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**TECHNICAL ASSISTANCE AND CAPACITY-BUILDING**

**Combined report of seven thematic special procedures on technical assistance to  
the Government of the Democratic Republic of the Congo and urgent  
examination of the situation in the east of the country\* \*\***

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\* The present document is being circulated in the languages of submission only.

\*\* Late submission.

## Summary

The Human Rights Council in its resolutions 7/20 and S-8/1 invited the seven thematic special procedures, including the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, in addition to the Special Representative of the Secretary-General for children and armed conflict, submitting the present report to make recommendations on how best to assist technically the Democratic Republic of the Congo in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government. The Council also underlined the need to urgently examine the current human rights situation in the east of the country, in particular as it regards violence against women.

The seven thematic special procedures find that the general human rights situation in the Democratic Republic of the Congo remains a cause of serious concern and has further deteriorated since the adoption of resolution 7/20 by the Council. In the east of the country in particular, systematic and gross violations of the human rights of civilians and grave breaches of international humanitarian law are taking place. The authors specifically highlight concerns relating to forced and arbitrary displacement, the effect of the humanitarian crisis on economic, social and cultural rights, violence against women and girls, the situation of human rights defenders and the impact of armed conflict on children in the eastern Democratic Republic of the Congo. Impunity, the existence of non-state armed actors, the present state of the security and justice sectors, the illegal exploitation of natural resources, the political instrumentalization of ethnic cleavages and the lack of equality between men and women are identified as root causes of human rights concerns.

Based on their assessment of the situation, the seven thematic special procedures formulate eight priority objectives and identify technical assistance needs in this regard:

1. Fighting impunity and strengthening the law enforcement and justice sectors;
2. Reforming the security sector;
3. Preventing the (re-)recruitment of children by armed groups and socially reintegrating children associated with armed groups;
4. Protecting women's rights and ensuring gender equality;
5. Addressing economic root causes of human rights violations;
6. Protecting the rights of the displaced and minorities;
7. Providing access to health care, especially for marginalized groups;
8. Strengthening state and civil society structures to protect and promote human rights.

The seven thematic special procedures urge the Council to continue taking a leadership role to ensure that the human rights dimension of the peacebuilding process in the Democratic Republic of the Congo is duly addressed. They recommend that the Council establish, based on resolution 9/9, a special procedure mechanism on the human rights situation in the Democratic Republic of the Congo, in particular areas affected or threatened by armed conflict. The authors also recommend that benchmarks to measure human rights progress in the Democratic Republic of the Congo be developed by the United Nations, in consultation with the Government, civil society and donors.

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## **Introduction**

1. The present report is submitted on behalf of the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, in addition to the Special Representative of the Secretary-General for children and armed conflict in accordance with Human Rights Council resolutions 7/20 and S-8/1.

2. In resolution 7/20, the Human Rights Council invited the above-mentioned thematic special procedures to make recommendations, within their respective mandates, on how best to assist technically the Democratic Republic of the Congo (DRC) in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government.

3. In resolution S-8/1, the Council invited the same thematic special procedures to also urgently examine the current situation in the east of the country with the view to providing a comprehensive report to the Council at its tenth session.

4. The present report, after describing the working methods of the seven authors, establishes a baseline assessment of the human rights situation, in particular the requested urgent examination of the situation the east of the country. On this basis, the report sets out detailed recommendations on how to best technically assist the Government with a view to achieving tangible improvements of the human rights situation on the ground.

5. The seven thematic special procedures would like to thank the Council for the trust extended in assigning them this mandate. They would also like to thank the Office of the High Commissioner of Human Rights (OHCHR), which served as the Secretariat of their group.

6. The authors express their gratitude to the Government of the Democratic Republic of the Congo, in particular the Minister of Human Rights, for the good cooperation extended and note with appreciation the openness of the Government to continuing a dialogue with the special procedures of the Human Rights Council and to inviting country visits of mandate holders, in particular the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary and arbitrary executions.

### **I. STEPS TAKEN BY THE SEVEN THEMATIC SPECIAL PROCEDURES TO IMPLEMENT THE MANDATE**

7. In compiling this report, the seven thematic special procedures were able to draw on first-hand information gathered during official fact-finding visits of the Special Representative of the Secretary-General on children and armed conflict (March 2007), the Special Rapporteur on

the independence of judges and lawyers (April 2007), the Special Rapporteur on violence against women, its causes and consequences (July 2007) and the Representative of the Secretary-General on the human rights of internally displaced persons (February 2008).

8. In addition, the authors have relied on detailed reports provided by United Nations agencies, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and Congolese and international non-governmental organizations (NGO). The thematic special procedures would like to express their sincere gratitude to the organizations and individuals that took the time and initiative to convey information.

9. On 22 September 2008, the seven thematic special procedures shared a comprehensive seven-page questionnaire with the Government in order to provide it with the opportunity to communicate relevant information and formulate needs. A response was received on 23 January 2009, shortly before this report is finalized. Pertinent information provided has been incorporated into this report.

10. In the spirit of cooperation, the Representative of the Secretary-General on the human rights of internally displaced persons who had been appointed as rapporteur of the group carried out a visit to the DRC from 17 to 23 January 2009 on behalf of the group of seven thematic special procedures. Visiting at the invitation of the Government, he held meetings in Kinshasa with the Prime Minister, the Minister of Human Rights, the Minister of Gender, Women and Children's Affairs, the Minister of Health, the Minister of Mining, and the President of the Senate. In addition, the Representative visited Goma (North Kivu), where he held meetings with provincial authorities, United Nations officials and NGOs. He also met with internally displaced persons and women survivors of sexual violence. On 22 January, the Special Rapporteur on violence against women held further consultations with the Ministers of Gender and Human Rights in Geneva.

11. The full text of this report was shared with the Government of the DRC with the invitation to providing comments prior to its publication.

12. The authors regret that several other thematic mandate holders relevant for the human rights situation in the DRC were not invited to participate in the group. They welcome the commitment of the President of the Council to making the participation of special procedures in special sessions of the Council routine and hope that mandate holders will also have an opportunity to be consulted on the outcomes of the special sessions, particularly when action by special procedures mandate holders is being considered.

## **II. BASELINE ASSESSMENT OF THE HUMAN RIGHTS SITUATION**

13. The Democratic Republic of the Congo has ratified most of the principal human rights instruments at the international and regional levels, although is not yet a party to the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or the Optional Protocol to the Convention against Torture. In addition, the DRC ratified the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. It is also a party to the Rome Statute of the International Criminal Court, and the authors note that it has cooperated with the Court on a number of cases.

14. The institutional structure to promote and protect human rights remains weak. The DRC lacks an independent national human rights institution. The National Human Rights Monitoring Centre, which existed under the Transitional Constitution has been abolished and has yet to be replaced. When this report was finalized, a bill to establish a new National Human Rights Commission had been approved by the Senate, but was still under consideration by the National Assembly.

15. At the executive branch level, in October 2008, the Government restored the status of the Ministry of Human Rights as a separate ministry. However, its effectiveness is limited due to an insufficient allocation of resources, in particular field presences in the various provinces.

16. On the non-governmental level, there are many individuals and organizations committed to actively defending human rights, although a number of Government authorities, and society at large, often fail to appreciate the legitimacy and importance of their work.

#### **A. General human rights situation**

17. The most recent reports of the Secretary-General and the High Commissioner for Human Rights on the DRC<sup>1</sup> and numerous non-governmental reports reviewed by the authors reaffirm that the overall human rights situation in the DRC remains a cause of serious concern.

18. Despite the successful conclusion of the electoral process and the transition to an elected Government, serious violations of civil and political rights continue to take place. Members of the Armed Forces of the DRC (FARDC) and the National Congolese Police (PNC) continue to be responsible for serious human rights violations, including summary executions, rape, torture and cruel, inhuman or degrading treatment. Members of the national intelligence services, both civil and military, have been implicated in politically motivated human rights violations, mainly arbitrary arrests, detention at undisclosed locations and torture and extortion. United Nations human rights monitors generally do not have access to detention facilities of the National Intelligence Agency (ANR), the Special Police (*Kin Mazière*), the Republican Guard (GR) and military intelligence.

19. The national security forces and armed groups, as well as political, judicial and administrative officials, targeted journalists and human rights defenders, who were stigmatized as political opponents and subjected to threats, arbitrary arrest, detention and other forms of ill-treatment.<sup>2</sup> Human rights defenders most at risk include women defenders and defenders fighting impunity for the most serious crimes (especially defenders supporting the work of the International Criminal Court). Defenders advocating for economic, social and cultural rights also face serious risks, in particular if they denounce the damaging effects of the illegal mining and

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<sup>1</sup> Fourth report of the Secretary-General on the Mission of the United Nations in the Democratic Republic of Congo (S/2008/728). report of the High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of Congo (A/HRC/10/58).

<sup>2</sup> S/2008/728, para. 31.

logging activities of private actors or corruption cases. Finally, human rights defenders encounter illegitimate restrictions of the exercise of their rights to freedom of opinion and expression, peaceful assembly and association that are not in line with international obligations or the Constitution.

20. While the country has a wealth of natural resources and arable land, little progress has been made to ensure the enjoyment of economic and social rights, such as the right of everyone to the highest attainable standard of health or to education, including free primary education, by the large majority of Congolese. The disastrous impact of more than a decade of armed conflicts and the burden of the external debt as well as bad governance and pervasive corruption in the public and private sectors are among the root causes of this situation. The health system is in a dire state and, due to user fees, not accessible to the poorest sectors of society, which results in maternal and infant mortality rates that are among the highest in the world. This sector requires the sustained support of the international community. The global food price crisis further compounds the grave situation. The high rates of severe malnutrition among groups in a vulnerable situation, especially the poor, women and children, have made them more susceptible to infectious diseases. A particular challenge, also affecting human rights, is the drastic fall in world market prices for certain minerals mined in the DRC, which presently affects employment and livelihood options for hundreds of thousands in resource-rich provinces such as Katanga. The BaTwa (often referred to as “Pygmies”) and other forest dependent peoples remain totally marginalized.

21. Violence against women, rooted in serious gender inequality, is pervasive and an issue of particular concern. During her official visit to the DRC in July 2007, the Special Rapporteur on violence against women noted that women living in areas of conflict continue suffering extreme levels of sexual violence, committed by FARDC, PNC, armed groups and increasingly also civilians.<sup>3</sup> Perhaps even more worrying, violence against women remains rampant throughout the country even where war has ended.<sup>4</sup> In Equateur Province for example, PNC and FARDC have carried out systematic reprisals against civilians, including mass rape, but most perpetrators enjoy impunity. Women survivors of rape have suffered severe physical and psychological injuries, but lack sufficient care. Survivors are often socially stigmatized and live in extreme poverty.

#### **B. Review of the human rights situation in the east of the Democratic Republic of the Congo**

22. Those of the seven thematic special procedures, who carried out individual fact-finding visits in 2007 and early 2008, all concluded that the situation in the areas affected or threatened by armed conflict was particularly grave. Since the outbreak of major hostilities in August and September 2008, the situation in the east of the DRC, in particular the Kivus and Province Orientale, has further deteriorated. Systematic and gross violations of the human rights of civilians and grave breaches of international humanitarian law are taking place.

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<sup>3</sup> A/HRC/7/6/Add.4.

<sup>4</sup> *Ibid.*, paras. 37 ff.

## 1. Forced and arbitrary displacement, including due to targeted attacks on civilians

23. Following his visit in February 2008, the Representative of the Secretary-General on the human rights of internally displaced persons concluded that the east of the DRC had been experiencing a situation involving a serious protection and humanitarian crisis, highlighted inter alia by the very large numbers of displaced persons.<sup>5</sup> Information received during the course of his visit in January 2009 indicates that the situation has further worsened. In December 2008, the Office for the Coordination of Humanitarian Affairs (OCHA) estimated that a total of 1,373,169 Congolese had been displaced in the East. The vast majority have been internally displaced - often more than once - while considerable numbers have sought refuge in neighbouring countries. In most cases, people have been forced to leave their homes owing to clashes between the Congolese armed forces and non-state armed groups or clashes between the different armed groups. The widespread insecurity and violence as well as human rights violations committed against civilians both by the armed groups and by members of the national security forces have also forced many Congolese to flee.

24. In early December 2008, the Office of the United Nations High Commissioner for Refugees (UNHCR) indicated an estimated 250,000 new cases of displacements in the Kivus region as a result of the fighting that began at the end of August 2008 between the rebel group *Congres National pour la Défense du Peuple* (CNDP) on the one hand and FARDC, PARECO (*Patriotes résistants congolais*) and Mayi-Mayi militia forces on the other hand.<sup>6</sup> The displacement has been exacerbated by deliberate attacks on the civilian population. The thematic special procedures are particularly concerned about summary executions of civilians suspected to be collaborating with the enemy, including the organized massacre of at least 64 persons (mainly young men) in Kiwanja by CNDP fighters on 5 November 2008.<sup>7</sup> The CNDP also appears to

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<sup>5</sup> See A/HRC/8/6/Add.3.

<sup>6</sup> The CNDP is a non-state armed group, which purports to protect the Tutsi and Banyamulenge minority populations in the East of the DRC, in particular against the *Forces Démocratique pour la Liberation de Rwanda* (FDLR). Among its leaders are Bosco Ntaganda, who has been indicted by the ICC for war crimes, and Laurent Nkunda, who was reportedly arrested on 23 January 2009 in Rwanda.

The FDLR is a non-state armed group based in the DRC, which is composed mainly of Congolese nationals but also a number of Rwandan Hutus implicated in the 1994 genocide in Rwanda.

PARECO is a non-state armed group, made up of Congolese of Hutu ethnicity and other ethnic groups.

The term Mayi-Mayi refers to various local militia forces without a centralized leadership, who purport to resist foreign interference in the eastern DRC.

<sup>7</sup> Final report of the Group of Experts on the Democratic Republic of the Congo prepared pursuant to paragraph 18 (d) of Security Council resolution 1807 (2008) (S/2008/773), para. 191.

have adopted a policy of forcing internally displaced persons (IDPs) to return to their places of origin, despite the lack of security, and is reported to have confiscated and redistributed land left behind by displaced persons. In early November 2008, CNDP had several IDP camps in the Rutshuru area forcibly emptied, looted and dismantled. Reports indicate a sharp increase in cases of sexual violence, summary executions and forced labour committed by all sides in the entire Kivus region as well as recruitment of child soldiers by armed groups.<sup>8</sup>

25. Another 135,000 persons have been forcibly displaced in Irumu, Province Orientale (Ituri district), owing to fighting initiated in September and October 2008 by rebels of the *Front Populaire pour la Justice au Congo* (FPJC), a new multi-ethnic rebel movement composed largely of demobilized militia fighters and the remnants of other militia groups.<sup>9</sup>

26. In mid-December 2008, the Congolese, Ugandan and Southern Sudanese armed forces launched a joint military offensive in Province Orientale against the Lord's Resistance Army (LRA), following a series of LRA attacks against the civilian population in at least 10 locations north of Dungu in September and October 2008.<sup>10</sup> LRA fighters retreating from the offensive carried out new atrocities. By mid-January 2009, over 530 killings, more than 400 abductions and numerous rapes by the LRA had been reported. When this report was finalized, an estimated 100,000 persons were displaced as a consequence of this violence.

27. On 16 January 2009, the Governments of the Democratic Republic of the Congo and Rwanda and CNDP announced an alliance (the next day joined by PARECO) and declared their intention to carry out military operations against FDLR in North and South Kivu. Military operations involving FARDC, Rwandan troops and CNDP began several days thereafter. While the thematic special procedures welcome political rapprochement between both countries and encourage further dialogue, they remain concerned that the military operations, particularly when conducted jointly with armed groups like CNDP, lead to violent reprisals against the civilian population and a grave humanitarian crisis involving another wave of massive displacement. In late January and February 2009, following the launch of the Congolese-Rwandan operations against the FDLR, United Nations human rights officers documented several cases of FDLR fighters gang raping women and arbitrarily executing civilians. By mid-February, the population of more than 20 villages in Masisi and Walikale territories had reportedly fled their villages. 3,000 persons had sought refuge in Remeka village (Masisi Territory) alone.

28. FARDC has been often unable to protect the civilian population. In numerous cases, including at the end of October 2008 in Goma and in mid-November 2008 in the Kanyabayonga area, fleeing FARDC soldiers have themselves pillaged civilian settlements, in some cases committing atrocities in the process. In violation of international humanitarian law, FARDC has also used civilian IDP populations in Kibati and Tongo to shield military operations.

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<sup>8</sup> S/2008/728, para. 33.

<sup>9</sup> Ibid., para. 26.

<sup>10</sup> Ibid., para. 27.

29. MONUC has deployed troops in a number of high risk areas and, on some occasions it has also conducted military operations with the goal to protect the civilian population, including to halt the advance of CNDP on Goma at the end of October 2008.<sup>11</sup> A number of outside observers are concerned that MONUC does not have the troop strength and civilian capacity to effectively implement its civilian protection responsibility under its expanded Security Council mandate and often fails to prioritize the civilian protection aspect of its mandate. Several interlocutors also indicated that MONUC should make publicly available the information on human rights violations at its disposal in a much more timely fashion. Since 2006, a protection cluster led by UNHCR and co-chaired by MONUC has been set up, which has helped draw more attention to abuses by armed groups and the state security forces. Its performance in some regions has been criticized, not least due to the absence of key actors and shortage of protection staff.

## **2. Humanitarian crisis affecting economic, social and cultural rights, including the right to health**

30. The displaced population in eastern DRC, as well as those who stay trapped in conflict areas, face a dire humanitarian situation often lacking basic food, potable water, shelter or basic hygiene and healthcare facilities or basic education. Schools and health posts have been destroyed or become non-functional because staff has been displaced. Many IDPs have lost all their belongings in the course of repeated displacement or due to pillaging, which further reduces their capacity for survival. An estimated two thirds of population displaced in North Kivu and up to 97 per cent in other provinces have been taken in by host families in keeping with African traditions of hospitality. Despite the fact that the capacities of host communities are often overstretched due to the increasing number of IDPs and the length of their stay, they receive very little humanitarian assistance.<sup>12</sup> The remaining IDPs are sheltered in recognized IDP camps or have sought protection around MONUC bases or other ad hoc sites. Their living conditions often fall short of the minimum humanitarian standards recognized by the international community.

31. IDP women met by the Representative of the Secretary-General on the human rights of internally displaced persons in camps around Goma highlighted the rape of IDP women collecting firewood or water as a primary concern. The proximity of FARDC positions to IDP camps, notably the Kibati and Mugunga Camps, undermines the civilian character of the camps and exacerbates general insecurity.

32. While humanitarian organizations are present in the camps, a large percentage of the population is cut off from the humanitarian aid necessary to secure its survival. Despite efforts by humanitarian actors to negotiate safe access with conflict parties and MONUC efforts to secure humanitarian corridors, humanitarian workers continue to be obstructed and often attacked by armed actors from all sides. Logistical difficulties further limit humanitarian access.

33. The massive displacement in the east has further affected the health status and access to health care of an already highly fragile population. The situation in the Kivus region requires the

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<sup>11</sup> S/2008/773, para. 15, and S/2008/728, para. 59-60.

<sup>12</sup> A/HRC/8/6/Add.3, para. 36.

immediate action of the international community to curtail the ever rising mortality rate. According to the World Health Organization (WHO), more than 10,000 cholera cases were reported between January and November 2008. Even though WHO, Médecins Sans Frontières (MSF), International Medical Corps (IMC) and others have provided medical support to local doctors and humanitarian agencies, the epidemic persists.

34. The widespread looting of health clinics and the arbitrary obstruction of humanitarian convoys intended to replenish medical supplies have aggravated the situation. Dramatic fluctuations in population centres due to internal displacement have placed great demands on an already weak health system in the eastern region of the DRC, requiring the rapid increase in medical capacity. Moreover, Congolese medical workers have been forced to flee, further straining the medical capacity in the region. The conflict has caused the collapse of the health system, which has limited the distribution of essential vaccines needed for the control of diseases.

### **3. Violence against women and girls**

35. Sexual violence has been a defining feature of the armed conflicts in the DRC and conflict parties have not assumed their responsibilities reaffirmed also by Security Council resolutions 1325 (2000) and 1820 (2008) on women, peace and security. During her visit in July 2007, the Special Rapporteur on violence against women found that sexual violence against women was particularly dramatic in the Kivus, where non-state armed groups, including foreign militia, committed sexual atrocities that were of an unimaginable brutality and aimed at the complete physical and psychological destruction of women with implications for the entire society.<sup>13</sup> The Special Rapporteur also documented how women were targeted in the local armed conflict in the Ituri District (Province Orientale) and how sexual violence had continued at alarming levels despite improvements in the overall security level.<sup>14</sup> In both areas, the Special Rapporteur documented cases of violence against women committed by FARDC members, including rapes committed as part of collective reprisals against the civilian population and individual rapes perpetrated by commanding officers.<sup>15</sup>

36. The Special Rapporteur has continued to receive disturbing reports about a new wave of sexual violence against women as well as attacks on women human rights defenders in the eastern region, especially in North Kivu. During the regional consultations on violence against women in the context of conflict in the Great Lakes and Horn of Africa Region, held in Nairobi from 3 to 5 December 2008, the Special Rapporteur had the opportunity to get first-hand information from local Congolese women groups who sounded the alarm that the situation in the Kivus and Province Orientale had further deteriorated.

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<sup>13</sup> A/HRC/7/6/Add.4, first paragraph of the summary.

<sup>14</sup> *Ibid.*, paras. 30-37.

<sup>15</sup> *Ibid.*, paras. 30-46.

37. Both the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on children and armed conflict have found that while many perpetrators of sexual violence are armed actors (FARDC, PNC, and armed groups), a significant and increasing number are also civilians not only in zones affected by the conflict but also in other parts of the country.<sup>16</sup> This is explained by the climate of impunity, absence of rule of law and the normalization of violence as an additional aspect of women's oppression.

38. It is also alarming that a significant percentage of the victims are girl-children (and in some cases also boys). From June 2007 to the end of June 2008 in Ituri, out of 6,766 cases reported and assisted by partners of the United Nations Children's Fund (UNICEF), 2,893 were children (43 per cent): 2,516 girls and 377 boys. In cases of child rape, 42 per cent of the perpetrators were members of the security forces or armed groups and 58 per cent were civilians. In the same period in North Kivu, UNICEF partners assisted 4,770 cases of sexual violence, of which approximately 38 per cent were against girl-children. For cases of rape of children, 70 per cent of the perpetrators were members of the security forces or armed groups and 30 per cent of the perpetrators were civilians. In South Kivu, out of 6,242 cases of sexual violence reported and assisted by UNICEF partners.<sup>17</sup>

39. The consequences of violence against women and girls are devastating. Since most rapes are collective, carried out with an extraordinary brutality and often accompanied by additional atrocities, women and girls often die as a result of the violence. Survivors often suffer vaginal fistula (a hole torn between vagina and rectum or vagina and bladder), lose their reproductive capacity or are infected with HIV and other sexually transmitted diseases.<sup>18</sup> In view of the massive level of reported sexual violence, and of the clear link between mass rapes and the transmission of HIV/AIDS, it is particularly important that health services be affordable and accessible to those living with the disease. Furthermore, health personnel should assist in the collection of evidence to ensure that those responsible are brought to justice and held accountable for their actions. The fact that survivors of rape have to pay a fee they often cannot afford for the forensic medical evidence certificate needed to open criminal investigations and the inconsistent use of a standardized certificate obstructs access to justice and thus contributes to impunity.

40. Survivors of sexual violence often end up destitute and struggle for their mere survival,<sup>19</sup> because they will often be rejected by their own husbands, families and communities and lose their social support networks. Under Congolese law, criminal courts can order perpetrators of crimes, including the State, to pay compensation to victims. The Congolese State has been sentenced to pay compensation to a number of women raped by State agents. However, none of

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<sup>16</sup> A/HRC/9/3, paras. 10 and 11.

<sup>17</sup> Report of the Secretary-General on children and armed conflict in the Democratic Republic of the Congo to the Security Council (S/2008/693), paras. 42-44.

<sup>18</sup> A/HRC/7/6/Add.4, para. 57.

<sup>19</sup> *Ibid.*, para. 61.

these women ever managed to receive actual compensation payments from the State.<sup>20</sup> International actors providing assistance to survivors of rape often neglect the need to support the socio-economic reintegration of women.

41. On 20 July 2006, the Government adopted a Law on Sexual Violence, which introduced major improvements to the Congolese Penal Code and the Code of Penal Procedure.<sup>21</sup> The Law has been disseminated through a number of advocacy campaigns, including a national campaign against rape launched by the First Lady of the Republic in November 2007. These important initiatives have yet to lead to real changes on the ground, since they are being undermined by widespread impunity for sexual violence and other atrocities.

42. In June 2008, the Ministry of Justice adopted a roadmap against impunity for sexual violence identifying useful and practical priority actions.<sup>22</sup> In addition, the Sub-Group on Sexual Violence, presided by the Minister of Gender, Women and Children's Affairs, is in the process of finalizing an action plan on sexual violence. It is positive that donors, such as the Governments of Belgium and Canada, but also many others, prioritize violence against women in their support strategies. In this regard, the coordination of initiatives and the streamlining of referral pathways for victims need to be addressed. Building on existing initiatives by the Government, the United Nations and civil society, the United Nations system in the DRC is in the process of formulating a comprehensive strategy to address sexual violence focusing on four interconnected strategic areas: combating impunity; protection and prevention; security sector reform; and multi-sectoral response for survivors.

#### **4. Situation of human rights defenders**

43. Human rights defenders engaged in denouncing serious violations of human rights, grave breaches of international humanitarian law and rampant impunity in the eastern part of the DRC are subject to threats and attacks by all parties to the conflict. They face stigmatization and are often accused of collusion with a party to the conflict. Women defenders are at particular risk, and several cases of rape of women defenders were reported to the thematic special procedures.

44. Despite the opening in November 2008 of a humanitarian corridor allowing aid workers and MONUC staff to better circulate in the Kivus region, human rights defenders remain vulnerable to attacks and their activities continue to be seriously impeded.

45. Human rights defenders based in Goma are reportedly scared to operate because of the presence of CNDP elements in town. They fear reprisals for their legitimate activities.

46. Human rights defenders based in Rutshuru territory, controlled for the most part by CNDP, are reportedly particularly affected. They have notably been active in reporting on the Kiwanja massacre and providing medical and psychological assistance to rape victims. According to

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<sup>20</sup> Ibid., para. 68.

<sup>21</sup> Ibid., para. 66.

<sup>22</sup> See S/2008/728, paras. 35 and 36.

reports, at least 25 defenders fled the CNDP offensive and are now living as internally displaced persons in North Kivu or asylum-seekers in Uganda. Others are reportedly in hiding in the Rutshuru area. They all fear to return. Some of these defenders suffered human rights abuses during their flight, and some of their relatives were reportedly executed or abducted because of their human rights activities.

47. In July 2008, in Kitshanga, Masisi territory, human rights defenders providing medical care and rehabilitation of torture and rape victims were accused by CNDP leaders of informing the international community on the incidence of rape in their area of control. These leaders further attempted to take away confidential medical registers.

48. In the Province Orientale, church workers who denounced violations committed by LRA troops and sheltered the civilian population were assaulted in the Dungu-Doruma area.

49. Following the resumption of fighting in North Kivu and the Province Orientale in October 2008, student demonstrations, reportedly instigated by local authorities, took place in several cities against the MONUC. Human rights defenders who denounced the manipulation of students by local authorities in Kisangani were accused of being “anti-patriotic”.

50. In South Kivu, a draft bill on the protection of human rights defenders was introduced into the Provincial Parliament by Deputy Ngongo and will be examined by the relevant committee of the legislative chamber in the course of the next months. With European Union funds, MONUC has also operated a protection programme for witnesses and human rights defenders in 11 provinces, mainly in the east of the country.

51. The Special Rapporteur on the situation of human rights defenders, having received an invitation from the Government to carry out a fact-finding mission, expects to undertake such a mission in 2009.

## **5. Children and armed conflict**

52. Information, verified through the country Task Force on Monitoring and Reporting in the framework of Security Council resolution 1612 (2005), showed a general decrease in the number of allegations of grave violations against children from June 2007 to September 2008 in the DRC.<sup>23</sup> However, children remained highly vulnerable in areas of ongoing conflict such as Ituri and the Kivus. Any modest protection gains that may have been registered through 2007-2008 are now being obliterated as a result of the renewal of hostilities in the east of the DRC.

53. All the parties to the conflict are committing grave violations against children such as the killing and maiming of children and as mentioned, rape and other grave sexual violence. Perpetrators include armed elements of the remaining Mayi Mayi groups, CNDP, FLDR, LRA, and other armed elements, as well as members of the Congolese security forces.<sup>24</sup>

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<sup>23</sup> See S/2008/693.

<sup>24</sup> Ibid., para. 16.

54. In addition, child protection actors indicate that there has been an explosion of child recruitment by non-state armed groups in recent months. On the basis of documented cases of children released in the past year, Mayi Mayi groups account for the highest number of children in their ranks, followed by CNDP. Although FARDC have received orders on 12 May 2005 not to recruit children and reportedly have stopped doing so, documented cases show that children are still present, especially in the non-integrated brigades as a result of the *mixage* process in early 2007.<sup>25</sup> Reports indicate that parents in conflict areas often prevent their children from going to school (where schools function again), because they fear that armed groups will forcibly recruit their children.

55. The regional and cross-border dimensions of the conflict also carry significant implications for children. This includes attacks by groups such as LRA, the recruitment of children from neighbouring countries, and the issue of repatriating children demobilized from fighting groups in the DRC to their countries of origin.

56. On 10 January 2009, the President of the Republic signed the Law on the Protection of the Child, which among other things reaffirms that the recruitment of children for use in armed conflict is prohibited and constitutes one of the worst forms of child labour.

### **C. Root causes of human rights concerns**

57. The unresolved conflicts with their multitude of actors, resulting in the repeated resumption of hostilities and violence, and the absence of a process leading to sustainable peace are the main causes of human rights violations in the east of the country. There, as well as in the rest of the DRC, state institutions necessary to protect and fulfil the human rights of the population too often lack the capacity to do so or, as in most rural areas, are totally absent. Many governmental actors feel no real commitment to address the human rights challenges affecting the country and act accordingly, or are unaware that human rights violations may not only result from acts but also omissions, including an unwillingness to investigate, prosecute and punish, to protect the civilian population in zones of armed conflict, or to provide basic goods and services necessary for the realization of economic, social and cultural rights.

58. On a more immediate level, the seven thematic special procedures have identified several causes of the identified human rights violations, some of which have already been highlighted by the Council in resolution S-8/1.

#### **1. Impunity and the state of the justice and penitentiary systems**

59. The Council in resolution S-8/1 rightfully emphasized the importance of bringing all perpetrators to justice since the problem of impunity in the country, in particular in light of the serious human rights violations and grave breaches of international humanitarian law in the eastern part, is one of the root causes for the continuing deterioration of the situation. Another dimension of impunity has been a reported growth in lynching and other illegal acts of vigilante justice, which further undermines the rule of law.

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<sup>25</sup> Ibid., para. 21.

60. The Government has cooperated with the International Criminal Court on a number of cases. However, operating on their own without international involvement, Congolese authorities often prove reluctant to investigate and prosecute military, law enforcement and intelligence personnel who perpetrate or bear command responsibility for serious human rights violations.<sup>26</sup>

61. Political interference at all stages of the criminal process is very common. There have also been numerous incidents, especially in the east of the DRC, in which military and civilian judges and prosecutors were threatened and attacked by armed group members and sometimes even members of the armed force to intimidate them, disrupt criminal proceedings and ensure impunity. Extremely low salaries in the justice, law enforcement and penitentiary sectors also provide numerous entry points for corruption at all levels. The special procedures welcome that the President of the Republic, in his second address on the state of the nation of 14 December 2008 acknowledged the problem of interference in the judicial process and emphasized that such interference must not happen and violators will be pursued.

62. The impunity problem is also rooted in the capacity of the justice system. Deprived of an adequate budget, the justice system remains in a deplorable state and lacks the capacity to handle its caseload. The access of the population to justice is extremely limited, not only because of high rates of poverty, but also by the utterly insufficient number of judges, magistrates and tribunals and their lack of geographic coverage in the East and remote areas generally. In January 2008, the Ministry of Justice put forward a Plan of Action for Justice Reform in the DRC, focusing among other things on recruitment, training and infrastructure. The tenets of the Plan still needed to be approved by the Mixed Committee on Justice Reform Follow-up when this report was finalized.

63. 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. For this reason, but also in light of the generally appalling prison conditions, characterized by serious overcrowding, a lack of basic health care, and starvation due to the virtual absence of a budget to provide to detainees without family support, penitentiary reform is an absolute necessity.<sup>27</sup> The implementation of a new Strategic Plan on Prison Reform and Training, developed by the Ministry of Justice and MONUC, should therefore be a priority for the Government and its technical assistance partners.<sup>28</sup>

64. The new Constitution, in force since 18 February 2006, sets out a good foundation to reform the justice sector and establish the rule of law. In August 2008, the President signed a law creating the Higher Judicial Council, which is a very important step forward. It is crucial that this new Higher Judicial Council be actively involved in the judicial reform process and that it is

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<sup>26</sup> There are exceptions. In Goma, for instance, FARDC set up an ad hoc Operational Military Court in November 2008. Based on quick trials with uncertain due process guarantees, the Court had convicted 18 soldiers, 4 of whom received death sentences, when this report was finalized.

<sup>27</sup> See A/HRC/7/6/Add.4, paras. 80-85, and A/HRC/4/7, para. 37.

<sup>28</sup> S/2008/728, para. 38.

provided with the budget and freedom from political interference to carry out its functions. Moreover, the judicial architecture demanded by the Constitution has to be completed. The adoption of legislation to establish the Constitutional Court, Court of Cassation and the Council State was still pending when this report was finalized.

65. While several constitutional rights have been incorporated in the pertinent domestic laws, important constitutional provisions still lack implementation at the legislative level. For instance, the Constitution limits the jurisdiction of military courts to offences committed by members of the armed forces and the national police. However, this important constitutional provision has not yet been incorporated into the Military Judicial Code, which provides the military justice system with jurisdiction over civilians in a number of constellations.

66. Positively, a draft law to implement the Rome Statute of the International Criminal Court has been placed on the agenda of the National Assembly, which would (among other things) transfer jurisdiction over all acts amounting to international crimes to civilian courts, even if the perpetrators are members of the military or police.

67. Issues of justice and accountability in relation to the massive human rights violations committed during the armed conflicts between 1993 and 2003 have hardly been addressed in the Global and Inclusive Agreement on the Transition in the Democratic Republic of the Congo of 2002 and subsequent peace initiatives such as the Conference on peace, stability and development in North and South Kivu held in Goma in January 2008. The United Nations is currently mapping the major human rights violations committed between 1993 and 2003; this will provide a basis of knowledge on which appropriate transitional justice mechanisms can be built.

## **2. Role of non-state armed groups and condition of the state security sector**

68. In paragraph 9 (a) of its resolution S-8/1, the Council identified the establishment of militia as a root cause of the conflict and the basis of human rights violations and the humanitarian crisis in the region. As indicated above, non-state armed groups are responsible for many of the worst atrocities committed in the eastern part of the country. To some extent, these groups manipulate local grievances over land to recruit fighters from the destitute population, while using the illegal exploitation of natural resources to sustain themselves (see paragraphs 73 to 77 below). Insufficient reintegration support from earlier disarmament, demobilization and reintegration processes also make it easy for armed groups to re-recruit former fighters, including former child combatants.

69. However, armed non-state groups also receive governmental support, which sustains their existence and is a cause of particular concern. In its final report of December 2008, the Group of Experts on the Democratic Republic of the Congo appointed by the Sanctions Committee of the Security Council put forward evidence that FARDC collaborated with FDLR, including through the provision of military equipment and in joint operations against CNDP.<sup>29</sup> The Group of Experts also found evidence linking FARDC commanders to PARECO and Mayi-Mayi non-state

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<sup>29</sup> S/2008/773, paras. 102-113.

armed groups.<sup>30</sup> Weak chains of command within the Congolese armed forces and insufficient civilian, democratic control of the sprawling security apparatus facilitate such illegal acts. At the same time, the Group of Experts also presented evidence that the Rwandan authorities have been complicit in the recruitment of soldiers, including children, have facilitated the supply of military equipment and have sent officers and units from the Rwandan Defence Force to the DRC in support of CNDP.<sup>31</sup>

70. According to the approach under the Global and Inclusive Agreement, militia and soldiers were given the choice to either join a unified national army, or to be demobilized and reintegrated into civilian life. Those who chose to join the army were generally sent to training centres (*centres de brassage*), where they received only about 45 days of basic training. Some militia groups were even directly merged into the regular forces (*mixage*). The result is an army that is very heterogeneous and overall ill-disciplined.

71. The rank and file of FARDC are often not paid and do not have adequate supplies, reportedly also because funds allocated for this purpose are embezzled by senior officers or civilian functionaries. As part of its security sector reform project, the European Union Security Sector Reform Mission (EUSEC) directly administers salaries for selected units. While this has reportedly decreased abuse of power by individual soldiers to some extent, it is still worrying that there have been incidents (e.g. in the Kanyabayonga area at the end of October 2008) where units benefitting from such support programme were involved in large-scale pillaging and accompanying atrocities. This highlights a need for more profound efforts on the part of the Government to push for reform and accountability.

72. Moreover, while in theory, perpetrators of human rights violations could have been excluded from joining the security forces, this has not happened in practice. As a result, major perpetrators of violations, including a number of notorious former armed group commanders, have managed to join the national army, police or intelligence services, entrenching a culture of impunity and disregard for human rights. The Security Council has repeatedly called on 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.<sup>32</sup>

### **3. Illegal exploitation of natural resources**

73. In resolution S/8/1, the Council identified the illicit exploitation of natural resources as a further root cause of the conflict and basis of the human rights violations and humanitarian crisis

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<sup>30</sup> Ibid., paras. 116-120.

<sup>31</sup> Ibid., paras. 61-68.

<sup>32</sup> See resolutions 1756 (2009), para. 12; 1794 (2007), para 15; 1856 (2008), para. 22.

in the region. The illegal exploitation does not only fund non-state armed groups or rogue elements in FARDC,<sup>33</sup> but it also deprives the State of the resources needed to provide access to justice and basic social services in accordance with its human rights obligations.

74. The eastern DRC is rich in many different and sought after minerals, in particular cassiterite (tin ore), coltan (columbite-tantalite, used in a number of electronic goods), gold, and wolframite, the major component tungsten, a strong and dense material used for various military components. Extractive sites of these raw materials in conflict areas have been a major source of finances for non-state armed groups in the region, who either directly control or even operate the mines, illegally tax the proceeds or participate in the illegal trade of the raw materials. In a number of cases, rogue FARDC commanders or units have become complicit to these illegal activities. The extraction and trade of the minerals often involves forced labour, extortion and violence against those who resist the demand of armed groups or rogue FARDC. Women groups also highlighted that sexual extortion and rape of women working around the illegal mining sites is rife.

75. Illegally extracted raw materials pass through a long supply chain in the DRC which stretches from the mining operations, quite often artisanal mining, through local traders (*négociants*) to officially registered export trade firms (*comptoirs*). Pointing to the involvement of the *négociants* as middlemen, *comptoirs* often claim not to know the origin of minerals received, which is implausible since the ore content substantially varies between sites, and mining sites for certain minerals such as coltan are almost entirely under the control of non-state armed groups. The Group of Experts of the Sanction Committee has identified a number of *comptoirs* who knowingly traded in illegal minerals<sup>34</sup> and the seven thematic special procedures were encouraged to hear from the Minister of Mining that their business licenses would not be renewed.

76. From the *comptoirs* and in some cases also directly from the mining sites, the minerals are exported to neighbouring countries or others from where they are re-exported and eventually end up in Europe, North America, Asia or elsewhere, where it is used in products such as mobile phones (coltan) or military munitions (wolframite). According to the principle of corporate responsibility to respect human rights, transnational corporations and other business enterprises as well as consumers have a crucial role in ensuring that buyers and users of such minerals do not knowingly or negligently purchase minerals from conflict areas in the eastern DRC.

#### **4. Political instrumentalization of ethnic cleavages**

77. The political instrumentalization of ethnic cleavages in the eastern DRC feeds the conflicts in the region and exacerbates the human rights violations that precede and accompany them. Following his visit to the Eastern DRC and neighbouring countries from 23 November to 4 December 2008, Mr. Francis Deng, Special Advisor of the Secretary-General on the prevention of genocide found that “massive violations of international human rights and humanitarian law

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<sup>33</sup> See S/2008/773, paras. 127-135.

<sup>34</sup> *Ibid.*, paras. 130-134.

were being committed on the basis of ethnicity and national origin in the DRC".<sup>35</sup> This finding is in line with the previous periods of violence in the region, in which ethnic antagonism was fostered and then manipulated for political ends.

78. To some extent, the ethnic divisions in eastern DRC are related to colonial resettlement programmes, population displacements into the DRC, including the massive inflow of Tutsi refugees fleeing pogroms in Rwanda in the 1960s, the political instrumentalization of minorities under the Mobutu regime and the large-scale displacements in the aftermath of the genocide in Rwanda. In a region that was historically sparsely populated, the demographic changes in the eastern DRC also created tremendous competition over scarce resources, in particular agricultural land and grazing areas, thus creating an environment that is prone to the manipulation of ethnic cleavages. Many land conflicts result from competing claims based on formal titles or customary law; tensions between returnees and those who stayed further complicate the situation. Extensive documentation is available showing how armed factions have been created along ethnic lines as a consequence of displacement and the manipulation of ethnic divisions.<sup>36</sup>

79. Limited progress has been achieved to address this dimension of the crisis in the eastern DRC. Yet, it will be impossible to treat the most recent outbreak of violence and the massive human rights violations accompanying it without focusing on its underlying causes, among which lies the interplay of politics, economics and ethnicity. Particular action is needed at the local level in order to bring peace to communities that have yet to recover from the ethnic divisions that were fuelled by years of conflict. The success of local reconciliation programmes is also contingent on effective policies that address the local distribution of resources, in particular land.

80. The question of nationality of Kinyarwanda-speaking Congolese, living within the DRC or as refugees in neighbouring countries, also needs to be addressed since it often lies at the root of ethnic divisions in the eastern DRC. The new nationality law of 12 November 2004 is a positive step in granting this group the right to nationality. In practice, as recently pointed out by the Committee on the Elimination of Racial Discrimination, Congolese nationality is difficult to acquire by the Kinyarwanda-speaking population.<sup>37</sup>

81. Finally, the question of minority rights in the political sphere aggravates tensions. Majority-voting systems, the particular tailoring of voting districts as well as the difficulty of displaced and some returnees to obtain electoral cards have resulted in a disproportionately low

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<sup>35</sup> See <http://www.un.org/preventgenocide/adviser/state3.shtml> for the press statement and the forthcoming full report of the Special Advisor.

<sup>36</sup> See, for example, the 1997 report of the Special Rapporteur on the situation of human rights in the Republic of Zaire (Democratic Republic of the Congo) (A/52/496).

<sup>37</sup> CERD/C/COD/CO/15, para. 17.

number of minority candidates being elected to office, which has bred further resentment. Ensuring the adequate political representation of minority groups in the democratically constituted institutions at the national, provincial and local level will help to stifle political manipulation attempts by armed groups.

### **5. Lack of equality between men and women**

82. Civilians are increasingly among the perpetrators of rape, which indicates a normalization of the war-related violence. This intensifies existing inequalities and oppression of women in society. Regrettably there is a tendency on the part of some to perceive sexual violence as an exclusively war related phenomenon with little or no regard to the serious inequality between men and women in the DRC.

83. Women face discrimination and violence in places of work and education. Girls are often denied access to education, as families privilege boys' attendance to school. Sexual coercion of women and girls, committed by supervisors, professors and teachers, is a long-standing phenomenon that existed before the armed conflicts.

84. Gender inequality and the oppression of women are not only deeply rooted in society, but they continue to be officially sanctioned through discriminatory laws. The Family Code recognizes equality between the spouses (art. 330), but effectively renders a married woman a minor under the guardianship of her husband. Article 444 stipulates that the wife must obey her husband; article 448 requires a woman to obtain her husband's authorization to effect any legal act for which she must present herself in person. It is encouraging that the Minister of Gender has drawn up a law to reform the Family Code. It is also positive that article 14 of the Constitution stipulates that women have a right to equitable representation in national, provincial and local institutions and mandates the State to guarantee this. However, the process to draft a gender parity law to implement the Constitution is still ongoing and women remain grossly underrepresented in the newly established democratic institutions as well as within law enforcement, armed forces and justice system.

85. The seven thematic special procedures are convinced that if the problem of sexual violence in conflict is addressed in isolation of the wider nexus of gender-based discrimination, the very serious levels of violence endured by women in "peace" will be grossly neglected and the war on women reinforced. As noted by the Special Rapporteur on violence against women, without fundamentally altering gender relations and supporting women's empowerment, high levels of rape will persist, even if stability, the rule of law and democratic, civilian control over the armed forces are established.

### **III. CONCLUSIONS AND RECOMMENDATIONS**

86. **In line with its international human rights commitment, the Government of the Democratic Republic of the Congo has the obligation to respect, protect and fulfil the human rights of everybody living in the DRC. This implies duties to refrain from certain acts, but the Government has, as the Council stressed in resolution S-8/1, paragraph 6, also "the primary responsibility to make every effort to strengthen the protection of the civilian population and to investigate and bring to justice perpetrators of violations of human rights and of international humanitarian law."** More generally, the Congolese authorities

have the obligation to protect the population from violence, provide access to justice and create conditions in which the basic needs of the population are secured. The Congolese State largely abdicated these responsibilities during decades of autocratic rule, followed by years of armed conflict that further eroded the institutional capacity of the authorities at all levels. In many ways, human rights concerns in the DRC centre around the question what the State fails to do for its people, rather than what it does to them.

87. The seven thematic special procedures welcome the many strategy papers and action plans in human rights relevant areas that the Government, often in cooperation with the international community, has prepared. Such documents are first steps: they only obtain meaning if they are actually implemented by the responsible Government authorities. Technical assistance, as the term indicates, can only assist the Government in the implementation process, but cannot replace government action.

88. Armed conflict has ended in most of the country and the elected authorities are now in place to implement much needed reforms without delay on the ground. This being said, the seven thematic special procedures recognize that considerable parts of the east of the DRC still experience armed conflict. The existing armed conflicts exacerbate the extent and severity of human rights violations and also pose a challenge to implementing government initiatives and accompanying technical assistance measures to address structural human rights concerns in key areas such as the justice and security sectors. The resolution of the armed conflicts in DRC will require multilateral political processes involving Governments of the DRC, neighbouring countries and beyond. However, political settlements achieved will only be sustainable, if the authorities seriously and immediately address the human rights concerns underlying the conflicts and the international community is prepared to dedicate the necessary technical assistance to this crucial element of successful peacebuilding. The absence of peace in the entire territory must not be an excuse to delay reforms, but makes it ever more urgent to undertake them.

#### A. Priority objectives and technical assistance needs in this regard

89. The baseline assessment carried out by the seven thematic special procedures highlights that the human rights problems in the entire territory of the DRC are serious, multifaceted and deeply rooted in the political, economic and social dynamics at the local, national and regional levels. On the basis of their assessment, the authors have identified eight priority objectives for Government action along with technical assistance needs in this regard. While several of them are reform areas where human rights actors (e.g. the human rights and rule of law components of MONUC) have key roles in assisting the Government, other actors will have to take the lead in other areas that are equally important from a human rights perspective, with human rights actors only playing a complementary role.

90. To a large extent the seven thematic special procedures have drawn on existing recommendations that are longstanding and have been reiterated many times by the United Nations, civil society organizations and experts. These include the sets of recommendations formulated by those among the seven mandate holders who visited the

**DRC on prior occasions, which remain overall valid since the authorities have heeded few of them. Some of the recommendations call for full implementation or expansion of existing programmes and projects undertaken within MONUC or on a bilateral basis while others complement existing with new reform activities.**

### **1. Fighting impunity and strengthening the law enforcement and justice sectors**

**91. Fighting impunity should be the number one priority as tolerance for killings, rapes or arbitrary displacement is a key reason for the continuing prevalence of these and similar human rights violations. The fight against impunity requires a strong political will on the part of the DRC authorities to take action against identified perpetrators of international crimes regardless of their rank or connections. The work of the International Court of Justice may supplement, but not replace national efforts. However, the impunity problem undeniably also has a capacity dimension. On the basis of the various action plans drawn by relevant Ministries, donors should continue to prioritize reform across the entire justice chain - police, prosecution, courts and especially also the penitentiary system. In the medium- and long-term such efforts will only be useful and sustainable if the Government itself shows a willingness to increase the justice portion of the national budget further to an acceptable level comparable with other countries (2-6 per cent).**

**92. At the national level, donors should emphasize support for the newly established Higher Council of Judges. Support for other elements of the judicial architecture set out by the Constitution, including the *Cour de cassation*, the Constitutional Court and the *Conseil d'État*, will also be needed, once the legislation to establish these institutions has been passed. Civilian jurisdiction needs to be further strengthened through legislation assigning criminal jurisdiction over perpetrators from among the police or civilian population to civilian prosecutors and courts. Nevertheless, the military justice system should not be neglected in donor efforts. Security sector reform partners should consider providing, at least in the conflict affected provinces, experienced military advocates from their militaries as advisors to military prosecutors and courts. They would assist in and monitor the daily work of these organs without, however, assuming any decision-making authority.**

**93. Perhaps even more important is the expansion of the state justice system in the rural territories. One state measure worth supporting would be the establishment of a network of justices of the peace that are linked up with traditional modes of dispute-settlement as well as of mobile higher courts to address more serious cases. Measures to increase payment and other support for those officials who are willing to serve in conflict zones, remote areas or other hardship posts may help addressing the chronic lack of qualified personnel in these areas.**

**94. International law does not only oblige the State to duly punish perpetrators of killings, sexual violence and other violent crime, but the State also has to ensure that the victim or surviving family receives compensation from the perpetrator's side. Moreover, ensuring compensation payments will motivate victims to claim justice, rather than accepting amicably settlements or staying silent altogether. Consideration should be given to establishing a compensation guarantee fund, managed jointly by the Government, participating donors and civil society, which would pay out compensation awarded by national courts or the International Criminal Court to victims of serious human rights**

violations. The fund would initially rely on matching government and donor contributions, but then seek repayment of disbursed amounts from the State or private individuals cited as responsible. In a pilot stage such a fund could cover one or two provinces and focus in particular on awards based on sexual violence cases.

95. Transitional justice for the massive violations that took place between 1993 and 2003 is another area that should be prioritized. These violations are generally outside the jurisdiction of the International Criminal Court, which can only be seized of cases that took place after 1 July 2002. 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.

## 2. Reforming the security sector

96. The police, intelligence services and in particular the FARDC all remain in need of serious and comprehensive reform. In many ways, the operational weakness of FARDC and also the present lack of capacity of the police constitute a human rights concern that should rank very high on the list of priorities. Not only does the FARDC often prove incapable of protecting the civilian population from attacks by armed groups, but it also becomes a perpetrator of violations because it lacks the command and control structures and accountability mechanisms to prevent abuses from within its ranks. The minimum training provided in the *brassage* process has proven inadequate. There is a need for more comprehensive training programmes. Coordinated training should target officers and systematically include international humanitarian law and human rights in the curriculum. This will not only require substantial resources, but also willingness among the various countries to agree on a curriculum and coordinate their efforts generally on the basis of a shared national security reform strategy. As an accompanying measure donors should also continue and expand programmes to provide units, particularly in conflict areas, with supplies and ensure that they receive their salary. The construction of barracks would allow keeping soldiers away from civilian populations.

97. 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 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 providing specialized international staff as well resources.

98. Donors should insist that training and support and accountability for human rights violations are mutually reinforcing elements and make extension of programmes contingent on serious government efforts to clean the ranks of the security forces. Similarly, MONUC should not cooperate with FARDC commanders and units implicated in human rights violations.

### **3. Preventing the (re-) recruitment of children by armed actors and socially reintegrating children associated with armed actors**

99. All parties to the conflict must cease any new recruitment of children and release unconditionally all those currently associated with their forces. They must prepare, in the framework of Security Council resolution 1612 (2005), action plans to identify, release and ensure effective and sustainable reintegration of all children associated with their forces, to prevent further recruitment and to address all other grave violations against children. Reintegration strategies should be community-based and in line with the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups.

100. Demobilization, disarmament and reintegration (DDR) processes need to include procedures to recognize and assist women and girls associated with armed groups, in particular survivors of sexual violence. To mitigate the re-recruitment of children due in part to insufficient reintegration support from earlier DDR processes, all stakeholders, including relevant government institutions, United Nations entities, NGOs and donors, should ensure the provision of flexible and multi-year funding.

101. The Governments of the Democratic Republic of the Congo and neighbouring countries should enhance their cooperation to prevent cross-border recruitment and to ensure the successful repatriation and reintegration of children formerly associated with groups in the DRC to their countries of origin. To help address cross-border dimensions of the conflict and implications for children, United Nations country teams and peacekeeping operations should develop a joint strategy to monitor and report on grave child rights violations by groups such as LRA.

### **4. Protecting women's rights and ensuring gender equality in law and society**

102. There are clear indications that violence against women will remain pervasive even once armed conflict ends and relative stability has been established. Building on existing initiatives, while enhancing their coordination, donors should therefore continue to address violence against women and support to its survivors as a priority. Government initiatives with clear and tangible objectives such as the roadmap to fight impunity for sexual violence of the Ministry of Justice are worth supporting. The formation of specialized police units is another area that deserves donor support. Particular emphasis should lie on the hitherto largely neglected and underfunded area of socio-economic reintegration of survivors of rape. Programs should not only cover the eastern provinces but also other parts of the country with high prevalence of violence against women and involve local women organisations.

103. The Ministry of Gender, Family and Children is drawing up essential legislation to reform the Family Code and implement the gender parity provision of the Constitution. Beyond technical advice, donors should support advocacy and awareness-raising programmes to make sure that these draft laws will be passed by parliament and signed into law.

104. The plans of the Minister of Gender to reconstitute the *Conseil national de la femme* would need to be closely examined. Technical assistance provided to this plan should not detract from crucial donor support to local Congolese women non-governmental organizations.

#### 5. Addressing economic root causes of human rights violations

105. The illegal exploitation of natural resources in the eastern DRC benefits armed groups and rogue elements in the state security forces; it perpetuates the armed conflicts and is often accompanied by serious human rights violations, namely forced labour. Seriously addressing the illicit exploitation of natural resources in the DRC will require exporters and consumers of Congolese mineral products to step up their due diligence efforts and publicly disclose what steps they have taken to prevent the purchase of mineral ore or its products mined in conflict areas of the DRC. Similarly, it also requires to develop concurrently the same requirement for due diligence at the DRC state level, to build the necessary capacity at the national level and to identify what role international technical cooperation should play in supporting it. Technical assistance partners can help the Government implement the Extractive Industries Transparency Initiative, for which the DRC was accepted as a candidate country in February 2008, or similar accountability mechanisms that will help prevent illegal diversion of state revenues and increase the resources available to the State.

106. With much of the international discourse focusing on illegal mining, many still fail to recognize the important role of local conflicts over land, exacerbated by several waves of displacement and returns. Beginning in provinces of particular concern such as North Kivu, community-based land commissions should be set up, involving traditional leaders, provincial state officials and community representatives, in particular also women, returnees and minority groups, to address local disputes over land. The commissions should be provided with the resources to offer compensation as a last resort where there are competing legitimate claims or where a redistribution of land to marginalized sections of society is necessary to resolve conflicts and ensure justice. An alternative would be to give this role to the justices of peace as described above. A thorough analysis of existing mechanisms of alternative dispute resolution based on customary law would be needed in order to set up a system within the framework of the State that is acceptable and supported by the population.

#### 6. Protecting the rights of the displaced and minorities

107. The Government, in particular the Ministry of Social and Humanitarian Affairs and its provincial counterparts in the eastern DRC, has to assume its responsibilities regarding protection and assistance for the internally displaced emanating from international and regional human rights treaties and the Protocol on Protection and Assistance to Internally Displaced Persons adopted at the International Conference on the Great Lakes Region which obliges the DRC to incorporate the United Nations Guiding Principles on Internal

**Displacement (E/CN.4/1998/53/Add.2) into its domestic law. As a first step the Government, with expert technical advice, should develop a legislative framework, a strategy and a plan of action for the implementation of these obligations. Meanwhile, the donor community should begin prioritizing support to vulnerable host communities in areas of refuge as well as early recovery activities in return areas.**

108. **There is a risk that internally displaced persons cannot exercise their right to vote and be elected if the local elections planned for 2009 would take place before they can return. The National Election Commission, in cooperation with MONUC and other partners, should ensure registration of the displaced as voters and be supported to find ways to ensure (e.g. through provisions on absentee voting) that the displaced can in fact exercise their political rights.**

109. **In addition, and also to build a more inclusive society generally, the Government should launch a campaign in the eastern DRC to provide national identification and electoral cards to anyone qualifying for DRC nationality under the new nationality law of 12 November 2004. Implementation should be guided by a rebuttable presumption that those who currently live or prior to the armed conflict have lived in the DRC are considered nationals of the DRC. Solving the problem of nationality of Kinyarwanda-speaking Congolese would enhance their sense of belonging, their participation in social life and contribute to reverse the widespread prejudice that this group is composed of “foreigners”.**

110. **These initiatives should be complemented by local conflict resolution and ethnic reconciliation initiatives involving all sectors of society including women, returnees as well as IDPs and refugees awaiting their return.**

#### **7. Providing access to health care, especially for marginalized groups**

111. **In line with its human rights obligations, the Government has to make efforts to progressively re-establish a functioning and accessible health system in the country, while ensuring minimum standards right away. It should prioritize immediate action to ensure that displaced populations have access to medical services, safe water and sanitation in order to avert the growing public health crisis. The specific health needs, especially those of particularly vulnerable groups, like women and children, need to be identified to ensure provision of adequate medical care and prevention of further health problems. In particular, urgent steps must be taken to ensure that fees do not become an obstacle for poor and vulnerable populations to access essential health care as such fees often are a key reason why persons with illnesses that could easily be treated die. The immediate abolishment of fees for forensic medical certificates for victims of sexual and gender-based violence should be a first step. The seven thematic special procedures call upon the donor community to continue supporting the national health system as a priority, in particular its support for groups in a vulnerable situation. In areas of crisis, relevant agencies should focus on improving coordination mechanisms to ensure adequate and prioritized response to the health crisis.**

## **8. Strengthening state and civil society structures to promote and protect human rights**

112. As soon as legislation on an independent national human rights commission is adopted, donors should provide adequate technical advice and assistance to establish the Commission and integrate it into regional and international networks of national human rights institutions. Within the commission, a human rights defenders focal point should be established whose tasks would include: investigating human rights violations against defenders; raising awareness on international and regional human rights instruments pertaining to the work of human rights defenders; ensuring that national legislation is in conformity with these instruments; making recommendations to the Government, Parliament and other state institutions with regard to the situation of human rights defenders, and following up on these recommendations; and offering legal assistance to human rights defenders.

113. Parallel to that, the Ministry of Human Rights should be empowered to identify human rights trends -in consultation with civil society- and ensure that they are taking into account in the policy-making process at the national level. Donors should consider assisting the Ministry with funding to re-establish small offices in the provinces and enable them to deal with complaints of the population against government officials regarding human rights issues. Furthermore, the Ministry should be trained by OHCHR on drafting methodology to meet in a timely manner its reporting obligations before United Nations treaty bodies. The Ministry should also translate the Declaration on Human Rights Defenders in the main local languages and disseminate it within the state apparatus and civil society, and deliver awareness-raising training to the police, military and judicial officials on the role and activities of human rights defenders, including women defenders, with technical advice and assistance from OHCHR and NGOs.

114. More generally, the emergence of a confident and coordinated civil society that can only prosper in a state of democracy, rule of law and full government commitment to individual freedoms and liberties should be fostered and supported. The Government should recognize the legitimacy of the work of human rights defenders, including women defenders, and acknowledge it as human rights work. It should further remove all obstacles that impede their work, protect them from reprisals, and take proactive measures to support their work. The adoption of national and provincial laws on the protection of human rights defenders, developed in consultation with civil society and on the basis of technical advice from relevant international agencies, would be a particularly strong signal. OHCHR, MONUC, and the European Union should continue their witness protection programme and expand its ambit to human rights defenders in all provinces.

115. In addition, illegitimate restrictions on the exercise of the right to freedom of association should be lifted: when NGOs applying for registration comply with all administrative requirements, legal personality should be immediately granted to them. Furthermore, the regime of information governing the exercise of the right to freedom of peaceful assembly (article 26 of the Constitution) should be respected without any arbitrary interference from the executive. Finally, the draft bill on the organization and

**functioning of the Superior Council of Audiovisual and Communication, as well as the two draft bills contributing to the better exercise of the right to freedom of opinion and expression (notably by decriminalizing a number of press offences), should be adopted.**

**116. Donors can assist these efforts by continuing to fund protection and empowerment programmes benefitting the fledgling community of local NGOs, in particular groups representing women or marginalized groups such as the BaTwa. Donors should also prioritize support for local organizations by earmarking a portion of their budget for direct support to such groups.**

#### **B. Recommendations on follow-up to the present report**

**117. In the light of the large ambit of human rights challenges in the DRC, the seven thematic special procedures have focused on identifying priorities for government action and technical assistance within the limitations of their respective mandates, while also developing a few exemplary proposals that can be implemented in the short- to medium-term with little resources.**

**118. In conducting their work, the authors noted that despite extensive efforts of the donor community to technically assist the Government in improving the human rights situation, there are no benchmarks against which to measure progress achieved by the Government. Benchmarks, established by the United Nations in consultation with the Government, civil society and donors, would be an important accountability measure and also of help in steering donor priorities.**

**119. The seven thematic special procedures urge the Council to continue taking a leadership role in ensuring that the human rights dimension of the peacebuilding process in the DRC is duly addressed. The situation in the east of the country is characterized by systematic and gross human rights violations, in particular committed by armed groups controlling territory and the state security forces. Another military escalation in the Kivus - with potentially devastating human rights implications - was underway when this report was finalized. The authors therefore recommend devising a dedicated follow-up and monitoring mechanism that extends beyond the Universal Periodic Review Mechanism and ensures continued direct engagement with the Government and civil society. The Council should strongly consider creating a special procedures mandate on the human rights situation in the DRC, in particular areas affected or threatened by armed conflict. This would build on paragraph 6 of Council resolution 9/9 on the Protection of the Human Rights of Civilians in Armed Conflict, in which the Council calls upon States involved in such conflicts to facilitate the work of any mechanism that the Council may decide to establish, as and where appropriate, in response to such violations.**

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