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SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 26 September 2007 at 10 a.m.

President: Mr. COSTEA (Romania)

later: Mr. VAN EENENNAAM (Netherlands)
(Vice-President)

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The meeting was called to order at 10.15 a.m.

TECHNICAL ASSISTANCE AND CAPACITY-BUILDING (agenda item 10)

Report of the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (A/HRC/4/7; A/HRC/6/NGO/15, 24, 27, 40 and 42)

1. Mr. PACÉRE (Independent Expert on the situation of human rights in the Democratic Republic of the Congo), introducing his report (A/HRC/4/7), said that the situation of human rights in the Democratic Republic of the Congo remained extremely worrying. Serious violations, such as arbitrary executions, rape and torture, continued to be committed throughout the territory in a climate of impunity. The country's first democratic elections had been held in 2006 and were a key factor in stabilizing a vast country marked by long years of war. However, in January and March 2007, outbreaks of political violence had resulted in gross human rights violations; those violations had not yet been investigated by the judicial authorities.
2. The situation in the east, particularly in Nord-Kivu province, had been deteriorating since early 2007. The Government's mixage initiative had led to the reinstatement in the army of a large number of officers who had committed serious human rights violations. It had recently led to clashes between the Forces démocratiques de libération du Rwanda (FDLR) and units loyal to the renegade General Nkunda, and to increased insecurity and mass population displacements. The armed confrontation had resulted in an upsurge in violations of human rights and international humanitarian law by the brigades mixtes and FDLR.
3. A large area of Sud-Kivu province remained under the control of armed groups of Rwandan Hutu - currently estimated to comprise more than 10,000 persons - which regularly committed atrocities against the civilian population.
4. Sexual violence was commonplace throughout the country. Only a small number of those responsible had been brought to justice. Fewer than 1 per cent of rape victims saw their cases come to court, and 80 per cent of perpetrators had been released on bail and had never reappeared in court. Of the cases in which proceedings had been initiated, 106 (80 per cent) were still in progress after two years. In the 53 cases in which damages had been awarded, no payments had been made because most of the victims were women living in extreme poverty who were unable to pay the court fees that were required before the judgements could be executed.
5. Prison conditions remained deplorable, and urgent measures needed to be taken to address the extremely high rate of pretrial detention.
6. Impunity remained a major concern. The great majority of serious human rights violations had not been prosecuted or even investigated. Efforts at transitional justice had been paralysed by the need to cater to the interests of all belligerent parties represented in the transitional Government. None of the serious crimes committed between 1996 and 2002 had been investigated thoroughly, and many suspected war criminals continued to receive appointments and promotions in the army.

7. One of the main causes of impunity was political and military interference in the administration of justice, which was facilitated by the fact that the judiciary's resources were so limited. In addition, the population at large had only limited access to justice. The question of impunity had been the focus of the High Commissioner's visit to the Democratic Republic of the Congo in May 2007, during which the Government had acknowledged the problem. The High Commissioner had emphasized the importance of the vetting procedure in excluding persons responsible for human rights violations from the armed forces, and of the mapping project to establish a credible inventory of the most serious violations committed between 1993 and 2003.

8. It was vital for the Government to show zero tolerance for serious human rights violations. He recommended that the Government should take a number of measures to combat impunity: it should halt political and military interference in the administration of justice; provide the judicial system with sufficient resources to guarantee its efficiency and independence; deny amnesty for war crimes, crimes against humanity and genocide; ratify the Rome Statute of the International Criminal Court; give full support to the "Mapping Team"; introduce vetting procedures, with the assistance of the international community; and establish a national human rights commission that conformed to international standards.

9. Urgent measures were required in the east of the country. In Nord-Kivu, the brigades mixtes should immediately undergo the brassage process, and judicial proceedings should be instituted to deal with serious incidents. In Sud-Kivu, it was necessary to speed up the process of disarming the armed Rwandan Hutu groups and punish those responsible for atrocities against the civilian population.

10. He urged the Congolese authorities to launch judicial investigations into the latest Bas-Congo and Kinshasa incidents and bring the suspected perpetrators to justice. The Government should ensure that members of the security services, which were often responsible for political crimes, were punished for serious human rights violations. Their mandates should also be brought into line with international standards.

11. In view of the extent and gravity of the crimes that had been committed, he recommended the establishment of an international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within the existing Congolese courts.

12. Mr. MUTOMB MUJING (Observer for the Democratic Republic of the Congo) said that the electoral process in the Democratic Republic of the Congo had proceeded smoothly. The few regrettable incidents that had occurred were attributable to the fact that his country was still learning about democracy after 40 years of authoritarianism and 10 years of deadly warfare and serious violations of human rights.

13. Combating impunity was one of his Government's chief priorities. Notwithstanding its extremely limited resources, the Government would make every effort to punish those responsible for serious human rights violations. With the support of its development partners, the Democratic Republic of the Congo had taken measures to reform the National Police and the prison administration and to criminalize torture. Legislation on the independence of the judiciary had been enacted.

14. The Independent Expert's recommendation to establish joint criminal chambers in the Congolese courts was interesting, and the Government would give it due consideration.

15. A judicial investigation had been opened into the Bas-Congo incidents referred to by the Independent Expert, and the commission appointed by the National Assembly had submitted a report to Parliament.

16. New legislation on sexual violence had been enacted in 2006 and a national plan to combat sexual violence had been adopted in 2007 with assistance from the United Nations Population Fund (UNFPA). A code on the protection of children had been drafted in accordance with international standards.

17. The Democratic Republic of the Congo would have liked to see the Independent Expert pay more regular visits to the country in order to take stock of the human rights situation for himself. Moreover, his country believed that it had not received all the technical cooperation and advisory services provided for by Commission on Human Rights resolution 2004/84; such assistance was needed to enable the Ministry of Human Rights to play a full part in the promotion of human rights and prevention of violations.

18. Mr. PEREIRA MARQUES (Observer for Portugal), speaking on behalf of the European Union, said that, since the establishment of an international criminal tribunal for the Democratic Republic of the Congo appeared unfeasible, the Independent Expert should elaborate on his recommendation concerning the establishment of joint criminal chambers.

19. The recent mixage operations appeared to have taken place without any screening and had resulted in the mass recruitment of child soldiers. He wondered what measures had been taken to prevent the recruitment of underage soldiers into the army.

20. He asked what the international community could do to help strengthen the Congolese judiciary in order to enable it to prevent human rights violations, particularly sexual violence against women and children.

21. Mr. CORMIER (Canada) asked the Independent Expert to elaborate on his recommendation concerning the establishment of joint criminal chambers to try crimes committed before 2002.

22. Ms. RONDEUX (Observer for Belgium) said that the Independent Expert should explain how persons who came forward with information and evidence would be protected from retaliation, and what could be done to improve the safety of witnesses and human rights defenders. She wished to know what role the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) could play in that regard, bearing in mind that the field office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been integrated with MONUC.

23. Mr. KIM Pil-woo (Republic of Korea) announced that his Government intended to provide financial support to the mapping exercise in the Democratic Republic of the Congo.

24. Mr. BESSEDIK (Observer for Algeria) said that the Independent Expert had said nothing in his report or his oral statement about the African Union's role in bringing peace to the Democratic Republic of the Congo, and he would welcome his comments on that subject.
25. Although the mandate of the Independent Expert was a technical mandate, that was not sufficiently reflected in his report or his oral statement. The Independent Expert had identified specific problems relating to Congolese institutions but had made only very general recommendations. He would welcome more detailed recommendations, particularly with regard to technical assistance from the international community to consolidate the peace process.
26. Ms. ROSE (French National Consultative Committee on Human Rights), speaking also on behalf of the Association francophone des commissions nationales des droits de l'homme (French-Language Association of National Human Rights Committees), said that the Independent Expert had recommended the adoption of a framework law on the organization and functioning of the new national human rights institution. That body should be established in accordance with the Paris Principles and should be provided with sufficient resources to enable it to operate in complete independence.
27. Ms. DE RIVERO (Human Rights Watch) said that, in his report, the Independent Expert had referred to the importance of consolidating the State's authority as a key element in creating a stable society. Human Rights Watch was concerned that the consolidation of State authority could become a pretext for human rights abuses, particularly in a context of impunity and lack of accountability, and she wondered what immediate steps could be taken to strengthen the justice system. She wished to know how the Democratic Republic of the Congo had responded to his recommendations on that subject.
28. Mr. PACÉRE (Independent Expert on the situation of human rights in the Democratic Republic of the Congo) said that the observer for the Democratic Republic of the Congo had stated that he - the Independent Expert - had not made regular visits to the Democratic Republic of the Congo. In fact, he had undertaken two missions to the Democratic Republic of the Congo in 2004 and had returned in August 2005. He had intended to visit the country again in late 2005, but the schedules of the relevant authorities had prevented him from travelling. He had endeavoured many times to return - most recently in March 2007 - but had been told that his visit would not be possible owing to security reasons.
29. He had been requested to express his views on the idea of prosecuting persons responsible for war crimes by the International Criminal Court, a special international criminal court or joint criminal chambers. The Congolese judiciary was in a dire situation and, although many improvements had been made, it still encountered difficulties in dealing with serious crime. The International Criminal Court had declared itself competent to investigate crimes committed in the Democratic Republic of the Congo since 1 July 2002; however, that meant that the millions of crimes that had allegedly been committed between 1993 and the first half of 2002 would never be prosecuted. That was why it was advisable to establish a special international criminal court. He had put forward the idea of establishing joint criminal chambers because such an arrangement would be less complicated and less costly than setting up a special international criminal court. He had suggested that five joint chambers, composed of national and non-national judges, should be established, one in Kinshasa and four strategically located

throughout the country. The joint chambers would specialize in criminal cases, particularly those involving serious crimes, with the right of appeal and cassation before a competent chamber placed under the authority of the Supreme Court.

30. In its resolution 2005/85, the Commission on Human Rights requested the High Commissioner to submit a report on possible options for putting an end to the impunity of the perpetrators of crimes committed before 1 July 2002. The mapping exercise was part of the investigation of such options and a way of cataloguing sites of crimes, including serious crimes.

31. With regard to the comment made by the Observer for Algeria, he said that his mandate covered technical assistance to the Democratic Republic of the Congo. His report outlined specific areas where such assistance could be provided. The Government should also have a say in deciding where technical assistance was most needed, and he had recommended that it should submit the relevant information to the international community.

Mandate of the Special Rapporteur on the right to food

32. Mr. REYES RODRÍGUEZ (Cuba) said that the mandate of the Special Rapporteur on the right to food proceeded from the realization that the prevailing unjust international economic order made it very difficult for many developing countries to guarantee that right to their citizens. He called on all members of the Council to support the extension of the Special Rapporteur's mandate.

33. Mr. ZIEGLER (Special Rapporteur on the right to food) said that 854 million people, or one sixth of the world's population, suffered from hunger or malnutrition. Every day, 100 million people died of hunger or its direct effects. In 2006, one child under the age of 10 died of hunger every five seconds. According to the Food and Agriculture Organization of the United Nations (FAO), the world could easily feed 12 billion people.

34. Much remained to be done to promote and protect the right to adequate food. One of the key problems was the lack of coherence within the United Nations system. While positive results had been achieved by some sectors of the system, the policies and practices of some agencies undermined the protection of the right to food. For example, the subsidies for agricultural exports from industrialized States that the World Trade Organization (WTO) continued to allow wiped out African agriculture.

35. In 2006, the 500 most powerful transnational corporations in the world had controlled over 52 per cent of the world's gross domestic product (GDP). They were not subject to any control mechanisms and their sole interest was in maximizing profits, not in promoting the right to food. The Council must find ways of bringing such non-State actors to account.

36. The production of biofuels was responsible for a massive increase in hunger. The use of arable land for the production of biofuels led to unaffordable food and water prices and increasing competition over land and forests, resulting in forced evictions.

37. The millions of Africans who left their continent in search of a better life in Europe were not economic refugees, but refugees from hunger. The Council should develop an instrument that

protected the rights of such refugees. Work on the drafting of an additional protocol to the International Covenant on Economic, Social and Cultural Rights that would enable victims of hunger to appeal directly to the relevant treaty body should be given new impetus.

38. Mr. HASSAN (Egypt), speaking on behalf of the Group of African States, strongly supported the renewal of the Special Rapporteur's mandate.

39. Mr. PEREIRA MARQUES (Observer for Portugal), speaking on behalf of the European Union, said that the European Union supported the extension of the Special Rapporteur's mandate, since it would help States to improve their strategies to promote the right to adequate food. He wished to know what challenges the Special Rapporteur had faced in discharging his mandate, what suggestions he could give to the future mandate-holder, and what improvements he could suggest to make the mandate more effective and action-oriented.

40. Mr. FLORÊNCIO (Brazil) said that his Government's policies fully recognized the universality of the right to food. Brazil's biofuel programme could play an important role in promoting progress in developing countries' agricultural sectors. He supported the continuation of the Council's debate on the right to food and the extension of the Special Rapporteur's mandate.

41. Ms. DUONG (Switzerland) said that her delegation supported the extension of the mandate of the Special Rapporteur on the right to food. That mandate was important in establishing a comprehensive and coordinated approach to the promotion and protection of the right to food, and in identifying the problems related to the right to food worldwide.

42. Ms. MARTÍN GALLEGOS (Nicaragua) said that it was unacceptable that, in an increasingly affluent world, there were currently more people suffering from hunger and famine than there had been when the mandate of the Special Rapporteur on the right to food had been created. The Council should continue to prioritize the right to food and extend the Special Rapporteur's mandate without discussion.

43. Mr. CHERNIKOV (Russian Federation) said that his delegation supported the extension of the mandate of the Special Rapporteur on the right to food for three years.

44. Ms. NAVARRO LLANOS (Bolivia) said that her delegation attached great importance to the continuation and strengthening of the mandate of the Special Rapporteur on the right to food. The Special Rapporteur had visited Bolivia and had facilitated its adoption of environmentally sound agricultural practices that focused on small- and medium-sized producers. The Special Rapporteur's mandate should include an analysis of the possible harmful effects of food aid. Food aid could lead to price reductions, disruption of markets and changes in the food standards of a population. Moreover, States could become dependent on food aid, which could create unfair competition with small-scale local producers and result in their partial or total displacement. While her delegation recognized the importance of emergency humanitarian aid, such aid should not have negative long-term effects. There was a need to maintain States' food sovereignty, ensure the well-being of small-scale producers and guarantee the entire population's right to food. The mandate should also focus on developed countries' trade policies that violated developing countries' right to food. Greater consistency was required between trade policies and development aid for developing countries.

45. Mr. HAIDARA (Senegal) asked the Special Rapporteur on the right to food to provide some practical suggestions on how to improve consistency between the right to food and investment, international trade and official development assistance. That issue should be included in the Special Rapporteur's mandate. His delegation supported the extension of the mandate of the Special Rapporteur on the right to food.
46. Mr. Van Eenennaam (Netherlands), Vice-President, took the Chair.
47. Ms. JANJUA (Pakistan), speaking on behalf of the Organization of the Islamic Conference, supported the extension of the mandate of the Special Rapporteur on the right to food. The Special Rapporteur should further develop the important link between international trade policies and hunger.
48. Mr. NWOBU (Nigeria) said that, in order for the world's population to enjoy the right to food, political issues that resulted in armed conflicts should be resolved, since conflicts inevitably led to displacement of persons from arable lands. Moreover, the international community should increase its assistance to poor countries, particularly those in Africa, in order to enable them to develop their capacity to deal with such issues as climate change and desertification, which could affect the availability of food in the long term. His delegation supported the renewal of the Special Rapporteur's mandate for three years.
49. Mr. ARTUCIO RODRÍGUEZ (Uruguay) said that his delegation supported the extension of the mandate of the Special Rapporteur on the right to food.
50. Mr. RAHMAN (Bangladesh) said that the Special Rapporteur on the right to food should undertake a study of the policies and programmes of States, inter-State bodies, transnational corporations and others in order to ensure that such policies and programmes did not have a negative impact on the right to food for all. His delegation supported the extension of the mandate of the Special Rapporteur on the right to food.
51. Mr. MAHAWAR (India) said that his delegation was in favour of renewing the mandate of the Special Rapporteur on the right to food for three years. The focus of that mandate should remain on issues that were within the remit of the Council.
52. Mr. ZHAO Xing (China) said that his delegation supported the extension of the mandate of the Special Rapporteur on the right to food for three years. The Special Rapporteur should consider the issue of unequal food distribution and food shortages in some parts of world.
53. Mr. BITETTO GAVILANES (Observer for the Bolivarian Republic of Venezuela) said that the Council should adopt measures to eradicate hunger and ensure that all people enjoyed the right to food. His delegation supported the extension of the mandate of the Special Rapporteur on the right to food.
54. Mr. CHERIF (Observer for Tunisia) said that his delegation supported the extension of the mandate of the Special Rapporteur on the right to food for three years.
55. Mr. OUVRY (Observer for Belgium) supported the renewal of the mandate of the Special Rapporteur on the right to food for a further three years. The Special Rapporteur should explain how the issues of climate change and global warming could be incorporated into his mandate,

since those phenomena were likely to affect the implementation of the right to food, particularly in Africa. The Special Rapporteur should share his knowledge of the justiciability of the right to food, particularly in the light of the communications that he had examined under his mandate.

56. Mr. HOLGUÍN (Observer for Ecuador) supported the renewal of the mandate of the Special Rapporteur on the right to food.

57. Ms. ROSE (National Institutions for the Promotion and Protection of Human Rights), speaking also on behalf of the German Institute for Human Rights, the National Consultative Commission on Human Rights of France and the Consultative Council for Human Rights of the Kingdom of Morocco, said that she strongly supported the renewal of the mandate of the Special Rapporteur on the right to food. In view of the interdependence of the right to food and other human rights, the organizations that she represented were in favour of creating a new mandate to address the specificities of the right to water. With regard to access to food and its productive resources, such as land, seeds and water, there were still equality concerns, particularly in relation to girls and women. In that connection, she asked the Special Rapporteur what initiatives he would take to ensure the effective implementation of the principle of gender integration.

58. Mr. FATTORINI (Movement against Racism and for Friendship among Peoples (MRAP)), speaking also on behalf of Centre Europe - Tiers Monde, the Women's International League for Peace and Freedom and France Libertés - Fondation Danielle Mitterrand, said that the Special Rapporteur had broadened the scope of the right to food by clarifying various legal aspects, such as food sovereignty, the extraterritorial obligations of States, and the role and obligations of transnational corporations. Moreover, by identifying the major economic obstacles to the realization of the right to food, he had highlighted the basic contradictions in the policies of many countries, particularly the developed countries. He therefore called on the Council to renew and strengthen the Special Rapporteur's mandate.

59. Mr. CRETENAND (International League for the Rights and Liberation of Peoples) said that the Special Rapporteur on the right to food had contributed to the identification of hunger as one of the main causes of poverty throughout the world. The questions of hunger and food insecurity should be dealt with in a global manner and analysed as one of the consequences of the economic domination of the countries of the North over the countries of the South. Current imbalances in the world posed a major obstacle to the realization of the right to food. For that reason, he supported the renewal of the Special Rapporteur's mandate.

60. Ms. CHARTERS (International Indian Treaty Council) said that, for indigenous peoples, the right to food encompassed not only their ability to feed themselves but also their ability to maintain their cultures, languages, customs and traditions. All of those things were affected by the denial of the right to food for indigenous peoples. She was in favour of the Council's renewal of the mandate of the Special Rapporteur.

61. Mr. ZIEGLER (Special Rapporteur on the right to food) said that great advances had been made in ensuring the right to food. For example, China had achieved food self-sufficiency, and Cuba had endeavoured to guarantee the right to food under difficult conditions. Brazil was feeding 11 million families under its Bolsa Família programme, and Guatemala had made great progress under its "zero hunger" programme. He commended Bolivia's zero tolerance

approach to malnutrition, as well as the agricultural reforms carried out by the Bolivarian Republic of Venezuela. Some countries had introduced laws on food security. However, the greatest progress had been the increased awareness of the right to food.

62. Negotiations currently taking place in the European Union with Asian, Pacific and Caribbean countries could lead to an agreement that would have a catastrophic effect on the right to food in the third world: the liberalization measures envisaged in the agreement could result in a significant decline in tax revenues in sub-Saharan Africa. Brazil's plans to use greater areas of arable land for the production of biofuels would have a negative impact on food production.

63. He supported the proposal to create a special procedure on the right to water, as well as the proposal that the Council should consider the question of refugees from hunger.

Mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

64. Mr. MARTÍNEZ ALVARADO (Guatemala), speaking also on behalf of Mexico, said that, since the establishment of his mandate in 2001, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people had focused on three main areas, namely, thematic investigation, country visits, and communications with Governments. His work had helped to raise States' awareness of the importance of respecting and protecting the rights and fundamental freedoms of indigenous peoples. As a result of the Special Rapporteur's country visits and annual reports, constructive dialogue between Governments and indigenous communities and other relevant organizations had increased.

65. The mandate of the Special Rapporteur offered clear possibilities to increase respect for and protection of the rights of indigenous peoples. Greater efforts were still necessary on the part of Governments, international organizations, other stakeholders and the indigenous peoples themselves. By renewing the Special Rapporteur's mandate, the Council would reaffirm its commitment to the protection of millions of indigenous people throughout the world.

66. Mr. STAVENHAGEN (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples) said that his mandate complemented other international human rights mechanisms owing to its specific focus on the challenges faced by indigenous peoples with regard to the exercise of their civil, political, economic, social and cultural rights. A thematic approach in recent years had helped to place that issue on the international agenda.

67. Since his appointment, he had sought to promote a constructive dialogue between Governments, indigenous peoples and other relevant parties concerning violations of or threats to the collective rights of indigenous peoples and communities, as well as the individual rights of their members. Since 2001, he had sent numerous communications to various Governments and had carried out 10 official missions, a number of follow-up missions and other non-official visits at the invitation of United Nations bodies and agencies or NGOs.

68. The issues analysed in his country reports had often been echoed by Governments and other actors involved in protecting the human rights of indigenous peoples. An essential component of his mandate had been cooperation with other human rights mechanisms with a

view to coordinating action, avoiding unnecessary duplication and making more effective use of existing resources. He had participated in the interactive dialogue on human rights with the Permanent Forum on Indigenous Issues, as well as in the annual sessions of the former Working Group on Indigenous Populations. Any successor body to the Working Group should include in its mandate the periodic exchange of information with the Special Rapporteur, while at the same time ensuring the direct participation of indigenous peoples.

69. The recent adoption of the United Nations Declaration on the Rights of Indigenous Peoples reflected a growing international consensus concerning those rights, and had been welcomed by the world's indigenous peoples. The adoption of the Declaration gave his mandate a new moral and political impetus, while providing it with a clear normative framework for future activities.

70. While it was true that many aspects of his mandate could be improved, the mandate had become a focal point for the promotion and protection of the rights of indigenous peoples. From that perspective, the mandate should be renewed and strengthened by the Council.

The meeting rose at 1 p.m.