence", demonstrating a bias in favour of

[1494] RMP 004/03/MMV/NMB – RP 01/2003, RMP 0046/04/NMB – RP 02/2004.
[1495] RP 103/2006.

the FAC and against the Mayi-Mayi. National NGOs and victims considered that this trial sanctioned impunity by providing a simulacrum of justice that was established in order to "protect the accused from prosecution".[1496] A subsequent attempt by the authorities to have this case reopened proved fruitless, which confirms the lack of enthusiasm on the part of the Government for the transition to a fight against impunity.[1497]

859. In the **Milobs case**, members of the "Front des nationalistes intégrationnistes" (FNI), a militia active in Ituri, tortured and killed two MONUC military peace-keepers in Mongwalu in May 2003,[1498] looting some of their private and professional effects. Seven members of the militia were charged with war crimes over three years after the incidents. On 19 February 2007, the court at the military garrison in Bunia sentenced six of the defendants to life imprisonment for war crimes under the Congolese Military Penal Code and article 8 of the Rome Statute of the ICC. When describing these acts as war crimes, the judge referred to international jurisprudence, from which he drew a conclusion that "there was internal armed conflict at the time", that "there was a link between the criminal behaviour and the armed conflict" and that "this link does not necessarily imply that the offence was committed in the location in which the hostilities took place". This decision was hailed by the United Nations, which nevertheless emphasised that, "despite a few recent convictions by military courts relating to violations of human rights, the DRC faces a pervasive climate of impunity."[1499] One of the accused, who had escaped, was sentenced *in absentia.* He was captured in October 2007, and his sentence was confirmed following a new trial on 12 November 2007.

860. Six years have elapsed since the transition began, and some armed conflicts still persist in the country, along with the serious violations of human rights and of international humanitarian law that result from this. During this period, only a few decisions in military courts have been identified that involve war crimes or crimes against humanity committed since June 2003.

[1496] *Report on the Ankoro trial, Supplement to the Human Rights Periodical*, ASADHO/Katanga, SPDH no. 007, February 2005.

[1497] "Attempts to address the issue of impunity — such as the reopening, before a military court, of the Ankoro trial, concerning crimes against humanity committed in November 2002 — have not been matched by a real commitment from the Transitional Government to stop, prevent or even condemn continued human rights violations. "; *Twenty-third report of the Secretary-General on MONUC* (S/2004/1034), para. 52.

[1498] Major Safwat Oran and Captain Davis Banda, who were Jordanian and Malawian respectively.

[1499] *Twenty-third report of the Secretary-General on MONUC* (S/2007/156 and Corr. 1), para. 52: Of the few convictions for serious offences that occurred during the indictment period, a notable example is the decision made by the military tribunal in the Ituri district on 19 February 2007, which recognised the guilt of six of the seven people who were suspected of the murder of two United Nations military observers in May 2003.

1. Équateur Province

861. Three judgements have been issued in Équateur province: the **Songo Mboyo case**, judgement issued 12 April 2006; the **Mbandaka mutiny case**, judgement issued 20 June 2006; and the **Lifumba-Waka case**, judgement issued 18 February 2008.

862. The **Songo Mboyo case**[1500] is a good illustration of the efforts that MONUC and the civil authorities have had to employ in order to enable military justice to function. A MONUC enquiry had shown that, during the night of 21 December 2003, FARDC troops (ex-MLC) based in Songo Mboyo had committed gang rape and systematic looting of all houses in the villages of Songo Mboyo and Bongandanga, which are 275 km south of Gbadolite. Although 119 reports of rape and 86 of looting were recorded and sent to the military prosecution department (auditorat militaire) in Mbandaka in May 2004, the case did not progress, which left the victims at the mercy of the military personnel, who threatened them repeatedly.[1501] In March 2005 in Mbandaka, the Minister for Human Rights publicly denounced the impunity arising from the Songo Mboyo cases. Finally, almost two years after the events, 12 military personnel were indicted for, among other matters, offences, rape and looting as crimes against humanity according to article 7(1) of the Rome Statute of the ICC, the majority of other suspects having been transferred to other regions. On 12 April 2006, the Military Tribunal sentenced seven soldiers to life imprisonment for crimes against humanity, and acquitted five others who had been accused, because they were found not to have committed these acts. On appeal, the verdicts against six of the accused were confirmed, and the seventh was acquitted.

863. In the end, the Songo Mboyo trial was considered to be an initial success; suitable investigations had been carried out, a relatively impartial trial had been conducted in front of the victims, and the fundamental rights of the accused and of victims had been respected to a minimal extent. However, this trial also illustrates the difficulties inherent in using the military judicial process to deal with crimes committed by the military's own troops. It was only the intervention by MONUC and the Minister for Human Rights which finally got this case moving and forced the military prosecution department to investigate it, after a two-year wait for the victims. This delay enabled several of the military personnel who had been involved in violence to be transferred elsewhere and thus to escape justice.[1502] Of the 78 presumed perpetrators originally identified by MONUC, only six were sentenced, and these individuals later escaped. It may also be instructive to ask questions about the ability of the judicial authorities to deal with such cases without constant support from MONUC, which had to charter five special flights to transport investigators and magistrates to the relevant locations.

[1500] RMP 154/PEN/SHOF/05 – RP 084/2005.

[1501] *Sixteenth report of the Secretary-General on MONUC* (S/2004/1034), para. 52.

[1502] "Commanding officers of FARDC and PNC often deliberately obstruct investigations by quickly redeploying soldiers and policemen under investigation to other duty stations without informing the judicial authorities." *Report of the Special Rapporteur concerning violence against women, its causes and consequences* (A/HRC/7/6/Add. 4), para. 76.

864. In the **Mbandaka Mutinies case**,[1503] once again it was MONUC that urgently assembled a team to investigate the violence that occurred on 3 and 4 July 2005 following a mutiny of FARDC military personnel based in the camp at Bokala, which is 6 km from the town of Mbandaka. The investigation revealed that the mutineers had committed murders and rapes and had meted out inhuman treatment to the civilian population, which was confirmed by the military prosecution department, which stated that six people had been killed, 12 injured and 46 were victims of rape. Of the 61 military personnel accused on 12 October 2005, 19 were accused of crimes against humanity (murder and rape) under article 7 of the Rome Statute of the ICC. On 20 June 2006, nine accused were sentenced by the Tribunal, eight of them to life imprisonment. The Court of Appeal, in a poorly-substantiated judgement, quashed the convictions of three of those accused of crimes against humanity, which it reclassified as ordinary military offences.

865. In the **Lifumba-Waka case**,[1504] an initial investigation by MONUC showed that around 12 police officers had committed violence against the civilian population. The military prosecutor charged the 12 police officers with crimes against humanity. Investigations by the military prosecution department revealed that 34 women and three children had been raped, that 50 civilians had been subjected to acts of torture and cruel, inhuman and degrading treatment, and that 120 households had been looted during reprisals committed by the police and the army against the civilian population during the night of 19-20 February 2006.[1505] Of the two remaining accused, just one was convicted of crimes against humanity and was sentenced to 20 years imprisonment; the other escaped during the trial and was convicted in absentia for less serious offences. Just like the Songo Mboyo case, this case illustrates the serious failings in the Congolese prison system, which gives a large number of accused and convicted people the opportunity to escape from justice.[1506]

2. Katanga Province

866. Aside from the Ankoro case, which was mentioned above, two other cases had far-reaching effects in Katanga: the **Kilwa trial**, judgement issued 28 June 2007, and the **Gédéon Kyungu trial**, judgement issued on 5 March 2009.

[1503] RPO86–RP 101.

[1504] RMP 064/AMS/SHOF/06.

[1505] Human rights: Monthly report, February 2008 - Administration of justice / fight against impunity> Trial monitoring, available at the following address: www.monuc.org.

[1506] "The disastrous state of the prison system, perhaps the weakest link in the justice chain, facilitates escapes of suspects and convicts, including high profile offenders who sometimes "escape" with the connivance of the authorities." *Combined report of seven thematic special procedures on Technical Assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (A/HRC/10/59), para. 63.

867. The **Kilwa case**[1507] once again began with a MONUC investigation mission, which learnt that over 100 people had been killed during a FARDC counter-offensive carried out on 15 October 2004 with the aim of recapturing the town of Kilwa, which had fallen into the hands of a rebel group. The MONUC report states that the evidence confirms that at least 73 people died, of whom 26 were victims of summary execution.[1508] MONUC demanded that those responsible for these crimes be brought to justice, and informed the Government of the identity of the presumed perpetrators. The military justice system, however, took no action. Only in July 2005, following a documentary about this massacre that was broadcast on an Australian TV channel, did international pressure increase, which removed the previous obstacles to an investigation by the military prosecution department. MONUC arranged for the military prosecution personnel to be moved to Kilwa so that the evidence of the many victims could be heard. In January 2006, the tribunal asked the regional military commander to have 12 soldiers suspected of committing crimes during these events appear in court. Further pressure by NGOs and MONUC[1509] was required before the military authorities finally agreed, in October 2006, to hand over seven of their personnel who were charged with "war crimes" in line with article 8 of the Rome Statute of the ICC, including Colonel Adémar Ilunga who had commanded the counter-offensive in Kilwa. Three employees of the mining company Anvil Mining Congo were also accused of complicity, and in particular of providing transport for the military personnel involved in these events.

868. The military tribunal acquitted five of the seven military personnel on 28 June 2007 because of lack of evidence. Colonel Adémar Ilunga and Captain Sadiaka were acquitted of the charges of war crimes in Kilwa, but were found guilty of several murders of civilians committed in Pweto and were in the end sentenced to life imprisonment. The three employees of Anvil Mining were acquitted because the charges were found to have been unfounded. The United Nations High Commissioner for Human Rights was "concerned at the court's conclusions that the events in Kilwa were the accidental results of fighting, despite the presence at the trial of substantial eye-witness testimony and material evidence pointing to the commission of serious and deliberate human rights violations".[1510] On 30 October 2008, on appeal to the military High Court, Colonel Adémar Ilunga and Captain Sadiaka saw their sentences reduced to five years of imprisonment and at the same time the Court overturned the decision to discharge them from the army.

[1507] RMP 0064/NMB/2005–RP 010/2006.

[1508] MONUC, *Report on the conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa (Province of Katanga) on 15 October 2004*, para. 24-29.

[1509] *Twenty-second report of the Secretary-General on MONUC* (S/2006/759), para. 70, "MONUC has written to the Auditeur militaire, asking him to expedite the judicial investigation into... the Kilwa massacre in October 2004... All these investigations are effectively blocked, in most cases by political and military interference in the judicial process."

[1510] OHCHR, "High Commissioner for Human Rights Concerned at Kilwa military trial in the DRC", 4 July 2007, available in English at the following address: www.unhchr.ch/huricane/huricane.nsf/view01/9828B052BBC32B08C125730E004019C4?opendocument.

869. The judicial decisions made during the Kilwa case are an illustration of the lack of impartiality and independence within the military justice system.[1511] The Court has clearly demonstrated its bias in favour of the accused, exonerating Colonel Adémar of most of the murder charges made by the military prosecutor, either against him personally or against him as the commander of the perpetrators of these murders.[1512] No reference was made in the judgement to international law as it pertains to war crimes. Throughout this case, political interference,[1513] a lack of co-operation on the part of the military authorities and many irregularities[1514] were observed.

870. The **Gédéon Kyungu case** emerged from several reports by MONUC and national and international NGOs, which documented the acts of violence committed between 2003 and 2006 in Katanga, in the Mitwaba-Pweto-Manono triangle, by the Mayi-Mayi group commanded by Gédéon Kyungu Mutanga. Only when he presented himself to MONUC on 12 May 2006 to lay down arms with his group of over 150 combatants, most of whom were child soldiers, was he put under house arrest by the provincial authorities. Seven months later his case was heard by the military prosecution department, and in July 2007 he was formally charged along with 26 of his men with war crimes, crimes against humanity, terrorism and insurrection. His trial began in August 2007 but was repeatedly interrupted, particularly following a complaint arising from reasonable suspicion on the part of the victims, who considered that the military tribunal in the Haut-Katanga garrison did not provide a sufficient guarantee of independence. This complaint was rejected by the military court in Katanga, which sent the case back to the same tribunal. Finally, on 5 March 2009, Gédéon Kyungu was sentenced to death for crimes against humanity, terrorism and insurrection. The charge of war crimes was not upheld. Six other defendants, including Gédéon's wife, were also found guilty of crimes against humanity in addition to other offences. This case, which lasted nearly three years, also suffered from multiple instances of interference from political and military authorities in the administration of justice, which resulted in delays to the investigation, paralysis of the judicial process and violation of the rights of victims and of the accused

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[1511] *Report of the Special Rapporteur concerning violence against women, its causes and consequences* (A/HRC/7/6/Add. 4), para. 78, "Prosecutors and judges are also vulnerable to pressure by political or military authorities... Whereas the MONUC investigation had concluded that virtually no fighting had taken place when the FARDC regained control of Kilwa, the court held that all civilians killed were casualties of fighting between FARDC and rebel forces and that no crimes had taken place. While the trial was ongoing, the Military Prosecutor, who had prepared the indictment and led the prosecution, was reassigned to Kananga. MONUC human rights observers also noted several other serious irregularities."

[1512] RMP 0064/NMB/2005–RP 010/2006.

[1513] A half-yearly report by MONUC's human rights office once again confirmed: "MONUC learned that the Military Prosecutor has been pressured to drop the charges brought against the Anvil Mining staff. MONUC deplores any interference and will take every opportunity to remind the relevant authorities of their responsibility to respect the independence of the judiciary." See "The Human Rights Situation in the DRC during the period of July to December 2006", 8 February 2007, available at: http://www.unhcr.org/refworld/docid/46caab000.html

[1514] See "Kilwa trial: a denial of justice", a joint report by Global Witness, RAID, ACIDH and ASADHO/KATANGA, 17 July 2007, available at the following address: www.globalwitness.org/media_library_detail.php/560/en/kilwa_trial_a_denial_of_justice.

for many months.[1515] Despite all this, the end of this trial was hailed as "a crucial step toward creating accountability in the DRC".[1516]

3 Maniema Province

871. Judgement in the **Kalonga Katamisi case**[1517] was issued on 26 October 2005 by the tribunal at the Kindu garrison. Kalonga Katamisi, someone known as Alimasi and several other military personnel newly reinstated in the FARDC were tried for crimes against humanity committed in 2004, when they were part of the Mayi-Mayi militia, namely "rape, sexual slavery and other forms of sexual violence of comparable seriousness" against 10 women, in line with article 169 of the military penal code 2002. Only Katamisi was present at the trial, as Alimasi and the others had fled. The judge sentenced Katamisi to death for crimes against humanity and also sentenced Alimasi and "associates" to death in absentia. The judge ordered that all the defendants be dismissed from the army and ordered them to pay reparation to the victims under civil law. The wording of this decision, although it was hailed as a "measure with which to fight against impunity",[1518] consists of nine poorly-written, badly-substantiated and contradictory pages. It raises many doubts both as to the expertise of the military judges who handed down this judgement, and as to its intrinsic legality: having confirmed that the majority of the members of the tribunal had answered "no" to the question of whether Alimasi was guilty of crimes against humanity, the judge nevertheless found him guilty and sentenced him to death;[1519] the judge also sentenced to death "unknown" persons who had fled, and these people were neither identified nor ordered to appear before the court, which is a flagrant contravention of international standards and of Congolese law.[1520] Another cause for concern arises from the fact that this case was investigated, pleas were heard and judgement handed down during the course of just one day by the military tribunal at the Bukavu garrison, which was held at the Kindu itinerant court hearing. To date no appeal has been lodged.

4. Orientale Province

872. The territory of Ituri in Orientale Province saw many ethnically-motivated conflicts which continue to this day, and which have created many victims among the

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[1515] *Twenty-second report of the Secretary-General on MONUC* (S/2006/759), para. 70, "MONUC has learned with concern that the Mayi-Mayi leader Kyungu Kasongo Mutanga, known as "Gédéon", may be given a command position and an officer's rank upon being integrated into the army. MONUC has written to the Auditeur militaire, asking him to expedite the judicial investigation into the crimes of which Gédéon is suspected."

[1516] HRW, Militia Leader Guilty in Landmark Trial, 10 March 2009. Available at the following address: http://www.hrw.org/en/news/2009/03/10/dr-congo-militia-leader-guilty-landmark-trial See also the *twenty-seventh report of the Secretary-General on MONUC* (S/2009/160), para. 87.

[1517] RP011/05 - RMP249/KK/05.

[1518] *Twentieth report of the Secretary-General on MONUC* (S/2005/832), para. 53.

[1519] RP011/05 - RMP249/KK/05, eighth and ninth pages of the decision.

[1520] Ibid.

civilian population. Between 2002 and 2004, massive human rights violations committed in Ituri were described in many reports sent to the Security Council by the Secretary General.[1521] An "interim emergency multinational force" ("Operation Artemis") was deployed to Bunia by the European Union between June and September 2003, with the authorisation of the Security Council.[1522] As part of their official mission to maintain order, troops from Operation Artemis - and later MONUC troops - arrested individuals who had committed acts of violence, including some leaders of armed groups that were responsible for the crimes that marked the conflict in Ituri.[1523] These arrests were due to be confirmed by the judicial authorities and the accused were to be held in a Congolese detention centre. As neither system was functional in Ituri, several of those detained were subsequently released.[1524] Finally, thanks to a programme of "rapid restoration of the judicial system", sponsored by the European Commission, the regional court in Bunia, the main town in Ituri, started work again in early 2004, having been closed for six months after the judges fled because of the deteriorating security situation. The first magistrates (five in the Court and four in the public prosecutor's office) took up their posts in Bunia in February 2004. Military judges followed in late 2004.[1525]

873. Ordinary tribunals examined the cases of two militia chiefs arrested by MONUC in October and November 2003, namely **Mathieu Ngudjolo**, chief of staff of the FNI[1526] and **Rafiki Saba Aimable**, head of military information at UPC.[1527] As military tribunals had sole jurisdiction over war crimes and crimes against humanity, these individuals were charged with ordinary crimes.

874. **Mathieu Ngudjolo** was prosecuted for, among other acts, the abduction and murder in September 2003 of a UPC partisan who had been sent to the headquarters of FNI to negotiate with the leaders of this armed group and invite them to a meeting organised by MONUC. On the day of the trial, all witnesses who had given evidence during the investigation retracted their testimonies and refused to appear in front of the tribunal, for fear of reprisals from the leaders of the FNI armed group. In the end, the prosecutor was only able to produce one witness, who only gave evidence at the first hearing of the tribunal and who refused to appear at subsequent hearings, citing ever-increasing threats from FNI partisans. The prosecutor had no further evidence to support

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[1521] See *Special Report on the events in Ituri* (January 2002 - December 2003) [S/2004/573].

[1522] Following an initiative by the European Union (EU), Security Council resolution 1493 (2003), dated 28 July 2003, enabled the use of force, as planned for in Chapter VII of the United Nations Charter.

[1523] In particular, MONUC proceeded to arrest the chief of staff of the FNI, Mathieu Ngudjolo, and several senior officers from UPC, notably Aimable Saba Rafiki and Étienne Nembe. See Special Report on the events in Ituri (January 2002 - December 2003) [S/2004/573], para. 9.

[1524] *Fourteenth report of the Secretary-General on MONUC* (S/2003/1098), para. 46.

[1525] See final report of the evaluation mission “Projet de poursuite de la restauration du système judiciaire à Bunia dans le contexte d’urgence de rétablissement de la paix en Ituri”, RCN Justice & Democracy in the DRC, April 2006, p. 4; see also “Making justice work: Restoration of the Legal System in Ituri, DRC” HRW, September 2004.

[1526] Front des nationalistes intégrationnistes

[1527] Union des patriotes congolais

the accusations. The Bunia regional court acquitted Mathieu Ngudjolo on 3 June 2004 because of lack of evidence.[1528] This trial illustrates the importance of witness protection measures in cases in which group leaders are still in a position of authority or power within the region. Mathieu Ngudjolo was subsequently promoted to the position of colonel in the FARDC in October 2006. He was arrested again on 6 February 2008 and transferred to the ICC in the Hague, where he had to answer six charges of war crimes and three charges of crimes against humanity, acts that were alleged to have been committed in the DRC from July 2002 onwards.[1529]

875. **Rafiki Saba Aimable** was accused at the Bunia court of arbitrary arrest aggravated by torture. On 17 August 2004, the court sentenced him to 20 years of imprisonment. An appeal was lodged with the Kisangani Appeal Court. Rafiki Saba Aimable, who was expecting to be transferred to the main town in Orientale Province, was taken in September 2004 to Kinshasa penitentiary and rehabilitation centre (CPRK - centre pénitentiaire et de rééducation de Kinshasa). In December 2004, as part of the demobilisation programme, the transitional Government appointed Rafiki Saba Aimable to the post of colonel in the FARDC, an act that was denounced by human rights groups.[1530] Rafiki Saba Aimable refused the post. In August 2006, while still in detention in Kinshasa, he made a request to the Minister of Justice, leading barrister Aunorius Kisimba Ngoy, that his case might be heard by the Kisangani Court of Appeal. After more than five years, Rafiki Saba Aimable's appeal has still not been heard, which is a serious violation of his rights as guaranteed by the Constitution. According to the director of the CPRK, at a meeting with the Mapping Team, Rafiki Saba Aimable was released on 18 January 2007 and was transferred to Kisangani, where he was to appeal against the judgement that sentenced him in the first instance. However, he was never admitted to Kisangani prison, according to information obtained from the director of the prison. Rafiki Saba Aimable has so far not been located, but what is certain is that he does not appear to be serving his 20-year prison sentence.

876. The military court returned to Bunia in 2005 and dealt with three cases relating to crimes under international law committed in Ituri; the **Kahwa case** (judgement issued 2 August 2006); the **Blaise Mbongi case** (judgement issued 24 March 2006) and the **Gety or Bavi case** (judgement issued 19 February 2007).

877. **Yves Kahwa Mandro**, founder and leader of the PUSIC militia[1531] which was acive in Ituri, was initially prosecuted in the civilian courts for acts of violence and

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[1528] See "Making justice work: Restoration of the Legal System in Ituri, DRC", HRW, September 2004, p. 8.

[1529] International Criminal Court, Situation in the DRC, case: The Prosecutor vs Germain Katanga and Mathieu Ngudjolo Chui, no.: ICC-01/04-01/07, decision on confirmation of charges, 30 September 2008.

[1530] HRW, "D.R. Congo: Army Should Not Appoint War Criminals", 13 January 2005, available at the following address: http://www.hrw.org/en/news/2005/01/13/dr-congo-army-should-not-appoint-war-criminals.

[1531] Parti pour l'unité et la sauvegarde pour l'intégrité du Congo (Party for Unity and the Safeguarding of Congo's Unity).

serious violations of human rights committed between 1998 and 2001, and later in the military courts for other acts of violence committed between 2002 and 2004. The Bunia regional court sentenced him on 19 January 2006 to life imprisonment for crimes committed between 1998 and 2001, particularly murders, assassinations and arson. In a heavily criticised decision, the Kisangani court of appeal acquitted him on 15 February 2008, stating in particular that the "events and acts of war" for which he had been prosecuted were now covered by amnesty laws.[1532] This decision was considered to be a "dangerous precedent, which is contrary to the spirit and letter of the amnesty law".[1533]

878. In the meantime, the military justice system charged him and others with war crimes (attacks against protected objects, according to article 8(2)(b)(ii) of the ICC) and crimes against humanity (murders committed on 15 and 16 October 2002 according to article 7 of the ICC). The tribunal at the military garrison sentenced him to 20 years of imprisonment on 2 August 2006.[1534] This decision was overturned on appeal[1535] on 27 July 2007 because of a technicality; the military court in Orientale Province considered that the right of the accused to be informed of an arrest warrant against him had been violated.[1536] This decision led to many criticisms from victims, who feared possible reprisals.[1537] The military prosecutor made a request to the Military High Court that this decision be overturned in September 2008; this court ordered that Kahwa be kept in detention and overturned the decision of the military court in Kisangani because of "improper application of the law, abuse of power by the leaders of the Kisangani military court and because of a lack of substantiation of the decision to overturn the judgement made by the military court at the Bunia garrison". In accordance with Congolese law, the high court sent the case back to the same court, but with different staffing. The multiple episodes involved in the Kahwa case demonstrate the difficulties experienced by some Congolese judicial authorities when issuing punishment for crimes committed by militia leaders in Ituri. They also illustrate the problems involved in having civilian and military justice systems working in parallel on events that may be classified as crimes under international law, in particular concerning the interpretation that should be given to "acts of war" that are covered by amnesty laws.

[1532] Government decree no. 03/001 dated 15 April 2003 granting an amnesty for all events and acts of war committed between 2 August 1998 and 4 April 2003.

[1533] *Twenty-fifth report of the Secretary-General on MONUC* (S/2008/218), para. 53.

[1534] RP no. 039/2006/RMP no. 227/PEN/2006.

[1535] RPA 1783, the Court considered that the first judge “was unable to examine the case thoroughly, as the first judge had not been properly informed and because there were technical problems”.

[1536] This verdict, which overturned extremely serious charges that had been laid against this man, was based only on one supposed procedural error, as the Court claimed that Mr Khawa's right to be informed about an arrest warrant against him had been violated. According to information in the dossier made available to the United Nations, Mr Khawa appears to have been informed of the arrest warrant against him throughout the trial, but does not appear to have wished to co-operate with the judicial authorities. Letter from the Special Rapporteur concerning the independence of judges and lawyers in the DRC Government - ref AL G/SO 214 (3-3-13) 26 September 2007. Read note 311 at the following address: www.hrw.org/en/node/76199/section/8 [in French].

[1537] Human rights: monthly report, February 2008 - Administration of justice / fight against impunity > Trial monitoring. Available at the following address: www.monuc.org/News.aspx?newsID=17100.

879. In the **Blaise Mbongi case**,[1538] the victims of FARDC's violent acts appealed to MONUC to set up an enquiry and force the military prosecution department to act following violent incidents that had occurred in their villages in October 2005. At the end of January 2006, Captain Blaise Mbongi of FARDC was charged with war crimes, specifically "commanding the looting of the property of the civilian population of Tshekele village in Ituri on 20 October 2005, having five school pupils arrested (all minors) whom his men forced to carry the looted property and commanding his men to kill these pupils" under article 8 of the Rome Statute of the ICC. The military tribunal at the Bunia garrison sentenced him to life imprisonment for acts of murder and looting that were classified as war crimes. The military tribunal within the garrison had refused to grant the accused the right to call his battalion commander, Major Faustin Kekule Kimbwa, whom he accused of taking part in the crimes, using the pretext that his military grade made him "ineligible for trial in a garrison military tribunal". On appeal,[1539] his lawyer mentioned these attacks on the fundamental judicial rights of the accused, in particular the fact that he was not allowed to call his chosen witnesses and that he had no access to counsel when the case was reopened.[1540] Despite all this, on 4 November 2006 the Military Court in Kisangani upheld the conviction, but the sentence was reduced to 20 years of imprisonment. Two months later, the accused escaped from Bunia prison.

880**.** The **Gety** or **Bavi case**[1541] arose from the discovery by MONUC of six mass graves around the FARDC camp in Bavi. According to witness statements, military personnel appear to have performed summary executions of civilians within the region at various times in late 2005 and early 2006. In December 2006, the military prosecutor at Ituri decided to charge 15 military personnel, including Captain Mulesa, for "war crimes of murder, war crimes of rape, war crimes of looting and war crimes of arson".[1542] The military garrison tribunal convicted 13 of the 15 accused on 19 February 2007 to life imprisonment for war crimes and, in solidarity with the State, to payment of civil reparations to the victims. On appeal the military court in Kisangani confirmed the judgement handed down in the court of first instance, but reduced the sentences of all the accused apart from Captain Mulesa. This case resulted in well-substantiated decisions, which cited other cases that reinforced the direct application of the provisions contained in the Rome Statute into Congolese law. These provisions are considered to be "clearer and better drafted" than the military penal code, particularly in terms of the prosecution of war crimes.[1543] The judge also cited, with approval, the decision of TPIY in the Tadic

[1538] RP no. 018/RMP212/PEN/2006, Bunia.
[1539] RPA no. 030/06, Kisangani.
[1540] Page 5 of the decision of the Military Court, re-examining the pronouncement of the first judge.
[1541] RP no. 101/2006-RMP et no. 545/PEN/2006.
[1542] According to a transfer decision, RMP no. 545/PEN/2006, dated 14 December 2006.
[1543] Judgement of 24 March 2006 issued in RP no. 018/2006 by the same tribunal, and decision taken to appeal at the Kisangani military court in the case of Blaise Mbongi Massamba who was prosecuted for war crimes; the judgement dated 12 January 2006 issued by the tribunal at Mbandaka military garrison in RP no. 086/05 and the decision taken to appeal in the Kahwa case under RP no. 039/2006.

case to classify the conflict in Ituri as an "internal armed conflict".[1544] In answer to the request by the main accused to call his hierarchical superior to answer to the charges brought, the judge declared that "in practice, it is not easy to prove that the hierarchical superior is responsible" as it has to be possible to prove the extent to which "these hierarchical superiors have tolerated the criminal acts of their subordinates". This last statement illustrates the limitations of military jurisdictions in determining the extent to which superiors and commanders are responsible for acts committed by their subordinates, which requires from the start an enquiry by the military prosecution department concerning military structures, which are often complex, particularly in the case of armed groups with no clearly defined hierarchy.

881. It is useful to mention, in conclusion, that at the same time as efforts were being made by the international community to restart the justice process in Ituri, on 10 January 2004 the Congolese head of State appointed five former warlords from Ituri district as generals in the national army. Four of the five new generals - Jérôme Kakwavu, Floribert Kisembo, Bosco Ntaganda and Germain Katanga – were identified in various reports as having been responsible for serious human rights violations, in particular war crimes and crimes against humanity, and this raised "serious questions about the Congolese Government's commitment to justice and human rights".[1545] In addition, these appointments placed these individuals out of reach of Congolese military justice, which had no judges of sufficient grade or rank to try them. This problem became apparent when the Congolese authorities arrested, following a specific request by the Security Council,[1546] several militia leaders including Thomas Lubanga, Floribert Ndjiabu, Goda Sukpa and Germain Katanga following the assassination of nine Bangladeshi MONUC military personnel in Ituri on 25 February 2005. Six months later, in August 2005, it was still not known whether these arrests "had been based on legitimate charges and arrest warrants, which could lead to criminal trials".[1547] In May 2006, the Military High Court in Kinshasa declared that it was "for the moment in an impossible situation, as no judge of appropriate grade and rank is available", and suspended "the trial currently before its jurisdiction, while awaiting new personnel".[1548] Three years after the arrest, the military High Court has still not examined these cases. In the meantime, Thomas Lubanga and Germain Katanga were transferred to The Hague in March 2006 and October 2007 respectively, to be tried by the ICC.

[1544] Page 28, paragraph 1 of the judgement issued under RP no. 101/2006 - RMP no. 545/PEN/2006.

[1545] Hundreds of witnesses reported to Human Rights Watch that these four commanders had ordered, condoned or personally committed ethnic massacres, murders, acts of torture, rape, mutilation and recruitment of child soldiers. “The government needs to take these warlords to court, not give them responsible positions in the army”, “DRC: Army Should Not Appoint War Criminals”, HRW, 13 January 2005, available at the following address:
http://www.hrw.org/en/news/2005/01/13/dr-congo-army-should-not-appoint-war-criminals.

[1546] Declaration of the President of the Security Council, dated 2 March 2005 (S/PRST/2005/10).

[1547] *Seventeenth report of the Secretary-General on MONUC* (S/2005/167), para. 17.

[1548] Decision referred to the Pro-Justitia, provisional judgement, P.D. no. 001/06, 12 May 2006.

882. As for Bosco Ntaganda, former assistant chief of staff of the Forces patriotiques pour la libération du Congo (FPLC), the armed branch of the UPC (Congolese Union of Patriots), which at the time was led by Thomas Lubanga, he joined the National Congress for the Defence of the People (CNDP - Congrès national pour la défense du peuple) in 2006, which at the time was led by Laurent Nkundabatware as chief of staff. A warrant had been issued by the ICC for his arrest on 22 August 2006 for war crimes, specifically recruitment of child soldiers and use of these child soldiers in hostilities. In January 2009, he left the CNDP along with his troops, and was brought back into the FARDC at the grade of general, despite the existence of an ICC arrest warrant against him.

5. Provinces of North Kivu and South Kivu

883. Although North Kivu and South Kivu Provinces were the scene of multiple serious violations of human rights and international humanitarian law, which persist today, very few of these violations have resulted in prosecutions in the judicial system for crimes under international law. Examples of such cases are the Walikale, Nkundabatware and Jules Mutebusi cases, and the Bosco Ntaganda case.

884. The **Walikale case**[1549] is one of the few known judicial initiatives to fight against impunity in North Kivu Province. This case involved 11 FARDC militia who were accused of committing mass rape, looting and torture against the civilian population in Hombo village (which is primarily populated by pygmies) on 18 and 19 March 2009. Thanks to support from MONUC and the REJUSCO programme which facilitates itinerant court hearings, the 11 accused, of whom six had fled, were sentenced on 24 April 2009 by the military tribunal at the Goma garrison for crimes against humanity in the form of rape, in application of the Rome Statute. The judge made reference to the jurisprudence of international tribunals when defining the occurrence of rape according to international criminal law.[1550] An important fact is that the judge applied the provisions contained in the Rome Statute when determining the extent to which the hierarchical leaders of the perpetrators were responsible, and considered that "they condoned the criminal acts of their subordinates when the latter violated international law".

885**.** **General Laurent Nkundabatware** and **Colonel Jules Mutebutsi** are two rebel chiefs who were particularly active in North Kivu and South Kivu Provinces between 1998 and 2009. In 2005, the military prosecutor at the military High Court issued two international arrest warrants against them for "creation of an insurrectionist movement, war crimes and crimes against humanity", and considered that there was "serious evidence of guilt" against them. These two arrest warrants, which were sent to the Minister of Foreign Affairs and International Cooperation, were issued in compliance with law no. 023/2002 dated 18 November 2002 pertaining to the military judicial code. According to the warrants themselves, they are international because "the two persons

[1549] Military tribunal at Goma garrison, 24 April 2009, RP 353/2009, RMP0039/KNG/09.

[1550] In particular, the judge cited the Furundzija (TPIY) case and the Akayesu (TPIR) case.

concerned by them live in Rwanda" and "attempts by the 10th military region to arrest them have been fruitless".

886. Jules Mutebutsi was arrested in 2005 by the Rwandan authorities, who transferred him to Rwanda. Under similar conditions, Laurent Nkundabatware was arrested and then transferred to Rwanda on 22 January 2009. Rwanda gave no official reason for either man's arrest, and provided no precise charges to justify their arrests. The Congolese authorities asked several times that the men be extradited to the DRC. Negotiations continued between the DRC and Rwanda in March and April 2009 in Kinshasa concerning the extradition of Laurent Nkundabatware, with no conclusion having been reached on the date of this report.

887. The **Jean-Pierre Biyoyo case**[1551] illustrates the reluctance of the Congolese military judicial authorities to classify acts that could constitute crimes under international law as war crimes. The facts of this case reveal that in 2004 and 2005, five military personnel deserted their camps, and that with the complicity of a secondary school teacher, they began an insurrectional movement known as FSP (*Front social pour le progrès*) which operated, under Biyoyo's leadership, abduction, arrest and arbitrary detention of underage children for the purpose of using these children as combat troops. The judge refused to classify recruitment of child soldiers as a war crime,[1552] and sentenced all those accused on 17 March 2006 for purely military and ordinary offences including desertion, insurrection, abduction, arrest and arbitrary detention of minors. Biyoyo was sentenced to death. On 3 June 2006 he escaped from Bukavu central prison. The appeal judge (Bukavu military court) confirmed, on 12 January 2007, the decision handed down by the court of first instance. In February 2007, Biyoyo was back in Bukavu as Lieutenant-Colonel of the FARDC, with the mission of helping a group of militia to reintegrate into the Congolese army. As a result of the general indignation at this appointment, he disappeared once again.[1553]

Conclusion

888. It is undeniable that after the reform of military law in 2002, followed by the DRC's signing up to the Rome Statute of the ICC in the same year and the adoption of the transitional Constitution in 2003, some actors in the Congolese military justice system have been inspired and, with the support of the international community, have taken a small number of courageous decisions in the face of material and psychological obstacles as well as political pressure: such was the situation in the Songo Mboyo, Gety and Bavi,

[1551] Judgement issued 17 March 2006 concerning acts committed in Uvira in the DRC, in Rwanda and in Burundi, RP 096/2006-RP 101/2006 and RMP 292/KMC/06-RMP 206/KMC/06.

[1552] In particular, the recruitment of children as combat troops. See sub-paragraph vii of paragraph 2 of article 8 of the Rome Statute.

[1553] ASF is concerned by the fact that Jean-Pierre Biyoyo remains at large. Available at the following address: http://www.asf.be/publications/ASF_RDC_Biyoyo_ENGL.pdf

Lifumba Waka, Gédéon Kyungu, Walikale cases, and the case of the assassination of the two MILOBS (military observers). However, all these cases have also demonstrated the operational limitations of military judges, particularly the Ankoro, Kahwa Mandro, Kilwa and Katamisi cases, in which hurried and questionable investigations, poorly-written or unsubstantiated judicial documents, decisions decisions with no rational basis in law, limitations placed on the right to defence and various types of interference are all characteristic failings of these decisions.

889. The lack of will to prosecute serious violations of international humanitarian law committed in the DRC is also illustrated by the fact that the vast majority of decisions handed down came about as the result of constant pressure from MONUC and NGOs. In nearly all the cases cited above, MONUC, having conducted the initial investigations itself, had to increase pressure, at times with the assistance of various NGOs, to persuade the military prosecution department to deal with cases involving serious violations of human rights and international humanitarian law.

890. From the legal decisions listed and analysed above, some general preliminary conclusions can be drawn:

- Crimes under international law, although recognised in Congolese military law since 1972 and contained in certain international conventions that apply in the DRC, have to date been the object of only a very small number of decisions made by Congolese military tribunals that have jurisdiction in this area, and this has sanctioned impunity for this type of crime.
- The few decisions that have been made have mainly been within three provinces, which reinforces the impunity for crimes under international law committed in other provinces of the DRC, including North and South Kivu and Kinshasa, where very serious violations of international humanitarian law were committed.
- For all crimes under international law committed between March 1993 and June 2003, as listed in section I of this report, military tribunals only dealt with two that were classified as war crimes, one of which ended in the acquittal of all those accused.
- Although military tribunals have begun to function once again throughout the DRC, albeit on a minimal basis, since the beginning of the transition in 2003, and often with the encouragement and support of the international community and MONUC, one is forced to question the will on the part of the authorities to come to terms with crimes under international law committed during previous conflicts.
- Finally, the prosecutions that have been brought concerning violations of international humanitarian law satisfy neither the DRC's international obligations to curb serious breaches of the Geneva Conventions and serious violations of human rights, which are imposed by the mechanisms of international law to which the DRC is party, nor international standards concerning the fight against impunity.

CHAPTER III. EVALUATION OF THE CAPABILITY OF THE CONGOLESE JUSTICE SYSTEM TO PROVIDE JUSTICE FOR CRIMES UNDER INTERNATIONAL LAW COMMITTED BETWEEN MARCH 1993 AND JUNE 2003

891. Having described the legal framework that applies to crimes under international law in the DRC and analysed briefly the legal practice to which this has given rise, it is now useful to examine to what extent the national justice system can currently and adequately deal with the many serious violations of human rights and international humanitarian law that were committed on its territory. In the following paragraphs, we will shed light on the relevant aspects of the evaluation of the capacity of the Congolese courts and tribunals to prosecute and try the presumed perpetrators of violations of human rights and of international humanitarian law committed in the DRC, particularly those documented in this report.

892. As noted in the previous section, it cannot be denied that the DRC has a legal and jurisdictional framework that can curb war crimes, crimes against humanity and crimes of genocide, both by criminalising these acts in national law, and by virtue of the fact that the DRC has ratified the most important Conventions concerning human rights and international humanitarian law. Although the national law applicable to crimes under international law does have gaps in certain areas, in particular a lack of a list of such crimes and the non-existence of specific sentences for war crimes, it is noted that these crimes are, in compliance with international law, not subject to a statute of limitations in Congolese law.[1554]

893. However, legal practice in the area of crimes under international law has been very limited, and is represented by a very small number of cases. It can therefore be stated that impunity prevails in this area.[1555] The Congolese judicial authorities that met with the Mapping Team confirmed that no judgement for war crimes or crimes against humanity had ever been issued under the Military Justice Code of 1972, which remained in force until March 2003.[1556] Even when the military criminal law was reformed in 2003,[1557] a very small number of cases relating to crimes under international law (in comparison with the number of crimes committed) have been dealt with by military

[1554] Article 166 of the military judicial code of 1972 confirms that there is no statute of limitations for the prosecution of war crimes or crimes against humanity.

[1555] Of the 14 identified cases in which Congolese jurisdictions have dealt with acts described as war crimes or crimes against humanity, only two were incidents that occurred before June 2003; the Ankoro case, judgement issued 20 December 2004 concerning incidents that occurred in Katanga in 2002, and the MILOBS case, judgement issued on 19 February 2007 concerning incidents that occurred in May 2003 in Ituri. See the following paragraph concerning judicial practice.

[1556] In the Ankoro case, charges of war crimes under the CJM-1972 were rejected by the tribunal.

[1557] This reform, which was approved on 18 November 2002, came into force in March 2003. See law no. 023/2002 of 18 November 2002 relating to the Code of Military Justice and law 024/2002 dated 18 November 2002 relating to the military criminal procedure code, which came into force on 25 March 2003. See *Journal officiel de la RDC* (Official Journal of the DRC), special edition, forty-fourth year, 20 March 2003.

jurisdictions established to date. This lack of dynamism in the Congolese justice system in relation to war crimes and crimes against humanity, particularly in respect of those primarily responsible for them, has only encouraged the perpetration of new serious violations of human rights and international humanitarian law.

894. The problem in the DRC is less a problem of inadequate provisions in criminal law than a failure to apply them. Although the 2006 Constitution gives a broad role to the promotion and protection of human rights, as required by the fight against impunity and the absolute requirement to restore a constitutional state, the admission is readily made that the "reality of the situation is not in line with the ambitions of the Constituent Assembly".[1558] However, as confirmed by the Status Report concerning the justice sector in the DRC, the Congolese judicial system is not "*terra nulla:* a solid legal tradition, inherited from the colonial period (which is still evident in the quality of some senior judges), a sustained desire for reform, which is certainly held back by political insecurity and the State's economic ruin but which has led to the creation of concrete and coherent proposals to restore judicial power, and finally a corpus of national legal texts that require no major urgent amendment nor significant additions".[1559]

895. The efforts made over the past few years to restructure and reform the administration of justice were intended to make the judicial system into one of the three powers in a truely constitutional state, in compliance with the provisions contained in the Constitution. Despite all this, all the indications suggest that the Congolese judicial system is in poor condition. Having been significantly weakened under the Mobutu regime, it suffered severely as a result of the various conflicts that ravaged the DRC for over ten years. As the head of the national Bar, Mbuy Mbiye Tanayi, said recently, "the Congolese justice system functioned to the satisfaction of all until the mid-1970s, at which point the edifice began to crumble. Rather than attacking the roots of the dysfunction that emerged within the Congolese judiciary, the political authorities instead made the choice to worsen the situation".[1560] On his return from a mission in the DRC, the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, concluded that the judicial system was "in a deplorable state".[1561]

896. These various observations shed light on the limited ability of the national judicial system to perform its essential functions within the Congolese State, particularly as regards the fight against impunity. There were found "signs, facts, proof and appearances

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[1558] Action plan for justice reform, Ministry of Justice in Kinshasa, 2007, p. 10, available at the following address: www.justice.gov.cd/j/dmdocuments/pdaction.pdf [in French] (hereinafter Ministry of Justice, Action Plan 2007).

[1559] The mission tasked with auditing the judicial system was the result of an initiative of the European Commission acting jointly with Belgium, France, the United Kingdom, MONUC, the UNDP and the OHCHR. See Justice Sector Organizational Review in the DRC Status Report, May 2004, p. 7 (hereinafter Audit 2004).

[1560] President of the national Bar, Mbuy Mbiye Tanayi, speech made at the start of the legal term, 2008.

[1561] *Report of the Special Rapporteur on the independence of judges and lawyers* (A/HRC/8/4/Add.2), para. 69 (hereinafter the Despouy Report).

of the collapse of judicial institutions, of their credibility and effectiveness, of their lack of independence and resources, both material and symbolic. This has not arisen primarily because of the poor quality of staff, but because of the total abdication by the State of its own responsibilities".[1562] These weaknesses in judicial power are manifestations of a deep-seated crisis that has persisted in the Congolese judicial system for decades.

897. Research and analysis carried out by the Mapping Team over six months, along with workshops and consultations with actors within the Congolese judiciary, both institutional and in civil society, confirmed that the main problems affecting the way in which justice functions, in terms of the system's ability to investigate, prosecute and try the perpetrators of crimes under international law committed in the DRC, are essentially connected with the limited capability and lack of independence of the Congolese judicial system.

898. The fact that military courts and tribunals have exclusive competence over crimes under international law also poses a problem in relation to the curbing of serious violations of human rights and of international humanitarian law committed in the DRC between March 1993 and June 2003. The poor capability and lack of independence of the military justice system are illustrated by the insignificant number of such cases they have heard since the transition process began, and the way in which they have dealt with them. Faced with the multitude of crimes under international law perpetrated before the transition, the independence of the judicial system is all the more essential as the system now has to deal with cases that involve senior leaders from armed groups involved in the various conflicts. Unfortunately, the problem of the lack of independence of military courts and tribunals seems to be accentuated or even increased by the nature of military justice itself, which, we are reminded, should "be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalised criminal court".[1563]

899. These three issues are analysed in the following paragraphs.

A. Lack of capability and resources in the Congolese justice system

900. The Congolese judicial system was described in 2008 by the Special Rapporteur on the independence of judges and lawyers as the "poor relation of the country's democratic institutions".[1564] This expert considered that apart from the damage caused by the war, the main cause of this situation was related to the fact that the State was not providing the judicial powers with the resources they needed in order to function. In

[1562] Audit 2004, p. 41.
[1563] *Commission on Human Rights* (E/CN.4/2005/102/Add.1), Principle on impunity 29.
[1564] *Despouy report* (A/HRC/8/4/Add.2), para. 73.

March 2009, a similar observation was made by the seven Special Rapporteurs from the Human Rights Council, who emphasised that the "the impunity problem is also rooted in the capacity of the justice system" and that "deprived of an adequate budget, the justice system remains in a deplorable state and lacks the capacity to handle its caseload".[1565] In many respects the incapability of the justice system in the DRC is a direct result of a lack of adequate financial resources.

1. Insufficient budget[1566]

901. While most countries spend between 2% and 6% of their national budgets on justice, the DRC only spent an average of 0.6% per year between 2004 and 2009,[1567] while its national budget increased by nearly 30% per year over the last three years. Some officials from the Ministry of Justice, who had worked there for over ten years, explained to the Mapping Team that they had no recollection of the justice sector budget being among the ten largest budgets at any time since 1990, although it had always been on this list before this date. In addition, the Minister of Justice was, in protocol, the fourth most important minister in the Government before 1990, and is now in eleventh place on this list.

902. Although the 2006 Constitution is innovative in that it granted the Supreme Council of the Judiciary the responsibility of drawing up the budget for the judicial system (art. 149),[1568] this fundamental provision has not yet been applied, despite the adoption of the law creating the Supreme Council of the Judiciary (*Conseil supérieur de la magistrature*). In addition, if judges are capable of evaluating the needs of the judicial system, the fact remains that the Council of Ministers, which must approve their assessment, must grant them the priority status they require.

903. The extremely reduced proportion of the budget allocated to the judicial powers is the primary cause of the lack of judges and of tribunals. Efforts from the international community and the United Nations were critical to start most of the ongoing projects to

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[1565] *Combined report of seven thematic special procedures on Technical Assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (A/HRC/10/59), para. 62.

[1566] The Mapping Team held meetings with the budget division of the Ministry of Justice on 7 and 12 February 2009. The Team also held meetings with the permanent secretariat of the Supreme Council of the Judiciary (Conseil supérieur de la magistrature or CSM) and with many presiding judges from provincial civilian and military appeal courts.

[1567] *Report of the Special Rapporteur concerning violence against women, its causes and consequences* (A/HRC/7/6/Add. 4), para. 71. See Audit 2004, p. 27; law no. 07/009 dated 31 December 2007 containing the Congolese national budget for the 2008 financial year. Available at the following address:www.umoya.org/index.php?option=com_content&task=view&id=2611 [in French]; Law no. 08/017 dated 31 December 2008 containing the national budget for the 2009 financial year. Available at the following address: www.digitalcongo.net/article/55729 [in French].

[1568] Organic law no. 08-13 dated 5 August 2008 concerning the organisation and functioning of the Supreme Council of the Judiciary, article 2, eighth and last paragraph, goes further: “It (the CSM) draws up the budget for the judicial powers”.

restore the judicial system.[1569] However the current judicial reforms only have a limited impact on the justice sector's budget, which remains insufficient. It is important to emphasise that the DRC has the obligation and responsibility to ensure that its justice system is viable and that its budget difficulties do not justify the inadequate resources that have been allocated to justice. As stated in the report of the international parliamentary-expert mission to the DRC in 2008, "If the State flouts, ignores or fails properly to fund the provision of justice, it undermines both the rule of law and democracy generally."[1570]

904. The chronic underfunding of the Congolese judicial system has an inevitable effect on all those involved in the judicial system and those who are tried. All areas of the civilian and military justice systems are affected; tribunals, qualified staff (judges, bailiffs, clerks, judicial police, prison staff), buildings (courtrooms, offices, prisons), equipment (furniture, computers, office supplies), transportation and communication, adequate training, security and witness protection, access to victims and access to defence are all lacking.

2. Lack of personnel

905. The number of tribunals and magistrates (judges and prosecutors) working in the Congolese judicial system has been insufficient for a very long time. Several of the magistrates, on meeting members of the Mapping Team, complained that they were unable to keep up with the volume of cases that were referred to them each day. Military magistrates in Ituri stated that "there is a severe lack of people ... in the whole prosecution department there are only three instructing judges, as the prosecutor himself cannot instruct ... a minimum of seven magistrates are needed in the prosecution department, according to the existing organisation chart".

906. A situation report about the justice system, which was drawn up in 2004, shows that there were 1950 magistrates , of whom 375 were sitting judges (magistrats du siège) and 1575 were prosecutors (magistrats du Parquet), with over 30% of them working in Kinshasa. The conclusion drawn from this was that "geographical distribution of judges

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[1569] In particular, the justice support programme, the programme to rehabilitate and restore the criminal justice system carried out in Ituri in 2003, followed by the project to rehabilitate justice in the east of the DRC (REJUSCO), the organisational audit of the judicial system in 2004, one of whose recommendations was implemented by the creation of a mixed justice committee (CMJ) bringing together representatives from the Ministry of Justice and representatives from the main donors to the judicial system, and adoption of the Action Plan for Justice in 2007. Between 2002 and 2008, tens of millions of US dollars were invested in the rehabilitation of the Congolese judicial system, in particular by the European Commission, the United Kingdom, Belgium, the Netherlands, Sweden, the United States of America, France and Canada, in collaboration with UNDP, MONUC and OHCHR.

[1570] "Most of the initiative, whether related to the essential infrastructure or to supporting the judiciary, seems to be left to and taken by the international community and donors. It is however the government which is legally responsible for these matters under international law." *Report of the international parliamentary-expert mission addressing impunity for sexual crimes in the DRC, 26 April - 3 May 2008*, Swedish Foundation for Human Rights and United Kingdom All-Party Parliamentary Group on the Great Lakes Region of Africa, para. 23 (hereinafter International parliamentary-expert mission, 2008).

and tribunals is inadequate, given the size and needs of the country".[1571] In late October 2007, according to data from the Ministry of Justice and the UNDP,[1572] there were 2030 magistrates, or one per 30,000 of the population, and only 230 jurisdictions and offices, i.e. one jurisdiction/office per 30,000 km^2. The most recent data from the Supreme Council of the Judiciary shows that, in late December 2008, there were 1818 magistrates, of whom 1495 were working civilian magistrates and 323 were working military magistrates,[1573] which was a reduction in comparison with 2004. As the recent REJUSCO report noted, the number of magistrates "has consistently been falling for years now, for various reasons".[1574]

907. Magistrates have often been at the whim of the current political climate, as they were in 1998 when 315 of them were dismissed arbitrarily by the President of the Republic, and were only reinstated under the terms of the Global and Inclusive Agreement of 2002. In February 2008, the President of the Republic forced 92 magistrates to retire, in a gesture which some considered to be a violation of the 2006 Constitution,[1575] while others praised the decision as an attempt to clean up a judicial system that was poisoned by various ills.[1576]

908. In 2007, the Ministry of Justice estimated that there was a shortfall of nearly 2500 magistrates nationwide, and that 1000 needed to be recruited urgently.[1577] At the first extraordinary meeting of the General Assembly of the Supreme Council of the Judiciary, which was held in December 2008, the Minister of Justice announced the recruitment of 250 magistrates, 200 of whom were to be civilian and 50 military, which was far less than the figure required to compensate for the lack of capacity in the judicial system. In

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[1571] Audit 2004, p. 21.

[1572] See Ministry of Justice Action Plan 2007, p. 19.

[1573] Data from the president of the tribunal of first instance in Kinshasa/Gombe Willy Mfutu, member of the technical committee of the permanent secretariat of the CSM. It should be noted that even those judges who die while performing their duties are considered to be "working" until 12 months after death, as their salaries continue to be received by their next of kin during this period.

[1574] The successive crises in the east of Congo have had greater effects on the number of judges working in these provinces, and judges are not generally keen to be deployed to these regions. According to REJUSCO, the total number of judges in early 2009 appears to be 2150. See Final report of mission for midway evaluation of the REJUSCO programme, 17 March 2009, p. 16. For reasons behind this reduction in the number of judges from 1977 to date, see speech by the head of the national Bar, Mbuy-Mbiye Tanayi, at the start of the legal term 2008, p. 6-8 [in French].

[1575] See the press release by the Autonomous Trade Union of Congolese Judges (Synamac) dated 14 February 2008, which denounced "the unconstitutionality, the irregularity and the inopportune timing of these rulings" and observed "that many judges were forced into retirement having reached neither the age of 65 nor 35 years service", which is available at the following address: www.lobservateur.cd/index.php?option=com_content&task=view&id=1320&Itemid=29

[1576] See the DR Congo analysis in general. Can J Kabila cull the judges in the absence of the CSM as contained in the 2006 Constitution? 9 March 2009, available at the following address: www.la-constitution-en-afrique.org/article-17496115.html

[1577] Sources from the Supreme Court consider that no fewer than 1000 judges should be recruited urgently, having learnt that to date more than 6000 applications have been submitted year after year to the Ministry of Justice, whose decision in principle to recruit 500 civilian and 100 military judges initially, and then to recruit 2500 judges over two years, has not yet been put into practice because of a lack of financial resources: Ministry of Justice, Action Plan 2007, p. 29.

addition, most of the tribunals planned for in the Code of Judicial Organisation and Competence have never been set up. Some magistrates who were appointed and abandoned by their line management ended up deserting locations that were insecure (because of war) or that were considered "not very lucrative". Others, according to public prosecution department managers, simply failed to turn up in the towns over which their appointments granted them jurisdiction.

909. In summary, there are insufficient numbers of magistrates, both sitting judges and prosecutors (magistrats du siège et du parquet) in the DRC. This situation affects almost all jurisdictions, civilian as well as military. The consequences of the lack of courts and of magistrates in terms of impunity are many, and are particularly serious outside Kinshasa. They include:

- They cannot deal with all the cases referred to them or that should be referred to them.[1578]
- They cannot reach the quorum required in order to sit, requiring in some cases the use of the police and army to use associate judges who have had little or no training in the law.[1579]
- Many rural areas are left without police stations, courts or magistrates, meaning that victims are forced to travel long distances (sometimes many hundreds of kilometres) in order to lodge complaints.[1580]
- Areas that lack judicial authority and that are considered to be "lawless zones", strongholds and fiefdoms under arbitrary control of local figures (traditional chiefs, police authorities, civilian administrators, senior businessmen) who tend to abuse their administrative, economic and customary powers when ruling on lawsuits put before the courts.
- *Officiers de police judiciaire* (OPJ – police officer working under direct order of prosecuting magistrates) who, in the absence of magistrates, arrogate powers that are not recognised as theirs by the law. The Mapping Team has received reports of the holding back of complaints, statements not being sent to prosecution departments, cases of arbitrary or illegal detention, demands of payment of arbitrary fines by those subject to trial, and transformation of civil cases into criminal ones.[1581]

[1578] Ministry of Justice Action Plan to reform the justice system, November 2007, p. 14.

[1579] According to the Special Rapporteur on the independence of judges and lawyers, "This is a clear violation of the fundamental standards of independence and professionalism of the judicial authority." See the *Despouy report* (A/HRC/8/4/Add.2), para. 28.

[1580] International parliamentary-expert mission, 2008, para. 26, Ministry of Justice Action Plan 2007, p. 14.

[1581] Witness statements collected by the Mapping Team in Kisangani, February 2009.

- Tribunals are paralysed for months, delivery and administration of justice is slow because magistrates leave the administrative centre to go to distant regions to hold peripatetic sessions.[1582]

3. Lack of technical and material support

910. Public prosecution departments, military prosecution departments, courts and tribunals are operating amidst great material poverty and with no office equipment for magistrates. Apart from a few buildings that house judicial facilities, which were renovated as part of a European Union project between 2003 and 2006, and recently as part of the REJUSCO programme, most buildings are old and dilapidated.[1583] Apart from the *Palais de justice* in Mbandaka, which was built in 1958, the other public buildings that house jurisdictions were built in the 1920s.[1584] In addition, these buildings have been looted several times (1991, 1993, and 1997). The furniture, which was already old and dated back to before independence, was damaged or taken, and has not been replaced. Magistrates and clerks often have to buy furniture for themselves, which they use throughout their careers. For years, senior magistrates in the Supreme Court of Justice have been obliged to work from home, as they have no offices at the Court.

911. Office equipment is lacking. The available typewriters are generally not in good condition. Very few magistrates have computers, and in most cases these belong to the magistrates themselves. There are no libraries in magistrates' offices. Magistrates therefore have very limited access to legal literature, few opportunities to consult the case law or even the texts of current laws. Moreover they rarely receive the sums required to cover their work-related expenses.[1585] Some are reduced to buying legal texts and other legal documents that are essential to their work with their own money. Concerning the slow speed at which judgements are produced, and the complete failure to produce them in some cases, it has been reported to the Mapping Team that judgements are only drawn up if the parties have the interest and resources to do so.[1586] As a result, according to the Special Rapporteur on the independence of judges and lawyers, "Judicial officers are thus compelled in nearly every case to live at the expense of those subject to their jurisdiction".[1587]

[1582] See Final report of the mid-term evaluation of the REJUSCO Programme, 17 March 2009, p. 16, which cites the problems of the general prosecution department in Bukavu, which has just two judges, the military tribunal in Béni which also has just two fully qualified judges, the tribunal in Uvira which has one president and one garrison prosecutor; one judge declared to the Mapping Team that "at peripatetic hearings, the President of the tribunal is alone, because of a lack of judges, and for several months he was unable to give verdicts on criminal cases which require a minimum of three judges".

[1583] Court premises are extremely dilapidated. Some judges or officers of the court have to work outside under a straw roof, as the court premises only have three or four rooms. *Despouy report* (A/HRC/8/4/Add.2) para. 33.

[1584] Audit 2004, p. 26. Some institutions are housed in inappropriate buildings such as private residences, where the working conditions are not acceptable.

[1585] Despouy report (A/HRC/8/4/Add.2), para. 32.

[1586] Mapping Team interview with the President of a military jurisdiction in Bukavu, 14 May 2009.

[1587] Ibid., para. 32.

4. Lack of transportation

912. The cases studied in the previous chapter illustrated the poor conditions and consequent limited ability of investigators and magistrates to move around such a large country in order to carry out their judicial functions. "Several magistrates have stated that when they are informed of people being killed or raped even 30 km from the city in which their court is located, they are unable to travel to the area for lack of a vehicle".[1588] In each of the cases mentioned, military justice received aid from MONUC or from international partners (REJUSCO) to assist in investigation or in holding peripatetic sessions in the places in which the violations occurred. This dependence by the Congolese judicial system on support from international organisations in carrying out its duty to investigate and prosecute crimes under international law cannot be an acceptable solution for the DRC, which must provide its own resources in order to fulfil its international obligations in this area.

5. Lack of training, professional development[1589] and specialisation among magistrates

913. All the magistrates seen by the Mapping Team expressed their difficulties in dealing with a situation in which skill, experience, qualification and merit are not taken into account when granting promotion and career advancement. In terms legal technique, magistrates are not well-equipped to carry out research, and are not well-informed or trained in issues around international humanitarian law, despite some ad-hoc trainings. They do not receive ongoing training to update them on current law, particularly concerning serious crimes and mass violations of human rights. In this respect, it should be noted that the part of the REJUSCO programme that involves the strengthening of specific skills for magistrates and investigators, in order to ensure that those accused of crimes under international law are prosecuted, tried and correctly defended, has not been carried out.[1590]

914. In addition, there are no magistrates who are trained as such, as there is no specific training college for magistrates.[1591] At the end of the university course, which provides the same training for all, any person who holds a law degree may become a

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[1588] *Despouy report* (A/HRC/8/4/Add.2), para. 31: "In some cases, particularly in the eastern parts of the country, MONUC provides road or air transport for judges so that investigations can be carried out and suspects arrested. In the absence of such assistance, however, it is impossible to investigate and prosecute violations committed in rural areas, leaving citizens without any legal remedy".

[1589] This term is understood to mean, in the context of Congolese justice, continuous training courses and refresher courses in various aspects of the law.

[1590] Final report of the mid-term evaluation of the REJUSCO Programme, 17 March 2009, p. 32 and 36; however, the Belgian organisation Avocats sans frontières (Lawyers without Borders) has held training sessions on crimes under international law for several Congolese judges.

[1591] There is a college that should act as a training centre for judges, within the Ministry of Justice in Kinshasa, but it is not operational.

civilian or military judge, as long as he or she holds a degree or doctorate in law. As confirmed by Balanda Mikwin Leliel, Professor and former chief president of the Supreme Court of Justice, it is fortunate that, with a few exceptions, magistrates in the DRC are professionals who hold academic qualifications. It should, however, be noted that the vast majority of magistrates struggle to hone their skills or to keep up the knowledge that they acquired at university, because of a lack of libraries and of legal works and journals.

915. The lack of specific training for Congolese magistrates and lawyers in crimes under international law and violations of international humanitarian law explains that the whole system has problems with the comprehension of provisions relating to war crimes and crimes against humanity (as defined in the Rome Statute of the ICC), and of harmonisation of these provisions and concordance with pre-existing national legal codes such as the code of judicial organisation and competence, the criminal code, the military criminal code and the criminal procedure code. For example, several civilian and military magistrates who were interviewed by the Mapping Team recognised that they were not aware of and did not apply the Geneva Conventions and other instruments of international humanitarian law that are incorporated into the Congolese judicial system. The Ministry of Justice Action Plan 2007 also identified poor knowledge (on the part of judicial actors) of international standards relating to international law and human rights as a major problem.[1592]

6. Weakness and deterioration in other components of the justice system

916. The underfunding of the Congolese judicial system has an inevitable effect on all those involved in the judicial system.

917. All areas of the civilian and military justice systems are affected; facilities, qualified staff (ushers, clerks, judicial police, prison staff), buildings (courtrooms, offices, prisons), equipment (furniture, computers, office supplies), transportation and communication, adequate training, security and witness protection, access to victims and access to defence are all lacking.

918. Once more it should be noted that there is a lack of protection for victims and witnesses, high legal costs, poor organisation of legal aid, lack of trust in institutions on the part of those coming before the courts, and slow and ineffective administration of justice. The serious lack of resources faced by clerks' offices means that "archives, which should be managed by an archivist clerk in each jurisdiction, are generally poorly kept and are stored in places with no appropriate conditions for conservation".[1593]

[1592] Ministry of Justice Action Plan, 2007, p. 18, available at the following address: www.justice.gov.cd/j/dmdocuments/pdaction.pdf

[1593] Audit 2004, p. 26, Ministry of Justice Action Plan 2007, p. 33. “clerks' offices are housed in huts, as observed during visits on the ground”.

919. Among the results of all these problems is that investigations are not started, a large number of judgements remain to be passed or are not drafted if those involved are not prepared to pay the drafting fee, that very few trials take place while a large number of defendants spend months or even years on remand without seeing a magistrate, that judgements are rarely carried out and that prisoner escapes are very common.[1594]

Lack of access and support for victims

920. Access to justice for victims of human rights violations is a challenge, particularly for victims who live in the provinces in which judicial facilities are geographically, economically and culturally distant from the population. In geographical terms, there is no local justice for victims or those asking for justice. Judicial facilities are distanced from the population. Magistrates' courts, which are supposed to provide local justice for the population, have never been set up in some areas of the country. As a result justice is inaccessible and distant from the population and perceived as arbitrary and not capable of resolving conflicts within society.

921. In economic terms, victims of serious crimes and violations of international humanitarian law, who are often destitute, cannot pay legal costs nor the fees required by defence lawyers. The legal institution "justice for the destitute" does not function satisfactorily, particularly in the provinces in which only a few who live in major urban centres can access this institution. This is regrettable when we consider that judicial decisions have become money-making ventures, and the great difficulties involved in having decisions enforced.[1595] In none of the decisions made by military jurisdictions in which the State was found to be responsible under civil law did the victims see, either from the State or from the attackers, any indication that the sentences would be enforced.

Lack of witness protection

922. There is no witness protection mechanism in the DRC. The Ministry of Justice recognises that this absence of a suitable victim and witness protection programme is a major problem in the face of the "risk of reprisals and attack that confronts victims and witnesses who take part or who wish to take part in a trial".[1596] However, during investigation and prosecution of crimes under international law involving the primary perpetrators, who sometimes still hold positions of power, protection of victims and witnesses is essential, or even indispensable. In such cases, witness intimidation is a key problem: "There is little or nothing done by the Government or police to protect vulnerable witnesses who may be testifying against armed men, whether through the

[1594] All these issues were identified as priority areas in the Action Plan for reform of the justice system. Ministry of Justice Action Plan 2007.

[1595] According to the report of the justice system audit organised by the European Union and the report of the evaluation of justice in the east of the DRC that was organised by Global Rights with the support of USAID, the rate of enforcement of judicial decisions is no greater than 4-6%.

[1596] Ministry of Justice Action Plan 2007, p. 14.

provision of safe houses or other measures".[1597] This problem was illustrated in the Songo Mboyo case, analysed in the previous chapter, in which FARDC militia threatened those victims who had informed against them with violence.

Poor functioning of the prison system

923. The extremely poor condition of prisons is such that rarely a day goes by in the DRC without a prisoner escape. Overcrowding in detention centres is endemic, which endangers both the health of detainees and the security of those who live near detention centres. Most detention facilities hold more remand prisoners than sentenced prisoners. The main detention centre in Kinshasa (CPRK) "holds more than 4000 prisoners, although the facilities are designed for 1500. 42% are held on remand".[1598]

924. Last March, the seven Special Rapporteurs from the Human Rights Council declared that "the disastrous state of the prison system, perhaps the weakest link in the justice chain, facilitates escapes of suspects and convicts, including high profile offenders who sometimes "escape" with the connivance of the authorities."[1599] It should be remembered that, in almost every case examined in the previous chapter, those accused and sentenced of crimes under international law escaped from prison. On the issue of the alarming number of escapes, a military prosecutor declared that it is the State's responsibility: "The authority of the State has yet to be demonstrated. The justice system must operate where it can be effective and where it is supported by public will ... we cannot begin legal action in the absence of a consolidation of the State's authority".[1600]

925. To conclude on the subject of "the high rate of prison escapes due mainly to the dilapidated state of the prisons", it is necessary to point out that the disastrous consequences of this are that "efforts to bring the perpetrators of human rights violations to justice are invalidated by these all too frequent escapes, which contribute to impunity".[1601] It is difficult to know what to say in response to the sight of army officers, sentenced to long periods of imprisonment, who are subsequently able to move around freely with the complicity of the authorities (see the Rafiki Saba Aimable and Jean-Pierre Biyoyo cases in the previous chapter).

[1597] International parliamentary-expert mission, 2008, para. 41.

[1598] Ministry of Justice Action Plan 2007, p. 33.

[1599] *Combined report of seven thematic special procedures on Technical Assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (A/HRC/10/59), para. 63. See also the *twenty-seventh report of the Secretary-General on MONUC* (S/2009/160), para. *88.*

[1600] Mapping Team interview with a military prosecutor in Bukavu, 13 May 2009.

[1601] *Despouy report* (A/HRC/8/4/Add.2), para. 55.

Insufficient legal aid

926. Defence lawyers, public attorneys and barristers operate under a specific law that grants defence lawyers and barristers a monopoly on representation in court.[1602] In order to strengthen access to justice, particularly for vulnerable and destitute groups, each branch of the Bar offers an Office for Free Consultations (Bureau de consultations gratuites or BCG) which takes statements from destitute people who are brought before the courts. Cases are assigned to lawyers automatically for follow-up, and the lawyers are not paid. After dealing with a case assigned by the BCG, the lawyer writes a report.

927. However it appears that very few Congolese people are aware of the existence of this free legal assistance. At the same time, the number of lawyers, particularly trainee lawyers who are experienced in taking on these kinds of cases, means that there can be no increase in the number of cases initiated in law by the destitute.[1603]

928. Although the Ministry of Justice's Action Plan in 2007 adopted a strategy aimed at "promoting free legal aid, with priority given to members of groups of people who are vulnerable in terms of the right to defence",[1604] the BCGs still receive no state support and as a result are functioning at a minimal level. Some international organisations working in the DRC have been able to set up collaborative projects involving BCGs, particularly in order to enable legal aid for those accused of crimes under international law.[1605]

B. Lack of independence of the judicial system

929. One of the major weaknesses of the judicial system in the DRC is the lack of independence of the courts and tribunals from the executive, legislative and administrative powers of the State. Interference and intrusion by the political and military authorities into judicial affairs are common and widely recognised. In his state-of-the-nation speech of December 2008, the President of the DRC made this observation:

> "... it is important that this trade in influence stops; we should remember that it is an offence. Very often, when magistrates issue proceedings as is their duty, and before they have even concluded the preliminary instructions, a deluge of telephone calls begins, which paralyses the proceedings. This is

[1602] Edict 79/08 dated 28 September 1979 relating to organisation of the Bar, of defence lawyers and state attorneys.

[1603] Mapping Team interview with president of the Bar Olivier Kilima in Kisangani, 30 February 2009; there are also insufficient numbers of lawyers to do this work. For example, in the whole of Orientale Province, one of the largest in the country, there are only around 90 lawyers called to the bar, of which over half are trainees. See note of the interview with president of the Bar Olivier Kilima in Kisangani, 30 February 2009.

[1604] Ministry of Justice Action Plan 2007, p. 15.

[1605] ASF has had a presence in the DRC since 2002, and in 2005 it set up a wide-ranging programme of international and transitional justice in order to provide legal aid for victims of and those accused of crimes under international law in Congolese jurisdictions.

> intolerable, and risks giving credence to the idea that this is a Republic of untouchables. Whoever breaks the law will be prosecuted. Magistrates are servants of the nation. There can be neither intrusion into nor interference in the way they carry out their duties."[1606]

930. Several of the judicial actors met by the Mapping Team complained of such interference, namely of incessant "phone calls". The political authorities have exacerbated this lack of independence with injunctions and interference in the administration and delivery of justice. In 2008, the Special Rapporteur on the independence of judges and lawyers concluded that "In the present circumstances, the judiciary cannot function independently, as it is subject to political interference and corruption".[1607] This is a key weakness in the face of the challenges posed by the crimes committed during more than ten years of armed conflict. Only a strong and independent judicial system can deal fairly and effectively with the important matters of fighting impunity and restoring dignity to millions of victims of past crimes.

931. It is generally recognised in law that independence is a necessary condition when exercising judicial power, in order to guarantee the fairness of the process.[1608] The independence of magistrates is an essential part of the judicial guarantees granted to all those accused of crimes, and expressed in the right to a just and fair trial "by a competent, independent and impartial tribunal".[1609] The independence of the judiciary can be measured objectively with reference to guaranteed tenure, financial security and administrative independence granted to judges and magistrates in the national legal system.[1610]

Independence in law

932. The judiciary has never received the guarantees of independence that are granted to it in the Constitution. Just a few months after the Congolese Constitution was adopted, the government decree concerning the judiciary, issued on 7 January 1961, explicitly revoked some of the guarantees of independence granted to sitting judges (magistrats du

[1606] State-of-the-nation speech by President Joseph Kabila, given at the People's Palace Kinshasa on 13 December 2008, available at the following address: www.mediacongo.net/show.asp?doc=11320.

[1607] See the *Despouy report* (A/HRC/8/4/Add.2).

[1608] See Universal Declaration of Human Rights, resolution 217 A (III) of the General Assembly dated 10 December 1948 and the International Covenant on Civil and Political Rights, resolution 2200 A of the General Assembly dated 16 December 1966.

[1609] Article 14 of the International Covenant on Civil and Political Rights.

[1610] These objective conditions for judicial independence can be found in articles 11 [adequate remuneration], 12 [guaranteed tenure] and 14 [judicial administration] of the "Basic Principles on the Independence of the Judiciary", which were approved by the General Assembly (see resolution 40/146 dated 13 December 1985). See "The Independence of Judges and Lawyers; a Compilation of International Standards", Centre for the Independence of Judges and Lawyers, Bulletin no. 25-26, April-October 1990.

siège).[1611] In the history of the DRC, despite a series of provisions contained in the various constitutions and laws relating to the organisation and functioning of the judicial system that were supposed to guarantee its independence, courts and tribunals have always suffered from interference from the executive, in violation of the principle of the separation of powers. Despite the adoption of a new constitution and the current implementation of a new process to create and consolidate a judiciary based on constitutional principles, the Congolese judicial system continues to suffer from the same historical problems.

933. In terms of provisions concerning the independence of the judiciary, the Constitution of 18 February 2006 recognises the principle of the separation of State powers and, in application of this principle, states the basic standards concerning the status and organisation of civilian and military courts and tribunals, the magistracy and the functioning of the judiciary.[1612] The 2006 Constitution enshrines the independence of the judiciary into law, which is now subject to the control of the Supreme Council of the Judiciary (CSM).[1613] Judges are now only subject to the authority of the law when carrying out their duties (art. 150).

934. Three years after this Constitution was promulgated, the reform of the judicial system into three jurisdictional orders is still not in place.[1614] Significant aspects of the new constitutional provisions have yet to be harmonised into all parts of the criminal procedure code and military procedure code, as required by the Constitution.

Supreme Council of the Judiciary

935. Article 152 of the new Constitution stipulates that the Supreme Council of the Judiciary (CSM) is a body that is exclusively made up of magistrates. The significant innovation that this law brings to the organisation and functioning of the CSM is the removal of political personnel, namely the President of the Republic and the Minister of Justice. The CSM includes four structures: the General Assembly, the Committee, the

[1611] Despite the guarantees of independence contained in the fundamental law of 19 May 1960, this decree was a departure from the principle of guaranteed tenure for judges, as it made changes to judges' prerogatives. In this decree (the constitutional government decree concerning the judiciary dated 7 January 1961) it is stated that the particular needs of the moment make it necessary for the central powers to transfer, dismiss or suspend judges without taking their consent into account or awaiting judgement.

[1612] Courts and tribunals are included, in the Constitution, among the DRC's new institutions (the other institutions listed under section 3 of the Constitution are the President of the Republic, the Parliament and the Government).

[1613] The law concerning the CSM was promulgated in August 2008, but the new institution took many more months to create.

[1614] The Constitution contains the following provisions for the organisation of courts and tribunals: jurisdictions of judicial tribunals placed under the control of a Court of Cassation, and administrative tribunals under a Coucil of State and a Constitutional Court. Construction of the three buildings that are to house these institutions is planned for the period 2009-2012 under a European Union programme to support the justice system. There is every reason to suspect that, while awaiting the creation of the Constitutional Court, the Council of State and the Court of Cassation, the Supreme Court of Justice will continue to exercise the remit devolved to these new jurisdictions, until they are effectively established.

Disciplinary unit and the Permanent Secretariat. The General Assembly is to be made up of 155 members when the corresponding jurisdictions and prosecution departments are set up, which has led some members of the permanent secretariat to say that the CSM is an "elephantine and high-spending" organisation. The CSM has the power to draw up proposals for appointment, promotion and dismissal of magistrates. The national and provincial disciplinary units enable magistrates accused of misdemeanours to appeal, apart from those who are judged in the first and last instance by the National unit. The creation of the CSM's various structures is not yet complete.

936. The commencement of work on the CSM in December 2008 revealed deep-seated conflicts between the magistrates and the representatives of the executive. In particular, representatives from provinces in which there were civilian and military magistrates denounced attempts at political manipulation of the management of the judiciary by representatives of the executive, in particular the President of the Republic and the Minister of Justice.[1615] Magistrates told the Mapping Team that during the first general assembly of the CSM, which was held in March 2009, they had "sensed the shadow of the executive, which wanted to control everything".

Failure to respect the principle of guaranteed tenure for magistrates

937. Many magistrates who were interviewed by the Mapping Team argued that they had been subjected to unjustified disciplinary measures, dismissal or transfer, in violation of the principle of guaranteed tenure for magistrates and the right to physical integrity and personal safety, among other principles. Article 150 of the 2006 Constitution states that sitting judges (magistrats du siège) may only be moved following a new appointment or at their own request, or via justified rotation determined by the Supreme Council of the Judiciary.

938. Lack of respect for constitutional provisions governing guaranteed tenure for magistrates and sitting judges as well as transfers and disciplinary actions have a very serious impact on the independence of magistrates. As the President of the magistrates' union in Orientale Province said to the Mapping Team, disciplinary action, such as transfers, are seen as punishments that are often imposed on magistrates who want to do their job.[1616] The forced retirement of 92 magistrates in February 2008 and the promotion of others by the President of the Republic were acts that were considered by some to be violations of the 2006 Constitution. Also in 2008, both in Kinshasa and in Lumumbashi, the former Minister of Justice suspended several magistrates from their posts because of "disciplinary offences", leading to a general outcry within the magistracy. In the

[1615] Mapping Team interview with members of the CSM General Assembly, with a Congolese lawyer who is an expert in international criminal law, on 9 December 2008, and with a member of the CSM permanent secretariat in the Technical Committee and an officer from the CSM permanent secretariat on 7 February 2009; respectively President of the Kinshasa/Gombe regional court and member of the CSM permanent secretariat within the Technical Committee and officer from the CSM permanent secretariat.

[1616] Meeting between the Justice Mapping Team and the Secretary of the judges' union in Orientale Province, SYNAMAG, Internal notes, 2 February 2009.

recruitment, progression and promotion of some magistrates, the apparent use of subjective criteria such as whether they belong to the same region or tribe as their line manager, or simply corrupt practices, have been denounced.[1617]

Failure to pay magistrates properly

939. In the preamble to the 2006 law concerning the status of magistrates, the Congolese legislature stated that the wish was to "restore the social and professional status of magistrates, who should be considered to be members of a constitutional power".[1618] However, the salaries of Congolese magistrates remain well below those of parliamentarians, another pillar of constitutional power. Currently, the salary for a new judge is 540,000 Congolese francs, while members of parliament are paid five or six times this sum. However, though magistrates' remuneration, including various benefits, should be "enough to strengthen their independence",[1619] it has to be noted that this is not the case.

940. The vast majority of Congolese magistrates consider that salaries received by them and other personnel in the Congolese justice system do not provide a decent living standard. This is in addition to the fact that salaries and other payments are paid late or not at all, particularly in distant provinces and territories. The consequences of this treatment have been noted by the Special Rapporteur on the independence of judges:

> "Judges earn very small salaries which do not provide a decent livelihood. For example, one judge whom the Special Rapporteur met admitted having to accept money from a party because he could not afford to pay for treatment for his daughter. It is therefore common for judges to give in to corruption or ask for money from the parties or from lawyers. Justice is thus for sale to those who can afford it."[1620]

941. The Minister of Justice himself stated in 2007 that it was "paradoxical that the judicial system, one of whose tasks is to fight corruption, should itself be undermined by this phenomenon". He noted that "those involved do not deny this" and explained the reasons as "financial fragility due to poor levels of remuneration" and to "a clear lack of resources".[1621] However, the corruption of magistrates, who now deliver justice

[1617] The State of Congolese Justice, speech given at the start of the legal term, Head of the National Bar Mbuy Mbiye Tanayi, 2008.

[1618] Point 5 of the statement of reasons behind the organic law concerning the status of judges, no. 06/020 dated 10 October 2006, *Journal Officiel de la RDC*, (Official Journal of the DRC) 47th year, special edition, 25 October 2006.

[1619] Ibid., art. 25.

[1620] *Despouy report* (A/HRC/8/4/Add.2), para. 35.

[1621] Ministry of Justice Action Plan 2007, p. 25.

according to the resources available to the parties involved, has enabled the rich and powerful to privatise justice to their own advantage.[1622]

Lack of independence in practice

942. Political interference, particularly interference from the hierarchy in the military magistracy, in the daily functioning of Congolese justice is extremely worrying. Examples of such interference by the authorities is common, and can also be found in the prosecutions for crimes under international law, as highlighted in the previous chapter concerning the Ankoro, Songo Mboyo, Kilwa, Gédéon and Kahwa cases, in all of which there was interference at various stages of proceedings. For example, human rights defenders and magistrates have said to members of the Mapping Team that "in the Kahwa case, the Kisangani Court of Appeal seems to have received clear orders to delay this case, as Kahwa, who was very popular, would be able to influence votes depending on the outcome of the case".[1623] This point will be made more specifically in the next section, concerning military courts.

943. In line with the principle of separation of powers, article 149 of the Constitution of 18 February 2006 states that "the judiciary is independent from the legislature and from the executive". Article 151 of the Constitution forbids the executive from issuing binding orders (‘*injonction*’) to a judge (sitting magistrate) who is exercising his/her jurisdiction to rule on disputes, to pervert the course of justice, or to oppose the carrying out of a judicial decision.

944. These constitutional provisions have not been applied and are not reflected in relationships between institutions. The tendency of the executive to preserve the old practices of supervision and regulation of the judiciary led to the emergence in 2008-2009 of a lively movement in which magistrates protested to the Government and demanded an independent judiciary.[1624] As Congolese magistrates have stressed, the provisions enshrined in ordinary law that were intended to eliminate the Minister of Justice's power of injunction have not yet been applied.[1625] The power of injunction consists of ordering the Prosecution Department to begin a prosecution,[1626] the right to oversee enables the Minister to follow, on behalf of the Government, the progress of a

[1622] ASADHO, Individuals: the power of money and private security firms, in Human Rights Periodical, Special Edition, Our annual report - State of liberty and human rights violations in Zaire in 1996, January 1997, p. 18.

[1623] Mapping Team interviews with judicial actors, Kisangani, February 2009.

[1624] During the first sessions of the Judges' Council, held in Kinshasa in December 2008, judges presented declarations and memorandums of condemnation, concerning among other matters interference from the executive, and particularly the President of the Republic, in the functioning of the magistracy and concerning attempts to change the structure of the CMS, which had just been established at that point.

[1625] Relations between prosecution judges and the upper hierarchy of the Republic's general prosecution service are still regulated by edict no. 82-020 dated 31 March 1982 concerning the code of organisation and competence of the judiciary.

[1626] As for the power to end prosecutions, the edict dated 31 March 1982 does not foresee this, and the case was not clear on this point; however, in practice, the Minister did exercise this power.

case that is considered to be sensitive, and the power of instigation gives the Minister the right to determine the State's policy on criminal matters.[1627]

945. On 25 April 2008, in front of the National Assembly, in response to criticisms that the power of injunction was incompatible with the new Constitution, the Minister of Justice at the time, Mr. Symphorien Mutombo, provided his view of this power, saying that it "represented a way for the public prosecutor to exercise his legal powers of investigation and prosecution". He added that "this injunction is not contrary to article 151 of the Constitution. The authority of the Minister of Justice over magistrates acts as a guarantee provided by a political leader who is tasked with execution of Government policy. The officials in the public prosecutor's office also have a role to play. They are agents of the executive and are subject to the authority of the Minister in charge, and they play a part in the independence of the judiciary when they exercise the functions that are specific to this power".[1628] Some magistrates tend to consider that the Minister of Justice's right of injunction is a right to order prosecutions rather than a right to stop them. These varying visions and interpretations of the constitutional provisions, as seen in the context of the old principles and practices, suggest that in the DRC, the most difficult is not the creation of new standards guaranteeing the independence and functioning of the judicial system, but the application of such standards.

C. Military courts have exclusive jurisdiction over crimes under international law

946. The fact that military courts have exclusive jurisdiction over crimes under international law poses several problems, both in terms of recognised principles of international law and in terms of the capacity and independence of military tribunals in the DRC when dealing with the many and serious violations of human rights and international humanitarian law that were committed. The problems described in the above paragraphs (lack of resources, weakness of judicial administration and lack of independence) affect the Congolese judicial system as a whole, including military courts.[1629] However, in the operation of military courts and tribunals, some problems such as the lack of independence are emphasised by the very nature of military justice. Faced with the task of prosecuting and trying the main leaders of the armed groups involved in crimes under international law committed between 1993 and 2003, "military justice draws particular attention from the main political protagonists, the former leaders

[1627] Article 12 of edict 82-020 dated 31 March 1982 concerning the code of organisation and competence of the judiciary.

[1628] See the response of the Minister of Justice on the four bills, 25 April 2008, p. 4 and 5, available at: www.justice.gov.cd/j/index.php?option=com_docman&task=cat_view&gid=19&Itemid=54.

[1629] "The lack of resources also affects the military justice system, which has jurisdiction over most cases involving gross human rights violations. The few investigations and prosecutions that have been carried out in relation to such cases have virtually all relied on the technical and logistical support of MONUC." *Report of the Special Reporter concerning violence against women, its causes and consequences* (A/HRC/7/6/Add. 4), para. 70.

of armed groups".[1630] Affording limited protection against interference when carrying out their tasks, "military magistrates suffer more directly than their civilian colleagues from the executive's desire to control the operation of military courts as directly as possible".[1631]

Crimes under international law and military courts

947. Crimes under international law are not military crimes. By definition, crimes under international law are crimes that are not dependent in any way on the status of their perpetrators. Even if they are committed by military personnel, "they shall not be considered to be military offences, linked to the requirements of military service or committed out of duty".[1632] In addition, any order to commit such crimes would clearly be illegal.[1633] These crimes are so serious that they involve the international community and the whole of humanity.[1634] As stated by Emmanuel Decaux, who was appointed by the Human Rights Commission to develop the principles underlying the administration of justice by military courts, "persons accused of serious human rights violations cannot be tried by military tribunals insofar as such acts would, by their very nature, not fall within the scope of the duties performed by such persons."[1635] Of the principles outlined by Mr. Decaux, we should note those concerning the incompetence of military tribunals to try children[1636] and civilians,[1637] the requirement to respect the rights of the defence and the right to a fair trial, including the right to appeal,[1638] and the right to a competent, independent and impartial tribunal, in particular with guarantees of the statutory

[1630] Marcel Wetsh'okonda Koso, "La justice militaire et le respect des droits de l'homme" [Military Justice and respect for human rights]. A study by AfriMAP and the Open Society Initiative for Southern Africa (OSISA), June 2009, p. 65.

[1631] Ibid.

[1632] Military Jurisdiction and International Law: Military Courts and gross human rights violation (Vol. 1) International Commission of Jurist, Geneva, 2004, p. 11.

[1633] Article. 28 of the 2008 Constitution: "None shall be obliged to carry out an obviously illegal order. Any individual or agent of the State is absolved from the duty of obedience when an order received constitutes a clear failure to respect human rights and public liberty and good morals".

[1634] On this subject, the Congolese jurist Nyabirungu Mwene Songa confirms that "The military criminal code is a very specific piece of legislation, and it cannot enshrine the values that are the very basis of national and international public order, considering that this role falls to the ordinary criminal law, in which these values must be expressed in the most general, formal and stable way, to include all citizens and inhabitants of the Republic". He adds: "... individual law, military criminal law should be consigned to the barracks and only deal with those matters that concern it, particularly as when it tries to deal with matters that do not relate to it, it inflicts harm." See Nyabirubgu Mwene Songa, Reform of Congolese general criminal law following the ratification of the Rome Statute, training seminar for lawyers concerning help for victims and those accused of crimes under international law, published by Avocats sans frontières (Lawyers without Borders), permanent mission in the DRC, October 2007, p. 36. Available at the following address: www.asf.be.

[1635] Issue of administration of justice by military courts. Report presented by Emmanuel Decaux (E/CN.4/Sub.2/2004/7), para. 17 (hereinafter Decaux Principles, 2004).

[1636] Decaux Principles, 2004, Principle 13.

[1637] Ibid., Principle 2.

[1638] Ibid., Principle 8.

independence of magistrates vis-à-vis the military hierarchy.[1639] The third principle concerns the jurisdiction of military courts over crimes under international law, and stipulates:

> "In all circumstances, the jurisdiction of military courts should be abolished in favour of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations, such as extra-judicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes."

948. This standard is also found in the Principles for the protection and promotion of human rights through action to combat impunity, drawn up by the Commission on Human Rights: "The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court".[1640] The African Commission on Human and People's Rights also adopted, in 2008, "Principles and Guidelines on the right to a fair trial and legal assistance in Africa", which limits the jurisdiction of military tribunals to "offences of a purely military nature committed by military personnel" and which states that "Military courts should not in any circumstances whatsoever have jurisdiction over civilians."[1641]

949. These principles reflect a growing tendency to restrict the jurisdiction of military tribunals over serious violations of human rights. These principles are all the more important in a post-conflict situation in which the judicial system usually carries serious deficiencies or weaknesses and in which the majority of serious violations of human rights and international humanitarian law continues to be committed by the security forces.[1642]

[1639] Ibid., Principle 6.

[1640] *Report of the independent expert from the Commission on Human Rights to update the Set of principles to combat impunity* (E/CN.4/2005/102/Add.1), Principle 29.

[1641] See "Principles and Guidelines on the right to a fair trial and legal assistance in Africa", African Commission on Human and People's Rights, Principle L (a) and L (c). Available at the following address: http://www.achpr.org/english/declarations/Guidelines_Trial_en.html

[1642] "The record of FARDC personnel as major perpetrators of human rights abuses is aggravated by a lack of accountability for those and other crimes, which is due to an inadequately resourced military justice system and interference in the judicial process. Continued appointments of alleged human rights violators to high-ranking positions within FARDC are a source of concern". *Twenty-third report of the Secretary-General on MONUC* (S/2007/156 and Corr. 1), para. 33; see also the *twenty-sixth report of the Secretary-General on MONUC* (S/2008/433), paras. 48-50; and *twenty-seventh report of the Secretary-General on MONUC* (S/2009/160), para. 66-68.

Jurisdiction of military courts over civilians

950. As stated in the description of the legal framework that is applicable in the DRC, military courts have jurisdiction over civilians in several types of circumstances, including crimes under international law, under various provisions which have proved quite difficult to apply in practice and which have been interpreted in very varied ways, particularly in the case of people committing offences using weapons of war.[1643] This practice was condemned by the Special Rapporteur on the independence of judges and lawyers, who expressed his "deep concern about this phenomenon" and called on "the new Congolese Parliament to take urgent action to restrict the competence of military courts, in accordance with international principles concerning military jurisdiction."[1644] The United Nations High Commissioner for Human Rights had also decried this practice, which is contrary to international standards that applied at the time when judgement was issued on the Kilwa case:

> "It is inappropriate and contrary to the DRC's international obligations for military courts to try civilians. While military personnel can in principle be charged by court martial, civilians may not - they should be tried before fair and independent civilian courts."[1645]

951. This extension of the number of people over whom military courts have jurisdiction leads to exclusion of civilians from the justice to which they are entitled, and violates the principle whereby "Military courts should, in principle, not have competence to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts."[1646]

[1643] Article 11 of the Code of Military Justice stipulates that military courts "also have competence over those who are not military personnel but who commit offences using weapons of war". For example, in the case of pastor Khutino, who was a vocal critic of the President and was sentenced to 20 years in prison on 20 June 2006 for attempting to assassinate another religious figure, the military court argued that it had competence because the attempted attack was committed using a weapon of war. Such an interpretation, which *de facto* attributes competence to military tribunals over ordinary (non-military) crimes committed by a civilian against another civilian, constitutes a clear violation of international principles in this area.

[1644] See the Report by the Special Rapporteur on the independence of judges and lawyers (A/61/384).

[1645] OHCHR, "High Commissioner for Human Rights Concerned at Kilwa military trial in the DRC", 4 July 2007, available in English at the following address: www.unhchr.ch/huricane/huricane.nsf/view01/9828B052BBC32B08C125730E004019C4?opendocument

[1646] Principle 2 concerning administration of justice by military courts. See *Report on the administration of justice, rule of law and democracy*, presented by Emmanuel Decaux (E/CN.4/Sub.2/2004/7), which also stipulates that "The jurisdiction of military tribunals should be limited to offences of a strictly military nature committed by military personnel. Military courts may try persons treated as military personnel for infractions strictly related to their military status."

952. Nevertheless, article 156 of the 2006 Constitution limits the competence of military courts to members of the armed forces and the police,[1647] which confirms the principle of natural justice according to which civilians must be tried by civil courts.[1648] Despite this, military courts continue to try civilians.[1649] There is resistance on the part of military courts to accept the deference of this issue to the Constitutional Court. On two occasions, civilians accused of crimes have challenged the competence of military courts, raising the issue of unconstitutionality, and requesting - under article 162 of the Constitution - that the military court "defer rulings and refer to a Constitutional Court immediately". This procedure, which is applicable to military courts under article 76 of the Military Code of Justice (2002),[1650] is violated by military courts, which themselves deal with objections of unconstitutionality. This occurred in the Nlandu[1651] and Maheshe[1652] cases, in which military courts asserted that they were competent to try civilians, stating that the provisions of military law granted them such jurisdiction "as this law came before the Constitution and thus cannot violate it".[1653]

953. It should be stated that at the time this report was written, a bill to implement the Rome Statute, which contains provisions granting exclusive jurisdiction to civilian courts and tribunals to try crimes under international law and other serious violations of human rights has not yet been examined by Parliament, although it was first tabled there in 2008.[1654] Those in the Ministry of Justice and in the judiciary met by the Mapping Team

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[1647] Article 156 of the 2006 Constitution: "Military jurisdictions are aware of offences committed by members of the armed forces and the police. In times of war or when a state of siege or emergency is declared, the President of the Republic, by way of a decision made in the Council of Ministers, may suspend, in all or part of the Republic and for a period of time and over a set of offences that the President shall determine, action to suppress civilian courts and tribunals in favour of military jurisdictions. However, the right to appeal shall not be suspended".

[1648] See also Article 19 of the 2006 Constitution of the DRC: "None shall be excluded from nor removed against his/her will from the judge assigned by law".

[1649] *Report of the independent expert on the situation of human rights in the DRC* (A/HRC/7/25), para. 16: "There is a worrying tendency for military courts systematically to exercise jurisdiction over civilians, a practice which is contrary to the Constitution (art. 152), but which is still common."

[1650] Article 76 of the Code of Military Justice contains the following provision in its fourth paragraph: "[Military jurisdictions] are not competent to rule on the constitutional nature of the laws and bills that have the force of law. Exceptions to this are taken to the Supreme Court of Justice, which shall rule straight away, in its capacity as the Constitutional Court".

[1651] Military tribunal at Kinshasa-Gombe garrison, RP 221/2006, RMP 1751/NKK/2006.

[1652] Military tribunal at Bukavu garrison, RP 186/2007, RMP 709/TNK/2007.

[1653] See Marcel Wetsh'okonda Koso, "La justice militaire et le respect des droits de l'homme" [Military Justice and respect for human rights], A study by AfriMAP and the Open Society Initiative for Southern Africa (OSISA), June 2009, p. 30.

[1654] The bill to incorporate the Rome Statute contains a provision to make civilian jurisdictions (the Court of Appeal in the first degree of jurisdiction, and the Court of Cassation in the second degree) competent over crimes under international law. These two jurisdictions will include military judges when they are asked to rule on cases involving military personnel. In terms of competent jurisdictions, the choice that has been made is that courts of appeal shall be the jurisdiction that is competent to try crimes under international law, regardless of the status of those brought to trial and any privileges and immunities they may have. This bears out the following: "the level of technical skill and experience among Appeal Court judges are sufficient that they may, with specially attributed competence, rule on serious violations of international humanitarian law; given the seriousness of the issues involved in these offences, the Court shall have five judges instead of three".

doubted that this bill would be passed in the face of strong opposition from the military authorities.

Problems connected with granting military courts jurisdiction over crimes under international law

954. In addition to the failure to respect the principles of international law in this area, the exclusive jurisdiction of military courts over crimes under international law has in practice raised many problems and revealed significant gaps which result in almost total impunity prevailing in this area. Some of the problems that affect the whole of the Congolese judicial system seem to be exacerbated by the very nature of military justice, which is characterised by a strict hierarchy, internal solidarity between members of the forces, and top-down control over any criminal trial of members of the armed forces or the police. While prosecution of the most serious crimes committed against civilian populations requires the highest levels of independence and impartiality among judges and magistrates in order to be legitimate in the eyes of victims, military justice seems incapable of even being seen to meet these essential conditions.

Subordination of military justice to the military hierarchy

955. Military justice is "an instrument of the judiciary that is at the service of the military command". This statement of the aims of military justice in the DRC is taken from the preamble to the Code of Military Justice (law no. 23/2002 of 18 November 2002). Military judges are both army officers (who are subject to military command) and members of the Congolese judiciary.[1655] The military prosecution department is therefore hybrid in nature. Its independence during investigations faces a double threat because military prosecutors are not only subordinate to the General Prosecutor of the armed forces, but also subject to the authority of the military's high command. Military justice is therefore peculiar in that a military prosecutor is required to obey the military's high command.[1656]

956. A group of British parliamentarians reported following a mission to the DRC that they "heard of many complaints that rank plays an insidious and detrimental role, through pressure exerted by superiors on the military prosecution service not to pursue complaints against members of the armed forces or police.[1657] Many examples have illustrated the

[1655] The Code of Military Justice states that the organisation of the High Court and of military courts and tribunals shall be governed by the principles of the independence of judges and collegial administration of benches, in line with the provisions contained in the Code of Judicial Organisation and Competence. However, other provisions in the Code of Military Justice remove all value and efficacy from the principle of the independence of judges. All military judges are proposed to the CSM by the Superior Defence Council and are appointed by the Head of State. Just like the ministry responsible for justice, the Minister for Defence has the right to be heard in appointments of military judges.

[1656] Mapping Team interview with the President of a military court in Bukavu, 13 May 2009.

[1657] International parliamentary-expert mission, 2008, para. 52.

limited ability of military courts to function free from orders and interference by the military hierarchy, and to take on their duties to dispense justice in full independence.

957. The case of General Kifwa, commander of the 9th military region in Orientale Province, is a sad example of the sometimes violent interference of military authorities in the business of judges.[1658] In a memorandum sent to the President of the Republic in October 2007, 20 judges from the Kisangani district criticised eight cases of interference in the workings of justice by General Jean-Claude Kifwa, and demanded that he be prosecuted for torture, death threats and other attacks on judges' rights.[1659] The memorandum also asked for urgent clarification of the relationship between the military command and the magistracy, and immediate cessation of all untimely interference by the military command in the investigation of legal cases.

958. Another illustrative case, documented by the Mapping Team, is interference in and blocking of the investigation of a complaint of torture, brought by a young victim against FARDC militia members who were acting under orders from a major, who was closely related to the general in charge of the unit. Investigation of the complaint against the perpetrators of these violent acts was blocked by interference from military staff who wanted to protect the officer, who was trusted by them and who was responsible for several violent acts in Bafwasende in Orientale Province.[1660]

959. The account of judicial practice relating to crimes under international law that appears in the previous chapter is illustrative of the fact that attacks against the independence of military justice come from all sides: the political authorities (in the Gédéon case), the military command (in the Ankoro case), economic and political forces (in the Kilwa case), and also from the management of the judges themselves (in the

[1658] "Military judges are threatened or attacked by members of the armed forces as an intimidation tactic to ensure impunity either for themselves or for other military personnel. The intolerable level of vulnerability of judges may be seen from the serious incidents that occurred recently in Kisangani, where General Kifwa abducted four judges from their homes, stripped them and beat them in the street in front of the crowds, then took them to headquarters where two of them were reportedly subjected to cruel and degrading treatment all night." See the *Despouy report* (A/HRC/8/4/Add.2), para. 32.

[1659] Memorandum from judges in the town of Kisangani, addressed to His Excellency the President of the Republic, 2 October 2007, which has come into the possession of the Mapping Team. The 20 signatory judges state, in particular, that: in May 2001, in Kinshasa, when he was the commander of the Republican Guard, General Kifwa ordered the arbitrary arrest and torture of two judges (Asan iwa Kitutu and Ali Risasi) and had them detained for 48 hours in a DEMIAP military prison (Military Information Service); in July 2007, during a meeting of military judges in Kisangani, he had publicly threatened the judges in Lingala (the language spoken in Kisangani and in the west of the DRC) with "having them all arrested if they continued to play around with authority"; in July 2007, the same general brought out two military personnel who were being held on remand in Kisangani central prison, and had them publicly whipped during a parade, such that one of them suffered a broken arm; this same general, on 27 September 2007, entered violently and with an escort into the public prosecutor's office in Kisangani, demanding that a soldier who was detained there, charged with homicide, be handed over to him, along with his legal file, although the general is not a judge and is not entitled to examine this case.

[1660] Confidential dossier, MONUC, DDH, confirmed by the Prosecutor at the Kisangani garrison court at a meeting with the Mapping Team on 4 February 2009.

Kilwa and Songo Mboyo cases).[1661] All kinds of pressure are put on military judges: military judges "stated that their superiors had instructed them to take a certain decision if they wanted to be eligible for promotion"; "judges who had taken actions or decisions unfavourable to a member of the military command had been transferred"; and finally, "military judges are threatened or attacked by members of the armed forces as an intimidation tactic to ensure impunity either for themselves or for other military personnel."[1662]

960. The frequent refusals on the part of the military authorities to work together with prosecutors and judges provide a further illustration of how far the military authorities depend on hierarchy. Several stratagems have been used by military commanders in order to place their men out of reach of military justice: military personnel under investigation have been transferred to other provinces without informing the prosecution department (as in the Songo Mboyo case); requirements have been introduced to submit investigations or prosecutions for the commander's prior authorization;[1663] refusal to hand over accused soldiers to the prosecution department (as in the Kilwa case); "misuse of a provision in military regulations that states that soldiers stationed in military operations zones can only be arrested with prior agreement from their head of unit".[1664]

961. On several occasions, the United Nations has condemned the multiple instances of interference that have undermined military justice, questionning "the capacity of the Congolese military authorities and judiciary — particularly in view of interference from political actors and the military command structure — to decisively address impunity and hold trials for serious human rights violations".[1665]

[1661] "According to Alexis Mikandji, in the Songo Mboyo case, the first president of the Military High Court named judge Kilimpimpi from Kinshasa as the president of the Mbandaka Military Court, as he was familiar with the case being heard on appeal. This appointment seems to have been linked to the fact that the first president of the military court in Mbandaka had publicly criticised the judgement of this case in the court of first instance, and considered that the classification of the mass rapes with which the accused were charged as crimes against humanity was not justified. Judge Kilimpimpi appears to have made it known to the lawyers that he was awaiting instructions from the hierarchy before passing judgement." See "La justice militaire et le respect des droits de l'homme" as previously cited, p. 68.

[1662] *Despouy report* (A/HRC/8/4/Add.2), para. 38 and 39.

[1663] "La justice militaire et le respect des droits de l'homme" [Military Justice and respect for human rights], as previously cited, p. 69.

[1664] *Despouy report* (A/HRC/8/4/Add.2), para. 76.

[1665] *Twenty-first report of the Secretary-General on MONUC* (S/2006/390), para. 53. "Political interference during all stages of the criminal process is very common, especially in high-profile cases involving crimes committed by State security forces." *Report of the Special Rapporteur on violence against women, its causes and consequences* (A/HRC/7/6/Add.4), para. 75; *Twenty-second report of the Secretary-General on the United Nations Organization Mission in the DRC* (S/2006/759), para. 70; *Report of the independent expert on the situation of human rights in the DRC* (A/HRC/7/25), para. 24: "Interference by the political and military authorities with the administration of justice was frequently denounced in most of the above-mentioned trials for serious human rights violations".

Problems linked to the rank of military personnel brought to trial

962. Military judges can only try cases in which the rank of the accused is equal to or lower than their own.[1666] Therefore, any defendant who is in the army or the police cannot be judged by a military judge whose grade is not equal to or greater than his/her own.[1667] These rules, which were stated in article 34 of the 2002 Code of Military Justice, often result in significant difficulty or impossibility of forming a bench. In such cases it is possible to use associate judges who have the required grade, but who are not judges by training, to dispense justice. This solution has been strongly criticised by career military judges.[1668] Furthermore this solution cannot be used in the Military Court or Military High Court, in which all members of the bench must be career judges. The issue of grades has been raised and criticised by military judges throughout the period that followed the creation of military jurisdictions and during the work on the CSM in December 2008.[1669]

963. This issue is closely linked to impunity because if the promotion of judges is blocked, their hierarchical superiors can escape justice.[1670] The extent of blocking is such that the Military High Court has found it impossible to deal with the case of Germain Katanga, who was promoted to brigadier-general before being transferred to the ICC to be tried for war crimes and crimes against humanity. Thus, "continued appointments of alleged human rights violators to high-ranking positions within FARDC are a source of concern"[1671] and, in the circumstances, would appear to put these people out of the reach

[1666] In the hierarchy of the Congolese army, grades are attributed as follows: At the top there are lieutenants-general (the highest grade in the army), and in second place there are major generals and brigadier generals. Officers: Officer grades start with sub-lieutenant → captain (after three years) → major (after three or four years) → lieutenant colonel → colonel → brigadier general → major general → lieutenant general.

[1667] Article 35 of the Code of Military Justice states that when a bench in a military court does not contain a sufficient number of military judges of the required grade and rank, this lack of personnel can be compensated for by appointing, in the absence of those with longer service, military judges of the same grade but with a shorter length of service, though judges with a lower grade than the defendants should never be appointed.

[1668] Article 34 of the Code of Military Justice states that "when assembling benches of judges in military jurisdictions, the grade or rank of the defendant at the time of the alleged acts, or, in case of subsequent promotion, when the defendant first appears in court, should be taken into account [...] If it is not possible to assemble a bench within the jurisdiction in line with the provisions in the paragraph below, associate judges shall be used, regardless of whether or not they belong to an army".

[1669] One solution, according to some, is to ask that the bench of the Military Court be integrated with civilian judges, because all judges must be career judges. It should be pointed out that the military was not receptive to the idea that members of the army should be tried by civilian judges. Mapping Team meeting with the first President of the Kisangani Military Court of Appeal, 4 February 2009.

[1670] "The fact that military judges are subject to the military hierarchy presents special problems. For a start, no military judge can hear a case in which a superior in rank is an accused. This can cause obvious difficulties, particularly given the small number of military judges above the rank of major, almost all concentrated in the largest cities". International parliamentary-expert mission, 2008, para. 51.

[1671] *Twenty-third report of the Secretary-General on MONUC* (S/2007/156 and Corr. 1), para. 33.

of justice. In his March 2009 report to the Security Council, the Secretary-General stated, on this subject:

> "Despite some cases of prosecution of low-ranking officials responsible for human rights violations, the fight against impunity at higher levels of the police and military hierarchies remains a major challenge and a contributing factor to the dire human rights situation in the country. The integration into FARDC of CNDP officers accused of war crimes, in particular Bosco Ntaganda, is a matter of grave concern".[1672]

964. A group of British parliamentarians, following a mission to the DRC, also noted that the *brassage* process which enabled rebel groups to be integrated into the Congolese army "has been conducted without any vetting procedures, let alone prosecution of offenders, which makes the FARDC a 'free zone' for sexual and other serious offenders."[1673]

965. A further consequence of the fact that it is impossible for military courts to exercise their competence over officers of higher grades has resulted in a violation of the right of the defence in the case of Captain Blaise Mbongi, which was examined in the previous chapter. The Court rejected the defendant's request to call his superior officer, whom he accused of taking part in the crimes, on the grounds that he was "not subject to trial in a garrison military court" because of his grade.[1674]

Problems linked to fair and impartial trials before military jurisdictions

966. Military justice has as its primary aim the restoration of discipline among the ranks. It is part of a system that is based on command and imposed discipline.[1675] This discipline is the stated reason why this system of justice often uses very swift processes, sometimes to the detriment of defendants' right to a fair and impartial trial. The cases studied in the previous chapter illustrate the serious omissions relating to the right to a fair and impartial trial: hurried and questionable investigations (the Ankoro and Kilwa cases); poorly written and improperly substantiated legal decisions (Katamasi and Kilwa cases); decisions with no rational basis in law (Katamasi and Kahwa Mandro cases) or that were not based on evidence (Kilwa case); rights of the defence completely ignored (Blaise Mbongi case) particularly relating to holding defendants on remand for unreasonably long periods (18 months in the Kilwa case, 17 months in the Ankoro case) or trials that last a very long time (the Gédéon case, which lasted nearly three years). For that matter, several political and military leaders from Ituri, including Floribert Ndjabu, Djokaba Lambi, Germain Katanga, Mbodina Iribi, Lema Bahati, Philémon Manono,

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[1672] *Twenty-seventh report of the Secretary-General on MONUC* (S/2009/160), para. 67.

[1673] International parliamentary-expert mission, 2008, para. 56.

[1674] See p. 397, note 1540.

[1675] See in general: Military Jurisdiction and International Law: Military Courts and gross human rights violation (Vol. 1) International Commission of Jurists, Geneva, 2004

Goda Sukpa and Masudi Bin Kapinda, demanded to be referred to the ICC, because of the slow pace of the Congolese justice system. Although the 2003 and 2006 Constitutions state expressly that "individuals may not be held in police custody for more than 48 hours...",[1676] all the detainees mentioned above were held on remand at the CPRK for more than two years.

967. In terms of the right to appeal, we should note a positive development introduced in article 61 of the 2006 Constitution, which expressly forbids that the rights of access to courts be removed in order to correct the excessive provisions in the law of November 2002 concerning the Code of Military Justice, which denies convicts the right to appeal to the HCM[1677] and the CMO.[1678] However, this right has proven difficult to exercise because of "various physical and bureaucratic hindrances", physical distancing of Military High Courts or their incapacity to hold sessions.[1679]

Problems linked to victims access to military justice

968. Several of the judicial decisions made by military courts have been unable to adequately take into account victims' demands for justice. In fact, the decisions examined in the previous chapter are all illustrations of the problems military courts tend to have with victims, which in most cases manifest themselves as a failure to listen to victims' requests, depriving them of the primary right to be heard. Unlike in civilian courts, victims have a limited right of access to military justice: "If a public prosecutor fails to pursue a case before a civil court, the complainant can obtain an order from the civil court that the matter be pursued. No such right exists in relation to military courts."[1680] Military courts have sent away victims (though recognized as such) purely because they failed to accurately identify their attackers, even in cases of victims of bombardment (Ankoro case). In addition, in all decisions made by military courts in which the State has been found to be legally responsible, none of the victims has seen the decisions on reparations carried out, either by the State or by the attackers.

[1676] "After this period, the person in custody must be released or made available to the competent judicial authority", Article 20 (4) of the transitional Constitution of 2003 and Article 18 (4) of the 2006 Constitution.

[1677] Article 83, paragraph 2 of the law dated 18 November 2002 concerning the Code of Military Justice.

[1678] Article 87 of the law dated 18 November 2002 concerning the Code of Military Justice.

[1679] "La justice militaire et le respect des droits de l'homme" (Military Justice and respect for human rights), as previously cited, p. 81.

[1680] International parliamentary-expert mission, 2008, para. 53: "The president of the military court in Bunia suggested that a valuable reform would be to give victims a direct right of access and military judges the power to require cases to be heard that the military prosecutor had not been willing to refer. NGOs in Goma and Ituri also suggested that NGOs might be given a direct right of intervention before the courts."

Problems with the application of amnesty laws

969. On two occasions, the Congolese legislature has adopted laws granting amnesty, following commitments entered into as part of the Pretoria Peace Agreement of 2002,[1681] and more recently as part of the Acts of Engagement of armed groups in North and South Kivu in January 2008.[1682] Although war crimes, crimes against humanity and the crime of genocide have always been expressly excluded from provisions granting amnesty as part of peace agreements and subsequent amnesty laws, the interpretation of these provisions by various judicial actors has always been problematic, as illustrated in the Kahwa case which was analysed in the previous chapter.

970. The application of amnesty laws gives the Congolese authorities broad powers to interfere in judicial affairs, which has been illustrated on many occasions. In a letter dated 27 November 2006, sent to the General Prosecutor at the Military High Court, the Minister of Defence asked "that consideration be given to suspend prosecutions of heads of armed groups in Ituri", who have agreed to demobilise and to join FARDC.[1683] Two weeks later, on 11 December 2006, the Minister of Defence wrote to Colonel Matata Cobra and Colonel Ngoudjolo Chiy, two of the leaders of armed groups in Ituri who had been newly appointed and promoted within FARDC, to assure them that "the Government, through the Ministry of Defence ... has also requested that no prosecution be launched against you".[1684] Prosecutions were finally initiated by the ICC against Colonel Ngoudjolo Chiy, who was transferred to The Hague in February 2008 in order to answer charges of war crimes and crimes against humanity committed in the DRC from July 2002.

971. This injunction by the Minister of Defence, sent to the military judicial authorities, is very disturbing. In addition to being a clear attack on the principle of the independence of the judiciary, this intervention by the Minister is against the letter and spirit of the

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[1681] The Pretoria Global and Inclusive Agreement, point III/8, states that "To achieve national reconciliation, amnesty shall be granted for acts of war, political and opinion breaches of the law, with the exception of war crimes, genocide and crimes against humanity. To this effect, the transitional national assembly shall adopt an amnesty law in accordance with universal principles and international law." See Point III.8 of the Pretoria Global and Inclusive Agreement.

[1682] Acts of Engagement for North Kivu and South Kivu ("Goma Agreement"), signed in Goma, 23 January 2008, article IV, para. 1: The Government of the DRC undertakes to present to Parliament an amnesty bill for acts of war and insurrection covering the period from June 2003 to the date on which the law is promulgated, which shall not include war crimes, crimes against humanity and genocide. Subsequently, a new peace agreement (Ihusi, 23 March 2009) between the Congolese Government and the CNDP once again called for the rapid adoption of an amnesty law.

[1683] 'Surséance des poursuites en faveur des groupes armés de l'ITURI (Suspension of prosecutions of armed groups in Ituri): letter sent from Minister of Defence to the General Prosecutor at the Military High Court, 27 November 2006 (MDNDAC/CAB/1996/2006), which is in the possession of the Mapping Team.

[1684] Letters from the Minister of Defence to Colonel Matata Cobra and Colonel Ngoudjolo Chiy, 11 December 2006 (MDNDAC/CAB/1065/1006 and MDNDAC/CAB/1064/2006 respectively), which are in the possession of the Mapping Team.

amnesty law, in that it demands a total amnesty, making no distinction between "acts of war" that are subject to amnesty, and crimes under international law which are excluded from any such amnesty.

972. Recently, on 09 February 2009, the Minister of Justice instructed "the Public Prosecutor of the Republic and the General Prosecutor of FARDC ... not to initiate prosecutions against members of these armed groups and to stay those that have already been initiated".[1685] Once again, these instructions given in anticipation of the promulgation of the amnesty law, which will take place on 07 May 2009,[1686] make no distinction between prosecutions for crimes under international law and those for acts of war or insurrection, as stated in article 3 of the law. These instructions are imprecise and vague in scope, and have been applied by some authorities to release individuals who had been sentenced for rape and other crimes that did not constitute "acts of war".[1687] This circular was greeted with bitterness and disillusionment by many Congolese judges involved in the fight against impunity, who considered this measure, like other measures aimed at integrating those who had committed serious crimes into FARDC ranks, as a reward for waging war and committing violations against innocent civilian populations.[1688]

Conclusion

973. In his refferal of the situation of his country to the ICC, the President of the DRC in a letter dated 3 March 2004 and sent to the Prosecutor recognised that "because of the exceptional situation in my country, the competent authorities are unfortunately not capable of investigating the above-mentioned crimes [crimes under international law] or of carrying out the required prosecutions without the contribution of the International Criminal Court".[1689]

974. Thus, despite the establishment of new military courts that were created following the adoption of the 18 November 2002 reforms of military law, both substantive and

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[1685] Amnestie à accorder aux membres des groupes armés (CNDP), (Amnesty granted to members of armed groups (CNDP)), letter from the Minister of Justice, no. 226/JPM 284/D/CAB/MIN/J/2009, 09 February 2009, which is in the possession of the Mapping Team.

[1686] The new amnesty law of 07 May 2009 covers acts of war and insurrection committed between June 2003 and the date on which the law was promulgated (art. 5). It uses the definition of war crimes contained in the law of 2005 and adds a definition of insurrection (art. 2). Its scope does not include crimes of genocide, war crimes and crimes against humanity (art. 3).

[1687] Release of political defendants and prisoners under the 25 March 2009 Peace Accords signed in Goma, letter from the Public Prosecutor, General Prosecution Department in Goma, letter dated 12 May 2009 with appendix containing the names of the 80 detained people who were released, which has come into the possession of the Mapping Team.

[1688] The Mapping Team held interviews with civilian and military judges in Goma and Bukavu shortly after the publication of these instructions, and was able to observe that some criminal cases that had been blocked for years because of the war are still locked away in prosecution department offices following the circular and other measures ordering the suspension of criminal prosecutions.

[1689] See Referral to the Prosecutor of the situation in the DRC (ICC-OTP-20040419-50), Prosecutor's Office, press release, 23 June 2004.

procedural, the highest authorities in the DRC considered that they were not capable of investigating and prosecuting crimes under international law committed on their territory. Unfortunately, the subsequent years proved them right. At the time of writing this report, the exclusive competence of military courts over crimes under international law has resulted in growing impunity, as demonstrated by the very small number of investigations and prosecutions of war crimes and crimes against humanity, despite the outrageous number of crimes committed.

975. As stated in the previous sections, prosecution of the perpetrators of crimes committed systematically and on a large scale requires a fairly sophisticated standard of investigation and expertise. It is not sufficient merely to prove that one crime took place; rather, it has to be shown that there was a series of linked events occurring in different places and often at different times. In several cases, it has also been necessary to prove "command responsibility", which requires an analysis of military structures which are often complex, particularly in the case of armed rebel groups, in which hierarchies are not always clearly established. In fact, prosecution of crimes under international law requires specific and specialised capacities; this need cannot be met merely by providing better training in international humanitarian law and international criminal law for judges and investigators. It also requires an organised and effective judicial administration throughout all components of the system: for example, the police, legal services, effective prison services and facilities, legal aid for accused and victims, protection for witnesses and legal personnel. However, there are significant structural deficiencies in all parts of the existing system, in terms of a lack of independence, of capacity, and of financial and human resources, endemic corruption, security problems and other difficulties. Several of these problems have already been identified in this report and constitute serious and chronic obstacles to the workings of justice. The national justice system has received significant support from international partners, including MONUC, in recent years, but the country's dependency on such support can not contitute a viable solution which can be relied on in the long term.

976. It is the objective working conditions of judges, who should be paid regularly and sufficiently, which above all must be improved so that judges can carry out their tasks independently and safely, free from all forms of pressure and interference: this currently does not seem possible in the DRC. Criminal prosecutions followed by sentencing are insufficient if the State does not take every possible step to ensure that those detained do not subsequently escape. In addition, military courts, in high demand since their judges and prosecutors are better trained, are not currently able to deal with all of the many and serious violations of human rights and of international humanitarian law that have been committed throughout the DRC.

977. The systematic interference from political and military authorities, which was documented in the previous section, is unremitting. Some of the main perpetrators of violence having integrated into FARDC, there is a risk that this pressure will increase and become an insurmountable obstacle to the prosecution of some senior leaders who are responsible for past crimes under international law. The absence of procedures and mechanisms to protect victims and witnesses in such cases could have a tragic outcome,

with victims often being defenceless in the face of defendants who are armed and in uniform. The safety of judges and investigators is also a problem that could discourage even those with the best intentions, and could pervert the normal course of investigations and prosecutions.

978. The high level of involvement of foreign nationals in serious violations of international humanitarian law committed in the DRC also causes a problem for the Congolese courts. Although they have jurisdiction over every individual, whether Congolese or not, they do not have the resources to force suspects who do not live in the country to appear in court. Cooperation on extradition from certain States remains unlikely, given the few guarantees offered by the Congolese military courts in respect of fair and equitable trials and respect for the fundamental rights of defendants, particularly as the death penalty is still provided for under Congolese law.

979. In summary, given the limited engagement of the Congolese authorities in strengthening the justice system, the minimal resources granted to the judicial system, the tolerance of interferences by political and military authorities in judicial affairs, resulting in the judiciary's lack of independence, the inadequacy of the military justice system, bearing exclusive jurisdiction, to deal with the number of crimes under international law, many of which were committed by security forces, and the fact that judicial practice of military courts and tribunals over recent years is poor, not always substantiated in law, and reflects a lack of independence, it can be concluded that the resources available to the Congolese justice system in order to end impunity for crimes under international law committed between 1993 and 2003 are no doubt insufficient. Furthermore, given the current state of affairs, Congolese military courts, in the eyes of many victims, have neither the capability nor the credibility required in order to step up efforts to the fight against impunity for the many violations of fundamental rights committed against them in the past.

SECTION IV. TRANSITIONAL JUSTICE OPTIONS FOR THE DRC

980. The Sun City Agreements marked the conclusion of a long peace process initiated over three years before in Lusaka and designed to bring an end to a long series of increasingly deadly conflicts. As the foreign forces had finally undertaken to leave the national territory, it became necessary for the entire Congolese population immediately to establish dialogue among themselves in several areas, and particularly those of justice, national reconciliation and the fight against impunity. Having been invited for the first time to enter into negotiations that would lead to transition, Congolese civil society, described as *forces vives* [living forces] in the Lusaka Agreements, participated legitimately and enthusiastically in the Inter-Congolese Dialogue (ICD), freely expressing their hopes for peace, justice and democracy.

981. The global and inclusive Agreement adopted following the ICD was intended to usher in a new political order, sound the death knell for armed conflict once and for all and outline a new political future for the DRC. The fight against impunity figured prominently in the resolutions that accompanied the Agreement adopted in Sun City in April 2002, which recommended the establishment of several transitional justice mechanisms and the adoption of crucial reforms in the justice sector:

- The establishment of an international criminal court for the DRC to judge crimes of genocide, war crimes and crimes against humanity committed since 30 June 1960 (resolution DIC/CPR/05).
- The creation of a national Truth and Reconciliation Commission entrusted with re-establishing truth and promoting peace, justice and national reconciliation (resolution DIC/CPR/04).
- The creation of a national human rights observatory (resolution DIC/CHSC/08).
- The elimination of special jurisdictions, in particular the *Cour d'Ordre Militaire*, the abolition of the military courts' jurisdiction to judge civilians and the recognition of the right of appeal before those jurisdictions (resolution DIC/CPJ/06).
- The assertion of the separation of powers and the effective independence of the judiciary (resolution DIC/CPR/06).

982. These requests by Congolese society to establish transitional justice mechanisms and to implement certain institutional reforms, the majority of which have not been answered, remain equally relevant and necessary today with respect to combating impunity for the crimes committed between 1993 and 2003. Recently, at the peace, security and development conference held in January 2008 in North Kivu and South Kivu, several hundred members of Congolese civil society reiterated their demands that transitional justice mechanisms be implemented, particularly in terms of investigations and prosecutions for war crimes, crimes against humanity and crimes of genocide

perpetrated since 1996, and that the Truth and Reconciliation Commission (TRC)[1690] be restructured and reconvened. One participant in the transitional justice round table meeting held in Goma in May 2009, organised by the Mapping Team, identified civil society's expectations as: "first, to know the truth concerning the crimes committed before the Rome Statute came into force, then to punish the perpetrators of those crimes and finally to grant reparation to the victims for their losses".[1691] The direct and indirect victims of the crimes committed between 1993 and 2003 have often expressed similar views in their meetings with the Mapping Team. In a recent study, 82% of the population in the east of the country said that "accountability [for war crimes] is necessary to secure peace".[1692]

983. The transitional justice mandate entrusted to the Mapping Team is to:

> "Formulate a series of options aimed at assisting the Government of the DRC in identifying appropriate transitional justice mechanisms to deal with the legacy of those violations in terms of truth, justice, reparation and reform, taking into account ongoing efforts by the DRC authorities as well as the support of the international community".[1693]

984. This mandate conforms perfectly with the multiple demands Congolese society has made toward its leaders and complies with the UN Security Council's recent request to MONUC to "help [the Government] create and apply a transitional justice strategy".[1694]

985. To carry out that part of its mandate, the Mapping Team examined the DRC's experiences in the area of transitional justice and identified the challenges it posed, particularly in the light of the conclusions drawn from its assessment of the judicial system presented in the previous section of this report. In particular, the Mapping Team

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[1690] See the final workshop reports of the conference on peace, security and development in North Kivu and South Kivu held in January 2008 where it was recommended "that a mixed (national and international) independent inquiry committee should be set up with a view to identifying the crimes committed in Kivu since 1996 and proposing sanctions for their perpetrators; that the ICC should accelerate the investigations into the war crimes, crimes of genocide and crimes against humanity committed across Congolese territory; that a Committee should be set up for identifying and compensating the victims of conflicts and war be entrusted with… defining the nature of the appropriate compensation and providing compensation to the victims; that a compensation budget should be included in the Kivu stability and reconstruction fund for the victims of the conflicts and war that have raged across the region since 1996; that a law should be adopted to establish a new Truth and Reconciliation Commission; that the independence of the judicial powers should be respected; and that the security and police forces be cleaned up".

[1691] Statements collected at the round-table meeting on the subject of transitional justice and the fight against impunity organised in Goma on 11 May 2009 by the Mapping Team for the DRC.

[1692] *Living with Fear*, a survey carried out among the population on peace, justice and social reconstruction in the east of the DRC, August 2008. Available at the following address: www.ictj.org.

[1693] Article 1.3 of the Terms of Reference approved by the United Nations Secretary-General on 8 May 2007.

[1694] Mandate reiterated by the Security Council in several of its resolutions. See Resolution 1794 (2007) of 21 December 2007, par. 16, and Resolution 1856 (2008) of 22 December 2008, par. 4.

reviewed the experience of the Truth and Reconciliation Commission, which operated during the transition, as well as the reforms in progress in the justice and security sector.

986. During that exercise, the Team consulted Congolese experts in criminal law and international criminal law. It met the Congolese civilian and military judicial authorities in Kinshasa and in the provinces, representatives of the Ministry of Justice and Human Rights, members of the government agencies responsible for the reform of the judicial system, including the justice reform monitoring committee within the Ministry of Justice (CMJ) and the Permanent Commission for Congolese Law Reform (CPRDC), NGOs for the defence of human rights, in particular those dealing with justice, victims' associations, Bar Association representatives and magistracy unions.

987. Convinced of the need for national appropriation of the transitional justice measures in order to guarantee their effectiveness and in order to gather views and opinions from civil society on this subject, the Team organised several round table meetings concerning transitional justice and the fight against impunity. These were held on 25 April 2009 in Bunia, 11 May 2009 in Goma, 12 May 2009 in Bukavu and 22 May 2009 in Kinshasa. In total, over a hundred people took part, primarily figures in the Congolese justice system, civil society organisations, including several victims' associations and professionals actively involved in the field of transitional justice. The Team observed that Congolese civil society was already keenly aware of the pitfalls to be avoided when drafting and implementing transitional justice measures and those pitfalls will be detailed in this section of the report.

988. The options for transitional justice put forward in this report broadly take into account the various points of view expressed by key Congolese figures at round table meetings and working sessions, and are also based on other studies of victims' expectations in terms of transitional justice and data gathered from the Mapping Team's own fieldwork. These round-table meetings do not claim to replace a dedicated national consultation process which must precede any important decision in terms of transitional justice in order to ensure its legitimacy and acceptance. Finally, the various options presented are compatible with the current efforts deployed and comply with the DRC's international obligations.

CHAPTER I. DEFINITION OF TRANSITIONAL JUSTICE

989. The United Nations defines justice as "an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large".[1695] The concept of "administering justice during the transition period" or "transitional justice" "comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation".[1696]

990. The main objectives and challenges of transitional justice are summed up by the Secretary-General of the United Nations as:

> *"(…)helping war-torn societies re-establish the rule of law and come to terms with large-scale past abuses, all within a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population, is a daunting, often overwhelming, task. It requires attention to myriad deficits, among which are a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in Government, a lack of official respect for human rights and, more generally, a lack of peace and security.".*[1697]

991. Transitional justice mechanisms aim to combat impunity with regard to serious and gross violations of human rights and international humanitarian law and to promote the dynamics for reform and reconciliation within societies recovering from armed conflicts or a period marked by large-scale abuses. They must also contribute to the prevention of further conflicts, the strengthening of democracy and the re-establishment of the rule of law, all of which must be supported by new consensual foundations. Transitional justice also seeks to restore dignity to the victims of human rights violations through the establishment of provisions for justice, truth and reparation for the wrongs they have suffered. Moreover, mobilising the national awareness around transitional justice measures will lay the foundation for the consolidation of peace and the reconstruction of a shared history.

992. Transitional justice is based on all the rights granted to the victims of large-scale abuses resulting from the international obligations of States to comply with, enforce and apply international law concerning human rights and international humanitarian law,

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[1695] See the *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies* (S/2004/616), par.7.

[1696] Ibid, par. 8.

[1697] Ibid, par. 3.

which are derived from international customary and treaty law and from domestic law. The rights of victims are codified in the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (herein "Principles on rights to a remedy and reparation")[1698] recalling numerous elements from the United Nations' Set of Principles to Combat Impunity[1699] and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[1700] These texts essentially identify three rights for victims: the right to truth, which implies establishing the facts,[1701] the right to justice and the right to reparations. The Human Rights Council has asserted these rights in several of its decisions, communications and general observations. Regional human rights courts have also contributed to delineating these rights. As regards the DRC, it is worthwhile pointing out the importance of the right to non-discrimination among victims, as reiterated in the Principles on rights to a remedy and reparation, which demands that victims should be recognised, irrespective of the communities from which they come.

993. In post-conflict situations or when a dictatorship ends, States are seldom in a position to meet their human rights obligations, particularly when it implies answering for serious crimes committed in the past. The scale and severity of the crimes dictate that *ad hoc* and exceptional measures be adopted to compensate for these failings and to provide adequate responses both to the victims and to society at large.

994. Various types of measure can contribute to these objectives, particularly "both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.".[1702]

995. These mechanisms are complementary and non-exclusive. Most of the numerous countries that have looked back at their recent history marked by dictatorship, armed

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[1698] Resolution 60/147 of the General Assembly dated 16 December 2005.

[1699] Louis Joinet, *Question of the impunity of perpetrators of violations of human rights (civil and political). Final report produced following decision 1996/119 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities* (E/CN.4/Sub.2/1997/20,); Diane Orentlicher, *Updated set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102 and E/CN.4/2005/102/Add.1, 8 February 2005.

[1700] Resolution 40/34 of the General Assembly dated 29 November 1985.

[1701] It also defines the right to truth as a "collective right, drawing upon history to prevent violations from recurring in the future". See Louis Joinet, *Report on the question of the impunity of perpetrators of violations of human rights (civil and political)*, par. 16 to 18, E/CN.4/Sub.2/1997/20 .See also the updated Principle 2 that stipulates: 'Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.".

[1702] See the *Report of the Secretary-General on the re-establishment of the rule of law and the administration of justice during the transition period in societies that are in conflict or are emerging from a period of conflict* (S/2004/616), par. 8.

conflict and large-scale serious crime have used transitional justice measures of several kinds, implemented simultaneously or gradually, in order to restore rights and dignity to victims, to ensure that human rights violations are not repeated, to consolidate democracy and lasting peace and to lay the foundations for national reconciliation. The exact form and function of the mechanisms adopted by governments vary according to the specific context and realities of each country, including the nature of the crimes committed.

CHAPTER II. TRANSITIONAL JUSTICE

A. Challenges facing transitional justice

1. Number and types of crimes committed and number of perpetrators and victims

996. Section I illustrated the scale and severity of the crimes committed against civilian populations during the period under consideration. These violations were committed on a massive scale during more than a decade of conflicts, and by various armed forces and armed groups. The number of violations reaching the threshold of crimes under international law is so high that even a properly functioning justice system working at full capacity would not be able to handle such a large number of cases. The perpetrators of those crimes number in their thousands, even tens of thousands, and their victims in their hundreds of thousands.

997. The crimes committed were apparently of a widespread and systematic nature. In the majority of cases, the armed forces and groups deliberately attacked civilian populations, repeatedly applying a disproportionate use of force. The systematic or widespread nature of the crimes committed against vulnerable groups, women, children and defenceless refugees, raises questions on the reasons behind the violence unleashed, on the existence of a deliberate policy of attacking certain categories of people on ethnic or political grounds, or by reason of their nationality. Such questions will not be answered satisfactorily before a court of law, which would primarily seek to assess the individual responsibility of perpetrators without attempting to understand the conflict as a whole, how it came into being and the underlying reasons for it. A judicial mechanism, in and of itself, can only look in a limited and fragmentary way at such violence, and can only deal with a limited number of cases, without taking into account the petitions of the majority of victims.

2. Characteristics of the conflict

998. A further difficulty in the implementation of some of the transitional justice measures advocated concerns the participation of foreign armed forces and groups in the waves of violence that swept across the country in the period 1993-2003. The Team has gathered information confirming that, in many incidents recorded, armed forces and groups from countries other than the DRC were involved.

999. The frequently decisive role played by foreigners in the armed conflicts on Congolese territory poses a serious challenge to the implementation of certain global transitional justice measures in the DRC. The process of seeking truth and finding facts, even more so the establishment of accountability, will be difficult in certain cases without the help and cooperation of third-party States or their citizens. It will be more difficult to establish the extent to which foreign commanders, sponsors and those who gave orders are responsible without the assistance of the authorities in the relevant countries. Even in the case of non-judicial transitional justice mechanisms, examining the role and

involvement of foreign armed groups risks engendering diplomatic reticence and halting the process of national reconciliation by hiding important aspects of the history of the conflict.

1000. In this respect, the Security Council reminded "occupying" foreign forces in 2001 that they "should be held responsible for human rights violations in the territory under their control".[1703] Furthermore, the Council also reminded States in the region that were involved in the armed conflict of their obligations under international law "to bring to justice those responsible and […] facilitate measures …to ensure accountability for violations of international humanitarian law."[1704]

3. Context

1001. The DRC's size and the extent of the devastation to its infrastructures present a challenge to any large-scale operation such as a national consultation process, truth and reconciliation initiatives, reparation programmes or judicial investigations. The distances which people must travel to collect information on the incidents that occurred across the territory are vast, as are the distances that would separate the victims of affected communities from the location of the mechanism that would hear them . However, the experience gained during the last elections served to demonstrate that this challenge is not insurmountable. Funding measures intended to help victims and witnesses gain access to transitional justice mechanisms need to be a priority of the DRC's partners working in this area.

1002. Although peace currently prevails across most of Congolese territory, the situation remains unstable. The State does not monopolise the use of force, since Congolese and foreign armed groups still control certain areas of the country, particularly in the Kivus and in Ituri. The peace process in the east of the country remains very fragile. In such cases, certain investigations may prove difficult and perhaps impossible to carry out, even with the assistance of MONUC.

1003. The Congolese security forces are not in a position to guarantee the safety of the civilian population, including the main actors of the judicial system. On the contrary, the forces themselves are a source of insecurity and represent some of the main perpetrators of violations of human rights in the country, according to the most recent reports from MONUC's Office of Human Rights. The work of human rights defence NGOs is constantly compromised by the high incidence of intimidation by the authorities, which risks holding back the few transitional justice initiatives undertaken by civil society.

[1703] See Resolution 1341 (2001) of 22 February 2001, par. 14.
[1704] See for example resolution 1291 (2000) of 24 February 2000, par. 15.

1004. These security problems must be overcome, particularly with regard to the victims, witnesses, judicial actors and staff of any transitional justice mechanism. Measures intended to protect witnesses and members of the judicial system are crucial to assure the security of those who would collaborated or worked with transitional justice institutions.

B. Implications for transitional justice

1005. Because of the many challenges that arise when seeking justice for the crimes committed in the DRC, it is crucial that a holistic policy of transitional justice be adopted, which involves relying on diverse and complementary mechanisms, both judicial and non-judicial. The process requires a strategy based on a global view of known violations, the timescales involved (crimes committed over a 10-year period) and the principal categories into which the victims fall. In that respect, this report may help to form the basis of a process of reflection for civil society and the Congolese Government as well as their international partners. This strategy must involve complementarity between various mechanisms, whether already available or yet to be created, each of which will have a particular role in seeking truth, justice and the reconstruction of the historical truth and the reparation and rehabilitation of victims, as well as vetting and institutional reform.

1006. For each challenge identified above, transitional justice proposes one or more mechanisms that can provide a solution or, at least, the beginnings of one. For example:

- The total impunity of the perpetrators of serious human rights violations and the difficulty posed by the complexity of these crimes to be investigated and prosecuted call for the establishment of a specific judicial mechanism and the reform of the justice sector.
- The high number of crimes committed and of individuals involved requires the implementation of a truth-seeking mechanism that will complete and transcend the intrinsic limitations of the judicial system, with a view to shedding light on the multiple conflicts that engendered such violence, thus fulfilling the individual's and society's right to truth.
- The extremely high number of victims calls for the introduction of more accessible and more flexible mechanisms to satisfy their requests for truth and reparation. A judicial institution in and of itself does not meet these conditions.
- The impunity enjoyed by numerous perpetrators of violations who are foreigners or living outside the country poses a challenge to the national judicial system and calls for the full cooperation of third-party States, either by prosecuting the perpetrators themselves or extraditing people suspected of committing crimes on DRC territory. The role of the ICC and the Security Council may be a determining factor in this area.
- The prosecution of those who bear the greatest responsibility, those who orchestrated or ordered many crimes, poses a huge challenge in terms of protecting witnesses and judicial actors. Here too, a specific and independent judicial mechanism could meet this challenge and institutional reform could produce long-term solutions to these difficulties.

- The persistent insecurity in the country undermines all the efforts deployed in the area of justice. Any solution to the problem inevitably implies a true reform of the security sector, with a 'vetting procedure' that would demote the perpetrators of serious violations of human rights from their rank, instead of keeping them there and supporting their power.

CHAPTER III. JUDICIAL MECHANISMS

1007. Judicial mechanisms include any institution that exercises a jurisdictional function of settling disputes through binding decisions founded on law. The jurisdictional function itself is twofold: first it serves to settle disputes and secondly it represents an instrument for asserting and developing the law. Therefore, a judicial mechanism has the duty not only to judge individuals, but to do so in accordance with existing law.[1705] In the area of transitional justice, judicial mechanisms fulfil an important role. They directly meet the international obligation to prosecute serious violations of human rights and international humanitarian law and are a means to punish the perpetrators of crimes under international law, thus serving as a pragmatic solution in the fight against impunity. To come up with realistic options for prosecuting those who committed serious violations against human rights and international humanitarian law in the DRC between March 1993 and June 2003, judicial mechanisms need to be set up and existing institutions which could help combat impunity, particularly in the area of international judicial cooperation, need to be identified..

A. Prosecution of perpetrators of serious violations against human rights and international humanitarian law and transitional justice

1008. The obligation of all States to prosecute the perpetrators of serious violations of human rights and international humanitarian law is now well established in international law. This obligation is stipulated in the United Nations Principles to Combat Impunity as: "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished".[1706]

1009. Criminal prosecutions are at the forefront of the measures of transitional justice envisaged for a post-conflict situation when the abuses committed are of the scale and gravity observed in the DRC. In addition to the resulting legal obligations, the nature of the criminal prosecutions will contribute to several objectives of transitional justice. The Secretary-General has underlined the crucial role criminal trials can play in transitional contexts:

> *"*They express public denunciation of criminal behaviour. They can provide a direct form of accountability for perpetrators and ensure a measure of

[1705] In criminal law, judicial decisions, in addition to convict or acquit, are intended to declare the law or *jus dicere.*

[1706] See "Updated set of principles for the protection and promotion of human rights through action to combat impunity" (herein "United Nations principles to combat impunity"), E/CN.4/2005/102/Add.1, 8 February 2005, principle 19.

> justice for victims by giving them the chance to see their former tormentors made to answer for their crimes. [...]. Criminal trials can also contribute to greater public confidence in the State's ability and willingness to enforce the law. They can also help societies to emerge from periods of conflict by establishing detailed and well-substantiated records of particular incidents and events. They can help to de-legitimise extremist elements, ensure their removal from the national political process and contribute to the restoration of civility and peace and to deterrence".[1707]

1010. When the Security Council set up the two *ad hoc* international criminal tribunals for Rwanda and the former Yugoslavia,[1708] it considered truth-seeking and criminal punishment essential prerequisites for reconciliation and for maintaining or restoring peace. As far as restoring confidence in the State institutions is concerned, this is all the more important given that certain institutions in the DRC did nothing to prevent, were complicit in, and in some cases were even the perpetrators of serious violations of human rights against the civilian population.

1011. Beyond their primary punitive purpose and their preventive function specific to criminal law, prosecutions also grant the victims of crimes their acknowledged right to justice. In addition, prosecutions play a part, albeit in a more limited way, in the truth-seeking process, considered as another right attributed to the victims. Absent from the first *ad hoc* Tribunals, the victims' own participation in judicial proceedings as a distinct party from the defence and the prosecution, is also important since it asserts the institution's legitimacy in their eyes and offers them, where applicable , a certain measure of reparation. This participation of victims is today recognised by the ICC.[1709] The victims and witnesses of abuses met by the Mapping Team frequently expressed their hope that "justice be done" for the crimes committed during the worst events they had suffered or witnessed.

[1707] See the *Report of the Secretary-General on the re-establishment of the rule of law and the administration of justice during the transition period in societies that are in conflict or are emerging from a period of conflict* (S/2004/616), par. 39.

[1708] International tribunal entrusted with prosecuting people responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other violations committed in the territory of neighbouring States between 1 January and 31 December 1994, see resolution 955 (1994) of 8 November 1994; International tribunal entrusted with prosecuting people responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, see resolution 827 (1993) of 25 May 1993.

[1709] In accordance with article 68 (3) of the Rome Statute.

B. Obligation to prosecute the perpetrators of crimes under international law committed in the DRC between 1993 and 2003

1012. In several of its resolutions, the Security Council reminded all parties to the conflict of their obligation to try those responsible for crimes under international law.[1710] The Human Rights Council and several regional international organisations (SADC, African Union, EU) made similar declarations during the transition period. More recently, the States of the Great Lakes region agreed to punish perpetrators of crimes of genocide, war crimes and crimes against humanity by signing the Great Lakes Pact on Security, Stability and Development. However, as detailed in section III of this report, the insignificant number of judicial proceedings for crimes under international law in fact supported impunity in this respect during the transition period.

1013. In the DRC, criminal prosecutions are nevertheless recommended by judges, NGOs and the great majority of the victims met by the Mapping Team, some of whom consider legal proceedings to be "the first step in examing the past".[1711] The Congolese Government has declared itself in favour of judicial proceedings on several occasions, but few tangible actions have been taken and impunity remains. Conversely, the process of *brassage*, whereby rebel groups are integrated into the FARDC, is often accompanied by the award of higher ranks to rebel leaders suspected of being responsible for gross violations of human rights and international humanitarian law, which gives civil society the impression that the Government "is favouring the perpetrators of crimes in the name of peace and national unity".[1712]

C. Challenges posed by prosecuting crimes under international law committed in the DRC between 1993 and 2003

1014. Criminal justice for the crimes committed in the DRC between 1993 and 2003 presents substantial challenges and the severity of the abuses is extreme. Given the innumerable violations committed and the considerable number of perpetrators involved, an order of priority needs to be established in terms of bringing to justice the people responsible for perpetrating the most serious crimes. The clear and consistent tendency of

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[1710] See resolution 1341 (2001) of 22 February 2001, par. 14, resolution 1234 (1999) of 9 April 1999, subparagraph 6: "all violations of human rights and international humanitarian law in the territory of the DRC, including acts of and incitement to ethnic hatred and violence by all parties to the conflict" and resolution 1291 (2000) of 24 February 2000, par. 15, in which the Security Council "calls on all parties to the conflict in the DRC to protect human rights and respect international humanitarian law and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and calls on all parties to refrain from or cease any support to, or association with, those suspected of involvement in the crime of genocide, crimes against humanity or war crimes, and to bring to justice those responsible, and facilitate measures in accordance with international law to ensure accountability for violations of international humanitarian law".

[1711] Participant at the round-table meeting in Goma organised by the Mapping Exercise, 11 May 2009.

[1712] Opinion expressed by the representative of a women's association active in the area of legal assistance during the round-table meeting in Bukavu organised by the Mapping Exercise, 12 May 2009.

the international justice system is to focus on bringing criminal prosecutions against "those who bear the greatest responsibility".[1713] A criminal prosecution policy for the DRC should therefore include all those who planned, orchestrated and ordered crimes to be committed, whether they are members of the military, civil or political authorities, as well as those who were directly leading the groups involved in the violations. Thus, the prosecution of the "people bearing the greatest responsibility" calls for a fully independent justice mechanism, capable of resisting pressure from certain high-ranking perpetrators of these crimes committed in the past. This is certainly not the case of the Congolese judicial system in its present state. Finally, even if the prosecution of a small number of those most responsible perfectly meets the aims of transitional justice, this will appear inadequate in the eyes of hundreds of thousands of victims and must therefore be complemented by other mechanisms that more closely meet their needs.

1015. The perpetrators of violations include both foreigners and Congolese citizens, as illustrated in section I of this report. As already pointed out, the Security Council stressed in its resolution 1341 (2001) "that occupying forces should be held responsible for human rights violations in the territories under their control".[1714] As for individual responsibilities, in a number of resolutions relating to the situation in the DRC, the Security Council reminded the Congolese Government and the other States in the region, particularly States involved in the armed conflict, of their obligations "to bring to justice those responsible [for the violations], and […] ensure accountability for violations of international humanitarian law".[1715]

1016. According to the information received, to this day, no third-party State involved in the conflicts in the DRC has brought proceedings against nationals suspected of perpetrating crimes, despite the existence of considerable evidence pointing to the implication of their forces in crimes committed in the DRC.[1716] While the recently adopted Great Lakes Pact on Stability makes provision for legal cooperation mechanisms, it nevertheless reaffirms the principle according to which States are under no obligation to extradite their citizens.[1717] However, due to the current state of the Congolese legal

[1713] See article 1 of the Statute of the Special Court for Sierra Leone. While the ICC Statute does not contain the same wording, the Prosecutor stipulated in a public document that: "The Office [of the Prosecutor] […] will initiate prosecutions of the leaders who bear most responsibility for the crimes", from *Paper on some policy issues before the Office of the Prosecutor*, September 2003; available at the following address: www.icc-cpi.int.

[1714] See note 1712, *supra*.

[1715] See, for example, resolution 1291 (2000), par. 15, in which the Security Council "calls on all parties to the conflict in the DRC to protect human rights and respect international humanitarian law and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and calls on all parties to refrain from or cease any support to, or association with, those suspected of involvement in the crime of genocide, crimes against humanity or war crimes, and to bring to justice those responsible, and facilitate measures in accordance with international law to ensure accountability for violations of international humanitarian law".

[1716] The Team has received unconfirmed information that on 23 May 2001, a UPDF soldier was sentenced by a UPDF military court based in Gemena and was repatriated to Uganda for killing six prisoners held in the cells at Gemena police station.

[1717] See article 14 of the Pact, *infra*.

system,[1718] which neither functions adequately nor can provide all the basic guarantees for a just and fair trial by an impartial and independent court, it seems highly unlikely that third-party States would agree to extradite any person whomsoever to the DRC in the short or medium term. Rwanda's refusal thus far to extradite Laurent Nkunda, a Congolese citizen accused of serious crimes by the Congolese judicial authorities, was in part motivated by the fact that the death penalty is still legal in the DRC.[1719]

1017. The weaknesses of the judicial system appear all the more overwhelming given that the prosecution of crimes under international law requires specific and specialised expertise in terms of investigative staff and prosecutors. The assessment of the resources available to the Congolese justice system made in section III of this report also concluded that Congolese jurisdictions have neither the independence nor the capacity to prosecute the main perpetrators of the most serious crimes committed on DRC territory between 1993 and 2003. The observation was also made that, under Congolese law, the military courts have exclusive jurisdiction over war crimes, crimes against humanity and genocide, which does not comply with the principles of the United Nations in this area or give much opportunity for victims to be heard. Despite the reforms initiated and the international support the Congolese justice system has received, it lacks the capacity in the short or medium term to meet the challenges of seeking prosecution for crimes under international law committed in the past. Consequently, it seems essential to adopt a specific judicial mechanism that can deal fairly and wholly independently with the most serious violations of human rights and international humanitarian law committed in the DRC.

1018. Most countries emerging from a period of conflict find themselves in a similar situation to that of the DRC, with a weakened and dysfunctional judicial system that is incapable of dealing with the many violations committed during the conflict period. Over the past 15 years, the international community has contributed to the establishment of several judicial transitional justice mechanisms empowered to address crimes under international law, the ICC being the most striking example. In certain other cases, it has helped adapt existing national judicial mechanisms with a view to assuring the just, fair and independent prosecution of crimes under international law. Certain trials have also taken place abroad, thanks to third-party States that have prosecuted alleged perpetrators on specific counts of crime under international law using some form of universal jurisdiction.

[1718] See section III of this report.

[1719] In 2005 (no exact date), in RMP file no. 094/BPS/04, the "Auditorat Général" of the High Military Court issued two arrest warrants under international law against General Laurent Nkundabatware and Colonel Jules Mutebusi for acts of insurrection, war crimes and crimes against humanity, considering there to be "strong evidence of guilt" against them in relation to the wave of summary executions, rapes and looting following the taking of Bukavu by their group in June 2004. In May 2009, Rwanda publically declared itself unable to extradite Laurent Nkundabatware to a country where the death penalty was still in force; see the joint statement issued by the Justice Minister/Garde des Sceaux of the Republic of Rwanda and the Justice Minister of the DRC, Kigali, 5 May 2009.

D. Role of the International Criminal Court

1019. Although the ICC in and of itself is not a transitional justice mechanism, it is making nonetheless a very significant contribution to criminal justice in countries in transition. At present, the ICC constitutes the only judicial mechanism with the capacity, integrity and independence necessary to prosecute those who bear the greatest responsibility for the crimes under international law committed on the territory of the DRC.

1020. The ICC's competence follows the principle of complementarity, whereby a case is only admissible when a State is itself unwilling or unable to carry out investigations and prosecute.[1720] The situation in the DRC was referred to the ICC on the express request of President Kabila in March 2004[1721] and was carried out in compliance with the Rome Statute of the ICC ratified by the DRC in March 2002.[1722] However, the ICC's jurisdiction is limited only to crimes under international law committed in the DRC since 1 July 2002. Consequently, the vast majority of possible crimes under international law listed in the first section of this report fall outside its jurisdiction.

1021. In June 2004, the Prosecutor opened the first two ICC cases concerning the situation in Ituri. The first investigation of the crimes committed by the UPC led to the arrest of Thomas Lubanga who was charged with enlisting and using child soldiers. The Lubanga trial, the first case before the ICC, opened on 29 January 2009. The ICC issued a second arrest warrant relating to the same incidents against Bosco Ntaganda on 22 August 2006[1723]. However, Ntaganda, appointed general in December 2004 as part of the peace negotiations held in Ituri, remains at large and plays an important role in the FARCD operations against the FDLR in the Kivus.[1724] The Government has publically stated on several occasions that it has no intention of arresting Bosco Ntaganda, at least for the moment,[1725] despite many objections.[1726] In its second investigation into the

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[1720] Under article 17 of the Rome Statute, the Court must determine that a case is inadmissible if a State, which has jurisdiction over it, has started an investigation or proceedings or has decided not to prosecute, if the person concerned has already been tried for conduct which is the subject of the complaint, or if the case is not of sufficient gravity.

[1721] See the press release from the ICC Prosecutor's Office of 23 June 2004, Prosecutor receives referral of the situation in the DRC, ICC-OTP-20040419-50.

[1722] According to the terms of ministerial decree no. 013 of 30 2002, the DRC has ratified the Statute of the International Criminal Court that came into force in July 2002.

[1723] *Prosecutor* v. *Bosco Ntaganda*, arrest warrant of 22 August 2006, no. ICC-01/04-02/06. This warrant was made public on 28 April 2008.

[1724] See *ICC-Wanted Warlord in UN-Backed Offensive*, Reuters, 29 April 2009.

[1725] See *New York Times*, An interview with Kabila, 4 April 2009, where the President says: "Justice that will bring out war, turmoil, violence, suffering and all that, I believe we should say: let's wait, let's do away with this for the time being. For me, the priority right now is peace. […] Bosco has been so cooperative in bringing about the necessary change that has brought about peace that we need to give him the benefits, of what we say in French, le doute, the benefit of the doubt. That's what we're doing. We're watching. We're monitoring him. We haven't forgotten that he's wanted by the justice system. But at the same time, we're telling the justice system that you're not going to be in place in the Congo if and when war breaks out*"*.

[1726] See Chapter 6 of this section.

situation in Ituri, against the FNI/FRPI, Germain Katanga and Mathieu Ngudjolo were transferred to the ICC on 17 October 2007 and 6 February 2008 respectively, and charged in September 2008 for war crimes and crimes against humanity, committed principally during the Bogoro massacre in February 2003.[1727] The Prosecutor said that a third investigation would be opened, most probably in the Kivus.[1728]

1022. The ICC has played and continues to play a very important role in combating impunity in the DRC, which is likely to encourage the work of the Congolese courts and tribunals and other mechanisms to be set up in the future. Its impact goes far beyond the few cases it is handling or will handle. Having established the principle that any individual, irrespective of their rank or level of political responsibility, can be held accountable for the most serious crimes, it contributed to reopening the debate on the fight against impunity in the DRC. The tribunal has thus given a great deal of hope to all the victims of the violations, even those committed prior to July 2002. The Court has also inspired some actors in the Congolese judicial system, who have looked into the provisions of the ICC's Rome Statute for material to supplement and clarify Congolese law in that area, as explained in section III of this report. Finally, by ratifying the Rome Statute, the DRC subscribed to the obligation to adapt its domestic legislation to the law enshrined in the Statute which, once adopted, should make a significant contribution to the fight against impunity.

1023. However, the numerous expectations raised by the ICC have led to disappointment among the Congolese people and international participants with an interest in victims' rights. The most frequent criticisms concern the slow pace of procedures and the limited scope of the charges that were brought, particularly against Lubanga and Ntaganda, which failed to provide justice to the hundreds or even thousands of civilians killed by the UPC and did not reflect the true scale of the criminal activities of the accused, as has been revealed by numerous inquiries.[1729] Furthermore, the Prosecutor's public declaration that the first phase of the DRC investigation had been completed was disappointing, largely because the networks that funded and armed the armed groups in Ituri were not implicated although he had suggested that he would investigate them.

1024. Despite the criticisms levelled against it, the ICC continues to garner a certain degree of legitimacy in the eyes of Congolese society. Nevertheless, due to the lack of

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[1727] *The Prosecutor* v. *Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, ICC-01/04-01/07, 30 September 2008.

[1728] "ICC Prosecutor recalls that ICC has jurisdiction over crimes against the civilian population in the Kivus," 4 November 2008. Despite the absence of publicity, an investigation into the crimes committed in the Kivus was opened in 2009.

[1729] See *FIDH and its Congolese member organisations disappointed by the limited scope of the International Criminal Court's investigations*, which reads as follows: "Nevertheless, FIDH and its three member organisations in DRC deeply deplore that, like Lubanga, Ntaganda is being prosecuted only for the enlistment, conscription and use of child soldiers. Our organisations have repeatedly called upon the ICC Prosecutor to extend its investigations, in order to ensure that ICC investigations and prosecutions are representative of crimes committed in Ituri"; full article available at: www.fidh.org.

progress in the fight against impunity in the DRC, it seems to be of primary importance that the ICC should maintain and indeed increase its commitment. It should use the third investigation in the Kivus to explore creative interpretations of the principle of complementarity, which can include exchanges of information, training sessions and possibly joint investigations with Congolese judicial staff. The success of the ICC, in the DRC and elsewhere, will have to be measured less by the number of individuals tried than by its capacity to stimulate and encourage the prosecution of crimes under international law before national jurisdictions.

1025. Similarly, the ICC must address the most serious crimes, which could be difficult to prosecute in the DRC due to their complexity or the impossibility of having the perpetrators extradited. The Prosecutor had declared that once in office he would address the networks that fund and arm the groups involved in the crimes within his mandate. Such an investigation is particularly complex. The people involved in these activities are indirectly implicated in the crimes and benefit from considerable political, military and economic support in their own countries. The same is true of individuals, whether nationals or foreigners, who bear the greatest responsibility for the crimes committed in the DRC but are today outside the territory and hence beyond the reach of national justice. It therefore appears important for the ICC's Prosecutor to pay particular attention to these cases, if they are not to evade justice.

1026. Conversely, the fact that the ICC has no jurisdiction over the many crimes committed before July 2002 and that it is not able to deal with a large number of cases, limits its direct role in the fight against impunity and confirms the important need to create new mechanisms which would make it possible to prosecute the main perpetrators of the most serious crimes documented in this report.

E. Role of third-party States: extraterritorial and universal jurisdiction

1027. While there are prosecution mechanisms that could be implemented in the DRC to bring action against the many crimes committed, each State still has an immediate role to play in the fight against impunity. Certain States can also play a crucial role in the success of judicial proceedings, whether they are conducted by jurisdictions in another country or by an international or mixed jurisdiction.

1028. The important role of third-party States in initiating prosecutions, in part derived from the international nature of the conflict, has been explained above:

- Third-party States have jurisdiction to prosecute most of the crimes documented in this report. If for one reason or another a State refused to extradite an accused perpetrator or hand him or her over to the competent Congolese judicial authority, the State would nevertheless be responsible for bringing prosecutions against him or her.
- For certain documented incidents, numerous potential witnesses are outside the country and their participation in the trial may require the cooperation of a third-party State.

- The gathering of some evidence that may be on the territory of a third-party State will require its cooperation.

1029. The exercise of extraterritorial or universal jurisdiction is made obligatory by international law in certain international conventions[1730] on the grounds that the most serious crimes under international criminal law, namely war crimes, crimes against humanity, genocide and torture, must not go unpunished. This principle authorises the prosecution of perpetrators of these crimes even if there is no link between the offence and the State which brings proceedings. This form of jurisdiction is based on the nature and gravity of the crimes committed. Thus, a large proportion of the crimes committed between 1993 and 2003 on DRC territory can be prosecuted in accordance with universal jurisdiction. The three examples below illustrate how the exercise of universal jurisdiction can contribute, or attempt to contribute, to punishing perpetrators of crimes committed in the DRC between 1993 and 2003.

- On 11 April 2000, on the basis of universal jurisdiction, Belgium issued an arrest warrant against Yerodia Abdoulaye Ndombasi, former principal private secretary to the President and subsequently Minister of Foreign Affairs under Laurent-Désiré Kabila, for war crimes and crimes against humanity committed in August 1998 in relation to speeches he gave "inciting racial hatred against the Tutsis… which led to the massacre of civilians".[1731] The ensuing decision by the International Court of Justice declared that by issuing the arrest warrant, Belgium had violated the right of the Minister of Foreign Affairs to immunity and the warrant was consequently withdrawn.[1732]

- On 7 April 2004, the Rotterdam District Court sentenced Nzapali, known as "Le Roi des bêtes" (King of the beasts), a colonel in the Bas-Zaire Civil Guard, to two and a half years in prison for committing acts of torture on a customs agent in October 1996 in Matadi, Bas-Congo. He was also tried for allegations of rape and serious physical abuses that constituted crimes against humanity, but the facts were not established.

- On 6 February 2008, a Spanish judge issued arrest warrants against 40 officers of the Rwandan army, including Major-General James Kabarebe for his role "in the

[1730] As far as humanitarian law is concerned, the territoriality principle in criminal law is stipulated by the provisions of the four Geneva Conventions and Protocol I [article 49 (Convention I), article 50 (Convention II), article 129 (Convention III), article 146 (Convention IV), and article 85, chapter I of Protocol I]. The extraterritorial jurisdiction of international crimes arises from the principle of *aut dedere aut judicare* according to which States are obliged to extradite the perpetrators of grave breaches themselves or to transfer them to international jurisdiction. Similarly, articles 5 and 8 of the Convention of 10 December 1984 against torture and other cruel, inhumane or degrading treatment or punishment recognise the legitimacy of extraterritorial jurisdiction in the area and establish the principle of *aut dedere aut judicare*.

[1731] Yerodia case, International arrest warrant, Case no. 40/99, Notice no. 30.99.3787/99, dated 11 April 2000, Judge Damien Vandermeersch.

[1732] Case concerning the arrest warrant of 11 April 2000 (*RDC* v. *Belgium*) [On the merits] Warrant dated 14 February 2002.

> mass killing of Rwandan refugees and the Congolese civilian population" particularly during the "attacks against the refugee camps situated in the territory of Zaire and specifically against the camps of Kibumba, Mubunga, Lac Vert, and later Tingi-Tingi, Kindu and Mbandaka" and Brigadier General Jack Nziza for having participated in the attacks on the same camps and "in the massacres of Shabunda, Kisangani and Maniema, between April and July 1997".[1733]

1030. With regard to judicial cooperation, two protocols of the Pact on Security, Stability and Development in the Great Lakes Region, which came into force on 21 June 2008, require Member States to cooperate in the prosecution of the perpetrators of these crimes,[1734] and particularly that they extradite accused perpetrators to their State of origin.[1735] These protocols complement the bilateral agreements[1736] by establishing the principle of the irrelevance of official capacity in terms of criminal responsibility for these crimes. However, the Pact stipulates that "the Member States shall not be obliged to extradite their nationals", hence considerably limiting the scope of the text. Member States are nevertheless required to pass on information to their judicial authorities received from the Member State requesting extradition for the alleged offence, and to inform it of the results of the investigations carried out[1737]. The Pact contains other interesting provisions concerning the establishment of joint commissions of enquiry (articles 17 to 20) and the exchange of information on crimes under international law between the police forces of the Member States (article 21).

1031. All States should therefore apply these texts and their own laws, on the basis of either extra-territorial or universal competence, to prosecute those who bear the greatest responsibility for the crimes documented in this report, complying fully with the provisions of international law in effect. They should also cooperate with the implementation of procedures operating outside of their own judicial systems, by responding, for example, to the needs of other national or international jurisdictions carrying out investigations and agreeing to extradite the perpetrators to States that request it. A Security Council resolution could also request, or even demand, cooperation from

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[1733] Juzgado Nacional de Instruccion n. 4, Audiencia Nacional, Madrid, dated 6 February 2008.

[1734] Protocol on Judicial Cooperation and Protocol on the Prevention and Punishment of genocide crimes, war crimes and crimes against humanity and all forms of discrimination. After Burundi, the Central African Republic, the Republic of the Congo, the DRC, the Republic of Kenya, the Republic of Uganda, the Republic of Rwanda, Tanzania and the Republic of Zambia had ratified the Pact, it came into force on 21 June 2008 under article 33 of said Pact which requires ratification by eight member states before it can come into force.

[1735] Protocol on the prevention and punishment of crimes of genocide, war crimes and crimes against humanity and all forms of discrimination, 1 December 2006, article 14, Legal Basis for Extradition, "Crimes within the field of application of this Protocol shall be extraditable, Member States shall include these crimes in any extradition treaty applicable to them".

[1736] For example, two judicial conventions link the DRC and Rwanda. The first is the one signed in 1966 between the Republic of Rwanda and the then Republic of the Congo. The second is the Convention of the CEPGL (Economic Community of the Great Lakes Community) signed in 1975 between the then Zaire, Rwanda and Burundi. Both authorise the extradition of a Congolese national arrested on foreign soil.

[1737] Article 14. Furthermore, article 24 stipulates that priority shall be given to the extradition request of the ICC if the requested State ratified the Rome Statute.

all States in prosecuting the main perpetrators of the serious violations committed in the DRC since 1993, as it did in February 2000, directed at all the parties to the conflict.[1738]

F. International court

1032. Resolution no. 5 of the Intercongolese Dialogue Commission on Peace and Reconciliation called as early as April 2002 for the creation of an "International Criminal Court for the DRC". The President of the transitional Government, Joseph Kabila, reiterated this request in a speech given to the General Assembly of the United Nations, stating that "the DRC believes in the establishment of an International Criminal Tribunal for the DRC to deal with the crimes of genocide, crimes against humanity, including the use of rape as an instrument of war, and massive violations of human rights."[1739] This demand has not been the subject of an official request, although it is provided for in the resolutions of the Intercongolese Dialogue. Since then, however, it has been referred to by several senior figures in civil society and by NGOs, as well as by various Special Rapporteurs from the Commission on Human Rights who have carried out missions in the DRC. Victims and Congolese NGOs, who are mistrustful of the Congolese justice system, continue to support this solution and sometimes referred to it when speaking to the Mapping Team.[1740]

1033. This type of court, like the International Criminal Tribunal for Rwanda, has both strengths and weaknesses. A court of this kind enjoys a high level of independence in terms of court officials, who are protected from direct political interference, has adequate resources to carry out rigorous investigations and proceedings that respect the fundamental rights of defendants in the context of a fair and equitable trial, and has qualified officials and the ability to implement certain measures to protect witnesses and ensure that detention conditions are in line with international standards. Another major advantage of such *ad hoc* courts is their primacy over all national courts, as subsidiary organs of the Security Council,[1741] giving to their decisions a binding force towards all United Nations Member States[1742] under international law. These judicial institutions are

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[1738] Resolution 1291 (2000) of 24 February 2000, para. 15.

[1739] Address by Major-General Joseph Kabila, President of the DRC: "On the international level we believe that the major objective is the establishment, with the assistance of the United Nations, of an international criminal tribunal for the DRC to deal with crimes of genocide, crimes against humanity, including rape used as a weapon of war, and mass violations of human rights"; see *Official Records of the General Assembly, fifty-eighth session*, 10th plenary meeting (A/58/PV.10).

[1740] Opinion expressed by a few participants at the round-table discussions on tackling impunity and transitional justice organised by the Mapping Team in Goma and Bukavu on 11 and 12 May 2009.

[1741] Legally, the *ad hoc* courts are subsidiary organs of the Security Council; (Article 29 of the Charter) and consequently have the same binding force as Security Council resolutions (Article 25 of the Charter). Before they are created the Security Council must recognise "the existence of any threat to the peace" (Article 39 of the Charter), so that, in the terms used by the UN, the Courts become themselves "measures to maintain or restore peace" (Article 51 of the Charter).

[1742] States are thus legally obliged *erga omnes* to abide by the orders and decisions of the Court. See *Prosecutor* v. *Tihomir Blaskic*, Appeals chamber, ICTY, 29 October 1997, para. 26.

therefore able to compel any individual to appear before them, without regard to their nationality or any immunity they may claim before national courts.[1743]

1034. An International Criminal Tribunal, however, involves significant costs, in particular in light of the small number of proceedings instigated and trials held. Generally set up outside the country where the crimes were committed, it runs the risk of having limited visibility as far as the population and victims are concerned because of the geographical distance involved and a limited understanding of its procedures. It can only contribute indirectly and in a limited manner to strengthening the national judicial system. Finally, it demands a significant level of direct involvement on the part of the Security Council.

G. Hybrid court

1035. The consultations carried out by the Mapping Team with civil society and key actors in the DRC judicial system confirmed an increasing trend towards abandoning the option of creating an *ad hoc* international tribunal in favour of a hybrid court, which is more appropriate to the actual situation in the country itself and easier to achieve in the short or medium term.[1744]

1036. This new trend has not escaped the attention of the Independent Expert on the situation of human rights in the DRC who, recognising the difficulties to be overcome in creating an *ad hoc* tribunal for the DRC, recently recommended that "Certain measures could be taken to reduce the costs of a special tribunal. It could sit in the country, somewhere near the centre, in order to keep down transport costs incurred for defendants and witnesses. The host State could provide premises and defray certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the DRC; and the host State could be responsible for the assignment of counsel."[1745] This proposal was thus similar to the model used for the Special Court for Sierra Leone, an international court of mixed composition, sitting in the country where the crimes were committed, created by treaty between the State in whose territory the crimes were committed and the UN.

[1743] See the case of the arrest warrant of 11 April 2000, *DRC* v. *Belgium*, Decision of 14 February 2002: [civil servants] "may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda . . . , and the future International Criminal Court", para. 61.

[1744] See "Argument in support of the creation of joint benches in the Congolese courts", Observatoire congolais des droits humains, September 2005. Opinion expressed by the majority of participants at the round-table discussions on tackling impunity and transitional justice organised by the Mapping Exercise in Goma on 11 May 2009, Bukavu on 12 May 2009 and Kinshasa on 22 May 2009.

[1745] See *Report by the Independent Expert on the situation of human rights in the DRC* (A/HRC/7/25), para. 35.

1037. "Hybrid courts" generally refer to "courts of mixed composition and jurisdiction, encompassing both national and international aspects."[1746] Most hybrid courts exercise their jurisdiction in the territory where the crimes were committed.[1747] They involve active participation on the part of international actors within the various organs of the court, in particular the chambers where judges sit and the Prosecutor's office, which includes the investigation section. Two types of hybrid courts have been established in the past: international hybrid courts, which are not part of the ordinary domestic courts and operate outside the national legal system (such as those for Sierra Leone and Lebanon) and special mixed chambers, which are integrated into the domestic legal order and form part of the national judicial system (Cambodia and Bosnia-Herzegovina).

1038. The establishment of a hybrid court sitting in the country to deal with the crimes under international law committed in the DRC, at least between March 1993 and June 2003, offers a number of advantages. The participation of international judges and prosecutors could strengthen the requisite guarantees of independence and impartiality that would be essential for the court to be credible to all parties. In addition to guarantees of independence and impartiality, the involvement of international actors would demonstrate firmly that such serious violations of human rights and international law also concern the whole international community and cannot go unpunished. This solution would also help to build capacity in the judicial system and should provide for a gradual transfer of the functions devolved to international participants to national actors. It is also possible, as in the case of the trial of Charles Taylor before the Special Court for Sierra Leone, to sit outside the country for security reasons. This precedent could be the basis for a similar measure for the highly sensitive cases which a court for the DRC would have to hear.

1. Tribunal Independent from the Congolese judicial system

1039. This would be a "Special Court", similar to the Special Court for Sierra Leone, international in character and operating outside the Congolese judicial system. It would be created by a treaty between the United Nations and the Government, would sit in the country and would apply international law and, if appropriate, provisions of Congolese national law. It would consist of a majority of judges, prosecutors and international investigators working jointly with their Congolese colleagues. Although there is no obligation for all the employees of an institution of this kind to be international, it will nevertheless be necessary to ensure that international actors have a preponderant role in the decisions of the court, particularly in relation to the prosecutions instituted and the judgments delivered, in order to strengthen the perception of independence and impartiality that their presence within the Court provides. As a participant at the round-

[1746] *Rule-of-law tools for post-conflict States: maximizing the legacy of hybrid courts*, United Nations High Commissioner for Human Rights, New York and Geneva, 2008, p. 1, available at: www.ohchr.org/Documents/Publications/HybridCourts.pdf.

[1747] The Special Tribunal for Lebanon is the only example of a hybrid court based outside the country where the crimes were committed, i.e. in The Hague.

table discussions on transitional justice organised by the Mapping Team in Goma put it, "given that the majority of crimes were committed by the warlords, it is essential that the Court should be distinct from the national jurisdiction in order to strengthen the independence of the courts".[1748]

1040. This model presents some significant advantages:

- It offers a good guarantee of independence vis-à-vis the national authorities, significantly limiting the possibilities of interference in the judicial process.
- It is likely to enjoy greater legitimacy in the eyes of the population, which does not have, or has lost, confidence in the Congolese judicial system.
- The application of international law and its primacy over domestic law offers guarantees in terms of respect for the fundamental rights of defendants in the context of a fair and just trial.
- It introduces the notion of irrelevance of immunities generally recognised in both domestic and international with regard to senior State officials[1749].
- It offers greater potential for cooperation between third-party States and other institutions, such as the ICC or Interpol, following the assurance of independence and impartiality given by a purely international Court, facilitating as such the investigation and prosecution of the crimes committed in the DRC, notably in their transnational aspects.

1041. However, this solution would also present some significant disadvantages, such as the following:

- It is quite a cumbersome mechanism that would take a long time to implement and would only be able to hear a limited number of cases at a relatively high cost.[1750] An international tribunal in the DRC would have to sit in a number of places, given the size of the country, and structures would need to be set up in certain provinces;

- In spite of greater visibility, by sitting in the country, this type of court would only have a limited impact on capacity building for the Congolese justice system, insofar as it would not be part of the national judicial system;

[1748] Opinion expressed by the representative of a human rights NGO at the round-table discussions on tackling impunity and transitional justice organised in Goma on 11 May 2009 by the Justice Mapping Team.

[1749] See the case of the arrest warrant of 11 April 2000, *DRC* v. *Belgium*, Decision of 14 February 2002: [civil servants] "*may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda…, and the future International Criminal Court"*, para. 61.

[1750] The Special Court for Sierra Leone, which is generally regarded as a success, will nonetheless only manage to have judged around ten individuals in over eight years at a total cost calculated at USD 200 million.

- The fact of its not being a permanent institution, probably combined with its jurisdiction being limited in terms of time to the crimes committed during a particular period, means there would be little direct impact on the ongoing situation of impunity with regard to the crimes that continue to be committed in the DRC.

- Its purely international character would deprive Congolese justice of a part of its jurisdiction over crimes under international law, which would come under the special court.

1042. The creation of an international judicial mechanism of this kind requires a firm and unequivocal commitment by the State in the DRC, which would have to abandon the exercise of part of its territorial sovereignty by handing over jurisdiction in criminal matters concerning its own nationals to an independent international court, which would exercise its jurisdiction despite their immunities. The creation of a mechanism of this kind is based on a treaty and requires considerable financial resources; as a result it can also entail long and complex negotiations that would delay both its actual implementation and the achievement of its objectives with regard to impunity. One representative of civil society summed up these difficulties as follows: *"*A special court is needed to judge the crimes of the past, but the will to find the resources to organise a special court of this kind is the main obstacle."[1751]

2. Special mixed chambers within the judicial system

1043. The creation of special mixed chambers within the Congolese judicial system has been suggested as a solution by several representatives of Congolese civil society and the international community over recent years, in order to tackle the problem of impunity for the most serious violations of human rights and international humanitarian law. At a seminar organised in Kinshasa in June 2005, judges, academics and representatives from civil society and public institutions adopted a declaration recommending the creation of special chambers within the Congolese courts.[1752] Recently, the Special Rapporteur on the independence of judges and lawyers reached the same conclusion, following a visit to the DRC: "In order to provide a solid foundation for democracy, the Congolese judiciary and the international community should cooperate in prosecuting grave violations of human rights and humanitarian law committed during the war, drawing on the experience of judicial cooperation in the area of transitional justice that has produced good results in other countries. The establishment of joint benches comprising national and international judges sitting in national courts might be an appropriate solution."[1753] Still more recently,

[1751] Opinion of a participant at the round table in Bukavu held on 12 May 2009.

[1752] Seminar/workshop on specialist joint benches in the Congolese courts, organised by the Coalition congolaise pour la justice transitionnelle (CCJT) in conjunction with the International Center for Transitional Justice (ICTJ) and MONUC's Human Rights Division in Kinshasa, Centre Nganda, on 7 June 2005.

[1753] *Despouy report* (A/HRC/8/4/Add. 2), para. 88.

the seven special thematic procedures on technical assistance for the Government of the DRC reiterated in its reports that "Transitional justice for the massive violations that took place between 1993 and 2003 is another area that should be prioritised. The establishment of joint benches, comprising national and international judges and sitting in national courts, might be an appropriate transitional justice tool for the DRC that can also be combined with truth-seeking initiatives."[1754]

1044. This option has the advantage of being able to be incorporated more readily into the efforts currently underway to reform and rehabilitate the judicial system being made by the Government with the support of the international community. It is in line with the principle that "It remains the rule that States have primary responsibility to exercise jurisdiction over serious crimes under international law."[1755] The Congolese judicial system, in spite of the shortcomings described in the previous section, includes a number of competent judges, prosecutors and lawyers, some of whom have shown great courage in making decisions related to serious crimes under international law. The involvement of international actors alongside these judges and prosecutors would help them continue to make further advances in case law, whilst strengthening the fundamental rights of defendants to a fair and just trial. It remains to be seen whether involving international judges in special chambers in this way could counter the many examples of interference and meddling by the political and military authorities in judicial matters. Unlike the creation of an international court, special chambers of this kind could be set up more rapidly if the initiative was approved by the Government: Among the advantages that such a system would offer are:

- The lower costs of special chambers compared with a purely international tribunal:
- With sufficient involvement of international actors in key posts, they would offer greater guarantees of independence and impartiality and would enjoy greater credibility amongst Congolese victims, as well as increasing the independence of Congolese judges;
- More than any other mechanism, they would help to build capacity amongst actors in the Congolese judicial system and could gradually transfer all their responsibilities to them to carry out investigations, prosecutions and trials;[1756]

[1754] Combined report of seven special thematic procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country (A/HRC/10/59), para. 95.

[1755] United Nations principles on impunity, E/CN.4/2005/102/Add.1, principle 20.

[1756] Created by a law of 2004, the "War Crimes Chamber" (WCC) began operating in Sarajevo, in Bosnia-Herzegovina in 2005, tasked with judging the crimes referred to the WCC by the ICTY and other cases instigated locally. The WCC is part of the national judicial system, but with an international structure to guarantee its independence in its initial period of operation. The intention is for the judges and prosecutors to be gradually replaced by nationals, and for the WCC to be made up entirely of national personnel by 2010.

- They would be in line with the current reforms, particularly the proposed Bill on the integration of the Rome Statute into Congolese law;[1757]
- Their temporal jurisdiction could be longer, in fact open ended, in order to cover the crimes under international law committed to date.[1758]

1045. These special chambers created within the Congolese judicial system would obviously present numerous challenges:

- The lack of credibility of the national judicial system in the eyes of the Congolese people would probably affect these benches as well. They should be able to overcome this handicap insofar as the presence of international actors in sufficient numbers and in key posts within the system should reassure victims and provide greater transparency in how it operates;
- The chronic lack of capacity in the Congolese judicial system could endanger this new mechanism. As has been observed many times in the preceding section, the judicial system in the DRC suffers from a significant lack of structures, financial and operational resources, human resources and general capacity to enable all those involved in it to fulfil their functions adequately and be sheltered from financial concerns. Significant and consistent support from the international community would be essential for the success of such a mechanism, both in terms of the initial set-up and its ongoing operation;
- It would be more difficult to ensure that third-party States would cooperate with these new chambers, given that they would be under no general obligation to collaborate and would probably be more reticent to cooperate with them than they would be towards an international body independent of the Congolese judicial system.

1046. The creation of mixed special chambers offers a solution that is less costly and easier to implement in the short or medium term, to deal with the most serious violations of human rights and international humanitarian law committed on DRC territory between 1 March 1993 and 30 June 2003. Whilst the inclusion of this mechanism in the Congolese judicial system would have the advantage of being able to contribute directly to capacity building in that field, it would need clear commitments and essential, effective safeguards

[1757] In accordance with the bill to adapt the Rome Statute of the ICC, which amends paragraph 2 of article 76 of law no. 023 2002 of 18 November 2002 on the Military Judicial Code, civilian courts "also hear cases concerning offences of all kinds committed by military personnel and punished in accordance with the provisions of the ordinary criminal code, except for the crimes of genocide, war crimes and crimes against humanity, which can only be heard by the Court of Appeal at first instance and the Court of Cassation at second instance, in accordance with article 94 of the Code of judicial organisation and jurisdiction". See Bill to enact the Rome Statute – March 2008, Bill amending and supplementing the Criminal Code, Code of criminal procedure, Code of judicial organisation and jurisdiction, Military Judicial Code and Military Criminal Code for the enactment of the Rome Statute.

[1758] Although the Team's Terms of Reference were limited to crimes committed between 1993 and 2003, the fact cannot be ignored that serious crimes were committed throughout the period of transition and continue today. Whilst it is agreed that efforts should be made to prosecute such crimes committed in the past, it would be logical to use the same mechanism to prosecute the international crimes still being committed.

to protect it from the risk of being contaminated by the problems that currently undermine the whole of the justice system in the DRC: a widespread lack of resources and capacity that affects all sectors, corruption, political interference and a lack of independence. Significant efforts would need to be made to guarantee credibility in the eyes of a population that is deeply mistrustful of the Congolese judicial system. In the words of a representative of a Congolese human rights organisation at the round-table discussions held in Goma, "Ideally the solution should be national, because the Congolese courts have jurisdiction (…) but the lack of resources and security demand the involvement of international donors."

Conclusion

1047. The DRC cannot escape its obligations under international law to prosecute these crimes committed on its territory, any more than it can ignore the demands from numerous Congolese victims who are still claiming justice for the wrongs they have suffered. The violations listed in section I, the impunity enjoyed by their perpetrators and the conclusions on the real capacity of the Congolese judicial system in section II underline the urgency and necessity of adopting an additional justice mechanism, if only to judge the most senior figures responsible for the most serious violations committed.

1048. The choice of the most appropriate judicial mechanism to deal with these crimes falls exclusively to the Government, which needs to take into account the demands from Congolese civil society. For this reason, as wide a consultation process as possible needs to be put in place by the Congolese Government with the support of the international community.

1049. One encouraging sign is that the Congolese Government recently created the post of expert for international crimes at the Ministry of Justice, whose primary mission will be to guide the Government's criminal policy in respect of crimes under international law.[1759] Such an initiative could offer an adequate framework for defining an appropriate prosecutions policy, taking into account all the relevant elements, the main examples of which are listed above.

1050. In terms of guaranteeing independence and obliging third-party States to cooperate, the creation of an international court offers some valuable and undeniable advantages, particularly in the context of crimes committed in the DRC by some military and political leaders, both national and international. If the Congolese Government were to pursue this avenue, an international hybrid court based on the model of the Special Court for Sierra Leone would offer better guarantees of success and would be in a position to contribute more tangibly to strengthening the national system, although to a limited extent.

[1759] Ministerial decree no. 08/22 of 18 May 2009.

1051. Given the immense needs of the judicial sector in the DRC, the most appropriate mechanism could be the one that would contribute to strengthening and rehabilitating the national judicial system whilst prosecuting the crimes of the past. Such a mechanism could also judge the crimes that continue to be committed in the DRC if the authorities so desire. A "special" mechanism of this kind has already been put forward in the Bill to integrate the Rome Statute of the ICC in Congolese law, which provides for assigning "specific jurisdiction" to the Court of Appeal, which will sit as a panel of five members to judge serious violations of international humanitarian law.[1760]

1052. The Mapping Team considers that a hybrid mechanism to prosecute these crimes – made up of international and national personnel – is necessary to do justice to the victims of the serious violations set out in this report, given the lack of capacity of the existing mechanisms and the numerous factors that impede judicial independence. The operating methods and exact form of such a judicial mechanism should be decided on and specified in detail by consulting the actors concerned, as well as the victims affected, in particular in terms of their participation in the process, to give the chosen mechanism credibility and legitimacy. Furthermore, prior to the deployment of international actors and resources, rigorous planning will be required and a detailed analysis carried out of the material and human capacities available within the national judicial system.

1053. It should be emphasised that judges and actors in civil society have already discussed this question over recent years and understand the issues involved. If these individuals were involve in the creation of such mechanism at the request of the authorities concerned , they could monitor the process in order to ensure that some of the main essential principles are adhered to, in order to guarantee the effectiveness of the mechanism and remedy the lack of capacity, independence and credibility:

- A significant financial effort and clear commitment on the part of the Government will be needed in order to ensure that the mechanism has adequate resources to carry out rigorous investigations across the whole of the country if necessary, and to prosecute and judge those most responsible for crimes under international law while ensuring respect for their fundamental rights in the context of a fair and just trial.
- Such a mechanism should provide guarantees of independence and impartiality. It should be structured in such a way as to protect key actors in the judicial system from interference by the political and military authorities. The best way to achieve these objectives would be to give international actors (judges, prosecutors and investigators) key roles in the different components of the mechanism, at least in its initial period of operation, ensuring that they are involved directly in important decisions in relation to investigations, prosecutions and judgments.

[1760] Bill to enact the Rome Statute of the ICC, National Assembly of the DRC, March 2008, articles 10 to 12.

- Its mandate and terms of reference should be clear and publicly available, setting out the criteria used in relation to the investigations carried out and prosecutions instituted, in order to shield the mechanism from accusations of bias by any groups. The prosecution policy or strategy should be in line with these terms of reference and subscribe to the same principle of transparency.

1054. A mechanism of this kind should also:[1761]

- Apply international criminal law in relation to war crimes, crimes against humanity and genocide, including command responsibility of superiors for the acts committed by their subordinates;
- Provide that any kind of amnesty that has been granted for crimes under international law should not apply before this mechanism;
- Provide for and specify the application of definitions of these crimes that have existed in international law and Congolese law since 1993;
- Exclude the jurisdiction of the military courts in this area, in accordance with the relevant international principles;
- Have jurisdiction over any individuals who have committed these crimes, whether they are nationals or non-nationals, civilians or military personnel, and who at the time of the crimes were aged 18 or over;
- Ensure respect for the fundamental rights of defendants provided for in the various international conventions in effect in the DRC;
- Ensure respect for all judicial guarantees of a fair and just trial;
- Reaffirm the independence of the judiciary, specifically the judges and prosecutors, and prohibit any right (*droit d'injonction*) of the authorities to give them instructions or orders in relation to their cases;
- Provide for a legal aid mechanism for defendants and victims;
- Provide for measures to protect witnesses and, if necessary, court officials who could be threatened or intimidated.
- Ensure that the detention of defendants and convicted prisoners is effective, secure and complies with the relevant international standards;
- Not provide for capital punishment, in accordance with international principles, in particular to ensure cooperation with third-party States and support for the mechanism by the United Nations and the many NGOs who could be involved in the activities of these courts.

1055. As the High Commissioner for Human Rights has stated, "hybrid courts can have a positive impact on the domestic justice system of post-conflict States so as to ensure a lasting legacy for the rule of law and respect for human rights".[1762] Clear terms of

[1761] Some of these criteria are established by the Secretary-General in his *Report on the re-establishment of the rule of law and the administration of justice during the period of transition in conflict and post-conflict societies* (S/2004/616), para. 64, conclusions and recommendations.

[1762] Foreword by the United Nations High Commissioner for Human Rights; see *Rule-of-law tools for post-conflict States: maximizing the legacy of hybrid courts*, United Nations High Commissioner for Human Rights, New York and Geneva, 2008.

reference, an unfailing commitment on the part of the authorities and adequate support in terms of capacity will enhance the contribution of hybrid courts to capacity building of the domestic judicial system and give the administration of justice a chance to take long-term advantage of their experience. "The establishment of hybrid courts will not solve all these problems, but if strategically designed and thought through, the targeted international intervention that hybrid courts represent can leave behind more than just convictions, acquittals and court houses."[1763]

[1763] Ibid., p. 1.

CHAPTER IV. SEARCHING FOR THE TRUTH

1056. Establishing the truth with regard to serious violations of human rights is now acknowledged as a right for victims on both an individual[1764] and collective basis: "Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations."[1765] The United Nations High Commission on Human Rights has devoted two reports to the study of the scope and substance of the right to truth, which conclude, amongst other things that: "The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them."[1766]

1057. The people of the DRC have a right to the truth on all the serious violations of human rights committed on its soil. According to a recent study, the vast majority of the population in the east believes it is important to know the truth about what happened in its region.[1767] At the Goma conference in January 2008, clear recommendations were adopted in support of the creation of truth-seeking mechanisms by the working groups on North Kivu and South Kivu.[1768] During their interviews with the Mapping Team, victims and witnesses highlighted the importance of shedding light on past crimes. Some believe, for example, that the various actors involved in the conflicts should be obliged to describe the atrocities they committed in order to free the community from the weight of resentment between different groups of people. During its work in the field, the Mapping Team also noted how certain communities remained polarised, years after the violence,

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[1764] See *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1); Principles on reparations (A/Res/60/147); Declaration on the fundamental principles of justice in relation to victims of criminality and victims of abuse of power, 1985; European and inter-American declarations on human rights. See the large amount of case law in the inter-American and European courts of human rights in this area.

[1765] See *Updated Set of principles for the protection and promotion of human rights through action to combat impunity,* Principle 2, (E/CN.4/2005/102/Add.1).

[1766] See *Study on the Right to the Truth* (E/CN.4/2006/91), para. 59. See also The right to the truth, (A/HRC/5/7).

[1767] "Living with Fear", a population-based survey on peace, justice and social reconstruction in the eastern DRC in August 2008 calculates this proportion at 88% (p. 54). Available at: www.ictj.org.

[1768] See Final Reports from the workshop at the Conference on peace, security and development in the provinces of North and South Kivu, held in January 2008, which recommend that: a joint independent commission of inquiry (national and international) should be set up for the purpose of identifying the crimes committed in Kivu since 1996, and identifying and proposing sanctions against the perpetrators; the ICC should accelerate investigations of war crimes, genocide and crimes against humanity throughout Congolese territory; a Commission to identify and compensate victims of conflicts and war should be created, charged with … defining the appropriate kind of compensation, and compensating the victims; the Stabilisation and Reconstruction Fund for Kivu should include a budget for compensating the victims of the conflicts and wars that have ravaged the region since 1996; a new law should be adopted, creating a new TRC; the independence of the judiciary should be respected; public order and security services should be cleaned up.

and had never had the opportunity to express themselves openly about the acts directed against them.

1058. Establishing the truth about the atrocities committed goes far beyond drawing up lists of cases and victims and some of the presumed perpetrators. The report of the Mapping Team has shed light on certain obscure areas about the atrocities committed in the DRC between 1993 and 2003, supplementing numerous other detailed reports. The official reports and documents, however, have never offered the victims and populations affected a forum where they could express their personal stories and grievances, question leaders directly as fellow citizens and discuss amongst themselves and with others the best way of healing past wounds and exorcising some extremely painful memories. Establishing the truth also involves discussing and putting into perspective the causes and consequences of human rights violations and the structures that allowed or facilitated them. "The questions of *why* certain events were allowed to happen can be as important as explaining precisely *what* happened."[1769] These discussions are the only way a consensus on the past will be reached between communities.

1059. Criminal proceedings will evidently not be sufficient to satisfy this strong desire for the truth.[1770] They will only affect a proportion of the crimes committed and will naturally focus on the facts related to the charges against the defendants. The information that emerges from these proceedings, although it will have the authority of a final court decision, will not necessarily be representative of the conflicts, their scale and complexity. Additional mechanisms will be required to complete the exercise of establishing the truth in full. Parliamentary commissions and archive conservation may have a part to play but, like the courts, these mechanisms leave little or no room for victims' accounts.

1060. A new Truth Commission for the DRC, with more of a central focus on the victims than the previous one, would seem to be one of the most appropriate solutions given the scale of the challenge of establishing the facts.[1771] Numerous countries have set up truth commissions, defined as "official, temporary, non-judicial factfinding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years."[1772] The primary objective of the Truth Commissions is to establish the

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[1769] *Rule-of-law tools for post-conflict States*. *Truth Commissions*. United Nations High Commissioner for Human Rights, New York and Geneva, 2006, p. 2. (hereafter Truth commissions, HCHR).

[1770] See "FIDH and its Congolese member organisations disappointed by the limited scope of the International Criminal Court's investigations" (cited above), which states: "Nevertheless, FIDH and its three member organisations in DRC deeply deplore that, as Lubanga, Ntaganda is prosecuted only for enlistment, conscription and use of child soldiers. Our organisations have repeatedly called upon the ICC Prosecutor to extend his investigations, in order to ensure that ICC investigations and prosecutions are representative of crimes committed in Ituri", available at: www.fidh.org.

[1771] As a general rule, the role of a truth commission should be considered supplementary, and certainly not as an alternative, to action through the courts. See Truth commissions, HCHR, p. 27.

[1772] See the *Report of the Secretary-General on the re-establishment of the rule of law and the administration of justice during the period of transition in conflict and post-conflict societies* (S/2004/616), para. 50 (hereafter Report on the rule of law).

truth and formulate recommendations on a range of subjects such as a policy on prosecuting the crimes identified, the reparation to be given, the institutional reforms to be implemented, particularly in the security and justice sector, an expression of repentance or the issuing of a public apology by the Head of State or by senior representatives of the State, etc. Over 30 commissions of this kind have already been set up, in particular in Argentina, Chile, South Africa, Peru, Ghana, Morocco, El Salvador, Guatemala, East Timor and Sierra Leone.[1773] The commissions set up in El Salvador, Guatemala, East Timor and Sierra Leone have benefited from a significant level of support and assistance from the United Nations.

1061. These commissions can help to determine institutional responsibilities, both political and military, to preserve evidence, to identify the perpetrators of atrocities and to recommend reparation measures and institutional reforms. They can also offer victims a platform where they can express themselves, which is more appropriate to their needs than a judicial procedure. In spite of their non-judicial nature, truth commissions sometimes have investigative prerogatives and powers in order to obtain official documents and to oblige witnesses, the perpetrators of crimes and other people with knowledge of the facts to appear before them.

1062. A Truth and Reconciliation Commission (TRC) operated in the DRC during the transition. Before proceeding to the creation of a new institution, which is already being discussed in institutional circles, this would be an opportune moment to review the experience of the Congolese TRC, which was not particularly conclusive according to the participants who talked to the Mapping Team during the round-table discussions on transitional justice.

A. Brief assessment of the TRC during the transition

1063. The signatories to the Global and Inclusive Agreement decided that a TRC would be established, and that this commission would examine all political, economic and social crimes committed between 1960 and 2003, in order to establish the truth and help individuals and communities to be reconciled.[1774] The TRC was one of five institutions designed to support democracy that were created during the political transition period.[1775] The aim of these institutions was to guarantee neutrality and impartiality when organising free, democratic and transparent elections, to ensure media neutrality, to consolidate national unity by providing true reconciliation among the Congolese people, to promote and protect human rights and to promote ethical and republican values. Article 4 of the TRC organic law exclusively gave this body the specific mission to "re-establish the

[1773] For a detailed, comparative analysis of truth commissions, refer in particular to: Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, New York, Routledge, 2001.

[1774] Resolution DIC/CPR/04.

[1775] See articles 154-160 of the transitional Constitution arising from the Global and Inclusive Agreement signed in Sun City (South Africa) in April 2002.

truth,[1776] promote peace, justice, reparation, forgiveness and reconciliation,[1777] with a view to consolidating national unity." In view of this, it had to ensure "assistance to citizens during the transition; prevention or management of conflicts using mediation; creation of a space in which Congolese people can express themselves; pursuit of a way to manage the healing of trauma and re-establishment of mutual trust between Congolese people" (article 5, TRC law).

1064. Unfortunately, the TRC was not able to carry out its mandate of establishing the truth, which led an international NGO specialized in transitional justice to call the TRC's work "a complete faillure".[1778] This harsh observation is shared by most members of civil society met by the Mapping Team. At the time of its *de jure* dissolution at the end of the transition period,[1779] the TRC had not opened a single enquiry; nor had it collected any witness statements from victims of or witnesses to violations. Among the reasons for this failure, the following main reasons can be mentioned:

- **Nature of its composition:** The TRC's membership was based on the principle of inclusiveness, which was the basis for the Global and Inclusive Agreement. All transitional political and civic institutions were created using the same model of membership and management during the transition. Application of this principle, with no accompanying adherence to criteria for selection of members of the institutions designed to support democracy during the transition, has had particularly severe consequences for the workings of the TRC. It has meant that the TRC has lost credibility in the eyes of victims, because of the past histories of some commissioners, who were involved in crimes that they should have investigated, and their links with armed groups or forces. This feature of its membership undermined the independence of the commission and meant that the TRC was never able to gain the trust of victims, national or international NGOs or

[1776] By "truth", the first paragraph of article 4 of law no. 04/17 dated 30 July 2004 concerning organisation, allocation of mission and functioning of the Truth and Reconciliation commission means the "clear and objective restating of the historical reality of events, crimes and human rights violations that, during the period in question, directly caused a person or a group of persons harm, whether psychological, physical, social or material".

[1777] Reconciliation is defined in paragraph 2 of article 4 of this law as "re-establishment of harmony, concord, true peace and positive spirit between Congolese individuals and groups, perpetrators and victims of various types of harm and crimes committed during the period in question, with a view to restoring national unity; reconciliation involves acknowledging that events occurred, asking for and granting forgiveness, fair reparation for harm and crimes and psychological and physical rehabilitation".

[1778] For more information, read "Confronting Past Crimes at the National Level", ICTJ, January 2009, which contains the following: "The work of the Congolese Truth and Reconciliation Commission (TRC) is largely discredited." available at the following address: http://www.ictj.org/static/Factsheets/ICTJ_CAR_fs2009.pdf.

[1779] Article 222 of the Constitution of the Third Republic states that "Institutions to support democracy shall be fully dissolved when the new parliament is created".

of the international community.[1780] In addition, once that legitimacy was lost, the TRC was not able to obtain support and help from several partners that had shown interest.

- **Lack of a consultation process:** no effort was made to consult the population about the aim, model, membership, powers and activities of the commission before the law was passed by Parliament. The law was drawn up by the President-designate of the TRC, inspired by the South African model and by the resolution arising from the Inter-Congolese Dialogue. This lack of consultation was one of the key reasons for the failure of the TRC, which never understood the needs and expectations of the population.

- **Dual mandate - truth-seeking and mediation:** The TRC's mandate was not only to establish the truth, but also to prevent and manage conflict using mediation. TRCs, which are generally established after hostilities have ended, are not usually given the mandate to mediate in conflict resolution. This part of the TRC's mandate was enacted as a priority by the commissioners, who travelled to North and South Kivu several times in order to mediate between local military and political figures. These activities, which were begun in a context of persistent conflict during the transition, seem to have overtaken the central mandate of truth-seeking, and mediation took most of the commissioners' resources, to the detriment of the other aims devolved to the TRC. Without seeking to evaluate the success or failure of this mediation, it should nonetheless be noted that such tasks do not strictly speaking form part of transitional justice, and ought to have been devolved to an institution other than the TRC. In any case, TRC commissioners were mobilised in order to carry out this mission, to the detriment of the truth-seeking mission.

- **Unrealistic mandate:** Even if we disregard the mediation mandate, the truth-seeking mandate proves to be unrealistic and impossible to carry out, even for a fully functional TRC. According to article 8 of the law, the TRC was obliged to investigate political, socioeconomic and other events that disturbed the peace in the DRC, to identify the perpetrators and the victims and to determine the extent of harm caused, to suggest to the competent authority whether an individual or collective request for amnesty should be accepted or rejected, and other tasks in addition. The period covered by the TRC's mandate was to be "from 30 June 1960 to the end of the transition". Examining such a long period (over forty years) during which there was a long dictatorship, many internal conflicts and international wars, and for which there were no archives for reference, apart

[1780] The following appears on page 26 of the report from the national TRC workshop, which was held at the Stade des Martyrs in Kinshasa between 25 and 28 February 2004: "... there is still great mistrust towards some members of the TRC, because of the procedures used to appoint them. In addition, the commission is the result of a political process. The fact that the commission is made up of persons nominated by those taking part in the Inter-Congolese Dialogue raises questions about the credibility and independence of this institution, as well as its objectivity and impartiality".

perhaps from those in the National Sovereign Conference (CNS), was an insurmountable challenge for the TRC.

- **Lack of human and material resources:** Application of the principle of inclusiveness had the effect that the majority of commissioners, who were chosen on the basis of political loyalties, had no professional competence to perform the tasks that were devolved to them. These facts made it very difficult for the TRC to obtain the material resources that it required in order to function, given that the Government expected that the international community would make a significant contribution; the international community proved reluctant to fund a commission that lacked credibility to such an extent.

B. Creation of a new TRC

1065. The demand for truth and for a new TRC remains strong in the DRC, despite the experience of the previous commission, which did not have the resources to carry out its mandate. In his closing speech at the Goma Conference in February 2008, President Kabila positively welcomed the demand for the creation of a new TRC[1781]. The former President of the TRC, Monseigneur Kuye, presented a new bill to Parliament in March 2008, but this bill did not appear to take into account the criticisms that had been made of the first TRC and the reasons for its failure. No consultation process took place, and with a similar mandate and method for appointing commissioners as the previous TRC, all the necessary conditions for a further failure seemed to be in place.

1066. Nevertheless, the need for a new TRC remains, so that light may be shed on the conflicts that tore the country apart. There are multiple challenges to be met; the DRC is a vast country, several regions are difficult to access and practically no region has escaped the violence. The violations were innumerable, as were the victims and perpetrators, as noted in sections I and II of the report. Many individuals who are responsible for past acts of violence now occupy positions of power and have little interest in seeing the truth disclosed; in fact, the opposite is true. The international dimension to some conflicts that unfolded on DRC territory also pose particular difficulties in establishing the truth, while enabling some to obscure the role played by Congolese figures.

1067. In order to avoid the errors made in the past, a serious and wide-ranging consultation process must be carried out, in a non-politicised atmosphere, so that the work of the TRC will be based on a credible foundation and mandate that will be needed if it is to establish the truth. This broad consultative process should act to "seek especially the views of victims and survivors, and make clear the functions, strengths and limitations of truth commissions." [1782]

[1781] Speech by His Excellency the President of the Republic closing the Peace, Security and Development Conference in North Kivu and South Kivu, Goma, 22 February 2008, p. 5.

[1782] Truth Commissions, OHCHR, p. 5.

1068. Civil society must be involved in the organisation of such a consultation process. Civil society organisations, particularly those involved in the defence of human rights, have played a very important role since the beginning of the 1990s and during the Inter-Congolese Dialogue period. Civil society continues to act as a counterbalance to State institutions, although it has been considerably weakened since the transition began, because of the fact that several of its influential members have been appointed to public positions. At the same time, internal leadership struggles have distracted some organisations from their stated mandates. Cases of intimidation of figures from civil society continue to be reported, some with tragic consequences. It is important that efforts be made to help victims to organise themselves so that they can be better prepared to contribute to the consultation process and the creation of a truth-seeking mechanism.

1069. Participants in the round-table meetings about transitional justice organised by the Mapping Team were insistent that a truth-seeking mechanism should be on a national basis, which seemed to them to be a requirement if there were to be true national reconciliation around a common history for all Congolese people. However, they also emphasised the importance of a regional dimension for the mechanism, which would be essential given the size of the country, the need to ensure access for victims, and the specific regional characteristics of the conflicts. Such a mechanism would have to travel around, or have regional outposts, particularly in those regions that were worst affected by conflicts, and in which communities are more divided today. It would, however, remain necessary to hold sessions about these events in the capital, from the point of view of national unity, in order to examine the waves of violence that swept the country from east to west and to prevent the regions in the west of the country from feeling denigrated or not concerned by the work and recommendations of the commission.

1070. Although there is no magic formula or ready-made template for a truth-seeking mechanism, it is possible, in the light of the experience of the first TRC in the DRC and in the Congolese context, to propose some basic principles which should enable some of the identified issues to be overcome.

- **Need for broad consultation:** This was absent from the first TRC and from the new plan lodged with Parliament; a consultative process involving victims and representatives from civil society appears to be indispensable if the basic parameters of a future mechanism are to be identified, and if the population are then to understand how this mechanism works and recognise that it is credible and legitimate[1783].

[1783] "Truth commissions are invariably compromised if appointed through a rushed or politicized process. They are best formed through consultative processes that incorporate public views on their mandates and on commissioner selection." *Report on the rule of law* (S/2004/616), para. 51; "These consultative processes should have two equally important aims: increasing the understanding of a truth commission and strengthening its terms of reference through input about the most appropriate mandate." Truth Commissions, OHCHR, p. 7.

- **A realistic and precise mandate:** The primary mandate of the mechanism must be truth-seeking. Given the numerous conflicts that have plagued DRC, the mandate is already rather demanding in itself and should be limited to the periods in history that have produced the most serious violations of human rights and of international humanitarian law.
- Truth-seeking must shed light on the serious violations that have been committed, and must determine their characteristics, causes and effects, in order to contribute to reconciliation. Faced with the innumerable violations of rights of all kinds that were committed in the DRC, the mandate should be limited to serious violations of human rights and of international humanitarian law.
- Commissioners should pay particular attention to certain groups that have been particularly badly affected by violence in the DRC, particularly women, children and some minorities and ethnic, political and national communities.
- **Other mandates:** The variety of different mandates with which the first TRC in the DRC was entrusted contributed to its failure. A TRC cannot act as a substitute for a mediation facility or a reparation mechanism[1784]. Of course, it can make relevant recommendations in this area, as it will have the opportunity to hear evidence from many victims and to evaluate the awful consequences of the violence they have suffered.
- It is generally thought that the TRC will contribute to reconciliation by carrying out its truth-seeking mandate, even though in some circumstances this contribution will be very modest. On the other hand, paying particular attention to the numerous ethnic conflicts in the DRC, and looking for the underlying causes of this type of violence, can certainly help to prevent such events and promote a greater openness in dialogue, which is a pre-requisite for reconciliation.
- **Powers of the Commission:** A truth-seeking mechanism must have all the powers it needs to carry out its mandate. Given the expected reluctance of some figures in the DRC to take part in a truth-seeking exercise, it is of primary importance that any mechanism has the power to question witnesses, to compel them to attend, to protect them if necessary, to guarantee that their testimony cannot be used against them in legal proceedings and to obtain the authorities' full co-operation. One of the most controversial aspects of the powers granted to some TRCs has been the power to grant amnesties to perpetrators who show repentance. Such prerogatives must be compatible with the principles of international law in this area, as reflected in the current amnesty laws in the DRC, and must not be applied to war crimes, crimes against humanity or crimes of genocide.[1785] Finally, given the numerous instances of interference by the political and military authorities in the judicial system in the DRC, as shown in section III

[1784] "... truth commissions are not well placed to implement an extensive reparations programme themselves", Truth commissions, OHCHR, p. 28.

[1785] See section III, chapter III.

of this report, it seems essential that this mechanism be granted the power to penalise "anyone who improperly interferes with... the commission".[1786]

- **Composition of the TRC:** As previously shown, the choice of commissioners for the first TRC caused it to lose all credibility and led to its failure. The selection process and eligibility criteria for members of any new truth-seeking mechanism in DRC, their credibility, independence and competence will to a large extent determine the legitimacy of such a mechanism, the support it receives and, ultimately, whether it succeeds or fails[1787]. Several Congolese participants in the round-table meetings about transitional justice expressed their great distrust for various parties and political groups who share power among themselves in the DRC.[1788] In such cases, the appointment of members of a truth-seeking mechanism must be done using a transparent process that is as consensual as possible. As for the members of the body, "ideally, these should be widely respected members of society (or international figures) who are accepted as neutral by all sides of a previous conflict (or the group as a whole should be seen to be representative of a fair range of views)".[1789] Given the missed opportunity that was the first TRC, and the background of distrust between the various parties and from the population, the possibility of appointing international members to the commission should also be explored, following the example of the proposed Truth and Reconciliation Commission in Burundi and the commission in Sierra Leone.
- **Content of final report:** When establishing the truth about serious violations of human rights committed in the DRC, and the causes and consequences of these violations, a truth-seeking mechanism should be in a position at least to make recommendations on measures whereby victims can receive reparations and compensation, on institutional reforms, particularly in the security and justice sector, in order to prevent such violations in the future, and, if required, recommend punishments for these.

1071. The success of any new truth-seeking mechanism remains highly dependent on a strong commitment from the Government to confront the past and on a conviction that establishing the truth is essential if there is to be a peaceful transition to a country in which the rule of law is respected. Any efforts by civil society and the international community will be useless without such a commitment from the Government. It would be

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[1786] "The commission should also be given sufficient power to ensure that penalties—perhaps fines, imprisonment, or both—can be imposed upon anyone who improperly interferes with or knowingly provides false information to the commission, or who violates its subpoena or witness protection powers, for example." Truth Commissions, OHCHR, p. 10-11.

[1787] "To be successful, they must enjoy meaningful independence and have credible commissioner selection criteria and processes." *Report on rule of law* (S/2004/616), para. 51.

[1788] This distrust towards a mechanism that is responsible for seeking truth is entirely justified. In such cases "Any inclination to put political leaders or representatives of political parties, factions or former armed groups on the commission should be strongly resisted." Truth Commissions, OHCHR, p. 13.

[1789] Truth Commissions, OHCHR, p. 13.

important that the Government make a series of commitments before establishing a new institution:

- Undertake to create as soon as possible an independent, neutral, credible, impartial and professional body, as soon as the results of consultations as to the nature of this body are received;
- Promote recruitment of leaders and of staff who have the necessary integrity, who are technically competent and who are willing to promote human rights widely;
- Equip the commission with a clear and realistic legal framework, and the material and financial resources required in order to ensure that it is independent and effective;
- Undertake to implement recommendations issued by the truth-seeking mechanism once the final report is received, and if necessary to create specific mechanisms with the mandate to implement the recommendations of the TRC.

1072. With a clear commitment from the Government, a real national dialogue and vigorous support from the international community, the Mapping Team is convinced that a truth-seeking mechanism could make an important contribution to consolidation of peace in the DRC.

CHAPTER V. REPARATIONS

1073. Many international treaties contain references to the rights to reparation for victims of serious human rights violations.[1790] This is linked to the right to remedy that provides that all victims should have an easy access to a procedure for obtaining reparation, via criminal, civil, administrative or disciplinary routes. The United Nations Organization adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" ("Reparation Principles"), which state that victims of such abuse have the right to adequate, effective and prompt reparation for harm suffered.[1791]

1074. Hundreds of thousands of victims have suffered psychological and physical damage as a result of the terrible violence they experienced between March 1993 and July 2003. This report does not provide details of the harm suffered by populations during the successive wars and conflicts, but does give a glimpse of the extent of the damage. The Mapping Team's work on the ground has brought to light the huge expectations on the part of victims in terms of reparations and their frustration at the privileges granted to combatants who were demobilised as part of the DDR programme, while they still receive nothing. It should also be emphasised that these populations, most of whom are in a disastrous economic situation, desperately wish for tangible steps towards reparation. These high expectations make the issue of reparations a particularly difficult one.

A. Types of reparation

1075. The right to reparation must take into account all harm suffered by the victim. The possible forms of material or non-material reparation are as follows: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

1076. The aim of restitution is to restore the victim to the original situation before the harm caused by the violations. This includes restoration of liberty for those in captivity or detention, restoration of civil or political rights, identity or even citizenship for those deprived of them, return of stolen property or of lost employment.

1077. Compensation aims to cover economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.

1790 See the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (article 2.3), the International Convention on the Elimination of all forms of Racial Discrimination (article 6), the Convention against Torture (article 14), the Convention on the Rights of the Child (article 39) as well as the Rome Statute of the International Criminal Court (articles 19 and 68).

1791 These principles, which were revised several times by the Commission for Human Rights, were finally adopted in their final version by the General Assembly in resolution 60/147 of 16 December 2005.

1078. Rehabilitation should include medical and psychological care as well as legal and social services. Particular emphasis is often given to former child soldiers and people who have been raped; these categories of victims are most frequently traumatised by these experiences, and need this type of support.

1079. Satisfaction should include effective measures aimed at the cessation of continuing violations, verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared or abducted, public apology, judicial sanctions, inclusion of international law and human rights in educational material at all levels, and commemorations and tributes to the victims.

1080. Guarantees of non-repetition should include a series of reforms, particularly within the security forces and judicial system, which will be examined in more detail in the last chapter of this section.

1081. Under public international law and international human rights law, the State has the obligation to provide reparation for acts and omissions that can be attributed to the State, on its own territory or abroad. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.[1792]

1082. Reparations may be ordered as a result of national or international legal decisions or by a commission that is specially mandated to rule on this issue. Legal decisions often impose on victims the heavy burden of demonstrating under civil law that there was an offence that led to damages, and to prove under criminal law the identity of the perpetrator of the crime committed against them. Mechanisms that are devoted specifically to reparations are better suited to victims' needs and less demanding of them. They concentrate primarily on the damage suffered, and do not necessarily seek to attribute blame to a specific individual. Some States have, for example, established commissions that are responsible for developing reparation programmes or compensation funds.[1793]

B. The right to reparation in the context of the DRC

1. Responsibility for reparation

Congolese Government

1083. The right to reparation is clearly recognised in Congolese law. Article 258 of the

[1792] Resolution 60/147 of the General Assembly concerning Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 16.

[1793] For example in Guatemala, Morocco, Brazil and Malawi. See Rule-of-Law Tools in Post-Conflict States: Reparations Programmes, p. 12, available at the following address: www.ohchr.org.

Congolese civil code states the principle that "any act whatsoever that causes harm to another obliges the person by whose offence the harm was caused to make amends for this harm". Also, Article 259, according to which "A person is responsible not only for the harm caused by his/her own action, but also the harm caused by acts committed by persons answerable to him/her, or matters that are within his/her responsibility", is applicable to responsibilities of the State or its departments.

1084. Congolese law therefore complies with the principle of international law according to which "a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law".[1794] The Military High Court has clarified that, in order for such responsibility to be established, it is sufficient to show poor general conduct on the part of public services in general, to establish that there is poor organisation or faulty operation, the latter having been assessed objectively with reference to what can be expected of a modern public service operating normally.[1795]

1085. It is also useful to emphasise that under international law, each government inherits the obligations and responsibilities arising from the acts of previous governments. Several regimes successively came to power between 1993 and 2003. The AFDL was a rebel group that later came to power, and several rebel groups involved in the war between 1998 and 2002 became involved in the transition Government. In addition, the Kinshasa Government was often accused of directly or indirectly supporting rebel groups in several provinces.

1086. As part of the proposal made by the International Commission of Inquiry for Darfur, it was recommended that funding for payment of compensation to victims of crimes committed by Government forces or *de facto* agents of the Government should be provided by the Sudanese authorities, which should be requested by the Security Council to place the necessary sum into an escrow account. Funding for compensation of victims of crimes committed by rebels (whether or not the perpetrators have been identified and brought to trial) should be afforded through a trust fund to be established on the basis of international voluntary contributions.[1796]

[1794] Resolution 60/147 of the General Assembly, para**.** 15.

[1795] Decision of the Military High Court of the DRC issued on 5 October 2004, cited as case law in the decision issued on 7 June 2006 by the military court in Équateur concerning the case recorded as RMP no. 154/PEN/SHOF/05 - RPA no. 014/2006, otherwise known as the Songo Mboyo case, page 43. The Équateur court considered, in its decision, that "the security of the population and of their property falls under the State's royal prerogatives as a public power, and the State must therefore keep constant watch over this", and that therefore "military personnel carrying out their functions must be considered to be an organ of the State" and draws the conclusion that the State is responsible, based on the fact that "military personnel based on Songo Mboyo, because of the faulty operation of the 9th FARDC battalion of which they were a part, failed in their primary duty to ensure the security of the population and their property.

[1796] See *Report of the International Commission of Inquiry for Darfur to the Secretary-General, pursuant to Security Council resolution 1564* (2004) of 18 September 2004 (S/2005/60), paras. 601-603**.**

1087. The Congolese Government should therefore be the first to contribute to a reparations programme. This contribution must be proportional to the State's budgetary capacity, but a suitable investment will demonstrate that the State recognises this legal and moral obligation, will provide a clear political signal of its willingness to help victims, and will stimulate contributions from other international partners in the programme.

Third-party states involved in violations

1088. This report has identified countries that could be held responsible for serious violations of human rights committed by their national armies during the period under consideration in the DRC, and in particular Uganda, Rwanda, Burundi and Angola. Further investigation could result in determination of the extent to which other countries involved in the two wars in the DRC were responsible. The Security Council had previously considered that, in connection with the three wars in Kisangani in 1999 and 2000, "the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population in Kisangani".[1797] In a decision issued on 19 December 2005, the International Court of Justice ordered Uganda to pay reparations to the DRC for serious violations of human rights and of international humanitarian law committed by its armed forces on DRC territory, taking into account the invasion of DRC territory and the military occupation of Ituri by this State.[1798] The ICJ had to declare itself incompetent to rule on the DRC's request against Rwanda, as this country had not accepted the jurisdiction of the court.

1089. The principle established by the ICJ is clear. Third-party countries that have international responsibility for serious violations of human rights and of international humanitarian law also have the obligation to pay reparations to the State on whose territory these acts were committed and harm suffered, in the currency of the DRC. This obligation has its source in international customary law; it is not dependent on the ratification of any particular treaty by the State involved. The obligation exists regardless of whether there is a judgement by the ICJ.

1090. In its judgement, the ICJ gave a favourable reception to the DRC's request that the two parties reach an amicable agreement as to the sum due in reparations by Uganda, which would be determined by the Court only in the case of a disagreement between the parties. At the time of writing, negotiations on this subject are still underway, but these are linked to a wide-ranging process of normalisation of relations between the two countries, which could have a negative effect on the rights of victims in the name of good

[1797] Resolution 1304 (2000) dated 16 June 2000, para. 14.

[1798] ICJ, Armed Activities on the Territory of the Congo (*DRC* v. *Uganda*), 19 December 2005, para. 259-260.

neighbourly relations and other diplomatic considerations.[1799] Furthermore, the sums received from Uganda must be wholly allocated to reparations, whether individual or collective. In order to guarantee that victims' rights are respected and that reparations are fairly granted during this process, victims' representatives must be included in current negotiations, in order to lend them greater legitimacy. Discussions should also be undertaken with the Governments of Rwanda and Angola, and with other governments that are responsible for serious violations of international human rights law and international humanitarian law. In the absence of decisions by the ICJ stating the extent of their responsibilities, international community involvement may be desirable.

2. Existing reparation methods

Judicial approach

1091. The initial step for victims of serious violations of human rights and international humanitarian law in the DRC is to be referred to national tribunals in order to request conviction of the perpetrators of violations, and if the relevant conditions are met, the Congolese State for the payment of reparations. However, as seen in the previous section, military courts, which have exclusive jurisdiction in the area of crimes under international law, are not easily accessible to victims, who cannot refer cases to them directly. In fact, victims can only be constituted as a civil party after the case has been submitted to the military court by a military prosecutor, and if the latter does not act, victims have no direct access to the military judge.[1800] If cases are submitted to military courts, victims can be a civil party in the case at any time, from the point at which the case is referred to the court until the proceedings finish, via a declaration to the clerk or in the hearing, and the applicant should receive formal acknowledgement of this.[1801]

1092. In terms of legal precedent, some decisions made in the military justice system have established that the Congolese State was responsible for cases of serious crimes and human rights violations. Experience remains very negative. Despite convictions in law of perpetrators and the Government who were held legally responsible for reparations for victims, these decisions have not been enforced. Reduced access to justice, the high cost of legal fees, widespread corruption, the indigence of those found guilty and a lack of a clear procedure for waiving legal fees in cases of a total lack of financial resources from victims have all discouraged the pursuit of reparations, even when these are granted by the courts.

[1799] Ngurdoto/Tanzania agreement concerning bilateral co-operation between the DRC and the Republic of Uganda, Ngurdoto/Tanzania, 8 September 2007, Chapter III - Political and Diplomatic Co-operation, article 8: Considering the Decision dated 19 December 2005 by the ICJ on the matter of the DRC versus Uganda, the Parties have agreed to form an *ad hoc* Committee that will be made responsible for studying this decision and recommending practical steps to be taken in order to implement it.

[1800] "The president of the military court in Bunia suggested that a valuable reform would be to give victims a direct right of access and military judges the power to require cases to be heard that the military prosecutor had not been willing to refer." See International parliamentary-expert mission, 2008, para. 53.

[1801] See article 226 of the law dated 18 November 2002 concerning the Code of Military Justice.

1093. Even the Congolese State, which has been found to be legally responsible on several occasions, has never paid what is owed. Within the Ministry of Justice, a Directorate for Disputes and Protocol was formed to take care of the reparations for harm suffered by victims in accordance with legal decisions in which the State is found to be legally responsible. This Directorate has not been in operation since it was created, mainly because of budgetary, equipment and capacity problems. For the financial year 2007, the Congolese Government had a derisory budget of 3 million Congolese francs (5,357 US dollars) for these reparations, which in any case was never disbursed. This sum is considerably below the sum awarded on average for a single case. For example, at the end of the symbolic trial for those accused of mass rape in Songo Mboyo in December 2003, the Congolese State was sentenced jointly and severally to pay 165,317 dollars to victims, a sum that has never been paid. The case law also show that there has been a lack of fairness in the sums awarded, in the absence of objective criteria to assess the harm suffered. As an example, in the Ankoro case, one victim was granted two dollars for a house that had been burnt down, because, caught off guard and pressed for a response, she stammered and asked for that derisory sum.

1094. It is the responsibility of the Congolese State to fulfil its obligations towards the victims. The Directorate for Disputes and Protocol should be restored to its former condition and should be provided with a budget that would enable it to provide satisfaction to victims. If the State does not have the resources immediately to pay all reparations granted by its tribunals, it should plan for staged payments over several years, but should start to pay part of what is due as soon as possible, to send the signal that it considers its obligations to pay reparations as a high priority. Finally, an exclusively judicial approach that requires perpetrators to be held responsible will never enable victims to receive full satisfaction, given the limitations of the judicial system in terms of the number of crimes committed between 1993 and 2003, and the number of victims involved. Alternatives to the judicial route must be explored, using the example of the ICC's Victims Trust Fund active in the DRC, which has developed new approaches to reparations.

ICC Victims Trust Fund

1095. The ICC's Victims Trust Fund ("The Fund") has the mission of helping the most vulnerable victims affected by crimes within the jurisdiction of the Court.[1802] The fund supports rehabilitation for victims and their families, working with local and international associations, experts, NGOs, authorities and UN bodies with the aim of designing, implementing and funding projects that directly meet the physical, material and psychological needs of victims that are linked to harm caused by crimes that are within the Court's jurisdiction. By promoting local initiatives, the fund aims to enable victims to rebuild their own lives and give them some hope for the future.

[1802] ICC-ASP/4/Res.3.

1096. The Fund provides finance, under its secondary non-judicial mandate, for projects developed in partnership with victims, their families and communities, via intermediaries, in order to support rehabilitation activities. Since 2008 the Fund has supported 16 projects in the DRC, in particular providing psychological support, physical rehabilitation and material assistance for the victims of sexual violence, former child soldiers, and the families of those who were assassinated. The Fund also supports projects that promote a culture of peace among communities affected by the conflicts in Ituri and North Kivu.[1803] The activities of the Fund must be encouraged and financed by the international community, as a concrete demonstration of recognition by the ICC's member states "that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity".[1804] The Fund nonetheless remains limited, by its mandate, to action to help victims of crimes falling under the competence of the ICC, meaning crimes committed after 1 July 2002. Some aspects of the Fund's work could inspire the Congolese State when it establishes its own reparation programme. If the International Criminal Court finds a defendant guilty, the Fund's function will be to organise reparation for the accused's victims, in the context of its legal mandate concerning reparations.

3. National reparation programme

1097. Consideration should be given to specific reparations aiming to provide justice for the victims of the most serious crimes committed in the DRC. Investment from the international community may be needed in order to implement this, but these measures should also be supported by those States that are considered to bear responsibility, in addition to the Congolese State, with a view to promoting national reconciliation. The involvement of the Congolese State would appear to be indispensable and is expected by the population.[1805] The Congolese State should thus consider creating a national reparation programme, using the principles mentioned above.

Consultation process

1098. As reparations have a greater impact on victims than any other transitional justice measure, a consultation process must be undertaken before any initiative is begun in this area. As a victims' representative reminded us using Gandhi's words: "everything you're doing for me, without me, is done against me ".[1806] At the very least, victims' associations and grassroots civil society organisations working in this field should be involved in such

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[1803] Programme Progress Report.

[1804] Section 2 of the Preamble to the Rome Statute.

[1805] According to surveys carried out by ICTJ in its study mentioned above, 60% of the population in the east of the country consider that the State should pay reparations for victims of crimes committed during the war - in comparison with 21% who consider that the international community should pay.

[1806] Contribution made by a representative from a victims' association during the round-table meeting on transitional justice, organised by the Mapping Exercise in Bukavu, 12 May 2009.

a process. Likewise, it is important that from now on victims be helped to form associations, and to organise themselves to ensure their opinions are heard during consultations.

1099. Consultation of victims should at a minimum cover the most important issues linked to reparations: the scope of application of any reparation programme, the types of reparation to be granted, procedures for carrying out the programme and the utility of an emergency programme. Such a programme should in any case bring together the rights of victims and the obligations of the State on the one hand, and the expectations of victims and the severe budgetary restrictions suffered by the Congolese State on the other.

Scope of application of a reparations programme

1100. The most important issue to resolve when creating any reparations mechanism is about how to determine who should receive help from such a programme. The United Nations General Assembly has defined victims as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."[1807]

1101. The Congolese authorities, or those responsible for designing a reparations programme, will need to decide whether all victims, according to the definition by the General Assembly, should benefit, or define the type of violation that will be subject to reparation under the programme, particularly if the programme includes a provision to grant individual reparation to victims. A recent study showed that 81% of the population in North and South Kivu and in Ituri have been displaced at least once.[1808] Forced displacement certainly constitutes harm that is linked to serious violations. At first sight, it would appear difficult to design a programme that could offer reparation to all victims whose rights have been violated, which in the case of the DRC could represent a very high percentage of the country's population, particularly in the regions that were worst affected by the conflicts.

1102. With this in mind, the experience of the Truth Commission in Timor-Leste could indicate a possible solution. It observed that:

> "All East Timorese people have been touched and victimised by the conflict in one way or another. However, in the course of its contact with many

[1807] Resolution 60/147 of the General Assembly.
[1808] ICTJ "Living with fear".

> communities the Commission became acutely aware of those among us who still suffer daily from the consequences of the conflict and whose children will inherit the disadvantages their parents face as a consequence of their victimisation. They include those who live in extreme poverty, are disabled, or who — due to misunderstandings — are shunned or discriminated against by their communities."[1809]

1103. This was the case, for example, for women raped by the occupying Indonesian forces, who subsequently gave birth to mixed-race children. "We are all victims but not all victims are equal. We must acknowledge this reality and lend a hand to those who are most vulnerable", the Commission concluded.

1104. Several criteria can be used to limit the scope of a programme and focus on those who have suffered the most and are in most need of assistance, without trivialising the suffering of others in the process. The seriousness of the violation, the consequences for the victims' physical or mental health, stigmatisation, possible repetition of the violations over time, and the current socio-economic status of the victims are all valid criteria. An inclusive consultation process would help to identify the priorities and shape the programme in line with the actual situation on the ground in the DRC.

Types of reparations: individual, collective, material and symbolic

1105. As mentioned above, there are different kinds of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The last of these will be dealt with in more detail in the section on the institutional reforms required.

Individual or collective reparations

1106. Although the right to reparations is an individual right of victims, States can also offer reparations to whole communities, which often suffer collectively from the violations committed.[1810] In the context of the DRC, where tens of thousands of victims were harmed, a vast programme of individual reparations is difficult to envisage. Insofar as hundreds of communities were attacked at one time or another, whole villages burnt down and basic infrastructure such as schools and hospitals destroyed, collective reparations seem particularly appropriate.[1811]

[1809] Commission for Reception, Truth and Reconciliation Timor-Leste (CAVR), 2005. Chega! Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste: Executive Summary, p. 200. Available at the following address [in English]: http://etan.org/news/2006/cavr.htm. Placed online 23 August 2007.

[1810] Peru and Guatemala are two examples of countries that have set up collective reparations programmes to support communities affected by serious violations of human rights and international humanitarian law. See www.ictj.org/en/research/projects/research6/thematic-studies/2537.html.

[1811] This is the case, for example, in Peru and Guatemala.

1107. The principle of collective reparations is, however, highly controversial, on the basis that if they are material, their reparative nature is not always very clear. First of all, these measures benefit all citizens and not just the victims. It is inconceivable that a school or hospital could be built and its use limited only to the victims of the violations. Measures of this kind are generally covered by development programmes and reflect the acknowledged economic and social rights of all citizens, for example, the right to education or health.[1812] In spite of these criticisms, which are well founded, there is undoubtedly a place for collective measures in the DRC. In a context in which the vast majority of the country does not have basic infrastructures, sometimes precisely because of its having been destroyed during the conflicts, prioritising certain development projects for the benefit of the victims' communities could be seen as a kind of reparation.

1108. In addition, certain collective measures of specific benefit to the victims could be identified in consultation with the victims themselves. A community project designed to locate the remains of individuals recorded as having disappeared, or to build a medical centre with dedicated rehabilitation units for specific groups, such as victims of rape or mutilation, are just two examples of collective measures that address the needs of victims directly.

1109. A consultation process could be set up to identify a limited number of communities that were particularly affected, based on the seriousness of the violations and their consequences. These communities would then be consulted to identify an appropriate method of collective reparation. In this respect, the current report could be a useful working document to determine which communities were particularly affected by violations of international human rights law and international humanitarian law.

1110. Clearly, a programme of collective reparations would not satisfy victims who are seeking individual reparations. Transparent information and the involvement of NGOs and local authorities should help to communicate the thinking behind collective measures. In order to manage the victims very high expectations, certain kinds of individual reparations should be envisaged and discussed with the communities for the direct victims of serious bodily injury, taking into account the resources available. Low cost measures for the victims could be taken, such as exempting them from medical, school or legal fees. The relatives of people who have disappeared, in particular orphans, would need to be included amongst the beneficiaries of these kinds of measures – at least within the communities that were most affected.

Material and symbolic reparations

1111. Reparations can also be symbolic and non-material. Such reparations involve a process of public and official recognition of the violations and their consequences for the victims. This may take the form of a public apology from the government or Head of

[1812] See Reparations Programmes, Rule-of-law tools for post-conflict states, p. 25-27, available at: www.ohchr.org.

State on behalf of the nation, for example, or even from the foreign governments involved in the conflict. Other initiatives aimed at preserving the memory of the violations may be envisaged, including museums and memorials, or even low-cost initiatives such as the introduction of a Remembrance Day for the victims. These initiatives have two main objectives. First, they serve as symbolic reparation for the victims of the violations, who thus receive public recognition of their suffering. Second, they send out a message of "never again" to the whole of society, that such events must never be repeated. Similar measures also contribute to preventing any attempts to rewrite history, or even to forget it.

1112. Although public recognition can be achieved without significant resources and without the need for a long process, the State has been almost completely silent with regard to the violations committed in the DRC over the period in question. In the Kilwa trial, the victims (who were demanding reparation for damages suffered following the massacres) called on the judge in particular to require the Congolese State to "publicly recognise the human rights violations perpetrated by certain members of the FARDC in Kilwa, to apologise to the victims and to pay deserved tribute to them […]".[1813] The judge did not agree to this request.

1113. The victims' need for recognition is, however, unquestionable, and sincere and public initiatives of recognition and apology could play an important role in the process of rebuilding both the social fabric and the victims' trust in State institutions. The need to preserve the memory of the violations is an important one. On 10 June each year, the Groupe Lotus, a Congolese NGO based in Kisangani, holds a memorial to the victims of the different conflicts endured by this town. On 24 February every year, the Catholic Church organises masses right across the country to commemorate the massacre of Christians who were demonstrating on 24 February 1990 for the re-opening of the Sovereign National Conference, unilaterally suspended by Mobutu. In its report on the Kasika massacre of 24 August 1998, the *Collectif d'actions pour le développement des droits de l'homme* (CADDHOM) called for the creation of an Institute of National Remembrance tasked with erecting monuments wherever massacres had occurred, and recording the names of the victims on them.[1814] In the Kilwa case mentioned above, the lawyers of the civil parties also called on the Court, on behalf of the victims, to "dedicate a monument to them in Kilwa to immortalise the memory of those who died".[1815]

1114. Memorials commemorating the victims have been erected at some locations, though it is impossible to list them all in this report. In South Kivu, three memorials (at

[1813] Decision RP No. 010/2006, delivered by the Katanga Military Court on 28 June 2007, on the Kilwa events, 2004, pp. 29-31.

[1814] D. Mwati Bulambo, Collectif d'actions pour le développement des droits de l'homme au Congo-Kinshasa. "*Programme de lutte contre les crimes impunis, 24 août 1998: Massacres de Kasika au Sud-Kivu*", Paris, 24 August 2008.

[1815] Decision RP No. 010/2006 delivered by the Katanga Military Court on 28 June 2007, on the Kilwa events, 2004, pp. 29-31.

Lusinda, Makobola and Mwenga) were built with funds from a 2006 legislative election candidate. In Uvira, the RCD had a memorial built to the Banyamulenge killed at Kalemie by the FAC. In 2005, at Kenge, in Bandundu province, the Government had a memorial erected to commemorate the victims of the 1997 war, at the instigation of a minister from the province.

1115. While these acts of remembrance must be encouraged, theirs goals need to be clearly delineated. Remembrance should bring a society together, not divide it. Memorials must not stand as an indictment of a particular group or individual; other justice mechanisms exist for this purpose. Rather, they should commemorate all the victims who have suffered at the hands of all parties to the conflict. In this respect, the initiative of Groupe Lotus, in honour of all the victims of the three Kisangani wars, must be acknowledged. On the other hand, the Makobola memorial would appear to have been erected more to lay blame on a particular group in the context of an electoral campaign than to commemorate the victims of one of the worst massacres in Congo's history. Far from helping to reconcile communities, this type of initiative is of course likely to create tensions that may rekindle certain disputes.

1116. The Congolese Government, the TRC and the body responsible for the reparations programme should encourage remembrance initiatives and establish directives to prevent the creation of injurious or harmful memorials. CADDHOM's idea to create a national memorial institute should be explored. It should be stressed that these ventures would be more advantageous if carried out alongside truth-seeking measures, making them the first symbols of a growing collective remembrance. In order to have the greatest effect on the victims, all of these symbolic gestures should go hand-in-hand with education projects in human rights and peace, which are in themselves a form of reparation.

Implementing the reparations programme

1117. There are several options for the implementation of a national reparations programme, notably via a TRC, a compensation commission, or a compensation fund.

1118. It was anticipated that the TCR established in the DRC during the transition period under the terms of the peace agreements would initiate a victim reparation programme, following the example of a number of other countries. The TRC did not address the matter of reparations for reasons cited earlier in this text. By hearing the accounts of hundreds or thousands of victims, a new TRC would certainly be in a position to participate in developing a reparation programme, if its mandate allows it to formulate such recommendations. This contribution could enable the needs and the desires of victims to be reflected by suggesting reparation methods and types, and helping to identify categories of victims who would be entitled to reparation. However, granting the TRC the prerogative to award reparations presents a significant risk to its primary, truth-seeking role. Not only could this encourage false testimony where people are motivated by financial reward, it could also literally paralyse its operations by increasing the number of victims involved in the TRC's work. Furthermore, the extra work involved in developing and implementing a reparation programme would delay both the drafting of reports on truth-seeking and also the actual awarding of reparations.

1119. For all of these reasons, a national implementation agency, a reparation commission, or a indemnification fund, which would have as its exclusive task the creation and implementation of a programme to indemnify the victims of conflict in the DRC, is the most appropriate mechanism with which to address the issue of reparations. This body must have sufficient independence and prerogatives in order to define and identify the categories of victims who have claims to various types of reparation to be granted individually and collectively.

1120. The establishment of a compensation commission was, for example, recommended by the International Commission of Inquiry on Darfur, given the nature and the gravity of the crimes committed and whether or not the perpetrators of the crimes have been identified.[1816] Such a commission could focus all its energies on the question of reparation, and could receive a mandate broad enough to be able to consider all the types of reparation listed above. It could establish relatively simple – and above all, free – procedures to enable victims to access the commission more easily than any court of law. The burden of proof would also be lower, since the identification of guilty parties would not be a precondition for reparation. Its budget should be commensurate with its mandate. Another solution could be to simply use a fund for victim assistance, like that of the ICC, which could process reparation requests from the victims of certain serious violations. The fund would be managed by existing government bodies, for example within the Ministry of Justice, but would have to offer sufficient guarantees of probity and operate transparently. This type of fund could potentially hand out compensation more quickly and with minimal bureaucracy, although few Government programmes have gone in this direction.

1121. A commission nevertheless has definite advantages over a straightforward fund. Firstly, in the absence of a truth-seeking mechanism, a reparations commission could fulfil certain needs in terms of public acknowledgement of the victims' suffering and offer victims a platform of sorts to make their voices heard. Secondly, it would in theory be more transparent, which is especially important in a country where there are serious issues of corruption within its institutions.

Financing the reparations

1122. The matter of financing reparations in a country emerging from conflict is a perennial problem, given the many priorities and urgent situations that it must face. As indicated above, the victims require an investment on the part of the Congolese Government in terms of reparations. Countries with an obligation to pay reparations to the DRC should contribute. In addition to these sources of funding, a serious and credible reparations programme would merit the support of the international community, particularly from countries who have already invested in the rebuilding of the country.

[1816] *Report of the International Commission of Inquiry on Darfur to the Secretary-General* (S/2005/60).

This contribution could take a number of forms, from financial participation in support of the programme's initial implementation to technical assistance for the new reparations mechanism. Third party countries, international organisations and NGOs may furthermore choose to fund or implement certain specific reparation projects. They may also facilitate the victim consultation process.

1123. Any sum of money seized from perpetrators of crimes under international law committed in the DRC, whatever their nationality and regardless of which judicial authority seized the money, can also be directed towards such reparation mechanisms. The same is the case for reparations paid by third-party countries responsible for violating their obligations to the DRC under international humanitarian law, as in the case of Uganda. It may even be possible to consider prosecution of some companies, whether or not they are linked to serious violations of human rights, which illegally exploited the DRC's natural resources, with a view to obtaining compensation that would be channelled into the reparations mechanism.

1124. Considering the principles of individual criminal responsibility, natural persons as well as corporate entities such as multinationals could be ordered to pay compensation to the victims of crimes for which they are found criminally responsible by a competent court. For example, a complaint was lodged with the UK Government against the company Afrimex, mainly regarding its role in financing RCD-Goma.[1817] The ICC prescribes a set of principles aimed at ensuring that reparations are made to the victims of crimes committed by a convicted person.[1818] As part of the follow-up on the arms embargo imposed in Security Council Resolution 1493 (2003), in its Resolution 1807 (2008) the Security Council decided that the freezing of assets and the prevention of travel would also "apply to the following individuals (…) as designated by the Committee: individuals operating in the DRC and committing serious violations of international law involving the targeting of children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement".[1819] While this provision applies to acts committed after the Resolution was adopted, it is nonetheless valid as an example of how parties to a conflict can contribute to reparation mechanisms that would be created for all the victims.

Conclusion

1125. A comprehensive and creative approach to the issue of reparation is clearly required. All the victims of serious violations of human rights and international humanitarian law are entitled to some form of reparation. Even if it seems as though

[1817] As a National Contact Point created under the new, strengthened procedures established by the Government for considering breaches of the OECD Guidelines for Multinational Enterprises, see Global Witness press release of 21 February 2007. Available online at the following address: www.globalwitness.org/media_library_detail.php/510/en/global_witness_calls_upon_the_uk_government_to_hol, and other documents available at this site.

[1818] See in particular Articles 75 and 93 of the Rome Statute, and associated texts.

[1819] Security Council Resolution 1807 (2008), 28 July 2003, paragraph 13, item *e*.

collective reparation is easier to implement, individual reparation must nevertheless be considered in some cases, particularly those in which the consequences of the violations continue to have a major impact on the lives of victims. Some victims will continue to seek reparation via legal channels, but this will not be the case for the vast majority of victims who, without the establishment of a purpose-built mechanism, will never be able to access the reparations they are owed.

CHAPTER VI. REFORMS

1126. One of the purposes of the transitional justice policy is to establish guarantees that serious human rights and international law violations that were committed in the past will not be repeated. If this aim is to be achieved, it is often of primary importance to reform institutions that have committed such violations or failed to perform their institutional role in preventing them. The implementation of reforms develops from a principle to combat impunity[1820] based in particular on the international obligation of States to "take the necessary steps in accordance with [their] constitutional processes and with the provisions of [the International Covenant on Civil and Political Rights], to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present [Covenant]".[1821]

1127. Although all transitional justice mechanisms are important, it should nonetheless be emphasised that institutional reform is without doubt the step that will have the greatest long-term impact in achieving peace and stability in the country and which will offer citizens the best protection against repeat violations. For countries emerging from a dictatorship or devastated by long-term conflict, large-scale reform is often necessary and urgent in many sectors, such as the economy, infrastructure, healthcare, education and governance. For the purposes of transitional justice there are usually two priority sectors: security and justice. The security forces and the judiciary are the Government agencies with the most important roles in terms of the respect, safeguarding and protection of human rights. In conflict situations, they must in particular recover their capacities to curb crime and shatter the climate of impunity that prevails even after hostilities have ended, especially with respect to past serious violations of human rights and international humanitarian law. All of these reforms are included in the concept of Security System Reform (SSR).[1822]

1128. Such reforms are obviously highly relevant in the DRC. Section I of this report clearly demonstrates instances in which the Zairian (later Congolese) security forces were directly or indirectly responsible for serious violations of international human rights law and international humanitarian law that were committed between 1993 and 2003 within

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[1820] Report of the independent expert to update the Set of principles to combat impunity – *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (later UN Principles to combat impunity) (E/CN.4/2005/102/Add.1), Principles 36 and 38.

[1821] International Covenant on Civil and Political Rights, Article 2.

[1822] OECD/DAC indicates that "guidelines on Security System Reform and Governance agreed by ministers in 2004 define the security system as including: core security actors (e.g. armed forces, police, gendarmerie, border guards, customs and immigration, and intelligence and security services); security management and oversight bodies (e.g. ministries of defence and internal affairs, financial management bodies and public complaints commissions); justice and law enforcement institutions (e.g. the judiciary, prisons, prosecution services, traditional justice systems); and non-statutory security forces (e.g. private security companies, guerrilla armies and private militia). This definition has become established internationally."

the territory of the DRC. Some armed group units responsible for these types of violations were integrated into the transition Government and the security services by virtue of the principle of inclusiveness embodied in the peace agreements, and many are still in office. In 2003, the Special Rapporteur on the situation of human rights in the DRC, like the Secretary-General in 2007, denounced the fact that, despite clear representations by several international bodies, including the Security Council and the Commission on Human Rights, individuals involved in mass human rights violations had been appointed to the Government.[1823] A lengthy reform process of all institutions began during the transition period and is currently underway in the DRC. Its achievement is all the more crucial in the DRC since the post-conflict period has been marked by persistent violence, rising crime rates for sexual violence committed by the security forces and civilians, including minors, and human rights violations, often committed by state workers. Indeed, since the start of the transition period, members of the DRC security forces (FARDC and PNC) have committed the greatest number of human rights violations.[1824]

1129. In light of information gathered by the Mapping Team and revealed in the preceding sections, the most crucial and urgent of the reforms that aim to prevent repetition of crimes under international law are those that concern improvements to the judicial system which will be outlined briefly, the adoption of a law to implement the Rome Statute and the vetting of the security forces.

A. Reform of the judicial system

1130. When emerging from conflict, "with respect to the judiciary, States must undertake all (...) measures necessary to assure the independent, impartial and effective operation of courts in accordance with international standards of due process".[1825] The creation of a legitimate, strong and independent judiciary is an essential condition in a country's peace-building and democratisation process. Any rule of law rests on such a judiciary that is adequately empowered, financed, equipped and trained to uphold human rights in the administration of justice. Equally important are the other institutions of the justice sector, including lawful police services, humane prison services, fair prosecutions and capable associations of criminal defence lawyers.[1826]

1131. Section III of the report revealed the state of disrepair and dysfunction of the judicial system. On the basis of an audit conducted by several donors between 2003 and 2004 and under the joint chairmanship of the Ministry of Justice and the European Union,

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[1823] *Interim Report of the Special Rapporteur on the situation of human rights in the DRC* (A/58/534), para. 59. *Twenty-third report of the Secretary-General on MONUC* (S/2007/156 and Corr.1), para. 33: "Continued appointments of alleged human rights violators to high-ranking positions within FARDC are a source of concern."

[1824] All the MONUC Human Rights Office reports consulted for the past three years confirm this situation. See Section III, Chapter III.

[1825] See *UN Principles to combat impunity* (E/CN.4/2005/102/Add.1), Principle 36.

[1826] The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), par. 35.

a Mixed Committee on Justice Reform devised the Plan of Action for Justice Reform, which was adopted in October 2007. It aims to drive wide-scale legislative reform and support the strengthening of capacities in the judicial system, particularly by reforming criminal legislation, deployment of legal administration throughout the whole country and the retraining of judges and judicial staff.

1132. The keystone of the fabric of the new judicial system, the *Conseil supérieur de la magistrature* (CSM), or the Supreme Judicial Council, has been set up as a judiciary management body.[1827] By imposing a clear-cut division of powers, removing the Executive's old powers of injunction, excluding the President of the Republic and the Minister of Justice from the CSM, allowing judges to self-manage and control their own budget and above all requiring that all magistrates professional transfer be approved by the CSM, this reform should ensure the independence of the judiciary as stated in the Constitution. However, it appears that the reality of the situation bears no relation to the ambitions of the constituent.[1828] Doubts have also been raised over the size of the CSM, which stands at 155 members. There are fears that such a large membership could paralyse the new institution.[1829]

1133. The new Constitution, which entered into force in 2006, saw the disappearance of the Supreme Court, to be replaced by the Constitutional Court, the Court of Cassation and the State Council. Laws creating these courts are awaiting adoption or promulgation. It is still too early to assess the impact of these reforms, which are essential for establishing the rule of law.

1134. As part of efforts to curb and prevent[1830] crimes under international law, the DRC has undertaken, by ratifying the Rome Statue, to prosecute the perpetrators of crimes listed in the Statute and to provide for all forms of co-operation with the Court in its national legislation. In the application of the Statute of the International Criminal Court, legislation implementing the Rome Statute should modify and supplement certain

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[1827] See Section III, Chapter III; law no.08-13 of 5 August 2008 on the organisation and operation of the Supreme Judicial Council.

[1828] Plan of Action for Justice Reform, Ministry of Justice, Kinshasa, 2007, p.10, available in French at: www.justice.gov.cd/j/dmdocuments/pdaction.pdf (hereafter Ministry of Justice, Plan of Action 2007).

[1829] By way of comparison, France's *Conseil supérieur de la magistrature* has only nineteen members, including the President of the Republic and the Justice Minister. In South Africa this council, known as the Judicial Service Commission (JSC), has twenty-three members, including the Justice Minister and six members of the National Assembly. In Benin, the *Conseil supérieur de la magistrature* comprises thirteen members, including the President of the Republic and the Minister of Justice. In Malawi, the Judicial Service Commission has only five members. In Mozambique, the *Conseilho Superior da Magistratura* has eighteen members. Lastly, in Senegal, the *Conseil supérieur de la magistrature* comprises twelve members, including the President of the Republic and the Minister of Justice.

[1830] The preventive vocation of the ICJ is recalled in the Preamble of the Rome Statute, where States party to the Statute confirm their determination to "contribute to the prevention of such crimes". During his first official visit to African States Parties to the Rome Statute in June 2009, the President of the International Criminal Court, Sang-Hyun Song, also stressed the importance of implementing the Rome Statute through appropriate national legislation, giving effect to the principle of complementarity between national jurisdictions and the ICC, to increase the dissuasive effect of the ICC system with respect to the commission of atrocities.

provisions of the penal code (*code pénal*), the code on the organisation and competences of the judiciary (*code de l'organisation et de la compétence judiciaires*), the military penal code (*code pénal militaire*) and the military justice code (*code judiciaire militaire*). It is vitally important that the Bill implementing the Rome Statute be adopted for the following reasons:[1831]

- Updated definitions of war crimes, crimes against humanity and genocide as taken from the Rome Statute will be included in the national legislation.
- The law embodies a number of basic principles, currently concerning the following tenets: individual criminal responsibility, the principle of legality of offences and penalties, the strict interpretation of criminal law, the application of the most favourable law to the defendant in the event of a conflict of laws, the non-retroactivity of criminal law, the *non bis in idem* principle and grounds for excluding responsibility.
- The law sets the age of responsibility at 18 years and prescribes identical penalties for perpetrators and their accomplices.
- It removes the privileges[1832] and immunities[1833] enjoyed by certain categories of individual as a consequence of their official capacity for crimes falling under the jurisdiction of the International Criminal Court.
- It introduces laws penalising offences against the proper administration of justice and ensuring the independence of judges in the exercise of their duties.
- It introduces life imprisonment as the maximum penalty, replacing the current death penalty.
- It establishes the choice of the Court of Appeal (*Cour d'appel*) as the only court with jurisdiction to hear these offences. The jurisdiction of the military courts, which is contrary to the principles of international law, is therefore abolished.
- It makes arrangement for cooperation in terms of inquiries and the suppression of crimes falling under the jurisdiction of the International Criminal Court, mutual assistance, arrest and surrender of accused persons and the enforcement of sentences and measures taken by the ICC.

1135. In spite of the importance of this reform, serious doubts remain over the true desire of the Congolese Parliament to pass that Bill, which is particularly opposed by the

[1831] The items that follow are drawn for the most part from the preamble in the bill submitted to the Government for information and comments by two members of the National Assembly on 23 April 2008.

[1832] "Exorbitant jurisdiction", or *privilège de juridiction*, occurs when a person accused of an offence is brought before a different court other than the competent court ratione materiae for the offence in question, on account of their capacity or their social and occupational position. The *privilège de juridiction* covers many categories of individual: the President of the Republic, national, provincial, city, town and village leaders, members of the national and provincial government, members of the constitutional court, the court of cassation, the state council, courts of audit (*cours des comptes)* and their prosecutors, and senior public administration workers, from the "director" grade upwards.

[1833] A legal prerogative temporarily or permanently shielding an alleged perpetrator of an offence from prosecution or which makes prosecution dependent on the fulfilment of certain conditions or formalities: e.g. head of State, elected representatives, diplomats, etc.

military authorities.[1834] Although it has appeared on the agenda for a number of Parliamentary sessions in recent years, the Bill has never been debated. However, since 2003 the Congolese Parliament has received constant requests to pass the Bill from many parties, including strong pressure from Congolese and international civil society (HRW and Amnesty International have orchestrated lobbying campaigns for the Bill's adoption), the ICRC, MONUC and OHCHR, the European Union and several other donors. This Bill before Parliament is a fundamental tool in the fight against impunity in the DRC and complies with the DRC's international obligations. Parliament must pass it without delay.

B. Vetting of security services

1136. The process of reforming the security forces (SSR, see above), particularly the police and the army, was begun at the start of the transition period, along with the reform of the justice sector. A committee on police reform has produced a draft law for the reform of the Congolese National Police, which is currently in Parliament and waiting to be placed on the agenda, debated and passed. The army reform process has proven more difficult. The two processes of disarmament, demobilisation and reintegration (DDR), designed to disarm all combatants and give them the option of returning to civil society or being integrated into the army, and the mixing and integration of former combatants in a new national army (*'le brassage'*),[1835] produced very mixed results. Once this stage was complete, a comprehensive SSR process for the army was to follow. Evaluation of these processes does not fall within the mandate or the expertise of the Team. However, it is to be regretted that transitional justice issues were not taken into account during this process. The DDR process could have enabled the systematic gathering of witness accounts at the *centres de brassage*, and efforts could have been made to identify those suspected of committing serious violations in order to exclude them from the army. Links were not established with the TRC, in part due to its passiveness.

1137. The imperatives of transitional justice can and must be considered in the comprehensive army reform process under debate. The most obvious link between transitional justice and institutional reform is the vetting procedure. This is a mechanism that aims to ensure that "government workers who are personally responsible for flagrant human rights violations, particularly personnel in the army, the security services, the police, the intelligence services and the judicial system, must be prevented from working in government institutions".[1836] Vetting is particularly important in cases where many people who were responsible for serious human rights violations were employed as government workers as a result of the peace agreements. It constitutes a preventive measure for human rights violations while allowing a certain degree of satisfaction for

[1834] Interview with the political and judicial authorities of the DRC in April and May 2009.

[1835] These soldiers received training in *centres de brassage* ("mixing centres") for between three months and one year. They were then deployed across the country as new units, which enabled most of the old chains of command from the old armed groups to be broken.

[1836] See *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1), 8 February 2005, Principle 36.

the victims, insofar as alleged perpetrators who are not prosecuted are at least excluded from positions of authority. It is a non-judicial procedure that aims to identify and remove those responsible for human rights violations from public institutions, in particular the security forces. Legislation normally provides for the setting up of a commission to gather information on the alleged violations committed by the individual, offer the individuals the opportunity to defend themselves, and lastly make a ruling, which can generally be appealed before another body. In recent years, the United Nations has assisted many countries in conducting vetting processes.

1138. Today, many people suspected of committing serious violations of international humanitarian law can be found in a number of institutions, in particular among senior positions in the army. During the transition period and in the years that followed, several individuals exposed as being responsible for serious crimes committed in the DRC, some for crimes dating back to the period covered by this report, were promoted on their integration into the national army created by the 2002 peace agreements. Very recent cases have confirmed the Government's unwillingness to exclude them, the most well-known being that of General Bosco Ntaganda, for more than three years under ICC warrant of arrest for war crimes and recently reintegrated into the FARDC. These actions go against the principles at the root of the vetting procedures under examination here. A vetting process is therefore not just essential in itself, but is also a prerequisite for any other transitional justice initiative. The presence of such people within institutions, and particularly in institutions that have a monopoly over the use of force, means that the alleged perpetrators of serious violations can use their power to block initiatives, and threaten or simply discourage potential witnesses and victims as needed.

1139. Since 2007, the Security Council has reiterated a number of times its call for the Congolese authorities to "establish a vetting mechanism to take into account when they select candidates for official positions, including key posts in the armed forces, national police and other security services, the candidates' past actions in terms of respect for international humanitarian law and human rights".[1837] Likewise, in March 2009 the seven thematic special procedures on technical assistance to the Government of the DRC indicate in their reports that: "The Government should remove perpetrators of serious human rights violations that have already been identified as such from its ranks and files without further delay. In addition, the Government and its major partners in security reform should set up a comprehensive and adequately resourced secondary screening mechanism, where each officer is vetted for his past human rights record and subjected to a determination of his ability to command in accordance with the principles of international humanitarian law and the values embodied in the Constitution of the DRC. Candidates who fail should be excluded and blacklisted from joining the military, police and intelligence services, with appropriate due process mechanisms and transparent processes. The international community should technically assist this process by

[1837] See Security Council Resolution 1794 (2007) dated 21 December 2007, para. 15; reiterated in subsequent Resolutions extending MONUC's mandate.

providing specialised international staff as well as resources."[1838] Still more recently, the primary recommendation of the Group of Experts on the DRC was for the Government of the DRC to implement "a vetting mechanism to screen the human rights records of FARDC officers".[1839] Demand for such a process is also increasing within Congolese civil society.[1840]

1140. The Security Council considers that such a measure is necessary in order to break the cycle of impunity that has always surrounded the DRC security forces, and that true SSR will not achieve sustainable results if the security forces are not vetted. Unfortunately, so far official discussions have not yet been initiated by the Congolese authorities regarding a possible vetting process for the police or for the army in the context of these reforms. The suggestion by several international partners to include vetting in police reform met with staunch opposition from Congolese stakeholders.[1841]

1141. As a priority, any vetting process implemented in the DRC should begin with the FARDC rather than the police, given that the majority of individuals facing grave allegations of serious human rights violations have been integrated into the army rather than the national police. This does not mean to say that vetting the police would be unnecessary; simply that vetting the army is a more pressing need. Secondly, at least to begin with, top-ranking officers who are now in positions of authority within the army should be vetted first. Vetting methods should include aptitude tests and an assessment of the individual's capacity, in the light of their previous experience, to hold a position of authority (e.g. regional commander, brigade commander). Vetting these positions would also have a very significant impact not only on boosting the levels of professionalism within the armed forces but also protecting civilian populations living in areas where these officers can still cause them harm.

1142. As in the case of prosecutions and truth-seeking, the mistrust of the people towards the institutions and between political actors suggests that it would be expedient to consider the possibility of including international representatives in this type of vetting mechanism. Such a mechanism would nevertheless require the firm commitment of the Congolese Government in order to ensure its success. The establishment of a vetting mechanism, which may at first be limited in scope, would do away with the widespread sentiment within Congolese civil society that 'perpetrators of crimes are favoured in the name of peace and national unity'.[1842] At the same time, such a mechanism would be politically less perilous and more acceptable than a mechanism aiming to embark on

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[1838] *Combined report of seven thematic special procedures on technical assistance to the Government of the DRC and urgent examination of the situation in the east of the country* (A/HRC/10/59), para. 97.

[1839] Interim *Report of the Group of Experts on the DRC prepared pursuant to paragraph 8 of Security Council Resolution 1857* (2008) of 22 December 2008 (S/2009/253).

[1840] See, for example, "Déclaration de COJESKI-RDC relative à la loi sur l'amnistie pour faits de guerre et faits insurrectionnels dans le Kivu", Kinshasa, 12 May 2009.

[1841] Interviews with MONUC workers, held by the Mapping Team in April 2009.

[1842] Opinion expressed by a representative from a women's legal assistance group at the Bukavu round-table meeting organised by the Mapping Team, 12 May 2009.

large-scale prosecutions, insomuch as the consequence for those responsible would not be a loss of freedom but "only" removal from office.

Conclusion

1143. In light of the impunity enjoyed by the perpetrators of serious violations of human rights and international humanitarian law, and the repetition of crimes within the territory of the DRC, there is a manifest urgency for justice and security service reform. The members of the Mapping Team were able to observe the constant fear on the part of affected populations that history would repeat itself, especially when yesterday's attackers are returning in positions that enable them to commit new crimes with complete impunity.

ANNEX I

KEY ACRONYMS USED

ADF/NALU	Allied Democratic Forces/National Army for the Liberation of Uganda (made up of former Ugandan rebel groups, the ADF/NALU appeared in the second half of the 80s after the President of Uganda seized power)
AFDL	Alliance des Forces Démocratiques pour la Libération du Congo
ALC	Armée de Libération du Congo (armed wing of the MLC)
ALiR	Armée de Libération du Rwanda (movement formed in 1998 comprising the ex-FAR/Interahamwe and armed Hutu elements)
ANC	Armée Nationale Congolaise (armed wing of the RCD-Goma)
ANR	Agence Nationale de Renseignements
APC	Armée du Peuple Congolais (armed wing of the RCD-ML)
APR	Armée Patriotique Rwandaise (national army of Rwanda from 1994 to 2002)
BSRS	Brigade Spéciale de Recherche et de Surveillance
CNDD	Centre National pour la Défense de la Démocratie (Burundian Hutu movement)
DEMIAP	Détection Militaire des Activités Anti-Patrie
DSP	Division Spéciale Présidentielle
FAR	Forces armées rwandaises (national army of Rwanda before July 1994)
FAC	Forces Armées Congolaises (national army of the DRC from June 1997)
FAP	Force d'Autodéfense Populaire (Mayi-Mayi groups)
FAPC	Forces armées populaire du Congo (armed group active in the Aru and Mahagi territories in the district of Ituri)
FARDC	Forces Armées de la République démocratique du Congo (formerly the FAC, national army of the DRC)
FAZ	Forces Armées Zaïroises (national army of Zaire)
FDD	Front pour la Défense de la Démocratie (armed wing of the Burundian Hutu movement CNDD)
FDLR	Forces Démocratiques de Libération du Rwanda (formerly the AliR from the end of 2000)
FDR	Forces de Défense Rwandaises (national army of Rwanda from July 2002, formerly the APR)
FIPI	Front pour l'Intégration et la Paix en Ituri (Coalition of three parties - the PUSIC, the FNI and the FPDC – created in December 2002)
FNI	Front National Intégrationiste (political movement in Ituri composed mainly of the Lendu ethnic grouping, created in early 2003)

FNL	Forces Nationales de Libération (Burundian Hutu armed group)
FPDC	Forces populaires pour la démocratie au Congo (political movement based in Ituri composed mainly of the Alur ethnic group, created in October 2002)
FRPI	Force de résistance patriotique en Ituri (political movement based in Ituri composed mainly of the Ngiti/Lendu ethnic group, created in November 2002)
FPR	Front patriotique rwandais (Rwandan rebel group up to July 1994)
Interahamwe	Hutu militia who were involved in the 1994 genocide
JUFERI	Jeunesse de l'Union des fédéralistes et républicains indépendants (armed wing of the UFERI)
MLC	Mouvement de Libération du Congo
MPR	Mouvement pour la révolution (President Mobutu's political party)
Mudundu-40	Mayi-Mayi group
NALU	Armée nationale pour la libération de l'Ouganda (see ADF/NALU)
PIR	Police d'intervention rapide
PUSIC	Parti pour l'unité et la sauvegarde de l'intégrité du Congo (political movement in Ituri composed mainly of the Hema ethnic group, created in October-November 2002)
RCD	Rassemblement Congolais pour la Démocratie (formed in August 1998 which became the RCD-Goma in 1999)
RCD-Goma	Rassemblement Congolais pour la Démocratie-Goma
RCD-ML	Rassemblement Congolais pour la Démocratie-Mouvement de Libération
RCD-N	Rassemblement Congolais pour la Démocratie-National
DRC	Democratic Republic of the Congo
SARM	Service d'Actions et de Renseignements Militaires
SNIP	Service National d'Intelligence et de Protection
UFERI	Union des fédéralistes et républicains indépendants
UFLC	Union des Forces pour la Libération du Congo (Mayi-Mayi group)
UPC	Union des Patriotes Congolais (political movement in Ituri composed mainly of the Hema ethnic group, formed in January 2001)
UPDF	Uganda People's Defence Forces (Ugandan army)
UPDS	Union pour la Démocratie et le Progrès Social (political party led by Étienne Tshisekedi)

ANNEX II

LIST OF DOCOUMENTS ON THE DEMOCRATIC REPUBLIC OF THE CONGO CONSULTED BY THE MAPPING TEAM

The Mapping Team reviewed numerous reports, from both public and confidential sources, in relation to the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003. The following is a **non-exhaustive** list of the public reports consulted by the mapping team. The titles of the non-public reports are not listed for confidentiality purposes.

United Nations

Secretary-General

- *Report of the Secretary-General on the situation of human rights in Zaire* (E/CN.4/1994/49), 23 December 1993
- *Report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the DRC* (S/1998/581, annex), 22 January 1998
- *Report of the Secretary-General's Investigative Team on the events in Mambasa, 31 December 2002-10 January 2003* (S/2003/674, Annex 1), 2 July 2003
- *MONUC Special report on the events in Ituri (January 2002-December 2003)* (S/2004/573) 16 July 2004

Reports of the Secretary-General on MONUC

- *Reports of the Secretary-General on MONUC* (S/2000/30), 17 January 2000
- *Second report of the Secretary-General on MONUC* (S/2000/330 and Corr.1), 18 April and 23 April 2000
- *Third report of the Secretary-General on MONUC* (S/2000/566 and Corr.1), 12 and 29 June 2000
- *Fourth report of the Secretary-General on MONUC* (S/2000/888 and Corr.1), 21 September and 4 December 2000
- *Fifth report of the Secretary-General on MONUC* (S/2000/1156), 6 December 2000
- *Sixth report of the Secretary-General on MONUC* (S/2001/128 and Corr.1), 12 and 14 February 2001
- *Seventh report of the Secretary-General on MONUC* (S/2001/373), 17 April 2001
- *Eighth report of the Secretary-General on MONUC* (S/2001/572), 8 June 2001
- *Ninth report of the Secretary-General on MONUC* (S/2001/970 and Corr.1), 16 and 23 October 2001
- *Tenth report of the Secretary-General on MONUC* (S/2002/169), 21 February 2002
- *Eleventh report of the Secretary-General on MONUC* (S/2002/621), 5 June 2002
- *Twelfth report of the Secretary-General on MONUC* (S/2002/1180), 18 October 2002

- *Thirteenth report of the Secretary-General on MONUC* (S/2002/1180), 21 February 2003
- *Fourteenth report of the Secretary-General on MONUC* (S/2003/1098), 17 November 2003
- *Fifteenth report of the Secretary-General on MONUC* (S/2004/251), 25 March 2004
- *Sixteenth report of the Secretary-General on MONUC* (S/2004/1034), 31 December 2004
- *Seventeenth report of the Secretary-General on MONUC* (S/2005/167), 15 March 2005
- *Eighteenth report of the Secretary-General on MONUC* (S/2005/506), 2 August 2005
- *Nineteenth report of the Secretary-General on MONUC* (S/2005/603), 26 September 2005
- *Twentieth report of the Secretary-General on MONUC* (S/2005/832), 28 December 2005
- *Twenty-first report of the Secretary-General on MONUC* (S/2006/390), 13 June 2006
- *Twenty-second report of the Secretary-General on MONUC* (S/2006/759), 21September 2006
- *Twenty-third report of the Secretary-General on MONUC* (S/2007/156 and Corr.1), 20 March 2007
- *Twenty-fourth report of the Secretary-General on MONUC* (S/2007/671), 14 November 2007
- *Twenty-fifth report of the Secretary-General on MONUC* (S/2008/218), 2 April 2008
- *Twenty-sixth report of the Secretary-General on MONUC* (S/2008/433), 3 July 2008
- *Twenty-seventh report of the Secretary-General on MONUC* (S/2009/160), 27 March 2009
- *Second Special report of the Secretary-General on MONUC* (S/2003/566), 27 April 2003
-*Third Special report of the Secretary-General on MONUC* (S/2004/650), 16 August 2004
- *Fourth Special report of the Secretary-General on MONUC* (S/2008/728), 21 November 2008

Reports of the Secretary-General on children and armed conflict presented to the Security Council

- *Report of the Secretary-General on children and armed conflict* (S/2000/712), 19 July 2000
- *Report of the Secretary-General on children and armed conflict* (S/2001/852), 7 September 2001
- *Report of the Secretary-General on children and armed conflict* (S/2002/1299), 26 November 2002
- *Report of the Secretary-General on children and armed conflict* (S/2003/1053 and Corr.1 and 2), 10 November 2003 and 20 February and 17 April 2004
- *Report of the Secretary-General on children and armed conflict* (S/2005/72), 9 February 2005
- *Report of the Secretary-General on children and armed conflict* (S/2006/826), 26 October 2006

- *Report of the Secretary-General on children and armed conflict* (S/2007/757), 21 December 2007
- *Report of the Secretary-General on children and armed conflict* (S/2008/693), 10 November 2008
- *Report of the Secretary-General on children and armed conflict* (S/2009/158 and Corr.1), 26 March and 13 August 2009

Security Council

- Resolution 1234 (1999) of 9 April 1999
- Resolution 1258 (1999) of 6 August 1999
- Resolution 1273 (1999) of 5 November 1999
- Resolution 1279 (1999) of 30 November 1999
- Resolution 1291 (2000) of 24 February 2000
- Resolution 1304 (2000) of 16 June 2000
- Resolution 1314 (2000) of 11 August 2000
- Resolution 1316 (2000) of 23 August 2000
- Resolution 1323 (2000) of 13 October 2000
- Resolution 1332 (2000) of 14 December 2000
- Resolution 1341 (2001) of 22 February 2001
- Resolution 1365 (2001) of 31 July 2001
- Resolution 1376 (2001) of 9 September 2001
- Resolution 1379 (2001) of 20 November 2001
- Resolution 1399 (2002) of 19 March 2002
- Resolution 1417 (2002) of 14 June 2002
- Resolution 1445 (2002) of 4 December 2002
- Resolution 1457 (2003) of 24 January 2003
- Resolution 1468 (2003) of 20 March 2003
- Resolution 1484 (2003) of 30 April 2003
- Resolution 1489 (2003) of 26 June 2003
- Resolution 1493 (2003) of 28 July 2003
- Resolution 1499 (2003) of 13 August 2003
- Resolution 1501 (2003) of 26 August 2003

- *Security Council mission visit to the DRC, 4-8 April 2000* (S/2000/416)
- *Report of the Security Council mission visit to the Great Lakes regions*, 27 April-7 April 2002 (S/2002/537/Add.1)
- *Security Council demands that rebel group in DRC bring perpetrators of Kisangani massacres to justice. In presidential statement, members call for immediate demilitarization of Kisangani by RCD-Goma* (SC/7462), 23 July 2002
- *Security Council condemns continuing exploitation of natural resources in the DRC* (SC/7925), 19 November 2003

MONUC's Office of Human Rights and the UN High Commissioner for Human Rights

- *Report on the human rights situation in the DRC presented to the Security Council by the UN High Commissioner for Human Rights* (S/2003/216), 24 February 2003
- *The human rights situation in the DRC, 2007*

Special Reports

- *The human rights situation in Zaire* (E/DEC/1994/270), 25 July 1994
- *The human rights situation in Zaire* (E/CN.4/RES/1994/87), 9 March 1994
- *The human rights situation in Zaire* E/CN.4/RES/1995/69), 6 March 1995
- *Report of the Special Rapporteur on the human rights situation in Zaire* (E/CN.4/1995/67 and Corr.1), 19 December 1994 and 17 February 1995
- *The human rights situation in Zaire* (E/DEC/1995/280), 25 July 1995
- *Report of the Special Rapporteur on torture and other punishments or cruel, inhuman and degrading treatment* (E/CN.4/1996/35), 9 September 1996
- *Report of the Special Rapporteur on the independence of judges and lawyers* (E/CN.4/1996/37), 1st March 1996
- *Decisions adopted by the working group on arbitrary detention* (E/CN.4/1996/40/Add.1), 31 October 1995
- *Report of the Special Rapporteur on the human rights situation in Zaire* (E/CN.4/1996/66 and Corr.2 and 3), 29 January and 28 March and 15 April 1996
- *The human rights situation in Zaire* (E/CN.4/RES/1996/77), 23 April 1996
- *The human rights situation in Zaire* (E/DEC/1996/282), 24 July 1996
- *Report of the joint mission charged with investigating allegations of massacres and other attacks on human rights that took place in East Zaire from September 1996* (A/51/942), 2 July 1997
- *The human rights situation in Zaire* (E/CN.4/RES/1997/58), 15 April 1997
- *The human rights situation in the DRC* (E/DEC/1997/267), 22 July 1997
- *Report of the Special Rapporteur on the human rights situation in Zaire: mission to the Kivu septentrional* (E/CN.4/1997/6/Add.1), 16 September 1996
- *Report of the Special Rapporteur on the human rights situation in Zaire: mission to rebel-occupied zones in Eastern Zaire* (E/CN.4/1997/6/Add.2), 2 April 1997
- *Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions: country situations* (E/CN.4/1997/60/Add.1), 23 December 1996
- *Report of the Special Rapporteur on the human rights situation in Zaire* (E/CN.4/1997/6), 28 January 1997
- *Report of the Special Rapporteur on the human rights situation in Zaire* (A/52/496), 17 October 1997
- *Report of the Special Rapporteur on the human rights situation in the DRC* (A/53/365), 10 September 1998
- *The human rights situation in the DRC* (A/Res/53/160), 9 December 1998
- *Report of the Special Rapporteur on the issue of the use of mercenaries* (E/CN.4/1998/31), 27 January 1998

- *Report of the Special Rapporteurs on the allegations of massacres in the DRC* (E/CN.4/1998/64), 23 January 1998
- *Report of the Special Rapporteur on the human rights situation in the DRC* (E/CN.4/1998/65 and Corr.1), 30 January and 30 April 1998
- *The human rights situation in the DRC* (E/CN.4/RES/1998/61), 21 April 1998
- *The human rights situation in the DRC* (E/DEC/1998/260), 30 July 1998
- *Report of the Special Rapporteur on the human rights situation in the DRC* (A/54/361), 17 September 1999
- *Report of the Special Rapporteur on the human rights situation in the DRC* (E/CN.4/1999/31), 8 February 1999
- *The human rights situation in the DRC* (E/CN.4/RES/1999/56), 27 April 1999
- *The human rights situation in the DRC* (A/55/318) – Note by the Secretariat, 23 August 2000
- *Report of the Special Rapporteur on the human rights situation in the DRC* (A/55/403), 20 September 2000
- *The human rights situation in the DRC* (A/Res/55/117), 12 March 2001
- *Report of the Special Rapporteur on the human rights situation in the DRC* (E/CN.4/2000/42), 18 January 2000
- *The human rights situation in the DRC* – (E/CN.4/2000/43) – Note by the Secretariat, 10 December 1999
- *Report of the Working Group on enforced or involuntary disappearances* (E/CN.4/2000/64 and Corr.1 and 2), 21 December 1999 and 11 and 20 April 2000
- *The human rights situation in the DRC* (E/CN.4/RES/2000/15), 18 April 2000
- *The human rights situation in the DRC* (E/DEC/2000/248), 28 July 2000
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ANNEX III

Terms of References

MONUC's current human rights mandate[1843] provides the umbrella for the mapping exercise. In his 21st report to the Security Council on MONUC (S/2006/390 of 13 June 2006), the Secretary-General indicated his intention to dispatch a human rights team to DRC to conduct a mapping exercise of serious violations committed between 1993 and 2003. MONUC has subsequently conveyed this in writing to the Transitional Government, indicating that the proposed mapping exercise would be carried out under MONUC's human rights mandate.

1. Mandate and Objectives of the Mapping Team

1.1 The Mapping Team will conduct a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003.

1.2 The Mapping Team will assess the existing capacities within the national justice system to deal with such human rights violations that may be uncovered.

1.3 Taking into account on-going efforts by the DRC authorities, as well as the international community's support, the Mapping Team shall formulate a series of options aimed at assisting the government of the DRC in identifying appropriate transitional justice mechanisms to deal with the legacy of these violations, in terms of truth, justice, reparation and reform.

2. Composition of the Team, duration of the mapping exercise

2.1 The Mapping Team will be composed of approximately sixteen substantive staff, including a team leader/chief, an executive assistant to the Chief of the Mapping Team, one rule of law specialist, one political affairs officer at the P4 level, one human rights officer at the P4 level, one database management officer, and one security officer, all based in Kinshasa, as well as three human rights officers/investigators at the P4 level, six human rights officers/investigators at the P3 level, and three forensic experts/consultants (tasked with preliminary assessment of mass graves, not exhumations), making up the substantive staff of the three sub-units that will be based primarily in the provinces. The substantive team should possess

[1843] SCR 1493, para 11 states: "… encourages the Secretary-General, through his Special Representative, and the United Nations High Commissioner for Human Rights, to coordinate their efforts in particular to assist the transitional authorities of the Democratic Republic of the Congo in order to put an end to impunity". SCR 1565, para 5.(g) states: "Decides that MONUC will also have the following mandate, in support of the Government of National Unity and Transition: to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations to put and end to impunity, and continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations."

knowledge and understanding of UN human rights instruments and procedures; they should also have knowledge of working for human rights in a fragile, conflict-prone or post-conflict society; legal skills, good knowledge of written and spoken French and English; knowledge of the DRC and the Great Lakes region would be highly desirable.

2.2. The following staff will also form part of the Mapping Team: One administrative assistant, four national human rights assistants with translation skills, three security officers, one database assistant, responsible in collaboration with a database management officer (mentioned in 2.1) for the elaboration of an *ad hoc* database and supervision of storage of information, one logistician tasked with liaising with MONUC over issues such as aerial and ground transportation, communications etc., and four drivers. The members of the Mapping Team shall be of high moral standing. The need for gender balance will be fully taken into account. Once the Chief of the Mapping Team has been appointed, she or he will contribute to the drafting and/or finalization of the following sections of these Terms of Reference: I) Timeframe for the deployment; II) Activities of the mapping exercise; III) Profile of the team members; IV) Methodology; and V) Expected Outcomes of the Exercise.

2.3 The members of the Mapping Team will enjoy all relevant privileges and immunities as accorded to MONUC staff.

2.4 The duration of the mapping exercise will be for an initial period of six months, extendable should the circumstances require it.

3. Essential requirements

3.1 The Mapping Team will have a well defined methodology and adequate logistical support.

3.2 The Mapping Team should be able to meet and interview individuals in conditions of privacy and confidentiality, where necessary. It will be essential that the minimal security conditions exist for the investigations to be carried out. With regard to the protection of witnesses – including the protection of their confidentiality – in cases that may arise as a direct result of the work of the Mapping Team, MONUC will endeavour to provide support within the limited scope of its current efforts in this area. The authorities of Democratic Republic of the Congo and all relevant national actors should undertake to facilitate the work of the Mapping Team and, in collaboration with MONUC, to guarantee the protection against reprisal/persecution of all persons and organizations that will have contact with the Mapping Team.

3.3 MONUC, in consultation with the OHCHR Field Safety and Security Unit, should ensure appropriate security arrangements for members of the Mapping Team. The members of the Mapping Team should be housed in secure premises. Secure office space should therefore be identified and allocated by MONUC for the duration of the mission, both in Kinshasa and in relevant field locations.

4. Methodology

4.1 The Mapping Team will, inter alia, take into consideration the outcome of past United Nations missions to the country.

4.2 The mapping exercise should focus its activities on the most serious violations of human rights and international humanitarian law carried out from March 1993 to June 2003. It should be carried out throughout the country, and in chronological order of events. It should gather basic information (e.g. establishing the locations, timings and backgrounds of major incidents, the approximate numbers of victims, the alleged perpetrators, etc.) and not replace in-depth investigations into the incidents uncovered.

4.3 Sensitive information gathered during the mapping exercise should be stored and utilized according to the strictest standards of confidentiality. The team should develop a database for the purposes of the mapping exercise, access to which should be determined by the High Commissioner for Human Rights.

4.4 A strategy aimed at ensuring that physical evidence that cannot or should not be removed from specific sites is properly secured should be developed.

4.5 The Mapping Team should devise a strategy concerning the tracing of witnesses. Consent of witnesses to the sharing with MONUC and transitional justice bodies of information provided by them must be sought.

4.6 The Mapping Team should develop a communications strategy, in close collaboration with MONUC.

4.7 The mapping exercise should be carried out in as discreet a manner as possible.

5. Reporting

5.1 The Mapping Team will draft a report on the exercise, outlining, amongst other things, a series of options for actions to be undertaken by national authorities with the assistance of the international community, with a special focus on the role of transitional justice measures designed to address such violations as may be uncovered. The report will be reviewed by DPKO and OHCHR and submitted in confidence by the High Commissioner for Human Rights and the Under-Secretary-General for Peacekeeping Operations to the Secretary-General. The Secretary-General should submit the report to the Government of the Democratic Republic of the Congo requesting its observations and comments by a specified date. Once the specified date has passed, the Secretary-General may wish to submit the report and the comments received by that date simultaneously but separately to the Security Council. The report could then be presented to the members of the Security Council by the High Commissioner for Human Rights subject to a decision by the Secretary-General. The report should be made public.

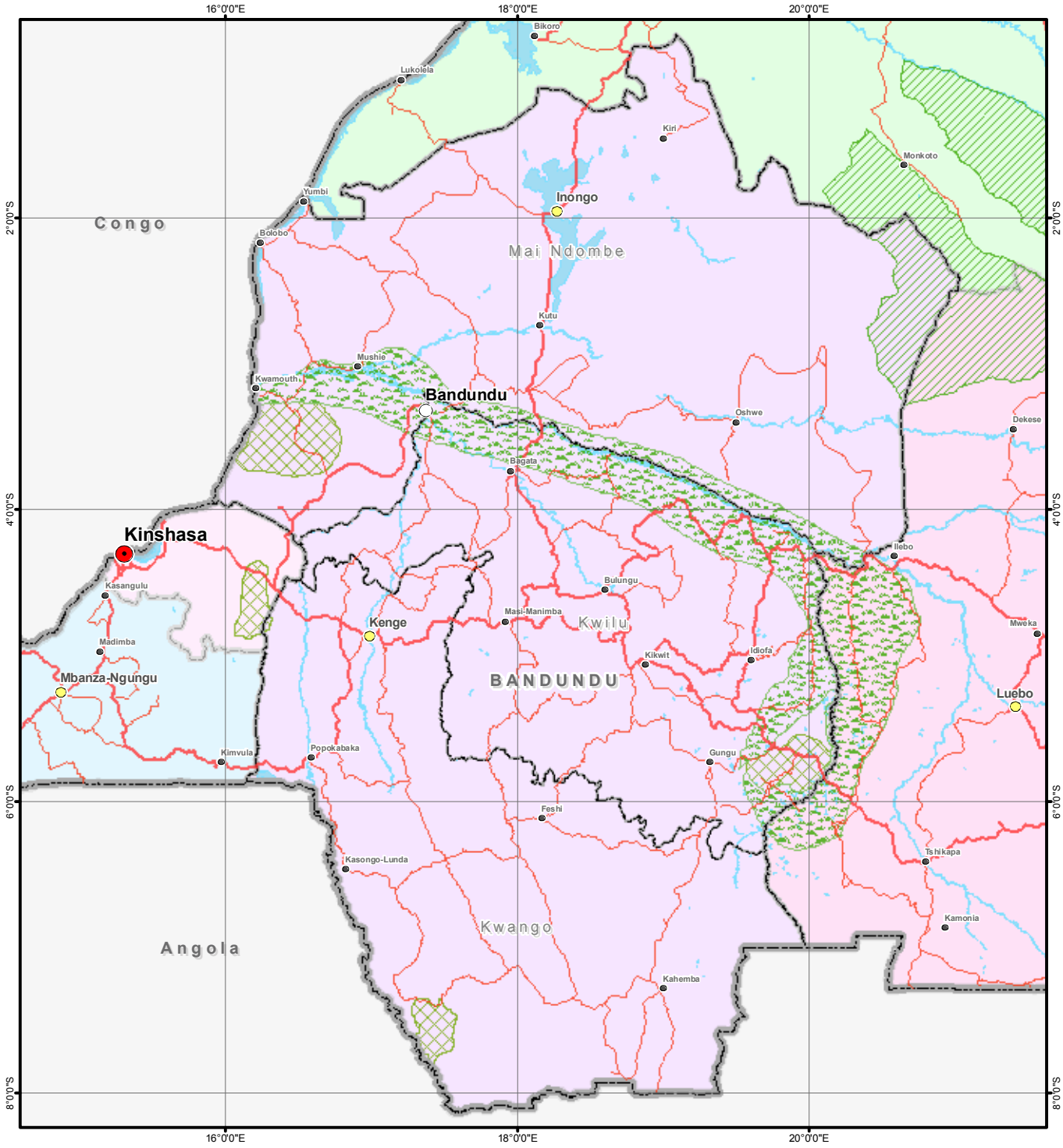
ANNEX IV

MAPS OF THE PROVINCES

DEMOCRATIC REPUBLIC OF CONGO
AFRICA

BANDUNDU PROVINCE

Map No - KINGEN6014
GIS UNIT, MONUC



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Date: 26 May 2009

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QA:

Legend

- Capital Cities
- Province Headquater
- District Headquater
- Other Location
- Nationale Road
- Regionale prioritaire Road
- International Boundary
- Province Headquater
- District Headquater
- Hunting Domain
- National Park
- Faunal Reserve
- Water Body

BANDUNDU PROVINCE

Sources :
- V-Map Level 0 data
- Coordinate System: Geographic; Datum WGS 84

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Kilometers

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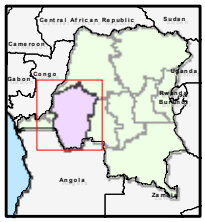

BAS CONGO PROVINCE

DEMOCRATIC REPUBLIC OF CONGO
AFRICA

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Bas Congo Province

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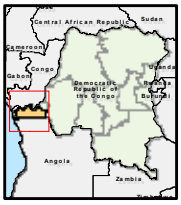

DEMOCRATIC REPUBLIC OF CONGO
AFRICA

EQUATEUR PROVINCE

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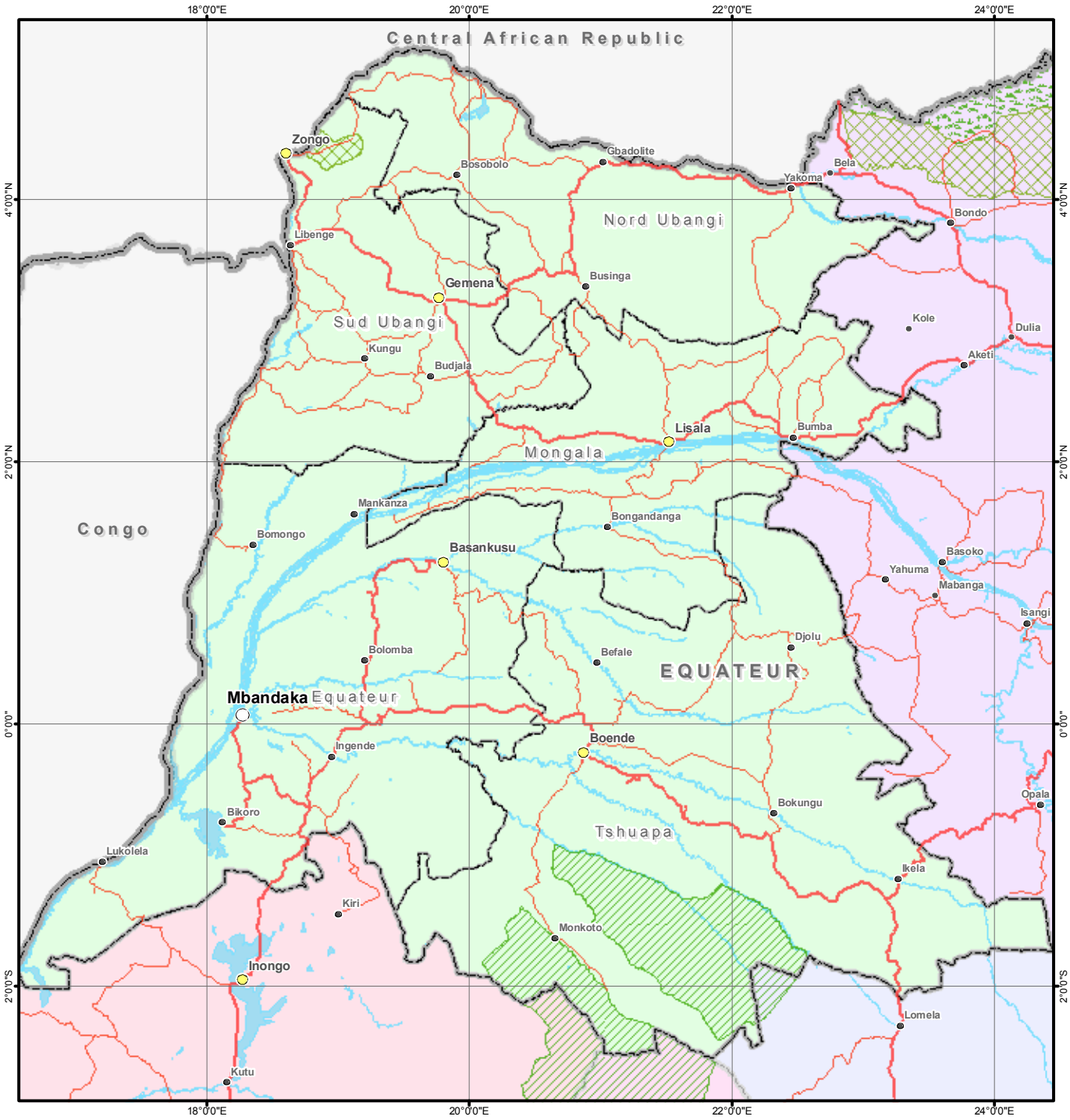

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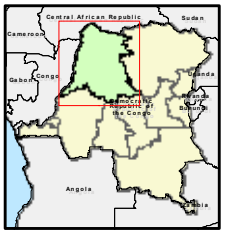

DEMOCRATIC REPUBLIC OF CONGO
AFRICA

KASAI OCCIDENTAL PROVINCE

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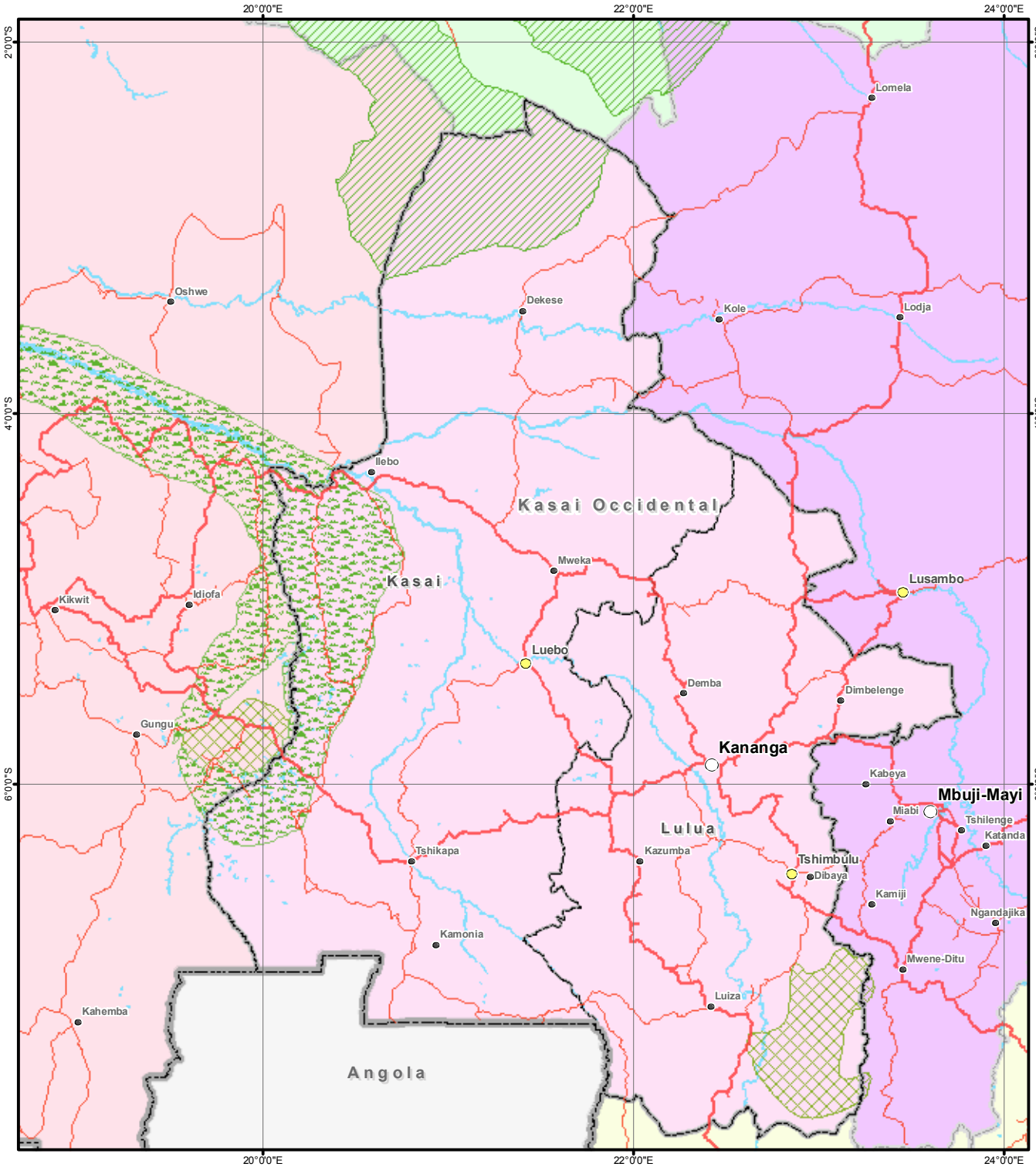

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KASAI OCCIDENTAL PROVINCE

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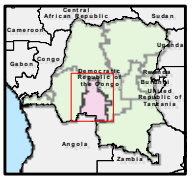

DEMOCRATIC REPUBLIC OF CONGO
AFRICA

KASAI ORIENTAL PROVINCE

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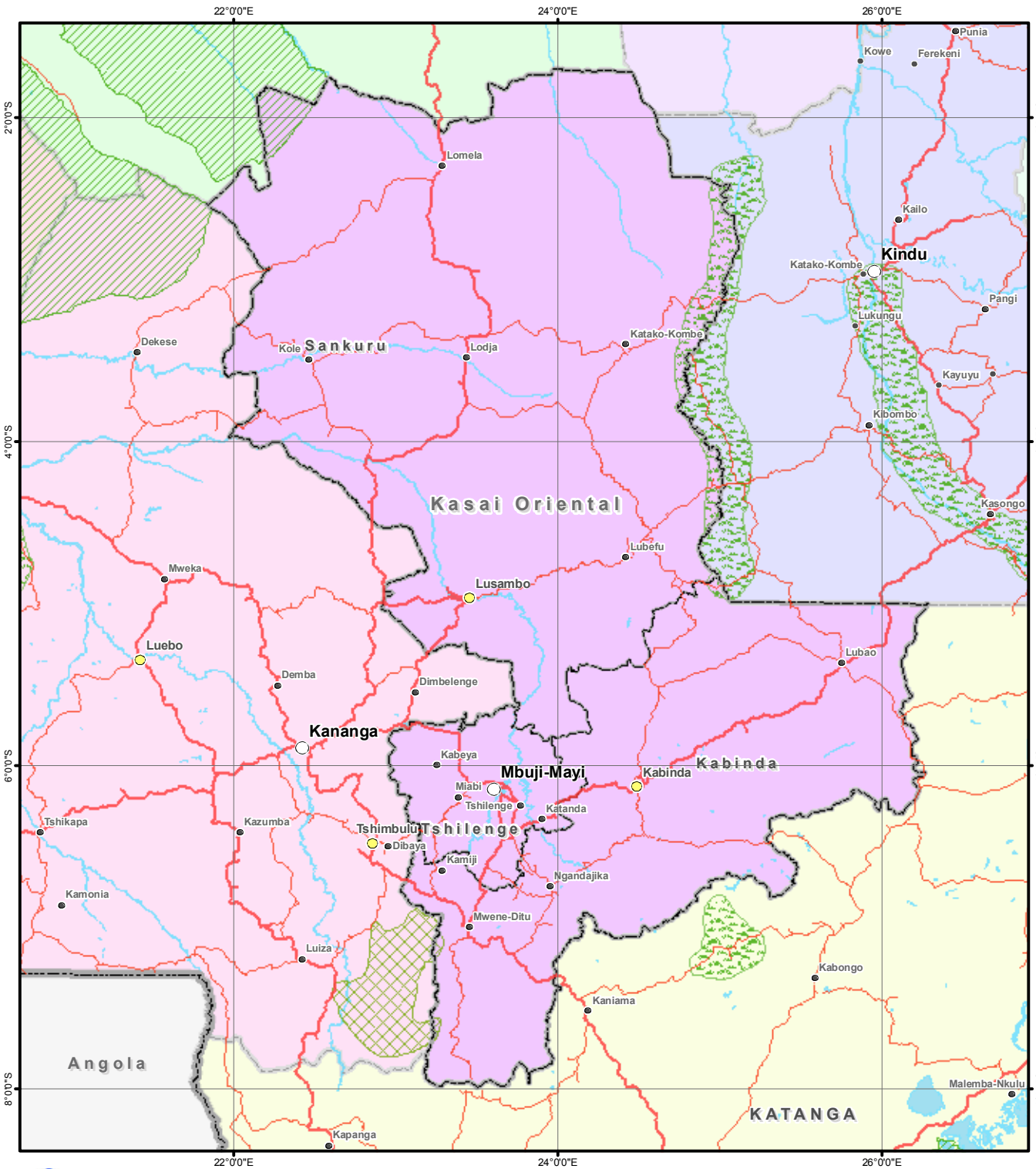

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Kasai Oriental Province

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DEMOCRATIC REPUBLIC OF CONGO
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KATANGA PROVINCE

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KATANGA PROVINCE

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KINSHASA PROVINCE

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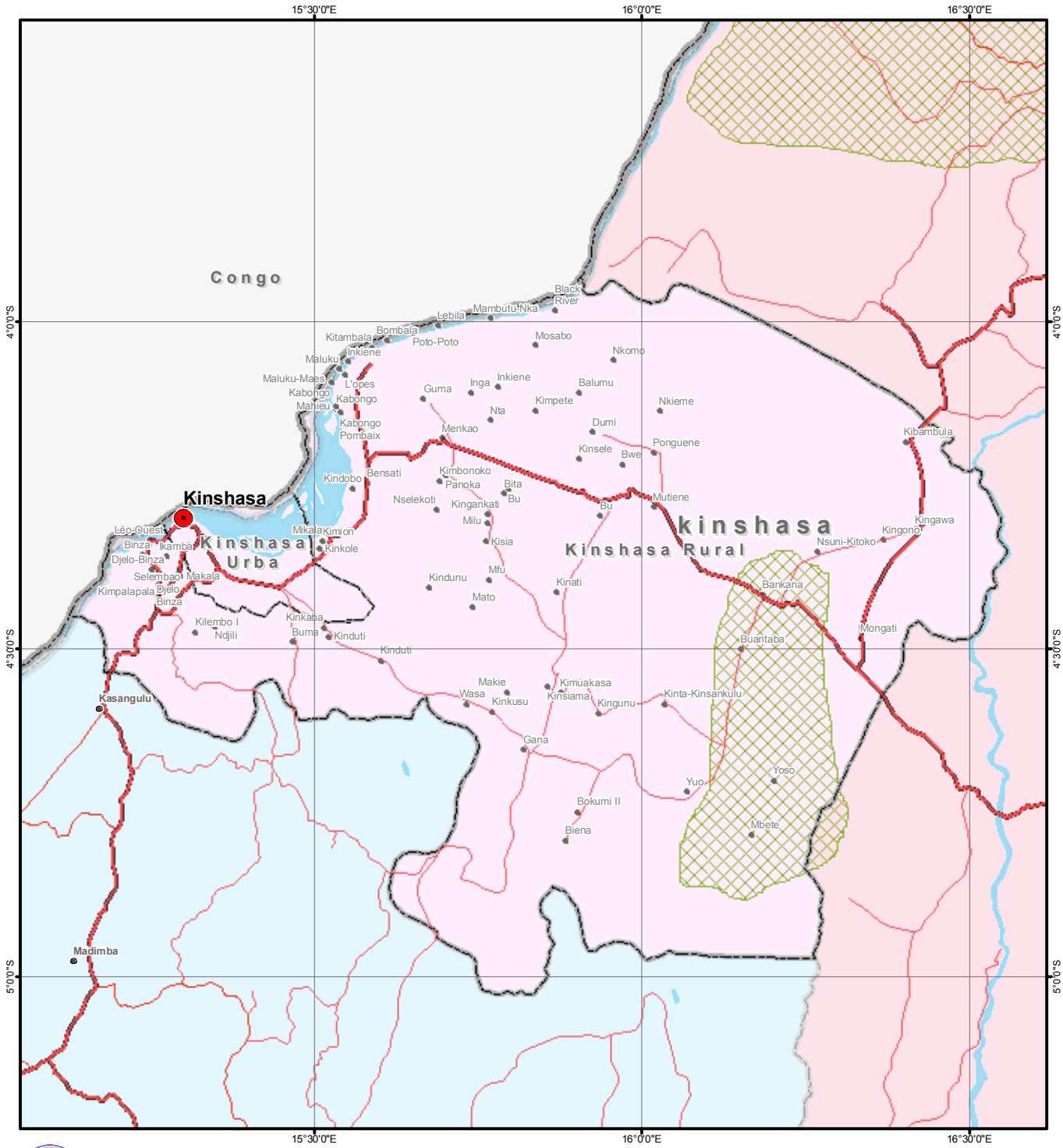

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KINSHASA PROVINCE

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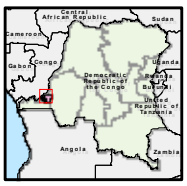

DEMOCRATIC REPUBLIC OF CONGO
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MANIEMA PROVINCE

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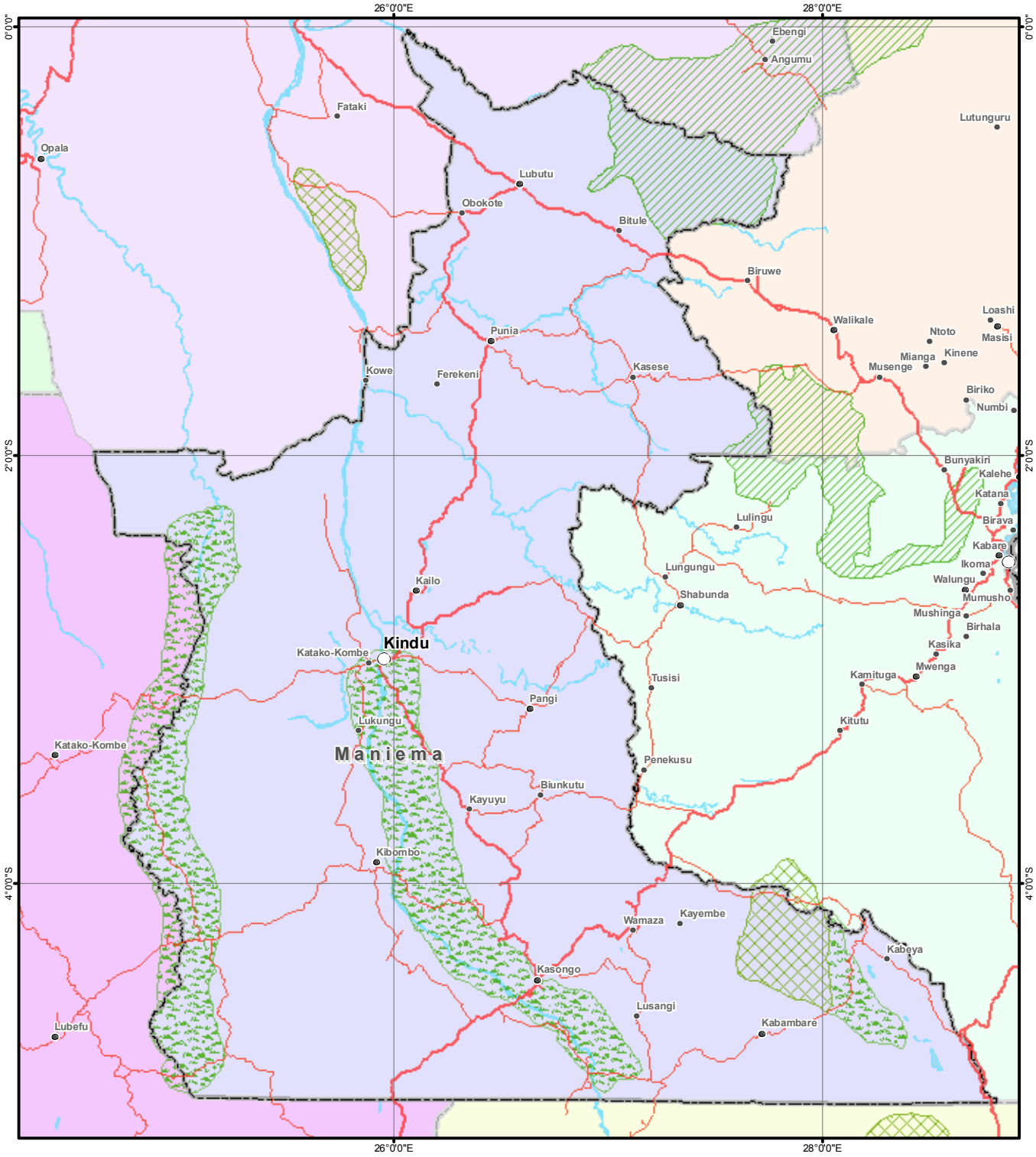

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Maniema Province

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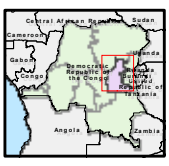

NORTH KIVU PROVINCE

DEMOCRATIC REPUBLIC OF CONGO
AFRICA

ORIENTAL PROVINCE

Map No - KINGEN6014
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ORIENTAL PROVINCE

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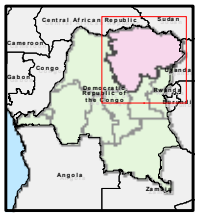
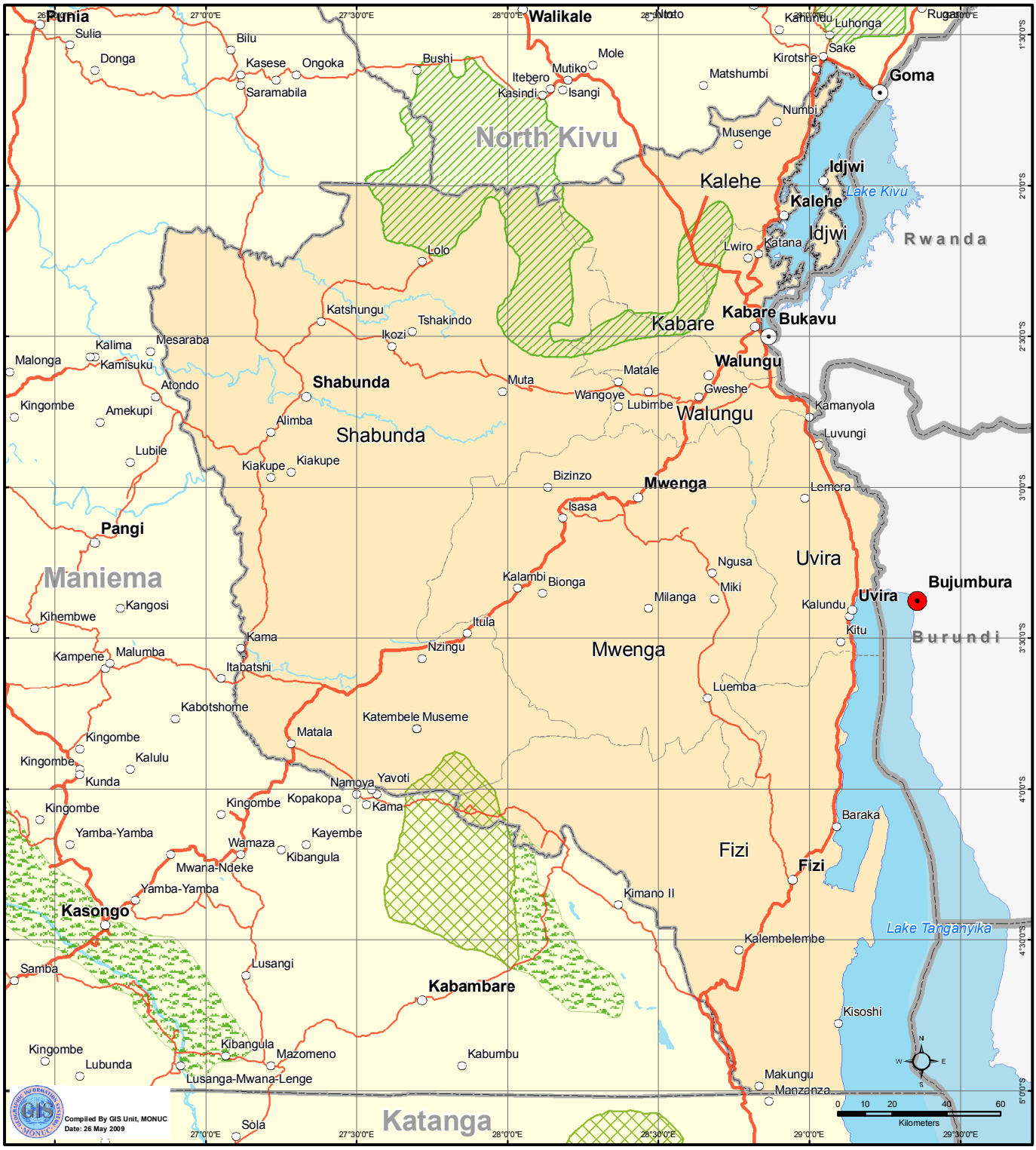
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