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增进和保护所有人权、公民、政治、经济、  
社会和文化权利，包括发展权

暴力侵害妇女、其原因及后果问题特别报告员  
亚肯·埃蒂尔克的报告

增 编

对刚果民主共和国的访问 \* \*\*

\* 内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文和法文分发。

\*\* 本文件迟交，是为了列入最新资料。

## 内容提要

性暴力已成为刚果民主共和国最近发生的武装冲突的一个典型特色。武装冲突地区内的妇女仍然遭受着刚果民主共和国武装部队、刚果国家警察、武装团伙和越来越多平民的性暴力侵害。南基伍的情况尤其严重，包括外国民兵在内的非国家武装团伙的性侵犯行径令人发指，目的是彻底摧毁妇女的身心，从而伤害整个社会。鉴于有众多方面卷入冲突而且罪行仍持续发生，在刚果当局的配合下，国际社会有责任采取一切必要措施，务求南基伍的妇女受到保护。

性暴力不只发生在东部刚果。在赤道省，刚果国家警察和刚果民主共和国武装部队有计划地对平民群体进行报复，包括大规模强奸。犯下这种危害人类罪行的军警极少受到上级惩戒，其中一些人还在国家保安部队中升任指挥要职，这就进一步使情况变本加厉。

强奸罪行不受惩处的现象很普遍。由于政治干预和腐败横行，强奸犯，特别是当他们是国家保安部队的一员时，可以逍遥法外。司法系统工作繁重，也得不到什么支持，这就让人怀疑是否具有消除有罪不罚现象的政治意愿。

遭到强奸的幸存妇女身心受到严重摧残，却得不到适当的照顾。幸存者往往受到家人排斥，背上污名，普遍难以诉诸司法，也得不到根据国际法和刚果法律所应得到的赔偿。

武装冲突期间使用极端性暴力的做法破坏了所有社会保护机制，使得那种对妇女肉体的狂暴幻想日益猖獗。越来越多的平民也犯下强奸罪行，导致妇女又受到一层压迫。如果孤立地对待战争引起的性暴力问题，妇女在“和平时期”遭受基于性别的歧视和暴力现象就会被严重忽略，妇女受到的迫害就会加剧。

有鉴于此，本报告向该国政府、国际刑事法院、国际社会、联合国和联合国组织刚果民主共和国特派团及部队派遣国提出了各项建议。

**Annex**

**REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR  
ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND  
CONSEQUENCES, YAKIN ERTÜRK, ON HER MISSION  
TO THE DEMOCRATIC REPUBLIC OF THE CONGO  
(16-28 July 2007)**

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## Introduction

1. From 16 to 27 July 2007, I carried out an official visit to the Democratic Republic of the Congo at the invitation of the Government. During my mission, I held consultations with government officials, including the Minister of Justice, the Minister on the Status of Women and the Family, the Minister of Human Rights, the Vice-Minister of Defence, the Vice-President of the National Assembly and members of the Parliamentary Gender Parity Network. I also met with local authorities, representatives of civil society, United Nations officials and women survivors of violence. I visited the Kinshasa Central Prison in Makala, Bukavu Prison, Mbandaka Central Prison and the Groupe Litho Moboti (GLM) Military Prison in Mbandaka, where I spoke with female and male detainees.
2. This report focuses on sexual violence used as an instrument of war in the Democratic Republic of the Congo. Given the vastness of the country, I was able to get first-hand impressions only in Kinshasa, South Kivu Province, Equateur Province and the Ituri District. While my findings concentrate mainly on the situation in these localities, reports received from the United Nations and other independent monitors indicate that violence against women is dire in the other provinces as well.
3. I would like to thank the Government for its cooperation in the preparation and conduct of my mission. I am looking forward to an ongoing dialogue with all stakeholders on the implementation of the recommendations made in this report.

### I. RECENT HISTORY AND POLITICS

4. The recent history of the Democratic Republic of the Congo is marked by two major armed conflicts, involving a multitude of actors.<sup>1</sup> An estimated 4 million people died as a result of the direct and indirect consequences of these wars.
5. The first Congolese war was an aftermath of the 1994 Rwandan genocide. When the Rwandan Patriotic Front (RPF) took control of the country, many perpetrators of the genocide, along with about 1 million refugees, fled from Rwanda to the East of the country (then called Zaire). Fearing cross-border attacks, Rwanda, supported by Uganda, invaded the Democratic Republic of the Congo in 1996. Rwandan troops supported a rebel alliance led by Laurent Kabila that took Kinshasa, ousted then President Mobutu and installed Laurent Kabila as President in 1997.
6. In 1998, the second Congolese war erupted, this time pitting Laurent Kabila's forces, supported by several African countries, including Zimbabwe, Angola and Namibia, against an alliance of armed groups supported by Rwanda, Uganda and Burundi.

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<sup>1</sup> The war in the Democratic Republic of the Congo has been termed the "seven-nation war", indicating the number of actors involved at the State level alone. See E. Newman and O. Richmond (eds.), 2006, *Challenges to peacebuilding*. Tokyo, United Nations University Press, p. 145.

7. In January 2001, Laurent Kabila was assassinated and his son Joseph Kabila assumed the Presidency. In 2002, President Joseph Kabila and the main rebel leaders signed a power-sharing agreement and a transitional Government was formed in 2005. A constitution was approved by public referendum, followed in 2006 by presidential, parliamentary and provincial elections. Joseph Kabila was sworn in as President on 6 December 2006.

8. The successful conclusion of the electoral process in the Democratic Republic of the Congo has been considered an important step towards stability. However, since the elections there have been troubling developments.<sup>2</sup> At the time of my visit, armed hostilities involving the State security forces, dissident factions of the Congolese Army (Forces armées de la République démocratique du Congo, or FARDC) and various non-State armed groups were ongoing in parts of eastern Congo (North Katanga, South Kivu, North Kivu and the Ituri District). The situation is complicated by the continued presence of estimated 6,000 to 7,000 members of foreign non-State armed groups, including the Forces démocratiques de libération du Rwanda (FDLR), an armed group dominated by Rwandan Hutu extremists. This situation has exacerbated racism and hostility towards the Kinyarwanda-speaking population in the Democratic Republic of the Congo. During my visit, ethnic tensions in the Kivus reached a new peak.

9. Control over the country's natural resources is central to the conflicts. In 2001, the United Nations Panel of Experts (see S/2001/357) found that mass-scale looting had taken place in territories conquered by the armies of Burundi, Rwanda and Uganda during the second Congolese war.<sup>3</sup> This was followed by systematic exploitation of natural resources organized by top army commanders, businessmen and government structures. Non-State armed groups in eastern Congo continue to use the networks and structures that emerged during this period to finance themselves. In July 2007, a Group of Experts appointed by the Security Council, which investigated the illicit transfer of embargoed materials in South Kivu, North Kivu and Ituri, confirmed that the most profitable financing source for armed groups remained the exploitation, trade and transportation of natural resources.<sup>4</sup>

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<sup>2</sup> According to reports, at the end of January 2007 at least 105 people were killed and over 100 injured in Bas Congo Province. FARDC and the national police (PNC) reacted indiscriminately, using disproportionate force, in some cases, summary executions to violent protests by members of Bundu Dia Kongo.

Between 22 and 25 March 2007, forces loyal to opposition leader Jean Pierre Bemba and FARDC violently clashed in Kinshasa and Bemba went into exile. Over 300 deaths, including an alleged 40 summary executions (mostly committed by the Republican Guards), more than 200 arbitrary arrests and scores of cases of intimidation and threats against persons perceived to be affiliated to Bemba or natives of Equateur Province have been documented.

<sup>3</sup> United Nations, Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo (S/2001/357).

<sup>4</sup> Final report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council resolution 1698 (2006); see S/2007/423, para. 37.

10. During the transitional period, Congolese leaders mortgaged the country's future revenues by awarding mining concessions in areas controlled by the Government. In a report published in June 2005, a National Assembly Commission, headed by current Assembly Vice-President Christophe Lutundula, declared that a number of mining and other contracts signed by government authorities between 1996 and 2003 were either illegal or of limited value to the country's development and recommended their termination or renegotiation.<sup>5</sup>

11. The magnitude and nature of the sexual violence in the Democratic Republic of the Congo must be assessed against this historical and political background.

## II. MAGNITUDE AND NATURE OF SEXUAL VIOLENCE

12. Sexual violence has been a defining feature of the Congolese armed conflicts. Extreme levels of sexual violence, perpetrated by non-State armed groups, State security forces and civilians persist in those areas of Eastern Congo that are still experiencing hostilities. However, sexual violence is not restricted to zones of armed conflict; it is rampant in the whole country.

13. The perpetrators often belong to State security forces, including the FARDC, FARDC Naval Forces and the PNC. MONUC Human Rights Division found that 54 per cent of all sexual violence cases documented in the first six months of 2007 were committed by the FARDC and 43 per cent by the PNC. Members of the Republican Guard, the Police Special Services (*Kin Mazière*) and the National Intelligence Agency (ANR) have also been cited as perpetrators of rape.

14. Human rights observers also note an increasing number of rapes of women in detention. During the first six months of 2007, MONUC documented 16 cases of sexual violence against women in prisons, police stations or other detention facilities. Reports from prisons, including Kinshasa Central Prison in Makala, also indicate that prison guards have forced female detainees into prostitution.

15. The number of rapes committed by civilians is on the rise. Some of these civilian perpetrators are said to be demobilized militiamen, who were reintegrated without any rehabilitation measures and continue their wartime conduct. Even more worrisome, the atrocities seem to have eroded all protective social mechanisms that would constrain the extensive use of sexual violence. As one woman's rights activist explained: "In the past, burglars would rob a house and then leave. Today, they will first rape all the women in the house and then steal".

16. A number of observers also noted that the victims are increasingly young girls. The Hospital of Médecins sans Frontières in Bunia (Ituri), for example, reported that one in six

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<sup>5</sup> The Government committed itself in a "Governance Contract" presented to the Congolese people in February 2007 to analyse existing mining contracts, renegotiate them where necessary and create structures to improve transparency. In April 2007, the Minister for Mining created an Interministerial Commission to revisit Mining Contracts.

patients (17 per cent) who was treated at the hospital for rape-related injuries in the first half of 2007 were younger than 12 years. The belief that HIV and AIDS can be cured by raping a virgin girl is one myth motivating the rapist.

### **A. South Kivu**

17. The situation in South Kivu is the worst crisis of violence against women that I have so far encountered in my work as Special Rapporteur. The Provincial Synergy to Combat Sexual Violence in South Kivu, an action committee bringing together dedicated governmental, civil society and United Nations representatives, has recorded 4,500 new cases in the first six months of 2007. According to figures obtained through MONUC, an estimated 14,000 new rapes were recorded in 2005 and 13,000 in 2006. The real number of cases is certainly many times higher, as most victims live in inaccessible areas and are afraid to report. Furthermore, there are inconsistencies in the methodologies used in recording reported cases.

18. An analysis of the cases recorded by the Provincial Synergy in 2007 shows that 70 per cent of all rapes in South Kivu are committed by non-State groups, 16 per cent by the FARDC and PNC and 14 per cent by civilians; 13 per cent of the victims are girls younger than 18 years old.

#### **1. Sexual atrocities by non-State groups**

19. FDLR and its various factions are major perpetrators of rape in South Kivu. One of these factions, known as "Rasta", has proven to be particularly violent. The Panzi Hospital in Bukavu treats about 3,500 women every year for severe genital injuries caused by rape and other forms of sexual assault. According to hospital staff, 90 per cent of the victims report that the perpetrators spoke Kinyarwanda. Certain renegade factions of FARDC as well as armed groups claiming allegiance to the Mayi Mayi movement have also engaged in systematic looting, rape and sexual enslavement.

20. Operating from dense forest areas situated around Burhale, Izige, Kanyola (all Walungu territory), Bunyakiri, Kalonge (Kalehe), Nindja (Kabare), Mwega and Shabunda territories, FDLR terrorizes the local population by raiding settlements, looting, murdering and gang-raping. Women and girls are abducted and taken to the forest, where they are sexually abused and enslaved. Between December 2006 and March 2007, MONUC recorded 89 such attacks. The situation is so grave that many families leave their homes at nightfall and go to better-protected areas.

21. A number of FDLR/Rasta fighters are Rwandan nationals, some of whom are thought to be implicated in the Rwandan genocide. The sexual atrocities committed in South Kivu are indeed reminiscent of those perpetrated by Interahamwe militia during the Rwandan genocide. The atrocities are structured around rape, sexual slavery and forced marriage. They aim at the complete physical and psychological destruction of women with implications for the entire society. Women are brutally gang-raped, often in front of their families and communities. In numerous cases, men are forced at gunpoint to rape their own daughters, mothers or sisters. In some cases women were shot or stabbed in their genital organs after they were raped. Women, who survived months of enslavement, told me that their tormentors had forced them to eat excrement or the human flesh of murdered relatives.

22. One woman from Nindja Village described how she and other villagers fled their homes every night to seek protection in the bush. One day in 2005, a group of Kinyarwanda-speaking men, whom she described as “Interahamwe”, tracked them down. They first executed the leader of the villagers and later the woman’s brother, when he refused to rape her. The woman, her two children and about 50 others were marched off into the forest. When one of her children fell, the perpetrators forced her to kill her child. In captivity she was raped by 19 different men. On one occasion, the commander of the group forced her to fry and eat the hands and feet of her murdered sisters-in-law. At regular intervals, the militia would execute abducted women and men, after forcing them to first dig their own graves.

23. These atrocities are ongoing. On the night of 21 July - while I visited South Kivu - FDLR/Rasta attacked the village of Nybishaka (60 km south-west of Bukavu), looted several houses and abducted two women. Six nights later, 10 armed men in uniform, believed to be FDLR, attacked Bulwe (50 km south-west of Bukavu) and abducted four women. The following day, one woman was found murdered, another was seriously wounded.

24. The FARDC has carried out military operations against the FDLR and the Rasta faction in the Walungu area, but has been unable to neutralize the armed groups. MONUC troops provided support for these efforts, mainly by cutting off retreat paths for the militia. Since August 2007, the FARDC has reportedly suspended military operations.

## **2. Sexual violence by State security forces**

25. FARDC, the FARDC Naval Forces, PNC and the Presidential Guard continue to perpetrate sexual violence. In some areas, rapes seem to be systematically employed to intimidate the local population. FARDC soldiers of the 109th Brigade based in Uvira were repeatedly accused of rape. On 22 March 2007, for instance, soldiers of the 109th Brigade reportedly raped a 13-year-old girl at Katongo (15 km south of Uvira, South Kivu).

26. According to reports, individual soldiers and police also routinely extort money and other goods from the local population. Such extortion may be accompanied by rape. On 11 March 2007, for instance, an 11-year-old girl was reportedly raped by two FARDC soldiers of the 14th Integrated Brigade in the locality of Nyamukubi (95 km north of Bukavu) when her parents resisted the illegal occupation of their home by soldiers.

27. Individual perpetrators are usually not held to account by their commanders, who themselves may be among the perpetrators. In July 2007, for instance, an officer of the 3rd Company of the 102nd Brigade based in Maturale (42 km north of Uvira) reportedly raped a 14-year-old girl and then attempted to settle the matter privately by giving the family of the victim US\$ 50 and a goat.

28. A colonel reportedly raped a 14-year old girl in Sange (95 km South of Bukavu) in 2005, when he was commander of the 110th Brigade in Uvira. Despite an arrest warrant issued against him in February 2006, he remained the commander of the First Mixed Brigade at the time of my visit.



29. A major of the 116th Brigade of the FARDC in Ziralo (210 km north of Bukavu) was reportedly implicated in acts of pillage and rape committed in Lulamba, Mudona and Mutuvo, but retained his position in the FARDC.

### **B. Ituri District**

30. The local dynamics in Ituri have been heavily affected by the Congolese wars and the politics surrounding them. Long-standing tensions between Lendu and Hema ethnic groups, rooted in colonial divide-and-rule strategies, were transformed into a local armed conflict involving several ethnically based militia groups. Thousands of civilians became internally displaced or were killed.

31. The militia groups involved, claiming to fight in defence of their own ethnic group, targeted the civilian populations indiscriminately.<sup>6</sup> Women in particular were treated as war booty and sexually abused. One Lendu woman from a village 40 km west of Bunia, whose village was attacked by Lendu militia in January 2004, described to me how her husband and four children were executed in front of her eyes. She and 30 other women of Lendu, Hema and Bira ethnic groups were abducted, sexually enslaved and subjected to additional forms of humiliation and torture. When Hema fighters from the Union des patriotes congolais (UPC) attacked the Lendu militia and took control of the camp, the fighters subjected the women to the same sexual atrocities as the previous group of men had done.

32. Efforts to demobilize non-State militia or integrate them into the FARDC have improved the overall security situation in Ituri. However, sexual violence continues, especially since more and more civilians commit rape. Cooperazione Internazionale, which runs a programme for survivors of sexual violence, identified more than 6,000 victims of rape in accessible areas of Irumu, Mambasa, Mahagi and Aru Territory between April 2006 and June 2007. Another 1,000 victims were identified between December 2006 and June 2007 in Djugu territory that had previously not been accessible due to the security situation. The Médecins sans Frontières (MSF) Hospital in Bunia has treated almost 2,000 rape victims in 2006. As high as these figures may appear, they almost certainly represent only a tiny proportion of the total.

33. Data provided by various sources indicates that one in five rapes is committed by the State security forces. On 28 April 2007, for instance, FARDC Major Komboko, responsible for the FARDC training camp of Rwampara (Bunia), raped the 12-year-old daughter of another FARDC officer. He was arrested on 8 May 2007 and on 28 July he was sentenced in first instance to 10 years in prison by the Kisangani military court.<sup>7</sup> During June 2007, MONUC documented

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<sup>6</sup> On 17 October 2007, the Congolese authorities surrendered and transferred Germain “Simba” Katanga, a commander of the Force de résistance patriotique en Ituri (FRPI) to the International Criminal Court (ICC). The ICC’s arrest warrant accused Katanga, among other things, of sexual enslavement.

<sup>7</sup> The decision has been appealed.

that a woman was allegedly abducted and raped by a FARDC member of the 2nd Battalion of the 1st Integrated Brigade in Rimba, Mahagi territory. On 4 June, the chief of police in Nyakunde, Ituri, allegedly arbitrarily arrested a 19-year-old woman and subsequently raped her.<sup>8</sup> On 8 June 2007, in Alibha (22 km south of Aru), a pregnant woman was allegedly raped by a FARDC member of the 3rd Battalion of the 1st Integrated Brigade, resulting in a miscarriage. Another woman was allegedly raped by a Police d'intervention rapide (PIR) agent on 16 June 2007 in Kolokoto (7 km from Mahagi port), when she went to follow up on a complaint that she had previously filed.<sup>9</sup>

34. FARDC has also used rape systematically in operations against the civilian population. I received reports that a company of the 6th Brigade had engaged in systematic reprisals against the local population of Jiba village (60 km east of Bunia), following armed clashes between the FARDC and non-State militia in the area. Between February and May 2007, at least 17 women were raped by FARDC soldiers. Other civilians had been subjected to torture, ill-treatment and looting. The military prosecutor was aware of the case, but claimed that since the 6th Brigade was redeployed to North Kivu, the perpetrators were no longer in Ituri and his request for permission to arrest alleged perpetrators had not been answered by the Commander of the 9th Military District.

35. In September 2006, FARDC soldiers of the Intervention Battalion of the 1st Integrated Brigade in Bavi (50 km south of Bunia) summarily executed at least 32 civilians. At the order of the commander of the Intervention Battalion, Captain Francois Mulesa, at least five women were raped before they were murdered. On 19 February 2007, the Bunia Military Tribunal sentenced 13 soldiers to life imprisonment in connection with the atrocities. Captain Mulesa was convicted of rape and sentenced to life imprisonment. The life sentence was confirmed on appeal by the Kisangani Military Court.

36. Another major incident involving rape occurred between 11-12 January 2007, when around 250 soldiers of the FARDC Integrated Brigades stationed in Bunia reacted violently to a rumour that FARDC officials had misappropriated part of the soldiers' annual bonus payments. The soldiers looted private homes and raped at least five women. On 18 June 2007, 17 soldiers were convicted for looting, failure to observe military regulations and squandering of ammunitions. The Court also ordered the perpetrators and the State to pay a total of US\$ 98,000 in compensation to the victims. None of the men were prosecuted for rape, since the Military Prosecutor considered that the available evidence did not suffice to secure a conviction.

### **C. Equateur Province**

37. Armed conflict in Equateur (situated in the North-West of the Democratic Republic of the Congo) ended several years ago. However, sexual violence continues in the province. From

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<sup>8</sup> As of 28 September 2007, the Chief of Police had been judged by the Bunia military court and sentenced to 20 years in prison.

<sup>9</sup> See MONUC, Human Rights Division, Monthly Human Rights Assessment, July 2007 ([www.monuc.org](http://www.monuc.org)).

June 2005 to June 2007 the Provincial Synergy to Combat Sexual Violence identified more than 2,500 victims of sexual violence. The real number is probably many times higher, not least since large parts of this vast, densely forested province are hardly accessible.

38. PNC, FARDC and the FARDC Naval Forces are major perpetrators of rape in Equateur. Relationships between the local population and the central authorities remain volatile since a large part of the local population reportedly supports the opposition Movement of Jean Pierre Bemba. The local population is very sensitive to actual or perceived governmental injustices, especially if they involve State security forces. Acts of violent self-justice occur frequently. On several occasions, State security forces have responded with armed and organized reprisals that indiscriminately targeted the civilian population, involving looting, torture, ill-treatment and rape, and carried out in public.

39. In December 2006, a mob of 250 villagers in Karawa (630 km north-east of Mbandaka) reportedly attacked a police station and lynched a man held at the station whom the villagers accused of witchcraft. In response, PNC assembled about 70 police officers from other duty stations (Businga, Bobadi and Inera) and pillaged Karawa, tortured civilians and raped at least 30 women, including a pregnant woman and four minor girls. According to the latest information received, the Military Prosecutor has launched an official investigation, but no police officer has been arrested or prosecuted in relation to this case. Several have been redeployed to other duty stations in an apparent attempt to shield them from investigation and prosecution.

40. In March 2006, a local mob in Lifumba Waka (515 km north-east of Mbandaka) took the local PNC Commander hostage to protest against police abuses. Policemen from Basankusu police station reportedly responded with an indiscriminate reprisal against the entire civilian population. Thirty-seven women were raped, including three minors and two pregnant women. Fifty other persons were subjected to torture or ill-treatment and 120 houses were looted. Allegedly, 2 of the 12 alleged perpetrators were in pretrial detention awaiting trial.

41. In April 2006, FARDC soldiers reportedly launched an armed reprisal in Gemena, South Ubangui District, responding to a rumour that a FARDC soldier had been killed by members of the local population. Ninety-seven civilians were subjected to gross human rights violations, including three women who were raped. All of the 22 soldiers initially arrested in connection with the case have reportedly escaped or disappeared from prison.

42. In August 2006, several tax collectors were violently attacked in Bolongo-Loka (512 km north-east of Mbandaka). Police from Botewa Police Station reportedly organized indiscriminate reprisals against the civilian population and raped at least 60 women, including 1 pregnant woman. Subsequently, nine alleged perpetrators were arrested and committed to pretrial detention. According to the latest information received, five of the nine men are no longer in prison and their whereabouts are unknown.

43. Allegedly, similar armed reprisals by the State security forces also took place in May 2007 in Bongulu (90 km north of Bumba), in April 2007 in Bonyanga (120 km south-west of Gemena) and in March 2007 in Mbelo.

44. Equateur Province was also the site of several mutinies of FARDC soldiers that involved mass rape. In November 2005, FARDC soldiers who were in the process of being demobilized in Bokala (8 km north-west of Mbandaka) reportedly carried out a reprisal against the local population, after one soldier was found dead as a result of electrocution. At least 16 women were raped.

45. In July 2005, soldiers of the 39th Brigade in Bokala attacked the civilian population, when the body of a FARDC soldier was discovered. At least 64 women were raped, including 3 minor girls. In addition, more than 1,500 persons were subjected to torture, ill-treatment and/or looting. In June 2006, 40 perpetrators were sentenced. Applying the Rome Statute of the International Criminal Court for the first time in the history of the Democratic Republic of the Congo, the Court of First Instance sentenced eight ringleaders to life imprisonment on counts of crimes against humanity. On appeal, the life sentences against three of the eight accused were confirmed.

46. In December 2003, soldiers from the 9th Battalion stationed in Songo Mboyo (600 km north-east of Mbandaka) mutinied after rumours that the commanders had stolen their salaries. They looted the village and brutally raped at least 200 women. One victim described to me how she was gang-raped by 17 soldiers, before the men forced her father at gunpoint to rape her. During the course of the investigation, victims and witnesses received death threats and had to be relocated to other areas. Six soldiers were eventually convicted for crimes against humanity and sentenced to life imprisonment. All six men have since escaped from prison under dubious circumstances.

#### **D. Sexual abuse committed by peacekeepers**

47. In 2004, media reports alleged that MONUC peacekeepers had engaged in large-scale sexual exploitation of Congolese women and girls. An investigation conducted by the United Nations Office of Internal Oversight Services (OIOS) in Bunia (Ituri District) between May and September 2004 confirmed that sexual contact between Congolese women and girls and peacekeepers occurred frequently, usually in exchange for food or small sums of money, often involving girls under the age of 18, with some as young as 13.<sup>10</sup> The investigation revealed a “pattern of sexual exploitation”, contrary to the standards set by the Department of Peacekeeping Operations of the Secretariat, which prohibit any solicitation of prostitution, regardless of the age or consent of the person solicited.

48. Against this backdrop, the Secretary-General appointed Prince Zeid Ra’ad Zeid Al-Husseini, Permanent Representative of Jordan to the United Nations, to develop a comprehensive strategy on sexual exploitation and abuse in peacekeeping operations. The strategy was debated in the General Assembly in April 2005 and a number of Prince Zeid’s

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<sup>10</sup> “Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo” (A/59/661) of 5 January 2005.

recommendations have since been adopted. In July 2007, the General Assembly recommended that standards of conduct, including standards on sexual exploitation, be included in the revised draft model memorandum of understanding between the United Nations and troop-contributing countries.

49. The Department of Peacekeeping Operations also established a Conduct and Discipline Team within MONUC to provide advice on disciplinary issues, raise awareness and channel reported cases of serious misconduct to OIOS. In addition, a night curfew was imposed and certain localities were declared out of bounds for peacekeepers.

50. Despite these positive measures, sexual exploitation and abuse within MONUC remains a serious concern. The United Nations recorded 176 allegations in 2006 in which MONUC personnel were accused of having engaged in sexual exploitation or abuse.<sup>11</sup> While a number of these allegations may eventually prove to be unsubstantiated, reports received from Congolese non-governmental organizations, United Nations staff members and individual victims indicate that cases of sexual abuse of minor girls and solicitation for prostitution continue to occur.

51. Some troop contingents still fail to address allegations of sexual exploitation and abuse with due diligence. In some instances, they even attempt to cover up cases. In February 2007, OIOS reported that it had substantiated allegations that a military contingent member of MONUC had sexually abused an under-age girl, which resulted in the birth of a child.<sup>12</sup> OIOS also investigated similar allegations involving another girl and a member of the same military contingent; this allegation could not be substantiated because the alleged victim could not be located. In both cases the Commander of the respective military contingent had provided subsistence support to the families of the girls for more than seven months, presumably to prevent them from complaining.

52. Shortcomings in the legal and procedural framework still allow perpetrators to escape criminal accountability, even where allegations can be substantiated and the perpetrator is removed from the mission. In cases involving civilian peacekeepers, impunity may ensue, because the perpetrator's country of nationality does not exercise extraterritorial jurisdiction over crimes of sexual exploitation and abuse.

53. These jurisdictional problems do not apply to military personnel, because military penal codes generally provide for their extraterritorial application. However, cumbersome procedures often prevent the successful prosecution of soldiers. Troop-contributing countries will usually first repatriate the offender and then carry out a criminal investigation into the case. At this point, witnesses may be inaccessible and important forensic evidence may be lost, especially since OIOS and the Conduct and Discipline Team still lack the capacity to compile and preserve such

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<sup>11</sup> "Special measures for protection from sexual exploitation and sexual abuse" report of the Secretary-General of 15 June 2007 (A/61/957) annex IV. This figure represents almost half of the 357 allegations recorded for DPKO personnel worldwide in 2006.

<sup>12</sup> Report of the Office of Internal Oversight Services, Part two: peacekeeping operations, of 26 February 2007 (A/61/264 (Part II)), para. 11.

forensic evidence. Prince Zeid's report recommends that troop-contributing countries conduct on-site courts martial. I was encouraged to hear that the South African contingent in MONUC has followed this recommendation.

54. The United Nations still lacks a mechanism to provide victims of sexual exploitation and abuse with adequate compensation. At the time of my visit, victims of MONUC abuse could obtain no more than emergency assistance within current mission budgets from the United Nations.<sup>13</sup> In addition, there are no mechanisms to ensure that fathers of babies born from relationships between MONUC personnel and Congolese women pay child support, nor are there any means to compel a father to do so. The mother would therefore have to sue for child support in the dysfunctional Congolese system, which is unrealistic even if one assumes that the United Nations would waive the father's immunity from judicial proceedings.

### III. SURVIVORS OF SEXUAL VIOLENCE

#### A. Care and treatment

55. Many survivors of sexual violence are severely injured, since most rapes are collective and carried out with an extraordinary brutality. Medical data collected by the Provincial Synergy for South Kivu showed that more than 26,000 women in the province sought medical assistance for rape-related injuries in 2006.

56. In some cases, the perpetrators deliberately seek to destroy the victim's genital and reproductive organs. At the Panzi Hospital, I interviewed a 10-year old girl, who had been abducted by armed men she described as "Interahamwe". The perpetrators rammed a stick into her vagina, damaging her genital organs. The Provincial Synergy in South Kivu estimates that 20 per cent of all rape victims have suffered irreparable damage to their genital organs.

57. Many rape victims also suffer vaginal fistula, i.e. the tearing of a hole (fistula) in the tissue between the vagina and the rectum or the vagina and the bladder. A woman suffering from fistula can no longer hold her urine or faeces. The smell is constant and humiliating to the woman. Left untreated, fistula can lead to chronic medical problems, including ulcerations, kidney disease, and nerve damage in the legs. Most fistulas could be treated with a surgical operation. However, local health centres lack the necessary equipment and trained medical staff. The few existing specialized medical hospitals, such as the Panzi Hospital (Bukavu, South Kivu) or the DOCS Clinic (Goma, North Kivu), are overwhelmed and geographically inaccessible for many women.

58. The rapists often infect women with HIV and other sexually transmitted diseases. The Provincial Synergy for South Kivu estimates that 22 per cent of rape victims in the province are HIV-positive. Few victims have access to post-exposure prophylaxis, which could significantly reduce the risk of infection, if taken within 24 to 72 hours of the rape.

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<sup>13</sup> See note 11 above, para. 21. A draft United Nations policy statement and draft comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff or related personnel (A/60/877) is currently being considered.

59. Women survivors of rape are often ostracized and rejected by their own families and communities. Husbands often desert women who have been raped or eject them from their home. The fact that State security forces and armed groups often deliberately rape women in front of their husband or families increases the social consequences of rape.

60. There are also thousands of babies born from rape, who are often rejected by society and sometimes even by their own mothers. Children born from rape committed by foreign armed groups are often persecuted by the local population.

### **B. Livelihood security**

61. Victims of sexual violence often end up destitute and struggle for their mere survival, because they lose their family support networks. A 60-year-old woman from the village of Babuna Batuti (Ituri) told me that she was gang-raped by three militiamen in front of her whole family in 2004. The militia executed her entire family, leaving only herself and her infant grandson alive. Today, she and her grandson live on the street with the help of the local women's association SOFEPADI. Other rape victims with whom I spoke faced similar hardships, especially those who had been rejected by their families. Economic assistance to women survivors of sexual violence to re-establish their livelihoods has so far been largely neglected by the donor community.

62. In the course of armed conflict, armed groups forcefully recruited thousands of women and girls as porters, cooks, etc. and many were also sexually exploited or raped. The National Commission for Disarmament, Demobilization and Reintegration (CONADER) has demobilized 101,000 militia fighters, including 2,600 women. Demobilized fighters were given a small demobilization grant, job training and equipment to begin a civilian livelihood. However, women who were associated with armed groups but did not actively take part in hostilities did not qualify for assistance.

63. One girl from a village near Bunia, told me that she was 14 years old when Lendu militia of the Front nationaliste intégraliste (FNI) abducted her. For three years, she and 20 other women were kept as forced labourers in the camp and were expected to sleep with the militiamen at their behest. She was repeatedly raped, became pregnant and gave birth to a son. When she returned to her community with her baby, her family rejected her. Unlike the men who abducted and exploited her, the girl did not receive any State assistance and she struggles to survive.

64. The Executive Unit of the National Disarmament, Demobilization and Reintegration Programme (UEPNDDR), which replaced CONADER in July 2007, plans to launch a programme for women who were associated with armed groups, many of whom have reintegrated into communities. Since providing women with individual benefits would mean identifying them as being associated with armed groups and thereby stigmatizing them, UEPNDDR plans instead to launch targeted community support programmes in localities, where such women live.

## **IV. PERPETUATION OF SEXUAL VIOLENCE**

### **A. Impunity**

65. International law requires the authorities to exercise due diligence and to investigate, prosecute and adequately punish perpetrators of sexual violence, in particular when the violence amounts to crimes against humanity, war crimes and/or torture.

66. On 20 July 2006, the President signed the Law on Sexual Violence, which introduced major improvements to the Congolese Penal Code and the Congolese Code of Penal Procedure. However, the law enforcement and justice authorities have been unable and, in many instances, apparently also unwilling, to implement the law. Massive impunity prevails.

#### **1. Justice system**

67. The justice system is in a deplorable state and lacks the capacity to handle even the relatively small number of rape cases that reach it. The MONUC Human Rights Division in South Kivu analysed the 287 cases of sexual violence that were reported to the military and civilian justice authorities during the period 2005-2007. At the time of my visit, 162 of the 287 reported cases were still under investigation; 60 per cent of these cases had been under investigation for more than one year. Only 64 cases have been tried, resulting in 58 convictions.

68. The non-governmental organization LIZADELL, which provides legal assistance to women and children in Kinshasa, followed 720 cases of violence against women that were referred to the justice system between 2004 and 2006. At the time of my visit, only 75 cases had resulted in a judgement; only two judgements had actually been executed.

69. The Law on Sexual Violence requires the courts to conclude a case within three months after the case is brought to the justice system. Senior justice officials in provinces visited considered this norm to be of a purely aspirational nature in light of the realities on the ground. The justice sector is severely under-resourced and understaffed. I was informed, for instance, that there were only two civilian judges in Mbandaka (Equateur), a city with almost 1 million inhabitants. These two judges were also expected to cover cases referred from the territories of Basankusu and Bongadanga, hundreds of kilometres away.

70. The lack of resources also affects the military justice system, which has jurisdiction over most cases involving gross human rights violations. The few investigations and prosecutions that have been carried out in relation to such cases have virtually all relied on the technical and logistical support of MONUC.

71. The Government seems unwilling to provide the justice sector with the necessary budget to function effectively. While most countries dedicate 2-6 per cent of their national budget to the



justice sector, in the Democratic Republic of the Congo this was only 0.6 per cent of the 2005 and 2006 national budgets.<sup>14</sup> The latest budget presented by the executive to Parliament would reduce the portion even further, to 0.3 per cent.

72. In the absence of an accessible and functioning justice system, the local population often refers rape cases to traditional authorities, local administrators or armed actors. Amicable settlements brokered by such figures typically disregard the victims' interests. Cases are often resolved by the perpetrator paying a small sum to the victim's family. In some cases, the victim is even forced to marry the perpetrator, a practice that provides men with a perverse incentive to rape women who have rejected their advances.

## **2. Corruption and interference**

73. Extremely low salaries and job insecurity for public officials (a judge may earn as little as US\$ 20-30 per month) provide numerous entry points for corruption at all levels.

74. Courts routinely release alleged rapists on bail, often under dubious circumstances and in violation of applicable rules of penal procedures. MONUC estimates that 80 per cent of alleged rapists in South Kivu are released on bail and never reappear in court. Lawyers in other provinces made similar observations. In Kinshasa, for instance, I met the lawyers of a 10-year-old girl who was gang-raped by four teenagers. Police arrested the perpetrators, but the Tribunal de Paix of Assossa ordered their release without giving any reasons for its decision. The perpetrators have since disappeared.

75. Political interference during all stages of the criminal process is very common, especially in high-profile cases involving crimes committed by State security forces.

76. Commanding officers of FARDC and PNC often deliberately obstruct investigations by quickly redeploying soldiers and policemen under investigation to other duty stations without informing the judicial authorities. FARDC officers have also shielded soldiers under their command from arrest, by abusing a military regulation, which stipulates that soldiers stationed in zones of military operations may only be arrested with the prior consent of their commanding officer.

77. In addition, FARDC and PNC frequently use intimidation against victims, witnesses and human rights defenders to ensure impunity. On the night of 8 March 2007, the Commander a.i. of the FARDC Naval Forces in Lukolela (200 km south-west of Mbandaka) reportedly raped a woman and a girl. The perpetrator reportedly threatened the Administrateur de Territoire with a firearm when he denounced these crimes to the perpetrator's superiors.

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<sup>14</sup> See the report of the independent expert on the situation of human rights in the Democratic Republic of the Congo (A/HRC/4/7, para. 44) and the preliminary note on the mission to the Democratic Republic of the Congo of the Special Rapporteur on the independence of judges and lawyers (A/HRC/4/25/Add.3, para. 7 (a) (i)).

78. Prosecutors and judges are also vulnerable to pressure by political or military authorities. In October 2004, for instance, 73 civilians were killed in Kilwa (Katanga province). A MONUC investigation into the killings documented cases of summary executions, rape, arbitrary arrest and detention, torture and looting by FARDC forces led by Colonel Adémar, then Commander of the 62nd Brigade. Twelve FARDC soldiers, including commanding officers, and three foreign employees of a multinational company were prosecuted. On 28 June 2007, the Military Court of Katanga delivered its verdict on the case, acquitting all defendants. Whereas the MONUC investigation had concluded that virtually no fighting had taken place when the FARDC regained control of Kilwa, the court held that all civilians killed were casualties of fighting between FARDC and rebel forces and that no crimes had taken place. While the trial was ongoing, the Military Prosecutor, who had prepared the indictment and led the prosecution, was reassigned to Kananga. MONUC human rights observers also noted several other serious irregularities.<sup>15</sup> When I finalized this report, an appeal against the decision was pending.

79. Article 152 of the Constitution foresees the creation of a Higher Council of the Judiciary, composed of judges and prosecutors. The Council would be responsible for the appointment, promotion and removal of judges and prosecutors. Its creation would help to protect those judges and prosecutors who want to end impunity and who have demonstrated this will through courageous convictions in cases involving high-ranking military officers. At the time of my visit, however, Parliament had still not passed the necessary implementing legislation.

### 3. Penitentiary system

80. In the course of my discussions with the Minister of Justice, I was relieved to hear that the Minister planned to launch a major reform of the penitentiary system. None of the prisons I visited even complied remotely with basic international standards on the humane and dignified treatment of prisoners.<sup>16</sup> Buildings were dilapidated and facilities run-down. Hygienic conditions were abhorrent. Many inmates were seriously ill, but medical care was scarcely available. During the first six months of 2007, MONUC documented at least 30 deaths of detainees.

81. Contrary to international standards, pretrial detainees and convicted persons are kept together. Children as old as 8 years of age are kept in prison with their mothers, without access to education, adequate medical care or food. In several localities, there are no separate sections for women or minors.

82. The appalling prison conditions have immediate ramifications for prison security.<sup>17</sup> With the exception of Makala Central Prison in Kinshasa, none of the prisons received a budget for

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<sup>15</sup> See also “High Commissioner for Human Rights concerned at Kilwa military trial in the DRC”, 4 July 2007 (see [www.ohchr.org/english/press/newsFrameset-2.htm](http://www.ohchr.org/english/press/newsFrameset-2.htm)).

<sup>16</sup> Article 10, International Covenant on Civil and Political Rights (ICCPR).

<sup>17</sup> The independent expert on the situation of human rights in the Democratic Republic of the Congo notes in his report to the General Assembly that detention conditions are so bad that escape is “the prisoner’s only chance of survival” (A/HRC/4/7, para. 37).

food from the central authorities. Some prisons even lack drinkable water. Some prison directors have no other choice but to allow prisoners to leave prison during the day to search for food and water. While many prisoners are said to return in the evening, others do not. According to the registers of Mbandaka Central Prison, which has adopted this practice, 77 prisoners have disappeared or escaped during the first six months of 2007.

83. In many cases, perpetrators of gross human rights violations seem to have simply walked out of prison with the connivance of the authorities. MONUC considers that 23 of the 33 prison escapes documented in the first half of 2007, involved corrupt prison wardens and police officers.

84. On 30 June 2007, for instance, 24 detainees “escaped” from the GLM Military Prison in Mbandaka, including three soldiers sentenced to life imprisonment in connection to Songo Mboyo mass rape, three soldiers convicted in relation to the July 2005 Bokala mutiny and three soldiers awaiting trial for murder and rape in connection with the Lifumba-Waka atrocities of March 2006. The escapes occurred just before 14 detainees were scheduled to be transferred to Kinshasa for security reasons. Twelve out of the 14 scheduled for transfer escaped, though 2 were later recaptured.

85. The prison commander provided me with an incredible account of the escape: the three guards on duty during the night of the escape had sent a detainee to buy food for the other inmates. When the man did not return, they went to search for him, leaving their rifles behind and the prison door open. Subsequently, 24 inmates escaped. The guards have since disappeared.

#### **4. Compensation**

86. International law requires the State to ensure that women victims of violence can obtain fair and adequate compensation. If the violence is committed by a State actor or otherwise attributable to the Government, the State itself must pay compensation.<sup>18</sup>

87. Under Congolese law, criminal courts can order perpetrators of crimes, including the State, to pay compensation. Yet, victims of sexual violence in the Democratic Republic of the Congo are systematically denied compensation, which discourages women from pursuing justice.

88. Courts have handed down several judgements ordering the State to pay compensation to victims of sexual violence committed by State agents. The Minister of Justice also informed me

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<sup>18</sup> The right to compensation forms part of the right to reparation, as set out by the General Assembly in resolution 60/147, “Basic Principles and Guidelines on the Right to a Remedy for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”. See also the Nairobi Declaration on Women’s and Girl’s Right to a Remedy and Reparation, elaborated in 2007 by a coalition of women’s rights activists and survivors of sexual violence ([www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php)).

that the Government had established a fund, from which compensation for criminal or other wrongful acts could be paid. However, at the time of my visit, not a single woman who had been awarded compensation had received any payment from the Congolese State.

### **B. Security-sector reform**

89. The security-sector reform gives militia and soldiers the choice to either demobilize and reintegrate into civilian life or join a unified national army. Those who choose to join the army will be sent to training centres (centres de brassage), where they are to receive training before being redeployed in integrated units. The programme has been marred by inefficiency and insufficient funding. According to Government estimates, more than 100,000 fighters are still awaiting to be processed.<sup>19</sup>

90. While in principle perpetrators of human rights violations can be excluded from joining the army, in practice, this has not happened.

91. Lieutenant Colonel Bebimobuli Engagela, known as “Colonel 106”, a former commander of a renegade FARDC faction, stands accused of at least eight cases of rape, sexual enslavement and forced recruitment of girls and women. He was reintegrated into the FARDC in March 2007 and was reportedly at a training centre in Luberisi (South Kivu) at the time of my visit.

92. Colonel Safari, former commander of the 120th Brigade in Shabunda, stands accused of murder and implication in a gang rape. Another commander from the same brigade also faces accusations of gang rape. At the end of March 2007, both perpetrators remained at Luberisi.

93. Men known to have committed serious crimes have even been given command positions. The Mayi-Mayi Commander in Moba (320 km south of Kalemie, Katanga), where 45 women and girls were allegedly raped by Mayi-Mayi combatants during the period 2002-2004, has since been integrated into the FARDC with a command position at the Headquarters of the Naval Force in Kalemie.

94. In Ituri, former militia leaders Peter Karim Ugada (FNI), Mathieu Ngudjolo of the Mouvement révolutionnaire congolais (MRC), and Justin “Cobra” Matata (FRPI) - all accused of gross human rights violations - have been awarded the rank of colonel in the FARDC.

95. Politicians and senior FARDC officers acknowledged that major perpetrators had been integrated into the FARDC, but assured me that they would be brought to justice once disarmament is completed and peace restored. It is encouraging that the highest levels of Government, including the President, have promised to support a United Nations mapping of the major human rights violations committed during the period between 1993 and 2003.

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<sup>19</sup> “Le gouvernement congolais a présenté sa nouvelle vision de la défense en RDC”, 13 July 2007 (see [www.monuc.org/news.aspx?newsID=14977](http://www.monuc.org/news.aspx?newsID=14977)).

### C. Women's status

96. Sexual violence in armed conflicts in the Democratic Republic of the Congo is fuelled by gender-based discrimination in the society at large. Women face discrimination and oppression in virtually every sphere of life. The country ranks 130th among 136 countries in the UNDP gender-related development index (GDI).

97. 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. The law also endorses double standards on marital fidelity: all cases of adultery committed by a married woman are punishable by six months to one year of imprisonment, whereas male adultery is only punishable if it is of an "injurious quality". In almost all ethnic groups, bride price is practised, which leads some men to believe that they have "bought" their wife. Punishment of women's "disobedience" enjoys considerable social acceptance, whereas the concept of marital rape is often not understood.

98. On a positive note, I was told that a comprehensive reform of the Family Code was high on the agendas of Parliament's Gender Parity Network and the Minister on the Status of Women.

99. Women also face discrimination and violence in places of work and education. Girls are often denied access to education, as families privilege boys' attendance to school. This is evidenced by the 63.1 per cent literacy rate for young women (15-24 years), which is far lower than the literacy rate of 78 per cent for men in the same age range.<sup>20</sup> Interlocutors also pointed out that the sexual coercion of women and girls, committed by supervisors, professors and teachers, is a long-standing phenomenon that existed before the armed conflicts.

100. 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. Article 13 of the Electoral Law requires political parties to give consideration to equal representation of women and men on its lists of candidates. Yet the same provision states that lists of candidates that violate this requirement remain admissible. Consequently, women are grossly underrepresented in the country's newly established democratic institutions. Women comprise 42 out of 550 members in the National Assembly, 5 out of 108 in the Senate and 9 of 60 ministers and vice-ministers in the Cabinet. Not a single Governor or Vice Governor is female. A Gender Parity Law that would implement article 14 has yet to be drafted and passed.

101. The normalization and banalization of war-related rape is adding to the inequality and oppression women endure in public and private. The rape crisis associated with war, therefore, cannot be addressed in isolation from gender-based discrimination and violence women

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<sup>20</sup> Figures for 2004 from World Bank, Summary gender profile: Democratic Republic of Congo (<http://devdata.worldbank.org/genderstats/>).

encounter in “peace”. The war has further reduced women to mere objects that can be raped, tortured and mutilated. 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.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

**102. Sexual violence has been a defining feature of the Democratic Republic of the Congo’s armed conflicts. Women living in areas of conflict still suffer extreme levels of violence, committed by FARDC, PNC, armed groups and increasingly also civilians.**

**103. The situation is particularly dramatic in South Kivu, where non-State armed groups, including foreign militia, commit sexual atrocities that are of an unimaginable brutality and aim at the complete physical and psychological destruction of women with implications for the entire society. Given the multitude of actors involved in the conflict and the continuation of these crimes, the international community, in cooperation with the Congolese authorities, has a responsibility to take all necessary measures to ensure that women in South Kivu are protected. Without strong international backing, the Congolese authorities will not be able to resolve this major human rights crisis which is, after all, rooted in the international community’s failure to effectively react to, let alone prevent, the Rwandan genocide.**

**104. While war has ended in many other parts of the country, women are not at peace. Sexual violence remains rampant throughout the country. In Equateur Province, PNC and FARDC have carried out systematic reprisals against the civilians, including mass rape. Soldiers and police who commit these acts amounting to crimes against humanity and war crimes are rarely held to account by the commanding officers. Many of the perpetrators have been given commanding positions in the State security forces, which further aggravates the situation.**

**105. Impunity for rape is massive, especially if the perpetrator belongs to the State security forces. Due to political interference and widespread corruption, a perpetrator with a minimum of influence or affluence goes unpunished. It is questionable whether there is political will to end this impunity, given that the justice system is denied the budget and support to effectively deal with its caseload.**

**106. The scale and the brutality of sexual violence in the Democratic Republic of the Congo seem to have eroded all protective social mechanisms, unleashing brutal fantasies carried out on women’s bodies. 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. If the sexual violence associated with war is addressed in isolation, gender-based discrimination and violence endured by women in “peace” will be grossly neglected and the war on women reinforced.**

**107. Women survivors of rape have suffered severe physical and psychological injuries, but lack sufficient care. Survivors are often socially stigmatized and many are so destitute that they have to struggle for their mere survival. Women are also systematically denied the compensation to which they are entitled under international and Congolese law.**

108. In view of my findings, I would like to make the following recommendations to the Congolese State institutions:

- (a) End impunity, in particular with regard to members of the security forces:
- Demonstrate a zero-tolerance policy on sexual violence and other gross human rights violations; publicly condemn all acts of rape committed by security forces.
  - Issue, disseminate and enforce orders to the FARDC, FARDC Naval Forces, PNC, ANR, Police Special Services (Kin Mazière) and Republican Guard prohibiting rape and other forms of sexual violence, which may amount to war crimes and crimes against humanity. Investigate suspects, including bearers of command responsibility, prosecute and severely sanction any member of the security forces who committed, ordered or condoned rape or other human rights violations. Prosecute and punish officers bearing command responsibility for grave violations.
  - Disseminate, raise awareness and implement the Law on Sexual Violence of 20 July 2006. Train judges, prosecutors, law enforcement officials and all the security forces on the law.
- (b) Enhance the independence and capacity of the justice system:
- Instruct authorities at all levels, including commanding officers of all security forces, to fully cooperate with judicial investigations and desist from interfering in the administration of justice. Instruct commanding officers to surrender alleged perpetrators immediately to the justice system, even in zones of military operations. Fully cooperate with any investigation carried out by the International Criminal Court.
  - Increase the budget designated for the functioning of justice to at least 2 per cent of the national budget. Deploy more justice personnel, including high-ranking military judges and prosecutors, to the provinces.
  - Develop, in cooperation with the United Nations and civil society, a standardized national medical certificate to be used in judicial processes.
  - Sanction any person who usurps judicial functions by encouraging or forcing victims of sexual violence to accept out-of-court settlements.
  - Reform the penitentiary system. Address the security gaps and the inhumane conditions in prisons. Diligently investigate all escapes and take disciplinary and penal measures against officials, including commanding officers, who are implicated in such escapes.
  - Adopt a law to establish the Supreme Council of the Judiciary, with the composition and functions as foreseen by article 152 of the Constitution.

- **Amend existing legislation to ensure that civilian courts have jurisdiction over all crimes against humanity, regardless of the perpetrator's function.**
  - **Adopt a law on the implementation of the Statute of the International Criminal Court, which will transfer the jurisdiction to hear international crimes from the military to the civilian courts.**
- (c) Reform the security sector:**
- **Implement a systematic vetting process for all branches of the security forces to ensure that officers accused of having committed human rights violations are discharged and prosecuted accordingly.**
  - **Suspend and prosecute, including in military operation zones, any member of the security forces suspected of committing rape or other gross human rights violations as well as any officer interfering in the administration of justice.**
  - **Instruct authorities at all levels to support and collaborate with the United Nations team designated to map human rights violations committed between 1993 and 2003.**
- (d) Compensate, support and protect women survivors of violence:**
- **Compensate all victims of sexual violence committed by State agents, beginning with those cases where courts have already ordered the payment of compensation. Allocate adequate funds for that purpose in the national budget.**
  - **Ensure that all women survivors of sexual violence have access to medical and psychosocial care. Support and participate in existing Provincial Synergies to combat sexual violence. Initiate the creation of similar action committees, involving Government representatives, civil society and the United Nations in all provinces of the country.**
  - **Deploy security forces to protect civilian populations at risk of attacks, with regular patrols in these areas. Resume, with the full support of MONUC, military operations against the FDLR/Rasta armed group in South Kivu. Involve the local population in setting up protection mechanisms.**
- (e) End discrimination and all forms of violence against women:**
- **Elaborate jointly with the Presidency, concerned ministries, civil society and the United Nations, an action plan on women, peace and security, with clear objectives and benchmarks and a particular focus on sexual violence. Allocate adequate resources for its implementation.**
  - **Adopt a gender parity law in line with article 14 of the Constitution.**



- **Abolish all legal provisions that discriminate against women, beginning with a comprehensive reform of the Family Code.**
- **Adopt a law on the establishment of a national human rights commission, with an adequate budget and in line with the Paris Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights, including women's rights.**
- **Denounce publicly and unequivocally all forms of violence against women, including spousal abuse, marital rape and sexual harassment without invoking any custom, tradition or religious consideration to justify or excuse such violence. Investigate and prosecute with due diligence all cases of violence against women in the family or community.**

109. I would like to recommend to the International Criminal Court that it:

- **Investigate war crimes or crimes against humanity - including sexual violence committed after 1 July 2002 - that the Congolese authorities are genuinely unable or unwilling to investigate or prosecute. Prosecute high-ranking officers of FARDC and PNC and leaders of armed groups that have committed such crimes and award compensation to victims.**
- **Take appropriate measures to protect witnesses and victims collaborating with the Court.**

110. I recommend to the United Nations and particularly to MONUC troop-contributing countries that they:

- **Fully support the Congolese security forces in all military operations that would genuinely improve the protection of the civilian population.**
- **Include vetting mechanisms in the Disarmament, Repatriation, Reinstallation, and Reintegration Programme to prevent impunity for foreign perpetrators of gross human rights violations.**
- **Provide OIOS and the Conduct and Discipline Team with the capacity to investigate all allegations of sexual exploitation and misconduct of peacekeeping forces, collect forensic evidence that can be used in a court of law. Where allegations are found to be substantiated, ensure that the victim receives compensation from MONUC or the relevant troop-contributing country.**
- **Adopt and fund a comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff or related personnel.**
- **Amend existing norms of conduct: failure to support children fathered in areas of deployment should be considered misconduct that is harmful to the interests of the organization.**

- **Establish cooperation between the United Nations Trust Fund in Support of Actions to Eliminate Violence against Women (managed by UNIFEM) and my mandate to ensure, among other things, that the Trust Fund's funding for the Democratic Republic of the Congo is in line with recommendations contained in this report.**

111. **Finally, I recommend that the international community:**

- **Launch a comprehensive international initiative to improve peace and security of women and the civilian population in the Kivus, focusing particularly on the role of foreign armed groups.**
- **Monitor the situation of sexual violence in the Democratic Republic of the Congo and initiate dialogue about the situation with the Government at all appropriate international forums, including the Human Rights Council.**
- **Maintain a strong military and civilian peacekeeping presence in the Democratic Republic of the Congo until a minimum of security for the civilian population, rule of law and democratic/civilian control over the security has been established.**
- **Support provincial synergies to combat violence against women in all provinces of the country. Provide participating civil society organizations with funds to deliver legal, medical, psychological, social and economic assistance to survivors of sexual violence.**
- **Provide direct funding for local women's initiatives to support women's empowerment and livelihood sustenance.**
- **Ensure that funds made available to the Government are sufficiently channelled for reparation and care of survivors of violence.**
- **Amend penal laws and exercise extraterritorial jurisdiction over acts of sexual exploitation and abuse perpetrated by nationals.**
- **End indifference with respect to sexual violence in the Democratic Republic of the Congo.**

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