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

**Report on the situation of human rights in the Democratic Republic of
the Congo, submitted by the Special Rapporteur, Ms. Iulia Motoc, in
accordance with Commission on Human Rights resolution 2002/14***

* This document is submitted pursuant to Commission on Human Rights resolution 2002/14, but has been transmitted late because of the recent mission by the Special Rapporteur and because additional information had to be incorporated in it.

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Summary

The peace process and democratization

The peace negotiations which took place in the context of the inter-Congolese dialogue culminated, in Pretoria on 17 December 2002, in the signing of the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo. In conformity with the Agreement, the belligerents, namely the Government of the Democratic Republic of the Congo, the Congolese Rally for Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the Congolese Rally for Democracy/Liberation Movement (RCD/ML), the Congolese Rally for Democracy/National (RCD/N) and the Mai-Mai, undertake to end the war, and to ensure the reconciliation, reunification, pacification and reconstruction of the country, the formation of a national army, the organization of free elections within two years and the establishment of a democratic constitutional regime.

Assuming that the Democratic Republic of the Congo is considered to be a country undergoing democratic transition, respect for all the human rights which make up the right to democracy is fundamental. In the east of the country, human rights defenders are considered by the authorities to be political extremists and are subjected to constant repression. All the members of political parties interviewed in Kinshasa stated that they are denied the right to organize demonstrations and marches throughout the country, but above all that they are unable to organize local branches in the east of the country, where there is no freedom of association.

While acknowledging the responsibility of the Congolese in the process of peace and democratization, the international community will have to assist the future transitional government in the implementation of the Pretoria Agreement.

The jeopardization of the peace process: the armed conflicts

Despite the positive developments, the human rights situation in the Democratic Republic of the Congo remains very serious. The armed conflicts are continuing, in breach of the 1999 Lusaka Agreement, the Kampala Disengagement Plan and the Harare Sub-plans, Security Council resolutions, and the recent Global and All-Inclusive Agreement signed in Pretoria. Given their magnitude, the violations of human rights and humanitarian law, notably as regards the protection of civilians, the phenomenon of child soldiers and the sexual violence against women and children, may be characterized as crimes against humanity and war crimes. The atrocities committed in the east of the country have reached unprecedented levels. The humanitarian situation is catastrophic.

The Ituri district continues to be the scene of armed clashes, with consequent increasing insecurity, population displacement and restriction of humanitarian aid.

In the east of the country, the lives of civilians are under constant threat; although the protection of civilian populations is provided for in the international instruments, civilians, and especially women and children, are targeted by armed groups.

It is apparent from the investigations conducted in December 2002 by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) that arbitrary executions, rape, torture and forced disappearance have been perpetrated by MLC, RCD/N and certain elements of the Union of Congolese Patriots (UPC) in the town of Mambasa and in villages between Mambasa and Mangina and between Mambasa and Erengeti.

The phenomenon of child soldiers continues to be very disturbing. There is very little demobilization and mass recruitment is taking place in the east of the country. As shown by the report of the Secretary-General on children and armed conflicts (S/2002/1299), children demobilized through the efforts of MONUC and local non-governmental organizations (NGOs) are subsequently recruited again by armed groups.

An end to impunity: a fundamental condition for the realization of human rights

The time has come to end impunity. The fact that the Democratic Republic of the Congo is among the 60 State parties to the Statute of the International Criminal Court, which entered into force in July 2002, is to be welcomed. There is an urgent need for a joint strategy to be put in place by all the United Nations bodies involved in order to end impunity. The Special Rapporteur will continue to work to ensure that this machinery is established.

The administration of justice

In the context of impunity, and indeed in that of democratization, the role of justice is fundamental. The Special Rapporteur congratulates the Congolese Government on having taken the decision to abolish the Military Court (Cour d'ordre militaire).

In the east of the country, the authorities of the Congolese Rally for Democracy/Goma (RCD/Goma) and MLC, after being questioned by the international community following the massacres committed by their armies, have instituted show trials. In Kisangani, following the massacres of 14 May 2002, only one defendant is still in prison.

The plundering of natural resources and violations of human rights

The publication, in October 2002, of the final report of the Panel of Experts on the Illegal Exploitation of Natural Resources of the Congo (S/2002/1146), endorsed by Security Council resolution 1457 (2003), once again raised the question of the link between the plundering of natural resources and violations of human rights, while at the same time showing the deep-rooted causes of the war.

Gender-specific human rights violations

There is recurrent sexual violence against women and children in the east of the Democratic Republic of the Congo. Apart from individual cases of sexual violence, the violence comprises mass rape, sexual slavery and forced marriage to members of the various factions. The level of sexual violence in Kivu is particularly horrific. Various NGOs have informed the Special Rapporteur of cases of rape followed by mutilation of the mouth and amputation of the legs. This is undoubtedly an area in which the international community can lend its support to local initiatives aimed at establishing rehabilitation centres for victims of sexual violence.

Introduction

A. Mandate and activities of the Special Rapporteur

1. In its resolution 2002/14 of 19 April 2002, the Commission on Human Rights requested the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo to submit an interim report to the General Assembly at its fifty-seventh session and to report to the Commission at its fifty-ninth session on the situation of human rights in the Democratic Republic of the Congo, and on the possibilities for the international community to assist with local capacity-building; the Commission also requested the Special Rapporteur to continue to keep a gender perspective in mind when seeking and analysing information.
2. Pursuant to this resolution, the Special Rapporteur submitted an interim report to the General Assembly at its fifty-seventh session (A/57/437). The present report is based on the information gathered during her second mission to the country (28 February-10 March 2003). In view of the extent of the human rights violations in the Democratic Republic of the Congo, the Special Rapporteur has opted to deal with certain subjects in depth in this report, notably the protection of civilians in armed conflicts, the situation of women and child victims of sexual violence, the problem of impunity, the administration of justice, and the question of the military courts trying cases of mass violations of human rights.
3. In the course of her mission, the Special Rapporteur received the full cooperation of the Congolese Government; she welcomes the spirit of openness, cooperation and transparency displayed by the Government. She was able to have discussions with all the officials she wanted to meet. She travelled to Kinshasa, Goma and Kisangani, but security conditions prevented her from visiting Bunia and Gbadolite.
4. During her stay in Kinshasa, the Special Rapporteur met with the highest State officials, notably the President, Joseph Kabila, the Minister for Foreign Affairs, the Minister for Human Rights and the Minister of Justice. She met the Special Representative of the Secretary-General and his deputy, members of the diplomatic corps and the senior representatives of the various United Nations agencies. She met with representatives of civil society on several occasions in Kinshasa and in the province of Ituri. She also met with representatives of the political parties and visited the Kinshasa Penal and Rehabilitation Centre (CPRK).
5. The Special Rapporteur travelled to Goma and Kisangani, where she met senior members of the Congolese Rally for Democracy (RCD) and, in Kisangani, the RCD provincial officials. In Goma and Kisangani, she met civil society representatives from the provinces of North-Kivu and South-Kivu and from Eastern Province. In Kisangani, she met relatives of the victims of massacres in May 2002 and victims of sexual violations; she also visited the prison and police cells.
6. In the context of her mandate, the Special Rapporteur travelled to New York, where she submitted her interim report to the General Assembly on 6 November 2002. In New York, she had a discussion with the Under-Secretary-General for Peacekeeping Operations and the Director

of the United Nations Development Fund for Women (UNIFEM) on the possibility of setting up rehabilitation centres for victims of sexual violence. She also attended the meetings of the Security Council on the Democratic Republic of the Congo.

7. From 17 to 19 December 2002 the Special Rapporteur undertook a consultation mission in Geneva: she held discussions with representatives of the diplomatic missions, officials of the Office of the United Nations High Commissioner for Human Rights and NGOs.

8. The Special Rapporteur transmitted to the Congolese Government 19 requests for urgent action concerning a total of 29 victims. One request related to 10 or so parliamentarians. Three further requests for urgent action were addressed to the rebel movements concerning a total of 25 victims. There has been no response to any of these communications.

B. Joint mission to investigate allegations of massacres

9. In paragraph 6 (b) of its resolution 2002/14, the Commission on Human Rights requested the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo and the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out, as soon as security considerations permit and, where appropriate, in cooperation with the National Commission of Inquiry to investigate alleged human rights violations and breaches of international humanitarian law in the Democratic Republic of the Congo (formerly Zaire) in 1996 and 1997, a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo, including those in the province of South Kivu and other atrocities referred to in the last report of the previous Special Rapporteur on the situation of human rights in the Congo (E/CN.4/2001/40 and Add.1) and in his earlier reports, with a view to bringing those responsible to justice, and to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session. In order to comply with this request, an explanatory note by the Secretary-General on the preliminary consultations undertaken by the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo has been submitted to the Commission on Human Rights (E/CN.4/2003/44). The Special Rapporteur refers the reader to paragraph 42 below.

I. THE PEACE PROCESS AND DEMOCRATIZATION

10. The peace negotiations which took place in the context of the inter-Congolese dialogue culminated, in Pretoria on 17 December 2002, in the signing of the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo. In conformity with that Agreement, the belligerents, namely the Government of the Democratic Republic of the Congo, the Congolese Rally for Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the Congolese Rally for Democracy/Liberation Movement (RCD/ML), the Congolese Rally for Democracy/National (RCD/N) and the Mai-Mai, undertake to end the war, and to ensure the reconciliation, reunification, pacification and reconstruction of the country, the formation of a national army, the organization of free elections within two years and the establishment of a democratic constitutional regime. On 6 March 2003, the protagonists reached a partial agreement on the draft transitional constitution.

11. Assuming that the Democratic Republic of the Congo is considered to be a country undergoing democratic transition, respect for all the human rights which make up the right to democracy is fundamental. These rights comprise, in particular, the right to freedom of expression and opinion and the right to freedom of association.

A. Situation of human rights defenders

12. The situation of human rights defenders, who are important protagonists in democratization, remains difficult, particularly in the east of the country.

13. In the territory under the control of the Congolese Government, the human rights defenders who are participating in efforts to identify and denounce abuses in the political trials instituted by the Military Court are the targets of violations. This was the case with Floribert Chebeya Bahizire, president of *Voix des sans Voix*, who has been obliged to go into hiding and to leave the country. It should be noted that, following several requests for urgent action, notably those by the Special Rapporteur, and following the efforts made by the Minister for Human Rights, the two human rights defenders mentioned in the Special Rapporteur's interim report, Mr. Sii Luanda and Mr. W. Wenga, have been released; their situation nevertheless remains precarious.

14. In the east of the country, human rights defenders are considered by the authorities to be political extremists and are subjected to constant repression. They are often victims of arbitrary arrest and detention, and violations of the person (beatings and abductions). In Kisangani, several cases were brought to the attention of the Special Rapporteur: Mr. Blaise Blaise and his family have been the victims of persecution by the Congolese authorities and threatened with arrest and death; his parents have been imprisoned because he had called on MONUC to ensure the protection of civilians. It was reported to the Special Rapporteur during her visit that Mr. Dismas Kitenge, President of the Lotus Group, and Mr. Bosongo had been detained for questioning by the Congolese authorities when they returned from Kinshasa, where they had been taking part in a seminar on the subject of impunity organized by the International Federation of Human Rights (FIDH).

B. Freedom of expression

15. The Special Rapporteur finds once again that there is a total lack of freedom of expression in the east of the country. There are very few newspapers, and reporters are often threatened and arrested. In September 2002, a reporter working for the Okapi radio station (run by MONUC) was arrested for having broadcast defamatory information on the question of the child soldiers. A Congolese reporter working for the same station was arrested by RCD/Goma for having filed a report on RCD soldiers who had left Manono with their families; he was charged with espionage and imprisoned.

16. By a departmental decision of 8 December 2002, in Bukavu Radio Maendeleo's broadcasting licence was cancelled: the station was accused of having exceeded its remit. RCD security personnel closed down the station's facilities; the director and four other persons were arrested and held in the Directorate-General for Security (DGS) prison for several days.

C. Freedom of association

17. The organization of free elections within two years, as provided in the Global and All-Inclusive Agreement, concluded in Pretoria, requires that political parties should be guaranteed freedom of association. All the members of political parties interviewed in Kinshasa - the Union for Democracy and Social Progress (UDPS), the Unified Lumumbist Party (PALU), Force novatrice pour l'union et la solidarité (FONUS), and the Democracy and Development Movement (MDD) - stated that they are denied the right to organize demonstrations and marches throughout the country, but above all that they are unable to organize local branches in the east, where there is no freedom of association. No political party is allowed to operate in Kisangani, and Mr. Mokeni's "Political and civil society leaders' group" has been forbidden to hold any meetings.

18. While acknowledging that the Congolese have prime responsibility for the process of peace and democratization, the international community will have to assist the future transitional government in the implementation of the Pretoria Agreement. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and MONUC must continue to provide support in the preparation of a common strategy for the promotion and protection of human rights during the transition phase.

II. THE JEOPARDIZATION OF THE PEACE PROCESS: THE ARMED CONFLICTS

19. Despite the positive developments, the human rights situation in the Democratic Republic of the Congo remains very serious. The armed conflicts are continuing, in breach of the 1999 Lusaka Agreement, the Kampala Disengagement Plan and the Harare Sub-plans, Security Council resolutions and the recent Global and All-Inclusive Agreement. Given their magnitude, the violations of human rights and international humanitarian law, notably as regards the protection of civilians, the phenomenon of child soldiers and the sexual violence against women and children, may be characterized as crimes against humanity and war crimes. The atrocities committed in the east of the country have reached unprecedented levels. The humanitarian situation is catastrophic. According to information provided by the Office for the Coordination of Humanitarian Affairs (OCHA) in 2002, there were 20,120,000 vulnerable persons in the Democratic Republic of the Congo, out of a total of 50 million inhabitants of the Great Lakes region. During 2002, the number of displaced persons increased in the provinces of Kivu and Maniema and in Eastern Province, particularly in Ituri.

A. The conflict in the Ituri region

20. The Ituri district continues to be the scene of armed clashes, which give rise to extreme insecurity, population displacement and restricted humanitarian access. In August 2002, troops of the Union des patriotes congolais (UPC), a Hema ethnic militia led by Thomas Lubanga, and the Ugandan forces took control of the town of Bunia (driving out the RCD-K(Kisangani)/ML) and killed members of the Lendu, Bira and Nande communities. The Lendu militias and the RCD-K/ML attacked the Hema villages in retaliation. At a peace conference in August 2002,

Mr. Ntumba Louaba, Minister for Human Rights, was taken hostage in Bunia, together with his delegation, and released after three days. Since August 2002, there has been a succession of bloody inter-ethnic reprisals between the Hema and Lendu ethnic communities and their respective allies.

21. According to the report of the Secretary-General (S/2003/211, paras. 9-13), RCD-K/ML troops and Lendu combatants retook Irumu and Komanda at the end of November 2002 and subsequently strengthened their positions at Mahagi (north of Bunia) and Rethy (south of Mahagi). The military situation stabilized towards the end of December 2002, when the Ugandan troops returned. Following a deterioration in relations between UPC and the Uganda People's Defence Forces (UPDF), UPC entered into a new alliance with RCD/Goma. MONUC has neither confirmed nor ruled out the presence of Rwandan troops in Ituri; it plans to deploy more observers as soon as the security situation permits. The Special Representative of the Secretary-General has undertaken to establish the Ituri Pacification Commission (CPI), as envisaged in the Luanda Accord of 6 September 2002.

22. The uncontrolled presence of armed militias has resulted in massive human rights violations, summary executions, forced disappearances, abduction, torture and obstruction of humanitarian aid. A new wave of violence began on 6 March 2003 with the retaking of the town of Bunia by Ugandan troops.

23. In its resolution 1468, of 20 March 2003, the Security Council expressed its deep concern over the situation in Ituri and stressed that all parties must cooperate with MONUC to set up the Ituri Pacification Commission, as envisaged in the Luanda Accord. It also expressed its deep concern at the rising tensions between Rwanda and Uganda and their proxies on the territory of the Democratic Republic of the Congo, and reiterated that all foreign troops must be withdrawn from the territory of the Democratic Republic of the Congo.

B. The protection of civilian populations

24. In the east of the country, the lives of the civilian populations are under constant threat; although the protection of civilian populations is provided for in the international instruments, civilians, and especially women and children, are targeted by armed groups.

25. Massive violations of international humanitarian law, particularly in the Ituri district, have been reported on several occasions, both by the former Special Rapporteur (E/CN.4/1999/31; E/CN.4/2001/40 and Add.1) and by the current Special Rapporteur in her interim report to the General Assembly (A/57/437). The High Commissioner for Human Rights submitted a report to the Security Council on 13 February 2003 (S/2003/216) and in March 2003 Amnesty International published a report entitled "DRC on the precipice: The deepening human rights and humanitarian crisis in Ituri". According to OCHA, 50,000 people have died as a result of the conflicts in the Ituri area and 500,000 have been displaced since 1999.

26. Despite several requests by the Security Council (S/RES/1445 (2002)), humanitarian organizations are unable to reach Ituri: the armed group's refusal to facilitate the dispatch of humanitarian aid into conflict zones constitutes a serious violation of human rights and international humanitarian law.

27. On 15 January 2003, after an inquiry initiated in December 2002, MONUC reported summary or arbitrary executions, rape, torture and forced disappearances perpetrated by MLC (led by Jean-Pierre Bemba), RCD/N (led by Roger Lumbala) and certain elements of UPC in the town of Mambasa and in villages between Mambasa and Mangina and between Mambasa and Erengeti. On the basis of interviews conducted in Beni, Butembo, Mangina, Oicha and Erengeti, the reports mention 136 summary executions, 71 rapes, including rape of children, 100 forced disappearances and 96 missing children. Some of the summary executions were followed by mutilation and cannibalism. This was a planned operation, under the name of “*Effacer le tableau*” (“A clean slate”), and those responsible for the killings targeted Mambasa’s Nande community and the Twa (pygmies).

28. According to the first investigations conducted by a joint team from MONUC and the OHCHR office in Bogoro, on 24 February 2003 153 cases of summary executions, mainly of Hema, were reported. According to evidence from the four UPC child soldiers interviewed by the joint mission, the assailants were armed groups of Lendu from the north, Ngiti from the south, Armée du peuple congolais (APC) troops and some 40 UPDF troops. The report of the joint MONUC-OHCHR mission concluded that civilian populations had been massacred in Bogoro and Mandro. There would appear to be an ethnic dimension to these murderous assaults.

29. In North and South Kivu, the most basic rights of the civilian population are constantly violated as a result of clashes between armed groups that appear to be proliferating. South Kivu province is the scene of violent clashes between the RCD/Goma army, the Banyamulenge forces of Commander Masanzu and the numerous Mai-Mai groups.

30. The Special Rapporteur has been informed that there are 13 armed groups in South Kivu, who fight among themselves, carry out summary executions and rape, and loot civilian property. Freedom of movement is restricted by roadblocks set up by armed groups that extort money from civilians, who are prevented from going into their fields; the civilians caught up in these armed conflicts are thus also condemned to suffer famine.

31. The Special Rapporteur can provide several examples of violations of the rights of civilians provided for in the fourth Geneva Convention. In January 2003, troops of the Armée nationale congolaise (ANC), led by Commander Utchumbe, alias Makofi, summarily executed dozens of civilians suspected of links with the Mai-Mai. On 14 February 2003, Mudundu 40 troops burned down 30 houses in Kabalo, in the community of Burhinyi, in Mwenga territory. The Special Rapporteur has also been informed that a large number of civilians were killed when Pinga was taken, in January 2003. Many of these massacres are carried out using machetes, knives or rifles, and houses are burned down at the same time.

32. In its resolution 1445 (2002), the Security Council endorsed the recommendations of the Secretary-General in his special report (S/2002/1005) and expressed its concern at the particularly worrying humanitarian situation in Ituri and South Kivu.

C. The child soldiers

33. The phenomenon of child soldiers continues to be very disturbing. There is very little demobilization and mass recruitment is taking place in the east of the country; according to UNICEF and the NGOs, there are more than 30,000 child soldiers in the Democratic Republic of

the Congo. The report of the Secretary-General on children and armed conflict (S/2002/1299) also shows that children demobilized through the efforts of MONUC and local NGOs are recruited again by other armed groups.

34. It is difficult to reintegrate child soldiers in government-controlled territory, as the great majority of them come from the east of the country. Similarly, given the overall situation of the education system in the Democratic Republic of the Congo, as mentioned by the Special Rapporteur in her interim report (A/57/437), and in particular parents' inability to pay teachers' fees, it is very difficult to get demobilized children into school.

35. In Uvira (South Kivu), all the armed groups in the region (RCD/Goma, Mai-Mai and Banyamulenge) continue to recruit children. Children aged under 15 make up a large proportion of the Mai-Mai, ANC and UPC forces. UPC has on several occasions ordered local communities to "supply children" for the war effort.

36. According to information transmitted to the Special Rapporteur, many child soldiers are abducted from their families by the various armed groups. They include young girls, who frequently serve as sex slaves for the soldiers. Many of the children are sent to the front. A large number of children were killed during the armed clashes in Uvira in January 2003. More than 40 child soldiers were killed in Ituri in clashes at Lipiri and Songolo in February 2003.

37. The Democratic Republic of the Congo has ratified the Optional Protocol to the Convention on the Rights of the Child, which entered into force in February 2002. The Protocol establishes a minimum age of 18 for conscription and participation in hostilities. According to the Rome Statute of the International Criminal Court, which entered into force on 1 July 2002, conscripting or enlisting children under the age of 15 in conflicts of an international or national character constitutes a war crime. The Statute also provides that children may appear before the Court as witnesses.

38. Under resolution 1460 (2003), the Security Council is authorized to take appropriate steps, in accordance with the Charter of the United Nations, if the parties identified in the report of the Secretary-General on children and armed conflict (S/2002/1299) do not make progress in demobilizing children. The Special Rapporteur intends to monitor the situation of child soldiers in the Democratic Republic of the Congo very closely, in view of the fact that, in the annex to his report, the Secretary-General identifies 10 parties involved in the armed conflicts in the Democratic Republic of the Congo who recruit or make use of child soldiers.

III. AN END TO IMPUNITY: A FUNDAMENTAL CONDITION FOR THE REALIZATION OF HUMAN RIGHTS

39. The Special Rapporteur welcomes the fact that the Democratic Republic of the Congo is one of the 60 States parties to the Statute of the International Criminal Court, which entered into force in July 2002. The State must now enact legislation enabling the Statute to be applied within the country. It is to be hoped that the new court will conduct inquiries into the massive violations of human rights there, in particular the earliest cases.

40. The Pretoria Agreement provides for amnesty for acts of war, political offences and crimes of opinion, with the exception of war crimes, crimes of genocide and crimes against humanity (art. 8). A truth and reconciliation commission is to be established as an institution in support of democracy.

Joint mission to investigate allegations of massacres

41. In its resolution 2002/14, the Commission on Human Rights requested the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances, to carry out a joint mission to investigate allegations of massacres carried out on the territory of the Democratic Republic of the Congo (for details of its mandate, see paragraph 9 above). This joint mission has been one of the Special Rapporteur's principal concerns since her appointment.

42. Unfortunately, it has not been possible to carry out the investigation this year, partly because security conditions did not permit and partly because OHCHR did not have sufficient financial resources.

43. In its resolution 1468 of 20 March 2003, the Security Council requested the Secretary-General, in consultation with the High Commissioner for Human Rights, to make recommendations on other ways to help the transitional Government in the Democratic Republic of the Congo address the issue of impunity. The Secretary-General is also requested to increase the number of personnel in MONUC's human rights component.

44. It is certainly necessary to increase MONUC personnel, but OHCHR's operational capabilities must be reinforced at the same time in order to enable it to perform an effective role as human rights coordinator. In the Special Rapporteur's view, the High Commissioner needs proposals from independent mechanisms in order to be able to formulate recommendations to the Security Council.

45. There is an urgent need for all United Nations bodies involved in setting up the mechanisms to agree on a common strategy that will make it possible to put an end to impunity. The Special Rapporteur will continue to work to make it possible for the joint mission to be conducted. She has been assured of the support of the Government and RCD/Goma.

46. In its resolution 1291 (2000), the Security Council urged that an international investigation into the massacres in the Democratic Republic of the Congo should be carried out, and the then Special Rapporteur indicated his willingness to conduct such an investigation. The current Special Rapporteur also undertakes to cooperate with any mechanism proposed in order to put an end to impunity.

47. In view of the current state of justice in the Democratic Republic of the Congo, it would be very difficult for a transitional government to conduct an investigation and to try and then punish the perpetrators of massacres that have caused more than 3 million deaths. In the experience of the international community, joint approaches are the best means of addressing issues of impunity relating to conflicts of this magnitude. The current functioning of the Special

Court in Sierra Leone would appear to confirm this view. The Special Rapporteur will probably be able to make recommendations in this regard only after the joint investigation recommended by the Commission on Human Rights.

V. THE ADMINISTRATION OF JUSTICE

48. In her previous reports, the Special Rapporteur highlighted the lamentable state of Congolese justice, especially in the east of the country. The material conditions are lacking to administer justice properly. The Commission on Human Rights, in its resolution 2002/14, requested the Special Rapporteur to report on the possibilities for the international community to assist with local capacity-building. Overhauling Congolese justice is certainly a priority.

49. The Special Rapporteur visited the prison and police cells in Kisangani, where she was able to see the poor conditions of detention resulting from overcrowding, lack of medical care and food shortages, and the particularly serious conditions for women detained with their children. She has learned from various sources of the existence of illegal places of detention in government-controlled territory, despite the Government's decision to close down all places of detention not subordinate to the courts.

50. The operation of military justice is a subject of particular concern. In government-controlled territory, the Military Court has sentenced 30 people to death in the trial of the assassins of former President Kabila.

51. The Special Rapporteur congratulates the Government on having taken the decision to abolish the Military Court. On 18 March 2003, the President of the Republic signed Decrees Nos. 032/2003 and 033/2003, which set 25 March 2003 as the date for the entry into force of Acts Nos. 023/2002 and 024/2002 concerning the Code of Military Justice and the Military Penal Code respectively. The Special Rapporteur sincerely hopes that the Government will reverse its decision to suspend the moratorium on the death penalty.

52. In the east of the country, the RCD/Goma and MLC authorities, after being questioned by the international community following the massacres committed by their armies, have instituted show trials.

53. In Kisangani, six of the nine defendants at first instance were acquitted of involvement in the massacres of 14 May 2002; two escaped and only one defendant is still in prison. The military judicial authorities who handled the inquiry seem to have deliberately overlooked the reprisals which their army took against the civilian population. Those chiefly responsible for the events of 14 May 2002 have been promoted within the military hierarchy.

54. The military judicial authorities leading the inquiry into the massacres of 14 May 2002 in Kisangani have admitted to the Special Rapporteur that they have not heeded the demands of the international community, for example those contained in the report of the High Commissioner (S/2002/764) or the statements by the President of the Security Council. They further stated that they were unable to investigate the senior military officers cited in international documents and NGO reports. During her visit to Kisangani, the Special Rapporteur spoke with the families of victims of the massacres in Mangobo, who told her that they could be subjected to reprisals at any time.

55. In Gbadolite, MLC hastily organized the trial of the presumed perpetrators of the massive human rights violations committed between October and December 2002. The War Council handed down 19 sentences on 18 February 2003; the charges failed to reflect the seriousness of the crimes committed.

56. The judgements handed down by military courts against military personnel who have perpetrated serious human rights violations represent a major source of impunity. This practice undermines the right to an effective remedy (International Covenant on Civil and Political Rights, art. 2 (3) (a)), the right to a fair and public hearing by a competent, independent and impartial tribunal (*ibid.*, art. 14 (1)), and the right to the equal protection of the law without discrimination (*ibid.*, art. 26).

57. A number of United Nations bodies active in the sphere of human rights, for example the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, and the Sub-commission on the Promotion and Protection of Human Rights, following the recent expert study by Mr. Louis Joinet (E/CN.4/Sub.2/2002/4), have recommended that the competence of military courts to try the perpetrators of serious human rights violations should be ceded to the ordinary courts. Countries affected by massive violations perpetrated by military personnel should enact laws establishing the competence of the civilian courts to try such cases. The recent trials organized by RCD/Goma and MLC once again illustrate the need to ensure that military courts do not try cases involving serious human rights violations.

V. THE PLUNDERING OF NATURAL RESOURCES AND VIOLATIONS OF HUMAN RIGHTS

58. The publication, in October 2002, of the final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), endorsed by Security Council resolution 1457 (2003), once again raised the question of the link between the plundering of resources and violations of human rights, while at the same time showing the deep-rooted causes of the war. The illegal exploitation of natural resources is in itself a violation of human rights and the norms of international law applicable *erga omnes*.

59. The Panel of Experts refers to numerous human rights violations resulting from the illegal exploitation of natural resources, for example the very large numbers of displaced persons, malnutrition, mortality, sexual violence against women and children, and the existence of child soldiers. It also notes that military units recruit children and force them to work, and especially to extract natural resources. NGOs in South Kivu informed the Special Rapporteur of children being recruited by armed groups to work in mines.

60. The exploitation of natural resources has resulted in numerous accidents and the deaths of illicit operators. The Special Rapporteur has learned of the deaths of certain illicit operators at the Mbuji Mayi diamond mine in February 2003.

61. The Special Rapporteur notes with satisfaction that the Congolese Government has, for the time being, suspended the persons cited in the report of the Panel of Experts, and that the Procurator-General has started legal proceedings. She notes that all the parties concerned should

take similar measures. It is essential, as the Panel of Experts stated in its report, that the future transitional government should take steps to end the illegal exploitation of natural resources and ensure that exploitation is legal.

62. The approval of the certification system to strengthen controls on “blood diamonds” and the Kimberley Process instituted by the representatives of the mining and diamond companies at Interlaken could help to curb illegal exploitation.

VI. GENDER-SPECIFIC HUMAN RIGHTS VIOLATIONS

63. There is recurrent sexual violence against women and children in the east of the Democratic Republic of the Congo. The use of mass rape and sexual violence as weapons of war intended to destroy the structure of the family has harmed Congolese society. Often rejected by their families or infected by sexually transmissible diseases or HIV, women have nowhere to turn for help. The climate of impunity continues unabated; in the eyes of international law, violence of this sort is deemed to be a crime against humanity and a war crime.

64. Many women and girls were raped following the capture of the town of Uvira by the Mai-Mai in October 2002. In November 2002, at Goma, a little girl was raped by Sengi Mupenzi, an RCD/Goma soldier. Many rapes have been committed by the Interahamwe and elements of the former Rwandan Armed Forces (ex-FAR) in the vicinity of Katombo and north of Lake Tanganyika. In November 2002, RCD/Goma soldiers raped women and girls at Katana. In government-controlled territory, rapes took place after the Mweka mutiny in Western Kasai province.

65. The level of brutality and sexual violence in Kivu is particularly horrific. NGOs informed the Special Rapporteur of cases of rape followed by mutilation of the mouth and amputation of the legs. Instances of sexual violence followed by mutilation appear to be on the increase. The victims are unable to testify. Many of the victims treated at hospitals in Goma, Bukavu, Kabiza and Nyangez are between 10 and 14 years old. Some 40 per cent of them are seropositive.

66. Girls are enlisted into armed groups, either as child soldiers or as wives of combatants, the victims of forced marriages. The cases that have been brought to the Special Rapporteur’s attention amount to slavery by reason of the treatment meted out to these women, who become the private property of the soldiers. Slavery in the guise of forced marriage was condemned by the International Tribunal for the former Yugoslavia, in the V. Kunarac case, as a crime against humanity.

67. Article 7, paragraph 1 (g), of the Statute of the International Criminal Court states that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity are considered crimes against humanity when the elements of the “crime” have been established.

68. The Special Rapporteur had the opportunity to talk with female victims of sexual violence in a rehabilitation centre established by a nun in a parish at Kisangani. These women

reported that they had been raped, most since childhood. Rejected by their families, lacking the means to support themselves, pregnant or with small children, they had found refuge in this centre.

69. A programme to tackle rape and violence against women has been proposed by a number of NGOs in South Kivu. A total of 770 women are currently being cared for under this programme. One NGO, Centre Olame, takes in 100 victims a month. The commission for action against rape and violence in South Kivu has three sub-commissions (legal and human rights; economic; and food, medical and psycho-social security).

70. These initiatives show that female victims of sexual violence have decided to break their silence. It should be noted that all over the world, and not just in Africa, victims of sexual violence dare not speak out for fear of being ostracized. But now victims of sexual abuse are increasingly aware that the violence against them is punishable. They also realize that they can get help.

71. This is certainly an area in which the international community can support local initiatives to establish rehabilitation centres for victims of sexual violence. Staff at the United Nations Development Fund for Women (UNIFEM) whom the Special Rapporteur met in New York said that they were willing to act as a focal point for action of this kind by the United Nations specialized agencies.

Conclusions and recommendations

72. The situation of human rights and international humanitarian law in the Democratic Republic of the Congo remains tragic, despite the positive developments. All the parties must implement forthwith the Global and All-Inclusive Agreement signed at Pretoria on 17 December 2002 and the subsequent agreements, given that these constitute the only viable plan for restoring peace and establishing a constitutional legal order based on respect for human rights.

73. The parties must implement Security Council resolutions, contribute to establishing the Ituri Pacification Commission and refrain from appointing perpetrators of serious human rights violations to posts.

74. The Government of the Democratic Republic of the Congo should, inter alia:

(a) Impose an immediate moratorium on executions pursuant to judgements handed down by the Military Court;

(b) Adopt the Congolese Charter of Human Rights which, among other things, abolishes the death penalty;

(c) Continue to take steps to demobilize child soldiers, end the plundering of natural resources, administer justice, encourage freedom of association and protect human rights defenders.

75. The Government of the Democratic Republic of the Congo, RCD and MLC, the de facto authorities, should:

- (a) Protect human rights and respect international humanitarian law, particularly as regards women and children, and accordingly order their soldiers fully to abide by the provisions of international humanitarian law, and in particular the International Convention relative to the Protection of Civilian Persons in Time of War;
- (b) Discontinue forthwith the recruitment and use of children in armed conflicts;
- (c) Take the necessary steps to end the widespread impunity;
- (d) Press ahead with fully independent and impartial inquiries by the judicial and civil authorities into the massacres at Kisangani and Mambasa;
- (e) As a matter of urgency, take the necessary measures to investigate and arrest the persons cited in the report of the High Commissioner for Human Rights;
- (f) Ensure the safety and freedom of movement of United Nations and associated personnel and the unhindered access of humanitarian personnel to affected populations.

76. The international community should:

- (a) Exert pressure for the enforcement of all international instruments, especially Security Council resolution 1468 (2003), of 20 March 2003, and paragraph 7 of resolution 1417 (2002), which reaffirms the mandate of MONUC, particularly as regards the protection of civilians in immediate danger;
- (b) Assist the process of democratic transition;
- (c) Offer assistance with local capacity-building in the fields of administration of justice and the protection of women and children, and especially the victims of sexual violence;
- (d) Find effective and meaningful actions to end impunity.

Annex

**PROGRAMME OF THE VISIT OF Ms. IULIA MOTOC,
SPECIAL RAPPORTEUR, TO THE DEMOCRATIC
REPUBLIC OF THE CONGO, 1-10 MARCH 2003**

Saturday, 1 March

- 8.50 p.m. Arrival at Ndjili international airport
- Welcome by Ministry of Human Rights, Human Rights Division of MONUC and Human Rights Field Office in the Democratic Republic of the Congo
- Press conference
- Arrival at hotel

Sunday, 2 March

- 11 a.m.-11.30 a.m. Meeting with Minister for Foreign Affairs
- Noon-12.30 p.m. Meeting with staff of the Human Rights Field Office
- 2 p.m.-3.30 p.m. Meeting with human rights NGOs
- 4 p.m.-5 p.m. Meeting with Ms. Lena Sundh, Deputy Special Representative of the Secretary-General, MONUC
- 5 p.m.-6 p.m. Meeting with Human Rights, Child Protection and Gender Divisions of MONUC
- 6.30 p.m.-7.30 p.m. Meeting with Minister for Human Rights

Monday, 3 March

- 5 p.m.-7 p.m. Meeting with representatives of Ituri communities

Tuesday, 4 March

- Journey from Kinshasa to Goma
- 3 p.m.-3.10 p.m. Arrival in Goma. Welcome by Justice Department, United Nations agencies coordinator, field security officer, Human Rights Field Office and MONUC Human Rights Division
- 3.15 p.m.-3.30 p.m. Arrival in Nyira
- 3.30 p.m.-3.45 p.m. Briefing by Human Rights Field Office

- 4 p.m.-5.45 p.m. Working meeting with RCD leaders
- 5.45 p.m.-6.15 p.m. Meeting with the chief military prosecutor reporting to the operational war council
- 6.30 p.m.-7 p.m. Meeting with public officials from the human rights department for Goma and Bukavu
- 7 p.m.-7.15 p.m. Meeting with representatives of South Kivu human rights NGOs
- 7.15 p.m.-7.30 p.m. Meeting with representatives of North Kivu human rights NGOs
- 7.45 p.m.-8.45 p.m. Working dinner with the International Committee of the Red Cross (ICRC)

Wednesday, 5 March

- 8 a.m.-9 a.m. Meeting with United Nations agencies and international NGOs
- 9.10 a.m.-10.30 a.m. Meeting with civil society and North and South Kivu human rights NGOs
- 10.30 a.m.-11.15 a.m. Meeting with chairman of the Bar, Procurator General and Chief Justice of the Goma Court of Appeal
- 11.20 a.m.-11.50 a.m. Meeting with Monsignor Ngabu
- 12.45 p.m. Departure for Kisangani
- 2 p.m. Arrival in Kisangani, welcome at airport by RCD political and administrative officials in Eastern Province and the regional director (eastern region) of MONUC Human Rights Division
- 2.15 p.m.-3 p.m. Arrival at hotel
- 3 p.m.-3.50 p.m. Briefing at MONUC eastern regional office
- 4 p.m.-5.15 p.m. Working meeting with RCD political, administrative and military officials in Kisangani
- 5.30 p.m.-7.30 p.m. Meeting with civil society and human rights NGOs

Thursday, 6 March

- 9 a.m.-9.45 a.m. Meeting with United Nations agencies and international NGOs
- 10 a.m.-12 a.m. Meeting with civil society and human rights NGOs
- 12.30 p.m.-1.30 p.m. Lunch with ICRC

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| 2 p.m.-4 p.m. | Meeting with women's organizations |
| 4 p.m.-5 p.m. | Meeting on Ituri with local humanitarian organizations |
| 5 p.m.-5.30 p.m. | Recording radio broadcast "Human rights in everyday life" |

Friday, 7 March

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| 8 a.m.-9.30 a.m. | Visit to town of Kisangani and police training centre. Meeting with United Nations Civilian Police (CIVPOL) |
| 9.45 a.m.-10.30 a.m. | Meeting with civil judges |
| 10.30 a.m.-10.45 a.m. | Visit to detention centres under jurisdiction of civil prosecutors' offices |
| 10.45 a.m.-11.15 a.m. | Working meeting with senior military prosecutor and garrison prosecutor |
| 11.15 a.m.-11.30 a.m. | Visit to military prison |
| 11.30 a.m.-2 p.m. | Working lunch with various departments of MONUC Human Rights Division (eastern region) |
| 2.30 p.m.-2.45 p.m. | Recording special broadcast, Okapi radio station |
| 2.45 p.m.-3.30 p.m. | Press conference |
| 4 p.m. | Departure for Kinshasa |
| 5 p.m. | Arrival in Kinshasa |

Saturday, 8 March

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| From 7 a.m. | Meeting with President of the Republic |
| 10.15 a.m.-10.45 a.m. | Meeting with Commissioner-General overseeing the peace process |
| 11 a.m.-11.30 a.m. | Meeting with Minister of Justice |
| Noon-1 p.m. | Meeting with international NGOs |
| 2.30 p.m.-3.15 p.m. | Meeting with Ambassador of the European Union |
| 3.30 p.m.-4 p.m. | Meeting with Chargé d'affaires of the French Embassy |

Sunday, 9 March

- 10 a.m.-11 a.m. Visit Kinshasa Penal and Rehabilitation Centre
- 2.30 p.m.-3.30 p.m. Meeting with human rights NGOs
- 4 p.m.-7 p.m. Meeting with political parties

Monday, 10 March

- 8 a.m.-9 a.m. Breakfast with ICRC
- 9.30 a.m.-10.30 a.m. Meeting with senior representatives of United Nations agencies
- 11 a.m.-noon Meeting with members of diplomatic corps
- Noon-1 p.m. Meeting with United Nations Children's Fund (UNICEF)
- 4 p.m.-4.30 p.m. Press conference
- 5 p.m. Departure from Kinshasa
