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# **Democratic Republic of Congo**

## **Addressing the present and building a future**

### **A Memorandum to the DRC transitional government of national unity, armed groups and foreign governments involved in the DRC conflict, and the international community**

#### **INTRODUCTION AND SUMMARY**

In October 2003 an Amnesty International delegation, led by its Secretary General, Irene Khan, visited the Democratic Republic of the Congo (DRC), Rwanda and Uganda to meet human rights defenders and humanitarian actors and hold high-level talks with the governments of these countries and the United Nations. As well as the three capitals, the delegation also visited Goma, North-Kivu province, and Bunia, the capital of Ituri district, Oriental Province, in eastern DRC.

Amnesty International's mission was timed to coincide with the new political beginning in Kinshasa that followed the official withdrawal of Rwandese and Ugandan government forces from DRC and the installation, in June 2003, of a transitional government composed of representatives of the former government, armed political groups, opposition political parties and Congolese civil society. The mission was designed to highlight the role and responsibilities of the new government, armed political groups and the Rwandese and Ugandan governments for the promotion and protection of human rights in DRC, with a particular focus on Ituri and Kivu regions of eastern DRC: regions that remain mired in violence and human rights abuse.

United Nations (UN) Security Council Resolution 1493 of 28 July 2003 authorized the UN MONUC<sup>1</sup> peace-keeping forces to use all necessary means to protect civilians under imminent threat of physical violence in Ituri and the Kivus. This "Chapter VII" mandate offers an enhanced standard of international protection for civilians in these areas, but prospects for its successful implementation depend on the size and the capacity of the MONUC force. During Amnesty International's stay in Bunia, it was clear that the more vigorous mandate and the recent reinforcement of the MONUC contingent have enabled that force to improve security in the town significantly. Even so, Bunia remains divided into ethnic enclaves, many people are still afraid to return home, and killings continue elsewhere in Ituri. In the Kivus, MONUC troops are currently so small in number as to make

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<sup>1</sup> *Mission de l'Organisation des Nations Unies en République Démocratique du Congo/ United Nations Mission in the Democratic Republic of Congo.*

implementation of the new mandate almost meaningless. MONUC is taking steps to deploy elsewhere in Ituri and to increase its presence in the Kivus, but in Amnesty International's view the resources and political support available to it remain inadequate to the task.

In both Goma and Bunia, Amnesty International delegates met survivors of terrible human rights abuses, whose stories illustrate the urgent need for an end to the violence and for greater protection of civilian populations. One survivor, **Carla**<sup>2</sup>, a 14-year-old girl had been raped by several soldiers. Although her parents tried to bring the suspected perpetrators to court, no action was ever taken against them. A former child soldier, **Paul**, a nine-year-old boy, who had escaped from an armed group in Ituri, expressed his suffering at seeing his friends dying on the battle field and at being beaten repeatedly by his officer. Another, **Papy**, a little boy, had his arms, face and legs mutilated by child soldiers, who then poured petrol into the open wounds. Papy is currently being cared for in Bunia after he was found sitting alone in a potato field. He has profound difficulty in communicating and the sight of other children terrifies him. In Bunia, the delegation also met a group of children and women survivors of a massacre that took place in the village of Katshele, in Ituri, on 6 October 2003. Of the estimated 65 people killed at Katshele, the overwhelming majority were women and children. All the survivors bore horrendous injuries.

In Kinshasa, the newly appointed members of the transitional government spoke of political progress, regional harmony, and democratic elections. The governments of Rwanda and Uganda asserted their support for, and willingness to cooperate with, the DRC transitional government. But in the Kivu provinces and Ituri human rights abuses similar to those described above continue to be perpetrated with impunity. Mutilations and mass killings persist. Children are being recruited and used as soldiers. Rapes of women and girls continue to be a standard tactic of warfare. There is also continued evidence of the support of neighbouring countries, particularly Rwanda and Uganda, to some of the armed groups operating in eastern DRC.

This Memorandum summarizes Amnesty International's findings during the Secretary General's visit, taking into account the concerns and perspectives voiced by the victims of human rights abuse, human rights activists, international agencies and governmental authorities. The main objective of the Memorandum is to urge the transitional government and other actors to bridge the dangerous "reality gap" between their aspirations for reconciliation, justice and security and the devastating cycle of violence and human rights abuses, which continue to affect the east and threaten to bring these aspirations to nought.

The Memorandum is organized in three sections, each of which concludes with a set of recommendations. The first section discusses the **immediate measures** to which Amnesty International believes the transitional government needs to accord the highest priority. These concern the protection of civilian populations and halting the horrendous cycle of human rights abuse in eastern DRC. The credibility and the future of the transitional government

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<sup>2</sup> This and subsequent names of victims have been changed.

will suffer if these atrocities are allowed to continue with impunity. At the same time, neighbouring countries must genuinely stop fuelling human rights abuses in eastern DRC and end all forms of support to the armed groups operating there. This section also addresses recommendations to the UN and its member states regarding support for MONUC and implementation of the new Chapter VII protection mandate, particularly in terms of a wider deployment of MONUC troops in Ituri and the Kivus. The international community should make a long-term commitment and stay the course until there is peace and stability in eastern DRC.

Two other areas to which the DRC government, UN, donors and implementing agencies must give priority is the care of victims of sexual violence and the rehabilitation of child soldiers. These victims' needs are enormous, yet no coherent or coordinated strategy of response is in place. The transitional government, UN and the international community must hasten efforts to build local capacity and provide desperately needed financial, material and technical assistance.

The DRC, Rwandese and Ugandan governments, supported by MONUC and the international community, should also cooperate fully to accelerate the disarmament, demobilization and repatriation of foreign insurgent groups based in the DRC.

Also as part of these immediate measures, the international community, including regional governments and the UN, should counter vigorously and comprehensively economic exploitation and arms trafficking to eastern DRC. The desire to control and plunder the natural resources of DRC has been the driving force of the conflict and continues to fuel massive human rights abuses. The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in DRC documented the involvement of Uganda, Rwanda, Zimbabwe and many companies worldwide in resource exploitation, but the Panel's recommendations have not been implemented. On the contrary the UN has decided to wind up the Panel, which recently published its final report. In Amnesty International's view, the UN Security Council needs to follow up the unresolved issues outlined in this final report and implement the recommendations from all four Panel reports. The arms embargo on eastern DRC, instituted by the UN Security Council in July 2003 (also as part of Resolution 1493) should be enforced on the ground by MONUC in the strictest manner possible, and a robust UN investigative body is needed to follow up reports of violations of the embargo.

The second section of this Memorandum addresses **transitional reforms**. The transitional government must quickly introduce structural measures for the protection of human rights, with the support of the international community. Preparations for elections and economic reconstruction should go hand in hand with building institutions of governance, based on respect for human rights and international humanitarian law. The critical test of the political process in the DRC does not lie in the planned elections two years down the road, but in the willingness and ability of the government to rein in the armed elements, end human rights abuse and undertake fundamental reform of the army and police. Giving men and women the chance to vote is meaningless if they continue to be threatened with rape, murder, torture and

arbitrary detention and have no recourse against these abuses. The transitional government and donor governments who will be funding and supporting transitional reforms must ensure that the leaders of the new army, police and members of civilian human rights institutions do not include those suspected of committing or ordering human rights abuses.

The third section of this Memorandum addresses the pressing need for **justice** and for an end to impunity – undoubtedly a long-term process but one which needs to begin now. The widespread nature of abuses in the DRC implicates a large number of people, including some who currently occupy positions of power. The message that Amnesty International heard repeatedly from victims in Ituri and the Kivus is that without justice, there will be no peace and reconciliation in the DRC. Experience historically and globally consistently demonstrates that national unity and democracy cannot be built on the back of abuse and impunity. Those who are suspected of having perpetrated war crimes, crimes against humanity and genocide must be investigated and brought to justice. In this regard, Amnesty International welcomes the indication by the Prosecutor of the International Criminal Court (ICC) to undertake preliminary investigations in the DRC, particularly Ituri, and calls on regional governments and the international community to give full cooperation and practical assistance to these investigations. The Memorandum also sets out various possible options for delivering justice at the national and international levels for crimes that fall outside the scope of the ICC.

## **I. IMMEDIATE MEASURES**

### **a. Ensuring the protection of civilians**

The DRC remains under a fragmented patchwork of control by different and largely unaccountable armed forces. Foreign governments, notably Rwanda and Uganda, remain deeply implicated in the ongoing turmoil in eastern DRC, despite the withdrawal of many of their forces. Violence persists in many areas and the continuing mass human rights abuses in Ituri and the Kivu provinces, in particular, are of acute concern<sup>3</sup>.

If true progress is to be made during this transitional period, all parties to the conflict should immediately take steps to end the human rights abuses still taking place against civilian populations in the east.

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<sup>3</sup> See Amnesty International reports on the Democratic Republic of Congo: *Ituri, a need for protection, a thirst for justice* (AI Index: AFR 62/046/2003, October 2003); *Children at war* (AI Index: AFR 62/034/2003, September 2003); *Ituri-How many more have to die?* (AI Index: AFR 62/030/2003, September 2003); *On the precipice: the deepening human rights and humanitarian crisis in Ituri* (AI Index: AFR 62/006/2003, March 2003); *“Our brothers who help kill us”: Economic exploitation and human rights abuses in the east* (AI Index: AFR 62/010/2003, April 2003); *From assassination to state murder?* (AI Index: AFR 62/023/2002, December 2002).

Over three million people are believed to have lost their lives as a result of the conflict and more than three million are displaced. Many have died from malnutrition or preventable disease in areas where they were inaccessible to humanitarian assistance. Most of this terrible toll has been borne in the east of the country. Children and women have been particularly affected by the DRC conflict, in which they were unremittingly and remorselessly targeted.

Despite the international prohibition on the conscription of children under 18, tens of thousands of Congolese children, girls as well as boys, have been recruited – in many cases forcibly – to fight with the various armed forces. From the beginning to the end of their military service, children are subjected to harrowing and dehumanising experiences, including beatings, rape, being forced into combat and to commit serious human rights abuses<sup>4</sup>. In the east many, if not all, armed political groups still actively recruit children. The transitional government, which includes members from many of the groups responsible for child recruitment, needs to address this issue urgently.

The conflict has also been marked by the deliberate and widespread use of rape and other forms of sexual violence as a weapon of war. The victims are believed to number tens of thousands<sup>5</sup>. In many cases rape was followed by the deliberate wounding or killing of the victims. On occasion armed political groups have committed rapes deliberately to humiliate civilian populations accused of collaborating with enemy forces. Thousands of women and girls have been abducted from their homes and forced to remain with armed groups as sexual slaves. The prevalence of HIV/AIDS among combatants has added considerably to the trauma faced by these women. Victims also suffer social stigma and fear of being ostracized by their community and abandoned by their families. Medical and psychological treatment appropriate to the needs of the victims is uniformly absent throughout the DRC. Few of those responsible for these extraordinarily brutal crimes have been brought to justice.

#### **b. Cutting the link between human rights abuses and economic exploitation**

Congolese and foreign political and military leaders' search for profit from the DRC's mineral-rich lands has been a major driving force behind the conflict. Amnesty International has extensively documented the economic aspects of the conflict and the entrenched links between human rights abuses and economic exploitation in both government and rebel-controlled territories<sup>6</sup>.

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<sup>4</sup> For further details please see Amnesty International's report, *DRC: Children at war* (AI Index: AFR 62/034/2003, September 2003).

<sup>5</sup> As an example, while in Uvira, South-Kivu in February 2003, Amnesty International met with the UN Office for the Coordination of Humanitarian Assistance which estimated that some 5,000 women had been raped in the area since October 2002, an average of 40 a day.

<sup>6</sup> See Amnesty International reports: "*Making a killing*": *The diamond trade in government-controlled DRC* (AI Index: AFR 62/017/2002, October 2002) and "*Our brothers who help kill us*": *Economic exploitation and human rights abuses in the east* (AI Index: AFR 62/010/2003, April 2003).

Substantial evidence now exists that foreign forces, as well as Congolese government and irregular forces, have engaged in the systematic plunder of DRC's natural resources and that in many cases this plunder was organized at the highest levels of state and military command. Much of this evidence is cited in the reports of the UN Panel of Experts, as well as in reports produced by various non-governmental organizations. In its last report published on 30 October 2003, the UN Panel of Experts established that revenues from diamond and gold, in addition to money raised at customs border posts, have enabled political and military actors to fund their military activities, including the purchase of arms.

Amnesty International found that the warring forces committed serious human rights abuses, including unlawful killings, forced population displacement and torture in order to control and profit from the DRC's natural resources. Congolese civilians – among them children – have been forced to work in mines. Human rights defenders and journalists who sought to expose the plunder have been threatened, detained or killed. International commercial traders, transporters, processors and retailers, knowingly or unknowingly, have fed this cycle of predation and human rights abuse for their own profit. Their involvement has been made considerably easier by the lack of transparency in international business dealings in precious minerals and the lack of action at the international level to hold them accountable.

### **c. Addressing the proliferation of arms in eastern DRC**

Enriched from their exploitation of natural resources and other sources of revenue, the belligerent forces have had no difficulty in acquiring weapons. Substantial amounts of arms and munitions flowed unchecked into the DRC during the war, most from neighbouring countries, adding to already substantial quantities left over from previous conflicts. Combatants have used these weapons to commit the grave abuses of human rights noted elsewhere in this document.

Arms and munitions used by the combatant forces in eastern DRC include items of Belgian, Bulgarian, Chinese, French, Israeli, Korean, Russian, South African, UK and US manufacture. They include landmines, an indiscriminate weapon that will continue to maim or kill for years to come. Russian (former Soviet Union) Antonov aircraft have also been evidenced. Not all of this equipment was directly supplied by these states to the current belligerents and some is of old manufacture. This does not, however, absolve the manufacturer states of the responsibility to ensure that their weapons and munitions are not used to commit human rights abuses. The DRC and foreign governments, including Rwanda and Uganda, have additionally provided logistical support, training, uniforms and other equipment to armed groups in eastern DRC.

The arms embargo imposed by the UN Security Council, in Resolution 1493 (July 2003) on the Ituri district and the Kivu province is welcome, but its effectiveness is limited by the lack of capacity and support for MONUC to monitor compliance. MONUC observers are frequently denied access to military installations, airports and other facilities. Their task is

made more problematic by the numerous air, lake and land crossings available to arms traffickers. Nor can the embargo address the problem of widespread availability of weapons already in the country.

Amnesty International recognizes states' right to purchase weapons to defend their citizens and territorial integrity. However, states in the Great Lakes region have used arms purportedly acquired for legitimate ends to commit human rights abuses, including war crimes. These states have also redirected arms to client political groups in the DRC which have in turn committed grave abuses.

### **Recommendations**

*In order to protect civilians:*

- **The DRC, Rwandese and Ugandan governments** must immediately end all political and military support to armed groups responsible for human rights abuses in eastern DRC. They should exert their influence over the armed groups - many of which are the creations of these governments - to cease unlawful killings of civilians, sexual violence, the recruitment and use of child soldiers, torture and other violations of international human rights and humanitarian law.
- **Congolese armed political groups**, whether represented in the transitional government or not, **as well as foreign armed groups** on DRC soil, should immediately cease all violations of international human rights and humanitarian law. Commanders and political leaders of these groups should issue clear and public orders to their forces to this effect and ensure their strict implementation.
- **MONUC** should deploy sufficient troops as rapidly as possible throughout Ituri and the Kivus to ensure the protection of civilian populations under resolution 1493. The force should consider deploying also to resource-rich areas in the east in order to deter resource exploitation by armed groups, thereby addressing a fundamental cause of the violence.
- **The UN Security Council and international community** should provide MONUC with the required resources and political support to achieve these goals. Amnesty International will continue to lobby the UN Security Council and world governments to this end.
- **The UN** should reinforce the monitoring and investigative capacity of the MONUC human rights and child protection sections.

- **The governments of DRC, Rwanda and Uganda**, supported by **MONUC and the international community**, should cooperate fully to accelerate the disarmament, demobilization and repatriation of foreign insurgent groups based in the DRC.

*To prevent recruitment and use of child soldiers:*

- **The DRC government and leaders of all armed political groups** must order their forces to end recruitment of persons under 18 years' old, immediately remove serving child soldiers from frontline positions and, pending demobilization, ensure that they are protected from ill-treatment and abuse. They should give MONUC unrestricted access to all military installations to identify child soldiers, and properly coordinate demobilization of children in their forces with the relevant UN agencies, ensuring that these agencies are involved in the demobilization process from the earliest stage.

*To provide effective care to and rehabilitation of child soldiers:*

- **MONUC, other relevant UN agencies and international NGOs, and donor governments**, must assist **the DRC government** to establish a coordinated strategy to demobilise child soldiers and ensure that resources and facilities are in place to receive large numbers of demobilized children and to cater for their long-term care and rehabilitation into civilian life. Efforts to build local capacity and to provide educational and vocational opportunities to the children should be expedited. Demobilization should reflect the gender balance of child soldiers.

*To prevent violence against girls and women:*

- **The DRC government and leaders of all armed political groups** must issue clear instructions to all combatants to immediately cease all sexual violence against women and girls.

*To provide care and support for survivors of sexual violence:*

- **MONUC, other relevant UN agencies and international NGOs, and donor governments**, should assist **the DRC government** to establish a systematic and comprehensive program of care for survivors of sexual violence. Such a program should build on and extend "best practice" initiatives and techniques, such as *centres d'écoute* (counselling centres), that have been developed at local levels, into a coordinated national response. This should be done in full consultation with Congolese and international non-governmental organizations already providing medical care and psychological programs for the care and rehabilitation of these groups.
- **The DRC government** should enable victims of sexual violence to obtain full redress before the courts and ensure that the dignity, privacy, and physical and psychological

well-being of victims who bring complaints of sexual violence are protected. The government should ensure that judges, prosecutors, the police and all others in the criminal justice system are trained how to treat victims of crimes of sexual violence with dignity and respect. This should be an element of a wider reform of the national judicial system which will require the financial support of the **donor community** (see Section III below, *Ensuring Justice for Victims*). Public awareness campaigns addressing the cultural aspects of sexual violence should be supported with a view to eliminating all violence against women in the DRC.

*To halt the exploitation of resources fuelling the conflict in the DRC:*

- **The DRC government** should, during the transitional period, undertake the comprehensive review of all contracts involving national assets and resources concluded at least since the start of the DRC conflict in August 1998. The purpose of the reviews should be to ensure that contracts were negotiated according to internationally recognized principles of public tendering and bidding, and that contracts are not tainted by human rights abuse.
- **The governments of Rwanda, Uganda and Zimbabwe**, as well as other governments, should ensure that minerals and other resources from the DRC entering their territory have not been obtained in a manner that contributes to human rights abuse. They should conduct impartial, independent and transparent investigation of companies or individuals named in the UN Panel's reports.
- **The Rwandese government** should promptly fulfil the commitment it made to Amnesty International in October 2003 that it will make public the findings of investigations it has reportedly conducted in response to the UN Panel of Experts, and clarify what further action it will take as a result.
- **The Ugandan government** should promptly fulfil its commitment to Amnesty International in October 2003 that it will conduct further investigations into a number of individuals named by the UN Panel of Experts and further implicated by the Porter Commission, the Ugandan National Judicial Commission of Enquiry, and ensure that those individuals implicated by the Commission, as indicated in the Government "White Paper", are brought to justice without delay.
- **The UN Security Council** should implement the recommendations made by the Panel of Experts in its four reports. In cooperation with national governments, it should take concrete measures to hold to account individuals, groups, companies and governments identified as perpetrating or being complicit in abuses of human rights, including social and economic rights, through their involvement in resource exploitation in DRC. The UN Security Council should periodically review implementation of the Panel's important recommendations.

- **UN member states** should ensure that minerals and other resources from the DRC entering their territory have not been obtained in a manner that contributes to human rights abuses. They should conduct investigations into companies or individuals named in the UN Panel's reports (this includes the **governments of Belgium, Germany and the UK**, to whom dossiers have been referred alleging breaches of OECD guidelines by certain companies named by the UN Panel). At the international level, all governments should support measures to introduce transparency and human rights principles into international business dealings.

*To prevent the flow of arms fuelling the conflict and to cut the link between resource exploitation and arms flows:*

- **The governments of DRC, Rwanda and Uganda, as well as other governments,** should respect fully the UN arms embargo and halt all arms transfers and supplies of military, security and police equipment or training to armed groups in eastern DRC.
- **The UN Security Council** should establish a strong monitoring and investigative body for the arms embargo imposed by Resolution 1493, with the objective of exposing the links between the supply of arms, economic exploitation and human rights abuses.
- **MONUC** should be given the means and specialist technical resources to track and intercept trafficked arms, and to deploy personnel to key locations, such as airstrips, ports and border-crossings, and reinforce customs controls to prevent arms trafficking. Such additional resources might include, for example, air-surveillance and radar capacity to monitor and prevent unauthorized flights, and marine patrols for the major lakes on the border of eastern DRC.
- **UN member states** should not engage in arms transfers and supplies of military and police equipment or training to the DRC, Burundi, Rwanda and Uganda unless they are able to subject these transfers to the most stringent certification and scrutiny to ensure that the equipment will not be used to perpetrate human rights abuses. States should support the adoption of an effective International Arms Trade Treaty, a central recommendation of the "Control Arms" campaign of Amnesty International, Oxfam and IANSA.
- **The UN and donor governments,** particularly those whose arms, munitions or equipment are present in the DRC, should actively support the creation and expansion of landmine and ordnance clearance programs for the DRC.

## **II. TRANSITIONAL REFORMS**

Supported by the UN, the transitional government is already setting course for countrywide elections in 24 months. As part of this process, the government must create conditions of stability, security and respect for human rights, which are essential to free and fair elections. These include: (a) the reform of the army through disarmament, demobilization and the creation of an integrated national force; (b) the reform of the national police service into a body capable of impartially and professionally upholding law and order, and respect for human rights; (c) the creation of civilian institutions to promote truth, reconciliation and respect for human rights.

In the reform process, the transitional authorities must take every care to consult with civil society and to halt abuses -- including acts of harassment, unlawful detention, torture and killing -- against human rights defenders, journalists and other members of civil society. It is essential that the DRC government establishes trust and confidence among the Congolese people by ensuring the protection of civilians throughout the country, by guaranteeing freedom of expression, movement, peaceful political opinion and assembly, and by creating the necessary space for civil society to operate free from fear and interference.

### **a. Reform of the Army**

The transitional government is tasked with forming a new national army into which all sides have agreed to integrate their combatants. A High Council of Defence, which includes the President of the DRC (who also serves as Commander-in-Chief of the armed forces) and representatives from the various former belligerent parties, has been established, and in September 2003 the joint military leadership of the newly unified national army was inaugurated when some 30 officers from various armed group forces were appointed to the command of military branches and regions.

Yet, despite these developments, the future of the new army and progress towards it remains desperately unclear. There is no clear chain of command and control, since armed forces are still acting as separate units under the command of the leaders of armed groups. Some of those appointed to military command in the new army are tainted by their implication in human rights abuses. No clear process has yet been elaborated to integrate thousands of combatants into the new army and to demobilise and disarm others, and to introduce reforms to develop a professional army capable of upholding human rights. In Amnesty International's view, this is a crucial matter, which needs immediate support and attention from the UN and MONUC.

### **b. Reform of the Police**

A key element in ensuring that human rights are better protected, and that the criminal justice system is able to function effectively, will be the reform of the police forces. After more than

seven years of armed conflict during which human rights were routinely abused, the police force, prison system, and courts in DRC have been almost completely destroyed. Overcrowded, unsanitary and otherwise dangerous conditions of detention and imprisonment across the DRC also amount in many cases to cruel, inhuman and degrading treatment.

Amnesty International regularly receives reports of arbitrary arrest and illegal detention from across the DRC. Virtually none of those detained are known to have had their arrest ordered or reviewed by an independent judicial official. Many have spent long periods in detention without charge or trial. Many remain in custody, uncharged. The torture and ill-treatment of detainees in custody is routine throughout the DRC, and deaths in custody are regularly reported. Women detainees have allegedly been raped in custody. People suspected of links to opposing armed political groups are especially targeted for acts of torture, as are people, including human rights activists and journalists, engaged in legitimate investigation and criticism of official conduct.

MONUC, through its Civilian Police Component (CIVPOL), has provided technical assistance to the national police since October 2001. CIVPOL is tasked with contributing to the training and reform of the Congolese police, assessing Congolese policing institutions, needs and capabilities, and supporting police development in areas of urgent need<sup>7</sup>. On some occasions, members of police forces from other parts of the country have been deployed in places where communities are divided. MONUC had planned to train 1,200 police officers by the end of 2003 to facilitate the political transition in the country. Unfortunately, capacity of training centres is such that this target is unlikely to be met.

In order to prevent human rights violations, all the security forces, including the police, should be made accountable for their actions to the people whose rights it is their duty to respect and protect. Over the years, the UN has adopted a number of treaties, codes and declarations to prevent human rights violations such as arbitrary arrest, detention without trial, ill-treatment and torture, “disappearances” and extrajudicial executions<sup>8</sup>. While reforming the police, the transitional government should ensure that all of these measures are implemented by the DRC’s police forces and incorporated into their training.

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<sup>7</sup> Special attention has been given to the Ituri area, where CIVPOL has initiated a training program for a local police force in Bunia, and to the training of the police in Kisangani.

<sup>8</sup> See the UN International Covenant on Civil and Political Rights, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1990 General Assembly Resolution on Basic Principles for the Treatment of Prisoners, and the 1989 Economic and Social Council Resolution on Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Also relevant is the African Charter on Human and Peoples’ Rights.

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**c. National Human Rights Institutions****(i) The National Human Rights' Observatory**

Among the civilian institutions formed by the DRC transitional government to monitor and remedy human rights abuses is the National Human Rights Observatory, *Observatoire national des droits de l'homme* (ONDH). Its task will be to investigate human rights abuses, following the Paris Principles on national human rights institutions. The ONDH is still being established and Amnesty International will follow its activities. However, Amnesty International has a number of concerns about the future operation of the ONDH. These concerns include whether the ONDH will be able to function independently, since its executive committee has been nominated by the political groupings and armed forces responsible for human rights abuses; whether it will function transparently, particularly as regards public reporting of its investigations and findings; whether the resources available to the ONDH will be sufficient to enable it to conduct comprehensive investigations nationwide; and how the ONDH's role will be integrated with other national judicial and human rights structures. Consultation and collaboration by the ONDH with Congolese civil society, human rights organizations and victims will also be crucial for this institution's legitimacy and credibility.

**(ii) Truth and Reconciliation Commission**

Another civil institution, the Truth and Reconciliation Commission, *Commission vérité et réconciliation* (CVR), is being established to ascertain the nature, causes and extent of political crimes and violations of human rights committed in the DRC since its independence in 1960 and to take necessary measures to provide reparations to the victims. Again, Amnesty International intends to follow its formation and operation closely.

Plans for establishing this institution have to date not taken into account the wide range of experiences of truth and reconciliation commissions in other countries. It is unfortunate that representatives of Congolese human rights NGOs, as well as national and international experts, have not been properly involved in the drafting of the law, which has still to be adopted by the DRC's parliament. The participation of these actors is critical to the establishment of a sustainable and legitimate truth and reconciliation mechanism.

Amnesty International is concerned that CVR's mandate to investigate crimes since 1960 is untenable given that the CVR is a transitional institution with a maximum life of two and a half years. Other areas of the CVR's mandate, role and responsibilities also remain unclear, including how it will interact with the ONDH and, especially, the wider national justice system, since the CVR will be receiving testimony and evidence regarding human rights abuses which could be justiciable under national and international law. For that reason, the CVR needs to be given an explicit mandate to collaborate and cooperate with the national justice system and with international, in order to prosecute the persons alleged responsible by the CVR.

Of particular concern is the inclusion in the CVR's executive committee of individuals suspected of involvement in human rights abuses. In view of widespread concern about the inclusion of such individuals, and in order to ensure that the members of the executive committee of the CVR are independent of political and military forces operating in the DRC and have no past record of human rights abuses, the government has the duty to review the composition of the executive committee of the CVR. The choice of the members of the CVR should be undertaken in consultation with the Congolese civil society.

## Recommendations

*To protect human rights defenders:*

- The **DRC government and leaders of armed political groups** should ensure that human rights defenders, journalists, humanitarian workers and other civil society activists are not subjected to human rights abuses and are allowed to freely carry out their work without harassment or interference.
- **The UN and donor governments** should use their political influence, as well as human and material resources, to support programs to promote and protect human rights in the DRC and provide support for local human rights defenders.

*To reform the army:*

- **The DRC government, supported by MONUC and other UN agencies**, should establish a coherent plan for the new army, which ensures that all integrated forces are placed under a clear chain of command.
- **The DRC government, supported by the donor governments and the UN**, should urgently establish a systematic program for the disarmament and demobilisation of forces that will not be integrated into the army and establish support programs for the rehabilitation into civilian life of all demobilized combatants.
- **The DRC government** should:
  - Exclude from positions in the integrated armed forces individuals against whom there is evidence of involvement in specific human rights abuses.
  - Ensure that children below the age of 18 are not included in the integrated army and continue to support the disarmament, demobilisation and reintegration of child soldiers under the age of 18 from all armed groups.
  - Clearly separate the role of the army from that of the police forces.
  - Ensure that the new army is prohibited from arresting and detaining civilian suspects, and that military courts are not used to try civilians under any circumstances or to try soldiers accused of crimes against civilians.

- **The DRC government, supported by donor governments and the UN,** should provide all sectors of the armed forces with training in human rights and humanitarian law, especially as regards the protection of civilian populations. This training needs to be practical and sustainable, and its application monitored.

*To reform the police:*

- **The DRC government** should:
  - Exclude from positions in the integrated armed forces individuals against whom there is evidence of involvement in specific human rights abuses.
  - Develop recruitment policies and practices which are as representative as possible of the ethnic and cultural diversity of the DRC. Targets for the recruitment from all ethnic backgrounds and all geographical areas should be set and maintained. A working environment should be promoted in which such groups are not discriminated against in any way.
  - Place police units responsible for civilian law enforcement under civilian control, clarify the roles, responsibilities and legal powers of the different branches of the police and security forces, and ensure that arrest, investigation and detention procedures by all security forces are closely monitored by independent judicial officials.
- **The DRC government, donor governments, MONUC and UN agencies** should provide resources to ensure that there are appropriate humane police detention facilities.
- **The DRC government, supported by donor governments and the UN,** should provide training to all sectors of the police force in human rights protection and in performing its role independently from political considerations.
- **The UN and donor governments** should support MONUC in continuing and expanding its training of the police force.

*In establishing the ONDH:*

- **The DRC government** should:
  - Ensure that the ONDH operates in accordance with international standards concerning human rights institutions. It should publish reports on its inquiries, together with the outcome.
  - Ensure that the ONDH is fully independent and sufficiently resourced to carry out its tasks and that its members are trained in human rights standards.
  - Ensure that ONDH members have suitable moral authority, purpose and credibility, and are genuinely independent of political or military forces. The choice of the members participating in the ONDH should be undertaken in consultation with Congolese civil society.

- Ensure that the role of this institution is integrated into the comprehensive plan to reform the criminal justice system in the DRC, and that it collaborates with the Minister of Human Rights on all questions concerning the protection and promotion of human rights.
- Ensure that branches of the ONDH are established in all provinces, specifically rapidly in the east of the country. **Donor governments** should support this outreach program.
- Ensure that witnesses and victims are given adequate protection and security.

*In establishing the CVR:*

- **The DRC government** should:
  - Clarify the mandate of the CVR and ensure that it is complemented by a reformed criminal justice system. In view of widespread concern about the inclusion of individuals suspected of involvement in human rights violations, the government should review the composition of the executive committee of the CVR to ensure that its members are independent of political and military forces operating in the DRC and have no past record of human rights abuses. The choice of the members participating in the CVR should be undertaken in consultation with the Congolese civil society.
  - Ensure that the CVR has unhindered access to witnesses, is empowered to subpoena witnesses, and can recommend measures of reparation and propose reforms of both law and practice. This institution should publish its reports and the response of political and security authorities.
  - Ensure that the CVR is given sufficient resources to perform its task. The government should provide witnesses and victims with adequate protection and security.

### III. ENSURING JUSTICE FOR VICTIMS

Ensuring justice is fundamental to redressing abuses of human rights and crimes under international law committed by all parties involved in the DRC conflict. There can be no genuine reconciliation in the DRC, and throughout the Great Lakes region, unless perpetrators are held criminally responsible, the truth about human rights abuses is established and full reparations are provided to victims.

The DRC government, in full consultation with Congolese civil society and the international community, needs to find a framework within which the past can be properly addressed and those responsible for crimes under international law and other grave human rights abuses may be held accountable.

In order to ensure that these objectives are achieved, the DRC government should develop a comprehensive anti-impunity program, supported by the international community. The

program's central responsibility should be reforming the DRC criminal justice system. Because of the nature of human rights abuses in the DRC conflict and the political situation on the ground, efforts at tackling impunity at the national level should be complemented by international measures. These include the ICC, but consideration should also be given to additional mechanisms to address the many human rights abuses committed before July 2002, the date from which the mandate of the ICC takes effect.

**a. Assessing the situation of the DRC justice sector**

The justice system in the DRC is at present utterly debilitated by the conflict and a longstanding history of political abuse and interference. Deprived of sufficient resources, the system is widely corrupt, uniformly ineffective and lacks independence. Although the DRC is known to have many lawyers, magistrates and judges, the judiciary has become ineffectual as a result of political interference, manipulation and insufficient resources<sup>9</sup>.

The reform of the system requires a thorough assessment of its needs, followed by a program of international assistance. In this regard, Amnesty International welcomes the Joint Assessment Mission of the DRC justice sector in October 2003, which includes experts from the European Union (EU), UN Department of Peace-Keeping Operations (DPKO) and MONUC. This mission will benefit from a broad range of input from various international and national actors in the DRC.

The Joint Assessment Mission intends to undertake a full review of the criminal justice system and will determine measures needed for its reconstruction into a functioning, effective and impartial system, with an overall goal to develop proposals for a program that would address comprehensively post-conflict justice in the DRC. Currently, the Mission is assessing the criminal justice system; the working conditions of its judges, magistrates, prosecutors, and lawyers; their training and the lack of material resources; the legislative framework (civil, penal, commercial, administrative); and conditions of detention. Following this assessment, the Mission will propose funding proposals for donor governments and organizations to support, and collaborate with these partners to develop a framework for delivering reform.

**b. Reforming national judicial institutions**

A priority of the DRC transitional government should be to ensure that competent, independent and impartial national courts have the necessary powers and resources to investigate and to bring to justice suspected perpetrators in accordance with international fair trial standards, without recourse to the death penalty.

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<sup>9</sup> Amnesty International does however welcome the abolition by presidential decree of the *Cour d'ordre militaire* (COM), Military Court, and the law which provides, since 25 April 2003, for a new code of military justice and new military courts.

Amnesty International believes that a national plan of action needs to be developed in close consultation with civil society to rebuild the national judicial system. The following fundamental principles should govern any approach to ensuring justice for victims of crimes under international law and other abuses in the DRC:

- (a) **Independence and impartiality**: any court must be truly independent from the executive authority and pursue suspected perpetrators solely on the basis of evidence and through a fair process, in strict accordance with international law and standards for fair trials.
- (b) **No selectivity**: there should be no selectivity in the pursuit of suspects on the basis of nationality, rank, ethnicity, religion, influence or any other such grounds.
- (c) **No statute of limitations**: crimes under international law, in particular genocide, crimes against humanity and war crimes, must be addressed regardless of when they occurred. There should be no statute of limitations for those crimes under international law, whether committed at any time in the past or currently.
- (d) **No amnesties**: there should be no amnesties, pardons or similar measures for crimes under international law if such measures would prevent the emergence of the truth, a final judicial determination of guilt or innocence or full reparation for victims and their families.
- (e) **Fair trials**: suspects should be prosecuted in proceedings that fully respect international law and standards for fair trial at all stages of the proceedings. The presumption of innocence must be respected from the moment a person becomes a suspect until he or she is proved guilty beyond reasonable doubt. Civilians must be tried only before civilian courts. Military personnel accused of crimes under international law must also be tried before civilian courts.
- (f) **No death penalty, ill-treatment or torture**: there should be no recourse to the death penalty or other forms of cruel, inhuman or degrading punishment, whatever the circumstances. Suspects must never be subjected to torture or ill-treatment. Confessions obtained under torture or other forms of duress must be declared inadmissible and the perpetrators brought to justice.
- (g) Full **reparation for victims**: victims and their families must be accorded effective means to obtain full reparations for the violations they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

### **c. Halting Impunity**

In order to ensure peace and reconciliation in the DRC, those suspected of having perpetrated war crimes, crimes against humanity, and genocide must be investigated and brought to justice. The fundamental objectives of such a process should be: (1) establishing the facts of the crimes; (2) ensuring that the victims are heard and their experiences are publicly and

officially acknowledged; (3) investigating and, where there is sufficient admissible evidence, prosecuting the alleged perpetrators; and (4) providing full reparation to the victims, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. In order to be fair and effective, all measures aimed at ensuring justice must fully conform with international human rights law and standards.

Given the length of time that it will take to reform the DRC criminal justice system, other national and international approaches should be considered. At the international level, the Prosecutor of the International Criminal Court (ICC) has already indicated his intention to investigate the situation in the DRC, particularly Ituri. According to international law, states are also entitled, and in some cases required, to exercise universal jurisdiction over alleged perpetrators of crimes under international law.

The DRC government and Congolese civil society have also proposed other approaches, such as an *ad hoc* international tribunal established by the UN Security Council pursuant Chapter VII of the UN Charter, a regional criminal court or a mixed international-national tribunal.

(i) The International Criminal Court

Amnesty International welcomes the announcement in July 2003 by the Prosecutor of the ICC that crimes committed in the DRC since 1 July 2002 that could constitute genocide, crimes against humanity and war crimes will be the subject of a preliminary examination by his office. This examination may lead to a full criminal investigation.

On 8 September 2000, the DRC government signed the Rome Statute establishing the ICC and ratified it on 11 April 2002. The Rome Statute is applicable in all parts of the DRC, and members of the different armed groups and foreign armies could be investigated and, if there is sufficient admissible evidence, prosecuted by the ICC for crimes committed on DRC territory.

In September 2003, the DRC delegate at the Assembly of States Parties of the ICC publicly agreed to cooperate with the Prosecutor in his preliminary examination. Amnesty International welcomes this pledge by the DRC government delegate and urges that that commitment be reiterated publicly by the DRC President.

Many crimes within the ICC's jurisdiction have been committed throughout the DRC. As well as undertaking a preliminary examination of crimes in Ituri, the Prosecutor of the ICC should take the full situation in DRC into account.

(ii) Universal jurisdiction

According to international law, states are entitled, and in some cases required, to exercise universal jurisdiction over alleged perpetrators of crimes under international law. This jurisdiction exists regardless of where and when these crimes occurred, regardless of the

nationality of the suspects or victims, and irrespective of whether there is a specific link with the country where the court is based.

Universal jurisdiction applies to genocide, crimes against humanity, war crimes, torture, extrajudicial execution and “disappearances” as the most serious crimes under international law, as well as to ordinary crimes under national law such as murder, abduction, assault and rape. Many of these crimes have been perpetrated by national and foreign forces in the DRC.

Obligations to bring to justice perpetrators of crimes under international law are found under customary law, general principles of law, conventional humanitarian law (specifically the four Geneva Conventions and Protocol 1), and international human rights law (for example, obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

States should investigate and prosecute those suspected of such crimes before their own courts, or hand them over to another state able and willing to try them according to international standards for fair trial and without the imposition of the death penalty.

There are several ways in which universal jurisdiction could contribute to ending impunity in the DRC. They include :

- Individual foreign prosecutors and investigating judges exercising universal jurisdiction based on the chance arrival of suspects in a state;
- Individual foreign prosecutors and investigating judges exercising universal jurisdiction, as envisaged by the Geneva Conventions and used by some states, of investigating crimes when a suspect is not present, based on victims’ complaints, and requesting the extradition of suspects;
- States agreeing to share responsibility for exercising universal jurisdiction.

(iii) International mechanisms and investigation of human rights abuses

The failure by the governments of DRC, Rwanda, Uganda, Burundi and Zimbabwe to investigate the widespread crimes in the DRC and, where there is sufficient admissible evidence, prosecute those responsible within their own forces for genocide, crimes against humanity, war crimes and other crimes under international law in the DRC, has directly encouraged repeated abuses by their forces that have cost the lives of innumerable Congolese civilians.

Because under its mandate, the International Criminal Court only has jurisdiction over crimes committed after July 2002, suggestions have been made by the DRC government, a number of observers, international and Congolese NGOs, that an *ad hoc* international criminal tribunal or an internationalized court should be established for the DRC.

An *ad hoc* international criminal tribunal for the DRC could be established by the Security Council, as was done in the case of the International Criminal Tribunals for the former Yugoslavia and Rwanda, or by the General Assembly. An internationalised court including both international and DRC judges, prosecutors and staff could also be established by the UN Security Council or in other ways. One such precedent is the Special Court for Sierra Leone, established by an agreement between Sierra Leone and the United Nations in 2000. In its statement to the UN General Assembly Sixth Committee on 20 October 2003, the DRC government indicated that an international tribunal in the DRC could take shape along the lines set up in Sierra Leone or Cambodia.

Amnesty International has consistently called for, at a minimum, the creation of a commission of experts or commission of inquiry to make recommendations on ways of comprehensively addressing impunity in the DRC. This body could be composed of international and national specialists with expertise in human rights and international humanitarian law and a good understanding of the region. This body could be mandated to investigate human rights violations and breaches of international humanitarian law that occurred during the conflict, exploring possible responses by the international community, and making recommendations. Such a commission should have all necessary powers to compel witness testimony, and adequate material and human resources. This mechanism could have the advantage of contributing to the development of the national justice system, and of involving civil society in the process. Similar commissions were set up on former Yugoslavia, Rwanda, Cambodia, and Timor-Leste.

#### **d. The death penalty**

The death penalty is the ultimate cruel, inhuman and degrading punishment. Irrevocable, it always carries the risk that innocent may be put to death. Amnesty International unconditionally opposes its application in all circumstances. At least 200 people have been executed in the DRC since 1997, following unfair trials in which the most fundamental of legal safeguards were not respected. Those executed include children.

The decision of the former DRC government, in September 2002, to lift the moratorium declared in March 2001 and to resume executions was a monumental step backwards for human rights in DRC, and one that threatens to undermine current attempts at reconciliation in the country<sup>10</sup>. Such executions violate the most basic rights of Congolese citizens, including the right to life and the right to fair treatment before the courts.

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<sup>10</sup> The suspension of the moratorium was followed by the execution in secret of 15 people in Kinshasa in early January 2003, the first executions known to have taken place since December 2000. A number of those accused of involvement in the assassination of President Laurent-Désiré Kabila have also been sentenced to death in 2003, after a trial that did not meet international standards of fairness. See Amnesty International's report, *DRC: From assassination to state murder?* (AI Index: AFR 62/023/2002, December 2002).

## Recommendations

*To reform the DRC national judicial system:*

- **The DRC government** should develop a program of reform and identify steps which should be taken to restore the domestic criminal justice system, based on the findings and recommendations made by the Joint Assessment Mission.
- **The Joint Assessment Mission** should ensure the full participation of DRC civil society organizations and experts in the assessment and development of the justice program.
- **The UN** should provide political and material support, including effective training to the Congolese judiciary. **Donor governments** should provide technical and financial assistance to the DRC national judicial system at all levels of the judiciary.

*With regard to the ICC:*

- **The DRC government** must promptly enact effective implementing legislation for the Rome Statute, as recommended in Amnesty International's *Checklist for Effective Implementation* (AI Index: IOR 46/11/00, August 2000) and Amnesty International's letter to the Minister of Justice ( AI index: AFR 62/031/2003). The legislation should provide national courts with jurisdiction over the crimes regardless of when and where it was committed, not just over crimes committed after July 2002.
- **All governments involved in the conflict, including the governments of DRC, Rwanda, Uganda, Burundi and Zimbabwe, as well as all military and political leaders of armed groups operating in the DRC,** should commit themselves to full cooperation with the Prosecutor of the ICC in his preliminary examination of the situation in the DRC and any subsequent investigation. If ICC prosecutions proceed, these parties should ensure that any individuals indicted of committing genocide, crimes against humanity and war crimes are surrendered to the ICC to face the charges against them.
- **The UN** should promptly enter into an agreement with the ICC Prosecutor's Office in order to formalize the collaboration between the ICC investigation team and UN regarding procedures for arrest of suspects, the exchange of information with the Prosecutors Office and other practical matters. This is essential for the success of ICC Prosecutor's work.

*Regarding universal jurisdiction:*

- **All governments** should investigate and prosecute those suspected of crimes of genocide, crimes against humanity, war crimes, torture, extrajudicial execution and “disappearances” in DRC before their own courts, or hand them over to another state able and willing to try them according to international standards for fair trial and without imposition of the death penalty. Those countries that have not yet passed enabling legislation for exercising universal jurisdiction or legislation to try perpetrators of certain crimes under international law should do so.

*Regarding other international mechanisms and investigation of human rights abuses,*

- **All governments involved in the conflict, including the governments of DRC, Rwanda, Uganda, Burundi and Zimbabwe,** should cooperate with any international or mixed national and international mechanism established to investigate and prosecute alleged perpetrators of human rights abuses in the DRC.
- **All governments involved in the conflict, including the governments of DRC, Rwanda, Uganda, Burundi and Zimbabwe,** should undertake prompt, thorough, independent and impartial investigations of alleged violations of international human rights and humanitarian law by their forces in the DRC, and bring to justice, in accordance with international fair trial standards and without imposition of the death penalty, those who have committed, ordered, solicited, induced, facilitated or in any other way contributed to the commission of such crimes.
- **All military and political leaders of armed groups operating in the DRC,** should cooperate with any investigations of human rights abuses committed in the DRC.
- **The UN Security Council** should establish an international commission of inquiry to investigate suspected perpetrators of violations of international humanitarian and human rights law in the DRC. Such a commission should be given sufficient resources, with all necessary powers to compel witnesses to appear before it, and be mandated to recommend judicial and other actions to be taken against perpetrators it identifies to prevent further abuses.

*On the death penalty:*

- **The DRC government** should immediately reinstate the moratorium on the death penalty and commute all existing death sentences. President Joseph Kabila should not sign any further orders of execution. Reinstatement of the moratorium should be followed in the longer-term by the abolition of the death penalty in law and in practice.