

report

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‘Erasing the Board’

Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern Democratic Republic of Congo



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Minority Rights Group International

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Cover Photo Bambuti women and children. Mark Lattimer/MRG. **'Erasing the Board': Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern Democratic Republic of Congo** is published by MRG as a contribution to public understanding of the issue which forms its subject. The text does not necessarily represent in every detail and in all its aspects, the collective view of MRG and RAPHY.

‘Erasing the Board’

Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern Democratic Republic of Congo

The Réseau des Associations Autochtones Pygmées du Congo (RAPY) and Minority Rights Group International (MRG)

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Executive summary

Introduction

War crimes and crimes against humanity, including persecution, murder, forcible population transfer, torture, rape and extermination, have been committed against the Bambuti Pygmies in the eastern Democratic Republic of Congo (DRC). These crimes have taken place since the start of the DRC's second war in 1998 and continue up to the present. Bambuti communities remain at grave risk.

The atrocities have been committed in the context of a war which has cost over 3.3 million lives through violence and conflict-related starvation and disease. Over 60,000 people have been killed in the north-eastern district of Ituri alone, according to United Nations (UN) estimates. The involvement of neighbouring states in the conflict, including Rwanda and Uganda, has been justified by them on security grounds, but is also directed towards the large-scale plunder of the DRC's natural resources, including gold, diamonds and other minerals.

Peace negotiations in the DRC concluded with the signing of the Final Act of the Inter-Congolese Dialogue on 2 April 2003 and the establishment of a transitional government on 30 June. With the assistance of the UN Mission in the DRC (MONUC) some progress has been made towards the disarmament and demobilization of former rebels.

Serious tensions remain at both national and regional level, however, and have often broken out into conflict. In the east of the country an arms embargo imposed by the UN Security Council is regularly violated and in Ituri there are frequent attacks on MONUC soldiers. Although there is in theory now a unified national army, little appears to have changed on the ground in the parts of the country controlled by the former rebel forces. Particularly in rural areas, people are left at the mercy of local commanders and they are abused and their villages looted with impunity.

The International Criminal Court (ICC) based in The Hague has jurisdiction over crimes committed in the DRC since 1 July 2002, following the ratification of the Rome Statute of the Court by the DRC on 11 April 2002. On 19 April 2004 the President of the DRC referred the situation of crimes committed in the DRC to the ICC's Prosecutor.

Crimes committed against the Bambuti Pygmies

The Bambuti in Ituri and the Kivus have never taken up arms during the armed conflicts in the eastern DRC, but they have nonetheless been targeted by armed groups. Both the location of their villages in the forest, and their knowledge of forest paths and hunting skills, have made them vulnerable. Particularly in the more recent phases of the Ituri war, the Bambuti have been coerced by different armed groups operating in the forest to act as trail-finders and to hunt game, and have then found themselves subject to revenge attacks by opposing armed groups. Violence against the Bambuti is also often linked by the perpetrators with certain mystic beliefs about a special power held by the Bambuti due to their origins as forest-dwellers. The most common expression of this is the stated belief that back pain or other ailments can be cured by sleeping with Bambuti women, a frequent justification for rape.

The marginalization experienced by the Bambuti in Congolese society generally has had extreme consequences in times of war. Institutionalized disregard for the rights of the Bambuti and the lack of seriousness with which complaints of abuse are treated, have meant that all armed groups in the eastern DRC have been able to prey on Bambuti villages with impunity, looting and raping at will. Where the Bambuti have been forcibly displaced from their villages, they have frequently had to live for prolonged periods unprotected in the forest, exposed to wild animals, disease and starvation.

The Mouvement de libération du Congo (MLC) and the Rassemblement congolais pour la démocratie – National (RCD-N)

Between October 2002 and January 2003, the MLC and RCD-N jointly carried out a premeditated, systematic campaign of attack against the civilian population of Ituri in the area of Epulu, Mambasa, Teturi, Byakato and Erengeti, which they named 'Effacer le tableau' ('Erasing the Board'). The objective of the campaign was to gain control of the territory, including the strategic surrounding forests, and to plunder its resources, using the terror

created by grave human rights abuses as a weapon of war. Encompassing the civilian population in general, the fact that the campaign specifically targeted the Bambuti for mass killing and the severe deprivation of other fundamental rights, by reason of their supposed supernatural powers and knowledge of the forest, indicates the commission of the crimes against humanity of persecution and extermination. The MLC / RCD-N forces also committed other crimes against humanity including murder, forcible population transfer, torture and rape; violations of common Article 3 of the Geneva Conventions; and other serious violations of international humanitarian law. The evidence of attacks targeted against the Bambuti may also support a possible prosecution for genocide.

The Rassemblement congolais pour la démocratie – Goma (RCD-Goma)

Since 1 July 2002 soldiers of the RCD-Goma have committed grave abuses of human rights, violations of common Article 3 of the Geneva Conventions and other serious violations of international humanitarian law against Bambuti communities throughout North and South Kivu. Authorities of the RCD-Goma were repeatedly made aware of allegations of abuses but the soldiers were able to continue in a climate of total impunity. The high incidence of rape of Bambuti women and children, and the systematic character of instances of mass rape, indicate the commission of a crime against humanity. The fact that such attacks were specifically targeted against Bambuti civilians, either on account of a belief in their supernatural powers or to punish them for the supposed collaboration of the Bambuti with the Mai-Mai, indicates the commission of the crime of persecution.

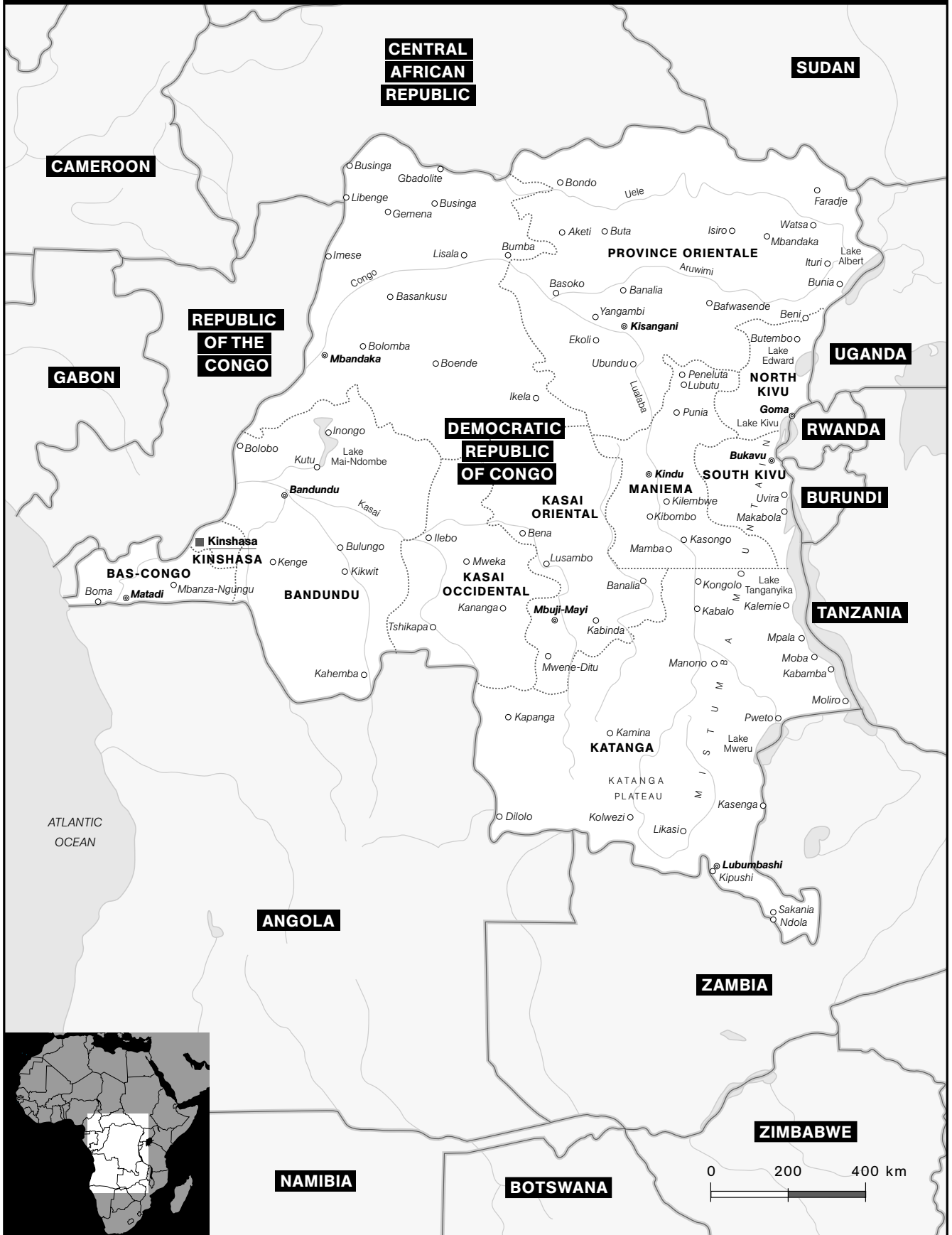
The Rwandan Interahamwe

Since 1 July 2002, Rwandan rebels including ex-Forces armées rwandaises (FAR) forces and *Interahamwe* have repeatedly carried out unprovoked attacks against Bambuti villages, sacking, looting and committing grave abuses of human rights, despite no resistance being offered. They have committed violations of common Article 3 of the Geneva Conventions, including murder, mutilation, cruel treatment and torture, and outrages upon personal dignity, and other serious violations of international humanitarian law including pillage, rape and displacement of the civilian population.

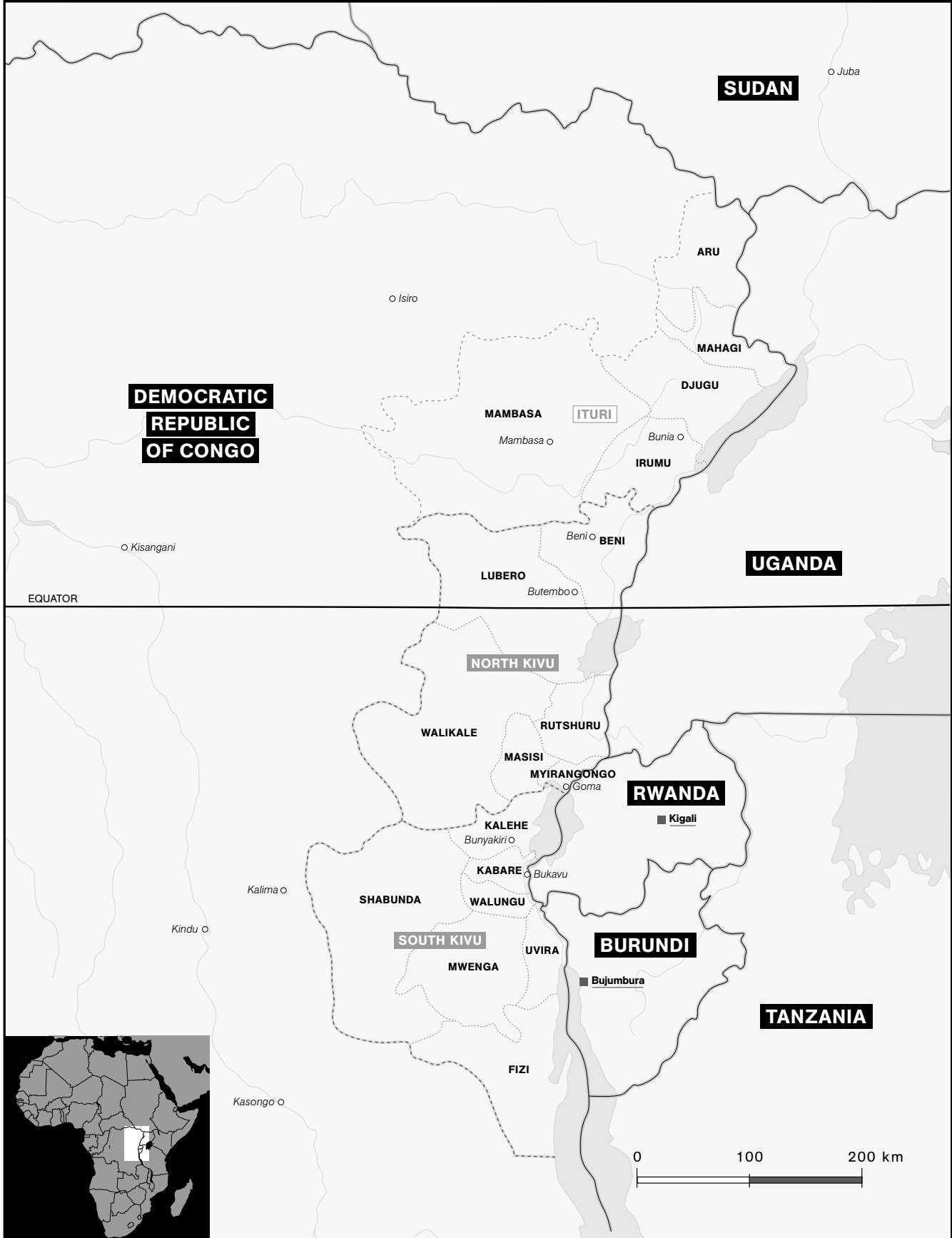
Recommendations

- The Prosecutor of the ICC should undertake a full investigation into persecution, extermination and other crimes against humanity and war crimes committed against the Bambuti population, as part of his wider investigation into crimes committed in the eastern DRC, with a view to prosecuting those responsible.
- MONUC should implement specific measures to protect the Bambuti, who are especially vulnerable to continuing abuses from all armed forces in the region, and UN and international development agencies should target development assistance at Bambuti communities.
- Donor governments and the international community should support the transitional government of the DRC in the development of an impartial national justice system and the establishment of national institutions of transitional justice and human rights monitoring; and should put pressure on the governments of Rwanda and Uganda not to engage in activities likely further to destabilize the DRC.

The Democratic Republic of Congo



Provinces of North and South Kivu and Ituri district



Introduction: conflict and plunder in the Congo

The second war

What the Congolese refer to as the 'second war' began on 2 August 1998 when the Rwandan and Ugandan armies crossed the border into the DRC in an attempt to overthrow the government of Laurent-Désiré Kabila that they had helped bring to power a year earlier. Joined by Congolese rebel groups to which they provided support, their advance on the capital Kinshasa was only stopped by the intervention of Angolan and Zimbabwean troops in support of the Congolese government.¹

The resulting five years of conflict, involving at one time eight African states, has been described as 'Africa's first world war'. Accurate figures for casualties are impossible to establish, but based on mortality surveys the International Rescue Committee estimated in early 2003 that over 3.3 million people had been killed or had died from conflict-related starvation and disease. The UN Office for the Coordination of Humanitarian Assistance (OCHA) estimated that there were 3.4 million internally displaced people in the country and around 17 million people were food insecure (out of a population of some 53 million). The prevalence of HIV among combatants and the systematic use of rape as a weapon of war have led to at least 1.3 million people becoming HIV-infected.²

But while the suffering and devastation caused by the war are now widely recognized, its causes are complex and controversial. Rwanda justified its first major intervention in the country then known as Zaïre in 1996 by the presence there of former soldiers of the Forces armées rwandaises (FAR) and the irregular militias known as *Interahamwe* ('those who fight together'), who had been responsible for the 1994 genocide in Rwanda of over 800,000 Tutsis and moderate Hutus. The ex-FAR forces and *Interahamwe*, using refugee camps in the Kivu as a base, had mounted raids across the border into Rwanda, while the government of President Mobutu looked on. Rwanda and Uganda then supported a Congolese rebel movement, led by the veteran guerilla leader Kabila, which overthrew Mobutu in less than a year. However, Rwanda and Uganda soon found the autocratic Kabila hard to control, feared that they would lose their access to the DRC's natural resources and accused him of continuing to support Rwandan rebels. When Kabila, who had lost US support, dismissed the Rwandan officer James Kabarebe as chief of staff of the Congolese army in July 1998, the second war erupted soon after.

The initial attempt to overthrow Kabila failed, but the DRC was soon effectively divided into different spheres of interest, controlled by foreign armies or the rebel groups they sponsored, most notably the Rassemblement congolais pour la démocratie (RCD) supported by Rwanda and the Mouvement de libération du Congo (MLC) supported by Uganda. The country's rich mineral and other natural resources were transported abroad on a massive scale.

An agreement reached in Lusaka on 10 July 1999 between the main state belligerents envisaged the withdrawal of foreign troops from the DRC and the disarmament of rebels based in the eastern DRC seeking the overthrow of the governments in Rwanda and Uganda, but no party wanted to move first. Following repeated clashes between Rwandan and Ugandan forces over control of Kisangani, destroying most of the city in the process, the UN Security Council passed an unusually strongly worded resolution in June 2000 expressing its outrage at their actions and calling on them and the other parties to the Lusaka Agreement to withdraw their troops.

In addition to increasing international concern over the scale of the destruction, two events in 2001 altered the diplomatic environment significantly. Firstly, on 16 January Laurent Kabila was assassinated by one of his own bodyguards. He was replaced as President by his son, the young Joseph Kabila, who rapidly commenced talks over economic reforms with the International Monetary Fund and the foreign donors whom his father had so successfully alienated. He also actively pursued the peace process. Secondly, the 11 September attacks by Al-Qaeda on the USA alerted many policy-makers in Washington to the dangers of failed states and the potential risk of allowing a *de facto* partition of the DRC. During 2002 the DRC government signed separate peace deals with Rwanda and Uganda and by the end of the year most, although not all, of the foreign forces had left the country.

The country, however, remained divided. The north remained broadly under the control of the MLC. The RCD had fractured, with the RCD-Goma (still sponsored by Rwanda) in control of the eastern DRC, the RCD-National allied with the MLC, and the RCD-Kisangani/Mouvement de libération (RCD-K/ML), after early support from Uganda, now allied with the government. There was also a proliferation of smaller armed groups on the ground, including groupings of local defence forces or patriots, generally known as Mai-Mai, opposed to foreign involvement in the DRC.

The peace process finally led to an agreement between all the main actors in December 2002 and on 2 April 2003 the 'Final Act of the Inter-Congolese Dialogue' was signed in Sun City, South Africa, providing for power-sharing between the Kinshasa government and the main rebel factions, pending multi-party elections in 2005. On 17 July 2003 the transitional administration was duly sworn in, with Kabila remaining President and two of the four Vice-President posts being taken by Jean-Pierre Bemba, chairman of the MLC, and Azarias Ruberwa, Secretary-General of the RCD-Goma.

Meanwhile the war in Ituri in the eastern Congo only intensified. In late 2002 and early 2003, the MLC and RCD-N undertook a campaign of pillage, killing and destruction in the region of Mambasa that the perpetrators named 'Effacer le tableau' ('Erasing the Board'), before being halted by forces of the RCD-K/ML. When the remaining Ugandan army forces left Bunia in May, fighting escalated between rival militias associated with the Lendu and Hema ethnic groups, most of them supported by either Uganda or Rwanda, with thousands of civilian casualties.

The UN Secretary-General reported to the UN Security Council in May 2003:

*'The humanitarian impact of the armed conflict for the 4.6 million inhabitants of Ituri has been catastrophic. According to the Office for the Coordination of Humanitarian Affairs, between 500,000 and 600,000 internally displaced persons – many of whom remain in hiding and cannot be accounted for – in addition to nearly 100,000 refugees from Uganda and the Sudan, are dispersed throughout the area. Since the first major onslaught of violence in June 1999, the death toll has been estimated at more than 60,000, and countless others have been left maimed or severely mutilated. Of the estimated 400 health centres, 212 have been closed, and not a single surgeon is present. It is estimated that 200 schools have been destroyed. Moreover, the prevailing atmosphere of insecurity has obstructed the humanitarian community's access to sizeable areas of the region, effectively denying the provision of aid to the most vulnerable populations.'*³

The UN Mission in the Congo (known by its French acronym MONUC), first established in 2000 to observe implementation of the peace accords, deployed its only reserve battalion to Bunia but quickly found itself ill-equipped to deal with the level of violence. In the first European Union (EU) military peace operation under the EU Common Foreign and Security Policy, French troops were dispatched to Bunia in an operation called Artemis.

They managed to secure the town while the complement of MONUC forces was increased to 4,000 by September, following a UN Security Council resolution to strengthen MONUC's mandate.

At the national level, progress was also made with the establishment of the institutions of transitional government, including the parliament and council of ministers, and the creation of the unified armed forces of the DRC, with an integrated military command and international donor support for a large disarmament, demobilization and reintegration (DDR) programme for former rebels.

Serious tensions remain at both national and regional level, however, and have often broken out into conflict. Frequent discoveries of arms caches by former rebels, violent clashes between different factions, threats by both the MLC and the RCD-Goma to suspend their participation in the transitional government, and the foiling of an apparent coup d'état in March 2004, all provide an indication of the precarious situation.⁴ In the east of the country an arms embargo imposed by the UN Security Council⁵ is regularly violated and in Ituri there are frequent attacks on MONUC soldiers. Although there is in theory now a unified national army, little appears to have changed on the ground in the parts of the country controlled by the former rebel forces. Particularly in rural areas, people are left at the mercy of local commanders and they are abused and their villages looted with impunity.

The plunder of the Congo's resources

In reaction to growing international concern at the large-scale plunder of the DRC's natural resources by foreign armies, the UN established a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo in July 2000.

The panel's first two reports, published on 12 April and 10 November 2001,⁶ detailed the mass illegal exploitation of resources from the DRC, undertaken principally by Rwanda and Uganda and their allied rebel groups, but also by other countries including Zimbabwe. The first report noted:

'Between September 1998 and August 1999, occupied zones of the Democratic Republic of the Congo were drained of existing stockpiles, including minerals, agricultural and forest products and livestock. Regardless of the looter, the pattern was the same: Burundian, Rwandan, Ugandan and/or RCD soldiers, commanded by an officer, visited farms, storage facilities, factories and banks, and demanded that the managers open the coffers and doors. The soldiers were then ordered to remove the relevant products and load

them into vehicles. (para. 32) When resource stockpiles were looted and exhausted by occupying forces and their allies, the exploitation evolved to an active extraction phase.’ (para. 46)

The panel analysed economic data for Rwanda and Uganda showing how during the war those countries had become major exporters of minerals for which they had previously no significant record of production or export. The first report concluded:

‘The conflict in the Democratic Republic of the Congo has become mainly about access, control and trade of five key mineral resources: coltan, diamonds, copper, cobalt and gold. ... Exploitation of the natural resources of the Democratic Republic of the Congo by foreign armies has become systematic and systemic.’ (paras 213-4)

In a further report published on 16 October 2002,⁷ the panel listed 123 individuals or companies whose activities had directly or indirectly funded the conflict or were otherwise linked to the main belligerents, including 24 Belgian and 16 British individuals or companies. The parties involved ranged from those who were members of elite networks using the revenue from resource extraction to fund rebel military activities, through to those who had only indirect commercial ties with the DRC but ‘still bore a responsibility to ensure that those links did not, albeit inadvertently, contribute to funding and perpetuating the conflict’.

To illustrate this latter relationship, the panel cited the example of the export of the mineral columbo tantalite (coltan). The metal tantalum is extracted from this mineral and used in the production of electronic components for mobile phones and laptop computers:

‘In 1999 and 2000 a sharp increase in the world prices of tantalum occurred, leading to a large increase in coltan production in eastern Democratic Republic of the Congo. Part of that new production involved rebel groups and unscrupulous business people forcing farmers and their families to leave their agricultural land, or chasing people off land where coltan was found and forcing them to work in artisanal mines. As a result, the widespread destruction of agriculture and devastating social effects occurred, which in a number of instances were akin to slavery. While the processors of coltan and other Congolese minerals in Asia, Europe and North America may not have been aware of what was happening in the Democratic Republic of Congo, the Panel’s investigations uncovered such serious concerns that it was

decided to raise the awareness of the international business community to those issues...’⁸

In its final report published on 23 October 2003,⁹ the panel concluded that:

‘Illegal exploitation remains one of the main sources of funding for groups involved in perpetuating conflict, especially in the eastern and northeastern regions of the Democratic Republic of the Congo. Over the last year, such exploitation has been characterized by intense competition among the various political and military actors as they have sought to maintain, and in some instances expand, their control over territory.’ (para. 44)

The panel pointed to an inter-connecting relationship between resource exploitation, arms trafficking and conflict, with all three underpinned by the prevailing environment of insecurity and impunity. It did, however, note that the intensifying armed confrontation among the militias in the eastern DRC had itself led to ‘a temporary reduction in the volume of illegally-exploited resources’. During 2003 the panel understood that:

‘Much of the resource exploitation has concentrated on gold and diamonds. Those minerals have a high revenue yield per unit weight, are easily transported and can be used in lieu of hard currency in transactions. Sites for artisanal mining of those precious minerals remain active in many regions: Ituri, other parts of Oriental Province, North and South Kivu and Maniema.’ (para. 46)

Political and military actors were able to fund their military activities, including the supply of arms, through such resource exploitation combined with monies raised at customs border posts.

In a confidential section of the panel’s final report transmitted to the Security Council, Rwanda and Uganda are accused of continuing to fund armed groups in order to exploit the DRC’s natural resources. The panel considered the activities of the Rwandan army and its support for the armed wing of the RCD-Goma as ‘the most serious threat’ to the DRC’s government.¹⁰

The Bambuti Pygmies

Pygmy peoples are believed to be the first inhabitants of the equatorial forests of central Africa and now live in a number of African states. The Pygmies of the Great Lakes region, including significant populations in Rwanda, Burundi and Uganda, as well as the DRC, are generally

known as Batwa.¹¹ However, in the DRC the Pygmies mainly call themselves Bambuti, particularly in Ituri, and the term 'Pygmy' itself, widely used when speaking in French, does not appear to have as pejorative a connotation as it holds in other parts of the Great Lakes.

There is no reliable estimate of the size of the Bambuti population in the DRC. Major population movements during the war, the poor state of official documentation as a result of the conflict, and the fact that many Bambuti do not hold identity documents mean that an authoritative population figure is not obtainable. Jerome Lewis cites a 1993 figure of 16,000, but this refers only to part of the region and the figure for the Bambuti population in the eastern DRC as a whole is certainly much higher. An interview with an Italian priest based in Watsa coordinating schooling projects for Bambuti children recorded a population in Ituri alone of over 30,000, with similar populations suggested for North and South Kivu.¹²

In addition to populations in the main conurbations of Bukavu and Goma, there are small Bambuti fisher communities on the shores of Lake Kivu and on the island of Idjwi, and larger populations in the national parks of Kahuzi-Biega, Virunga and the Ituri forest. For forest-dwelling communities, hunting game remains a dominant occupation, and also plays a leading role in the construction of Bambuti identity and cultural life. The Bambuti also live through subsistence cultivation of the staple manioc, providing services for neighbouring Bantu villages, and artisanal mining.

Throughout the region, the Bambuti experience extreme marginalization in society. Typically living in villages furthest from the roads (sometimes as much as half a day's walk from the nearest road), they virtually have no access to basic services and utilities and are denied development assistance. At the same time, Bambuti have found themselves pushed out of their forests in the name of conservation in the Kahuzi-Biega and Virunga national parks, effectively alienated from their livelihood as well as their cultural and spiritual heritage. Discrimination by other ethnic groups is ingrained, and the Bambuti are often stereotyped as beggars and thieves. Despite the visible poverty and marginalization of the Bambuti, DRC authorities have denied that they suffer discrimination. In the initial report of the DRC to the African Commission on Human and Peoples' Rights in November 2003, no mention was made of the situation of the Bambuti. When the commissioners questioned the government delegation about the vulnerable situation of the Pygmies and the human rights abuses they had suffered, the DRC representative simply noted that all Congolese people were equal before the law and had access to all institutions, and did not recognize that the Pygmies suffered from specific discrimination. The government delegation

did however condemn the abuses committed against the Pygmies in the former rebel-held areas of the DRC.

The Bambuti are virtually invisible in local and national government in the DRC and in public life generally, and have no organized political representation. However, during the 1990s a number of non-governmental organizations (NGOs) led by Bambuti were established and have become effective advocates for the rights of their communities.

The Bambuti in Ituri and the Kivus have never taken up arms during the armed conflicts in the DRC, but they have nonetheless been targeted by armed groups. Both the location of their villages in the forest, and their knowledge of forest paths and hunting skills, have made them vulnerable. Particularly in the more recent phases of the Ituri war, the Bambuti have been coerced by various armed groups operating in the forest to act as trail-finders and to hunt game, and have then found themselves subject to revenge attacks by opposing armed groups. Violence against the Bambuti is also often linked by the perpetrators with certain mystic beliefs about a special power held by the Bambuti due to their origins as forest-dwellers. The most common expression of this is the stated belief that back pain or other ailments can be cured by sleeping with Bambuti women, a frequent justification for rape.

The marginalization experienced by the Bambuti in Congolese society generally has also had extreme consequences in times of war. Institutionalized disregard for the rights of the Bambuti and the lack of seriousness with which complaints of abuse are treated, have meant that all armed groups in the eastern DRC have been able to prey on Bambuti villages with impunity, looting and raping at will. Where the Bambuti have been forcibly displaced from their villages, they have frequently had to live for prolonged periods unprotected in the forest, exposed to wild animals, disease and starvation.

Justice for crimes under international law

International law has criminalized certain grave violations, including genocide, crimes against humanity and war crimes, both in multilateral treaties and in customary international law. The primary responsibility for suppressing such crimes rests with individual states which have jurisdiction, but their criminalization under international law also places a responsibility on the international community as a whole to ensure that they are suppressed and the perpetrators punished.

The Rome Statute of the International Criminal Court (ICC), which came into force on 1 July 2002, provides a codification¹³ of such crimes for which the ICC

has jurisdiction. Genocide covers a series of acts including killing and causing serious harm committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. Crimes against humanity are acts, including murder, extermination, enslavement, forcible transfer, torture, rape and persecution committed as part of a widespread or systematic attack directed against any civilian population. War crimes are serious violations of the Geneva Conventions and other laws of war, and can be committed in both international and internal armed conflicts.

The Rome Statute of the ICC reflects the need to act against the growing prevalence of crimes targeted at victims solely because of their identity. The crime of persecution is 'the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity' (Article 7.2(g)). It can be committed against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any crime within the jurisdiction of the Court.

Where crimes have been committed on the territory or by a national of a state party to the Rome Statute, they can be referred to the ICC Prosecutor by a state party, or can be investigated by the Prosecutor acting under his own initiative. The UN Security Council can also refer a situation to the Prosecutor. The ICC, however, is 'complementary' to national criminal jurisdictions; that is to say, cases can only proceed where the state in question is unwilling or unable genuinely to carry out an investigation or prosecution.

The DRC ratified the Rome Statute on 11 April 2002 and the ICC therefore has jurisdiction over crimes committed in the DRC from 1 July 2002. As noted by the UN panel of experts, the impunity prevailing throughout the DRC for grave violations of human rights has enabled those violations to continue unchecked. Trials or any form of punishment for abuses committed by the armed forces or by militia groups are extremely rare.

In January 2003, the DRC's Permanent Representative to the UN, Ileka Atoki, transmitted a letter¹⁴ to the President of the UN Security Council denouncing the military operation 'Effacer le tableau', recently undertaken by the MLC and RCD-N in Ituri, as a 'campaign that spread horror and desolation throughout Oriental

Province and the region of Ituri, targeting in particular indigenous Pygmies and the Nande ethnic group'. The letter went on to state:

'My Government believes that this extermination of a population group, ie. Pygmies, and this methodical destruction of an ethnic group, ie. the Nande, may be qualified as genocide and ethnic cleansing under the rules of international law. They are a crime against humanity par excellence and an insult to the human conscience and the civilized world as it enters the twenty-first century. My government requests the Security Council, which explicitly named the President of the MLC, Mr Jean-Pierre Bemba, as the one responsible for these abuses, to ensure that the alleged perpetrators, authors and politicians and military personnel implicated in these horrible incidents, which repel national and international public opinion, answer for their acts.'

Jean-Pierre Bemba had reacted to international concern about the operations of the MLC in Ituri by convening a swift trial of some of those responsible. However, the fact that only two junior soldiers were convicted of murder and the commanding officer was convicted only of allowing insubordination suggested that the trial had been largely staged to deflect criticism and pre-empt any serious attempt to deliver justice.

The newly appointed Prosecutor of the ICC, Luis Moreno Ocampo, announced on 16 July 2003 that his office was likely to investigate crimes committed in the DRC, centering on the Ituri war. However, the problem of ensuring adequate access for investigators on the ground presented a major hurdle to be overcome. In January 2004 he said that he hoped the investigation could begin by October, but that continuing violence in the region made it difficult to begin earlier.¹⁵

On 19 April 2004 the ICC Prosecutor announced that he had received a letter from the President of the DRC referring to him the situation of crimes committed in the DRC.¹⁶ By means of this letter, the DRC asked the Prosecutor to investigate in order to determine if one or more persons should be charged with such crimes, and the authorities committed to cooperate with the ICC. In accordance with the Rome Statute, the Prosecutor will now proceed to determine whether there is a reasonable basis to initiate an investigation in respect of the situation referred.

War crimes and crimes against humanity committed against the Bambuti Pygmies since 1 July 2002

‘Erasing the Board’: alleged crimes perpetrated by the MLC / RCD-N

From October 2002 – January 2003, combined forces of the MLC and the RCD-N undertook a military operation to capture the town of Mambasa in Ituri and the territory south and south-east of Mambasa with the professed objective of the town of Beni, approximately 120 kilometres further south. They named the operation ‘Effacer le tableau’ (‘Erasing the Board’) and, according to the victims, its purpose was variously described by the attackers as to steal or destroy everything worth having, and/or to kill or clear the population.

The operation had two distinct phases. On 12 October, MLC / RCD-N forces arrived for the first time at Mambasa, coming from the west, having first taken Epulu. They captured Mambasa, causing most of the residents to flee, and a day later also took Mandima, six kilometres to the east. They remained in control of Mambasa and Mandima and the surrounding area until 28–29 October, when they retreated after several days of fighting with the Armée populaire congolaise (APC), the armed forces of the RCD-K/ML. The MLC / RCD-N took Mambasa again on 28 November. From 18 December they advanced south, on the road to Beni via Byakato and Mangina, and south-east, via Komanda and Erengeti. Just before the New Year, they encountered heavy resistance around Mangina and in Erengeti from the APC and elements of the Maï-Maï. Following a ceasefire agreement signed at Gbadolite on 31 December, the MLC / RCD-N forces retreated back north in the course of January 2003 and had left Mambasa by the end of the month. The area has since remained under control of the RCD-K/ML.

The UN High Commissioner for Human Rights reported to the Security Council in February 2003 that the MLC / RCD-N operations had been accompanied by serious human rights violations, including arbitrary executions, rape, torture and forced disappearances.¹⁷ The pattern of looting, killing and rape was described as tactics of war, with the summary executions targeting the Nande ethnic group and the Pygmies, who were forced to

flee ‘to escape persecution for their alleged collaboration’ with the RCD-K/ML. The crisis led to the displacement of over 100,000 people. The High Commissioner’s report noted that some soldiers were allegedly seen with T-shirts printed with ‘effacer le tableau’ and that soldiers from the force confirmed that they had been sent by Jean-Pierre Bemba, MLC leader, and Roger Lumbala, leader of the RCD-N. The High Commissioner recalled that ‘after first denying the allegation as a campaign of calumny orchestrated by his enemies, Mr Bemba admitted the veracity of the charges and promised to prosecute those suspected of having committed the crimes’.

The officer commanding the first advance on Mambasa, Lieutenant-Colonel Freddy Ngalimu, was replaced and later tried by the MLC with some junior members of his forces (see introduction). Ngalimu was convicted only of allowing insubordination. He had been replaced for the second advance by Colonel Widdy Ramses Masamba, whose *nom de guerre* was ‘le Roi des Imbéciles’ (King of the Imbeciles). None of those involved in the second advance has been brought to justice. Both Colonel Ngalimu and Colonel Ramses reported to General Ndimba Constant, based at Isiro, whose own reported alias was ‘Effacer le tableau’.

After the signing of the Final Act of the Inter-Congolese Dialogue on 2 April 2003, the UN and an international committee in support of the transition facilitated intensive negotiations on a new integrated high command of the armed forces of the DRC. A memorandum was agreed on 29 June, on the eve of the establishment of the transitional government, and in August the MLC was allocated command of two of the DRC’s ten military regions and the RCD-N command of one. The RCD-K/ML and the Maï-Maï were also allocated one each.

Before arriving in Mambasa on 12 October 2002, the MLC / RCD-N forces occupied Epulu, where there were reported numerous cases of pillage and the rape of Bambuti women. Pindjaone B., from the village of M. in Epulu, was already in her hiding place in the forest with her husband and her mother when four soldiers suddenly appeared at about 8 p.m.

‘They started to push us around and to intimidate us, asking for goat meat. We said we were Bambuti,

and not able to find that sort of thing. They said that that was good because we were people with powers, people who could heal illnesses. That if we didn't have meat they could eat us and they would get the power. Then they asked my husband several times to sleep with my mother in order that they could see our power. They beat him but he refused to do it. Then they raped my mother and me, one after the other, each by two of them. Afterwards they asked my husband to sleep with me in front of them to see how we make love. After strong threats and blows my husband finally accepted and we did it in front of my mother and in front of them. It was horrible.'

Pindjaone believed that their attackers were targeting Bambuti in particular. 'They said that our flesh had powers.'

Zuena M. from the same village was also with her husband and her mother when five soldiers came armed with knives and rifles.

'They were members of "les Effacer" ["the Erasers"]. They pushed my husband about until he fell onto my mother. He got up and they started to slap him. They stamped on him with their boots. They said that they should kill him because he was a Pygmy without value. He cried out a lot and asked to be pardoned and one of the soldiers thankfully said that they should leave him and instead plunder everything that we had. Thank God, that is what they did. All the same, they forced him to carry everything to their camp. Afterwards, their leader allowed him to go.'

Zuena also thought that the Bambuti had been specifically targeted. 'They said that the Bambuti were not even people, and who would carry out an inquiry for their sake? No-one, they said, and we are surprised that you could even have these events reported.'

Father Silvano Ruaro was at the Italian Catholic mission in Mambasa when MLC / RCD-N forces arrived there on 12 October. He hid 100 metres from the mission but they saw him and started firing. They were after money; some were already drunk and they threatened to shoot him. They also prevented him from taking his medication for malaria. They were mainly talking in Lingala, but one spoke Swahili to him. 'He said it was better not to resist because for four days they had been given permission to do whatever they wished – no matter what it was – and they would not be punished.' Father Ruaro was held for 12 days until the MLC / RCD-N forces began to withdraw from Mambasa. Subsequently he assisted an officer from MONUC to undertake an initial inquiry into what had happened, interviewing some of the large numbers of displaced people.

Father Ruaro was not himself a witness to violence committed against the Bambuti, but concluded:

'I have been here for 30 years and the Pygmies have never left the forest. What was it that made them leave? There must have been something terrible that was happening. The aim of the operation was to terrorize the population. It was terror as a weapon of war, raping women and children in order to gain the territory.'

Sumbula R. survived a massacre in the village of Mbuluku, located in the forest south of Lolwa. At about 2 p.m. in the afternoon during the month of October, a group of men wearing military clothes arrived at the village and asked where the men were. The women replied that they were working in the forest. The men left to go and wait in an abandoned village where they had hidden their weapons. After dark they returned.

'It was in the night around 8 p.m. when people began to fall asleep. Once they were sure the village was asleep, they attacked and started to shoot and kill. It was dark and the moon was not shining that night. They started shooting at all those who tried to escape. One ran this way, they shot him. Another ran that way, they shot her – even the women. They captured the young children, gathered them and held them until daylight. Then they put some of them in a mortar and pounded them to death. They destroyed the huts and set them on fire. The people were also burnt.'

The village chief was shot at three times but managed to escape. Sumbula was stabbed in the head and bleeding seriously, but he also managed to escape. He has a scar from the stabbing on the crown of his head. Afterwards they learnt that three young men from a neighbouring village who had visited Mbuluku that day on the pretext of buying meat had in fact been bribed by the attackers to show them the way to the village. Sumbula recites their names but believes that the three subsequently left and moved to Kivu in order to escape retribution. Sumbula says that the men who perpetrated the massacre spoke a number of languages, but predominantly Lingala.

'They kept saying that we were animals and that we must be killed. They also said that our fat tasted very nice. You animals, we will eat you, they said.'

The massacre was reported to the authorities, but Sumbula believes they are powerless.

'Whenever I expressed my intention to pursue the matter with the authorities I was told that I might

also be killed. But I decided to continue, regardless of the discouragement and intimidation from the authorities. Even my own family members, including our local chief, tried to discourage me but I had to persist for the sake of my relatives who were killed and buried like animals.'

The inhabitants of Mambasa and the surrounding area fled south, spreading the word about the atrocities committed by 'les Effacer'. Mangali B., aged 50, from the village of M. on the Mambasa-Beni road, sought refuge in the forest where he built a makeshift hut and kept his belongings, including a bicycle, a sawing machine and some animals.

'We were afraid, especially after hearing that they had killed Bambuti elsewhere... Everyone from Mambasa was telling us the same story... We heard they would kill us too if we stayed on the roadside. We fled the village and hid in the bush but unfortunately some local people led them to where we were.'

Some men dressed in military fatigues and armed with rifles and knives came and started beating him on the back with a machete and a rifle butt, threatening to kill him. They took all his belongings and then forced him to carry the loot to the village of Mayuano from where someone else was recruited to take over. When Mangali returned, everyone else had already fled.

As the MLC / RCD-N forces moved south on the Mambasa-Beni road, the local population fled before them. Besei M., a preacher from the village of Mt. east of Teturi, sought to get his family to safety in time. 'We heard that they were in Mayuano, then Masangi and then in Teturi. At that moment we decided to evacuate our family members.' Besei took his mother to safety and then came back for his father.

'By the time I got here, all the people had left the village except for my old man... We spent the night here and the following morning we found four other elderly people. We walked all the way through to Malutu at Ngali where we stopped to rest... I spent two weeks there waiting to get information about my family's whereabouts, as I did not know where and how far they had walked. Whilst in Ngali I heard that fighting was moving towards Byakato. After a week, I made my way back.'

On his way back, however, he was caught by a group of MLC / RCD-N forces.

'They kept telling us that if we did not provide them with meat we would be in trouble. They kept asking us

where the other members of our community were. We told them that they had run away and we did not know their whereabouts. "If we don't get any meat today you will be dead. We will get you today. We are the Effacer. We are the Katanyama ["flesh cutters"]," they kept telling us... They made us sit on a termites' nest, even the old man who was so tired and weak, and they beat some of us. We were made to stay there for about an hour. Those who screamed were beaten and told they would be killed. We were saved by a goat. As we were being held, they saw a goat, which must have gone astray, chased and caught it and let us off.'

They came back to their fields through a short cut in the forest. But about a week later, MLC / RCD-N forces came again. 'On that occasion they only looted the village. They took our pots, clothes, and other belongings. They destroyed everything.'

Besei thought the fighters were targeting the Bambuti, but he did not know why. When he was placed on the termites' nest, he said that two of them were giving orders to the others to beat up the Bambuti. 'They kept saying that if we did not provide them with any meat we would be eaten.'

Although the threat of being eaten was extensively reported by Bambuti victims and witnesses of human rights abuses, eyewitness accounts are rare. Amuzati N. from the village of L. near Malutu was hunting in the forest when he heard shouting and shots coming from the direction of his camp.

'There was a lot of chaos. They were killing them. People were running in all directions. A lot of them went missing. There was a lot of noise and chaos so I stayed back and could not go nearer as I feared for my own life... They started killing people and eating them... I saw them cutting up human flesh, then they were putting it on a fire to grill it. I got scared and ran away not knowing what else happened behind me.'

A number of Amuzati's close relatives have been missing since that day and he is convinced that the bodies he saw being cut up were those of his elder brothers, S. and N.

'I am very shocked and still cannot understand why they are after us. We were told that they were asked to eat us. Why did they have to eat us? They were calling themselves the Katanyama. From what we heard, they were told they can eat us, the Bambuti. They were told that our flesh gave power to those who ate it. Someone needs to ask them why they were eating us. Why call us those whose flesh is cut?'

The mass displacement of the civilian population from their homes and fields placed tens of thousands of people in serious humanitarian need. This need became acute when MLC / RCD-N operations were continuing in the vicinity and the population was forced to remain in hiding. Asina A., from a village in Mandima, was displaced with her husband.

'He kept asking me to accompany him to look for some food but I was not very keen to leave the bush where we were hiding. I told him that we should wait until the following day as it was dangerous to leave the bush. I said that we did not have children so we could wait until the next day. He insisted on looking for food and I said that people get killed over things like that. After he had insisted I agreed to go with him. I was walking behind him and as we got to the main road he was caught. He then spoke in our language advising me to run away. I then ran back to where we were hiding and told my brother-in-law about what had just happened. After a short while we heard three gun shots and my heart started beating very fast and I could feel that it was him who had just been killed. We wanted to find out who was shot and, soon after, one of his younger brothers came to report that his body was found. He was shot dead. They even put three lollipops in his mouth... His body stayed in the bush throughout the night, as we could not go to collect it for fear of being killed too. On the following day in the morning, we went and found the body, which we brought back and buried. ... We believe they wanted to exterminate all the Bambuti. This is what was said everywhere.'

When the body of Asina's husband was recovered, they informed their local chief who advised them to contact the chief of the area where the body was found. However, when they got there they were told there could not be any investigation because of the war. She believes they did not want to investigate. 'They just hate us. There are no other reasons. They look down on us.'

Conclusion

Between October 2002 and January 2003, the MLC and RCD-N jointly carried out a premeditated, systematic campaign of attack against the civilian population of Ituri in the area of Epulu, Mambasa, Teturi, Byakato and Erengeti. The objective of the campaign was to gain control of the territory, including the strategic surrounding forests, and to plunder its resources, using the terror created by grave human rights abuses as a weapon of war. Encompassing the civilian population in general, the fact that the campaign specifically targeted the Bambuti for

mass killing and the severe deprivation of other fundamental rights by reason of their supposed supernatural powers and knowledge of the forest, indicates the commission of the crimes against humanity of persecution and extermination. The MLC / RCD-N forces also committed other crimes against humanity including murder, forcible population transfer, torture and rape; violations of common Article 3 of the Geneva Conventions; and other serious violations of international humanitarian law. The evidence of attacks targeted against the Bambuti may also support a possible prosecution for genocide.

Alleged crimes perpetrated by the RCD-Goma

Following the departure of most Rwandan troops from the eastern DRC in the autumn of 2002, most of the territory of North and South Kivu was left under the control of the Goma faction of the Rassemblement congolais pour la démocratie (RCD-Goma). In late 2002 and the first half of 2003, the RCD-Goma deployed most of its military forces, known as the Armée nationale congolaise (ANC), in separate offensives to confirm its total control of the Kivus and the province of Maniema, attacking the RCD-K/ML north of Goma, groups of Mai-Mai south and west of Bukavu and around Kalima, and attacking a militia of Banyamulenge (Congolese Tutsis) in the area of Uvira. Fighting even continued after the RCD-Goma, along with other rebel groups, signed the Final Act of the Inter-Congolese Dialogue in April 2003 and the Secretary-General of the RCD-Goma publicly announced the end of the war. The offensives and the accompanying grave violations of human rights led to tens of thousands of people fleeing their homes.¹⁸

In August 2003 the RCD-Goma, like the MLC, was allocated two military regions in the integrated high command of the armed forces of the DRC. However, as a progress report in January 2004 from the UN Secretary-General noted, beyond the allocation of senior appointments 'there is still a lack of clarity on the modalities for the integration and restructuring of the new Democratic Republic of the Congo armed forces, or for the setting up of a national Congolese police'.¹⁹ This was made tragically apparent at the start of June, when dissident officers of the RCD-Goma led a force several thousand strong to capture the town of Bukavu. There was widespread looting and rapes and attacks on civilians before the rebels retreated.

Forces of the RCD-Goma, both before and after their integration within the armed forces of the DRC, have been responsible for a consistent pattern of human rights abuse against Bambuti communities, most notably sexual violence against Bambuti women and children.

Furaha K. from the village of M., approximately 20 km from Goma in North Kivu, was 15 when she and three other girls looking for sweet potatoes in the fields encountered five soldiers of the RCD-Goma. 'They stopped us and asked us to put down what we were carrying. We refused and immediately they started to whip us and they raped us, each of us twice.' Noella P., also 15, related:

'One day towards midday in the month of September 2003, we were four girls together looking for sweet potatoes when we were met by five Rwandan soldiers of the RCD who threatened us immediately. They said that if we refused, they were going to kill us. They whipped us, threw us on the ground and then raped us. Each one of us was raped twice by two soldiers. Afterwards, they whipped us again. When we arrived home, our parents noted our appearance and asked to know what had happened. We didn't want to tell them but our manner betrayed us. And since then, we no longer go to the forest and we suffer from hunger.'

Both Furaha and Noella had been raped by RCD-Goma soldiers before, Furaha on two other occasions.

The stigma associated with rape and its damage to a woman's marriage prospects mean that the incidence of rape is probably under-reported. However, in addition to the four girls in the village of M., two older women in the village also reported being raped. Steria D., aged 40, was beaten and raped by a soldier of the RCD-Goma in September 2003 who told her that the Pygmies had for years guided the Mai-Mai and *Interahamwe* militias to attack them. She was left pregnant. Ndabumwa M., aged 33, was out gathering firewood when an RCD-Goma soldier suddenly appeared and said he wanted her.

'I told him that I couldn't because according to our customs I should not sleep with another man except my husband. He asked me if our blood wasn't the same as that of other people and immediately he took me by force and raped me. After he had finished, he hit me until the blood started to run from my ears. He said that Pygmy women heal illnesses.'

In addition to the high incidence of rape, the practice of mass or collective rape points to its systematic character. Cécile N., of the village of Mb. in the area of Masisi, North Kivu, was one of a group of nine Bambuti women cutting firewood in the bush when a group of about 20 soldiers of the RCD-Goma appeared, armed with rifles and knives. They were dressed in a mixture of military and civilian clothes and all spoke Kinyarwanda. 'The leader of the group, called 'État major' by the others, gave

the order to rape us. So the soldiers raped us in turn: at least two or three soldiers for one woman.'

Another of the nine women, Mukara H., was 14 years old at the time. 'The group had a leader, dark, of medium height. He ordered the mass rape. They said that Pygmy women would heal back trouble. The attack lasted hours. I was called a "dirty Pygmy".' Cécile said that the insults that had been directed at them, saying that Pygmy women were 'dirty' and 'stupid', led her to believe that the collective rape was also a way of humiliating them. The mass rape took place in 2003 around March, at the time of year that the villagers sow beans. The women did not report their attackers to the authorities out of fear of being killed.

In many cases, the allegation that the women support the Mai-Mai is used as a justification for maltreatment and rape. Rosaria N. had been given refuge with some other women by a pastor in the village of K. in Bunyakiri in South Kivu. In May 2003, 16 soldiers of the RCD-Goma came to the village at 11.30 p.m.

'They accused us of being the women of the Mai-Mai, as we didn't have husbands. We denied it, as did the pastor, but that didn't stop us from being raped. They said that they would kill us if we refused and they moved us to another house. It was the commander who started the rape; afterwards he chased me out and asked the soldiers to take me away. They carried out the order and led me outside where two of them raped me again.'

Mubawa M., from M. in the neighbourhood of Kyabiringa in North Kivu, was arrested at 1 a.m. in March 2003 by the RCD-Goma. His house was set alight and everything was taken. He was taken to the plantation at Madimba where he was tortured. The soldiers said that a rifle had been found hidden near to his field and they accused him of being the owner. 'They said that I must have other rifles to take to the Mai-Mai. I was tortured to make me admit as well that all the Pygmies were part of the Mai-Mai, and that they possessed firearms.'

Two years earlier, in February 2001, Mubawa had witnessed the killing of four civilians, three of them Bambuti, by RCD-Goma forces. He said that the perpetrators knew that their victims were Bambuti, but as they did not have identity cards they were treated as Rwandan *Interahamwe*.

'There were about 70 soldiers coming back from an operation very close to the Shove forest. First they knocked the victims unconscious with posts. They barricaded the road before slitting the throats of their victims with knives. They left the decapitated bodies there. Two of the victims were my big brother and my little brother. The chief of the locality was powerless

because the matter was beyond his authority. At least that is what he gave my family to understand.'

Nakabuya M., aged 32, of N. in Bunyakiri, was also accused with her family of belonging to the Mai-Mai and Interahamwe. Some 40 soldiers of the RCD-Goma arrived at her village on 1 May 2003, led by a commander named Kitambala.

'They came because they had been informed it was a Pygmy village and they held a grudge against us for a long time. I was two months pregnant and the soldiers arrived to say that we Pygmies have weapons which kill the animals of the [Kahuzi Biega National] Park. They said that they ought to kill us so that we could no longer kill the animals. They destroyed our huts, they looted everything. They took me and started to whip me after my husband had fled. They prepared a grave for me and they continued to whip me to make me admit that we had weapons. My husband, having heard my cries from his hiding place, gave himself up and was beaten savagely. With my one-year-old daughter, they wanted to bury us. They measured my height for the grave, and pulled my baby from my back. At last they said that preparing the grave would delay things, that they would shoot me and my family would have to take care of the burial. They charged the rifle and put it to my ear, saying that if in five minutes I hadn't admitted the existence of the weapons they would kill me. Then they let me be and left.'

The ordeal lasted two hours. Nakabuya still sees the soldiers responsible in the neighbourhood, but did not report them to the local chief because 'it is the military authorities which gave the order and the local authorities don't have any power'.

The cases of sexual violence against Bambuti women have continued after the integration of RCD-Goma troops into the unified armed forces of the DRC. Furaha N., aged 22 from B/M. in Bunyakiri, was raped on 15 January 2004 by two soldiers from a group of four that accosted her. Among them she recognized those who patrol regularly in the local villages during the day. Vumilia K., aged 33 and also from B/M. in Bunyakiri, was raped on 5 January by a soldier living in the camp at Mulonge. A week later she lost the three-month old foetus she was carrying. When she informed a local village chief he said that he did not have power over the military and that the case was over his head. When Faradja N. had reported her rape of 7 December 2003 to the same chief he had promised to pass the report to the military superiors of the RCD-Goma, but she has not heard anything since.

Rosaria N., from K. in Kalima, Bunyakiri, described how in January 2004 her sister-in-law, Elise C., had been at home when a group of armed men came. They made threats and started to rape her in front of her husband.

'Eight men raped her and, as she had just given birth, she was hurt terribly. They pushed other implements into her vagina. After they left, she had a problem getting medical attention. After a delay she was taken to the hospital where she was in a terrible state. Afterwards, she couldn't access care any longer because of lack of means. She came back home but the infection hadn't healed.'

Elise died soon after, in January 2004. When asked whether the events had been reported to the authorities, Rosaria said: 'The news was announced, but as it is the Rwandans who ruled and who still rule, no-one has power over them.'

The Bambuti victims or witnesses of human rights abuses committed by the RCD-Goma universally report that redress was unobtainable. Complaints were never taken seriously. Reports of abuses were either dismissed out of hand, were never investigated, or the complainant was never informed of any outcome. In some cases, the making of a complaint itself provoked further abuses. Many victims did not report abuses out of fear, out of despair of the outcome, or because the only authorities to whom they could complain were those who were directly responsible for the abuse.

The husband of Lusiya N. from Kh. village in Bunyakiri was shot dead in an incident in Kamananga in July 2003. He was a teacher at the village primary school, aged around 65. After she queried what had happened, the soldiers:

'finished by stating that my husband had been shot because he was Mai-Mai. It was the soldiers present in the village who had shot him, so it was impossible for me to file a complaint because they are the same authorities who continue to govern.'

On the night of 25 November 2002, Jean-Paul K. from M. village in Kabare, South Kivu, was beaten severely by a soldier of the RCD-Goma and robbed of all his possessions. He has scars on his hand and legs as a result of the beating. He informed the village chief. The next day he saw the soldier in question, who recognized him. When he started to ask for his belongings back, he was taken and put in the jail at Kavumu. 'He abused me, saying that I was a Pygmy, "a worthless man".' He was imprisoned for a month before he was freed through the intervention of the chief of the locality, paying a fee of US\$20.

Conclusion

Since 1 July 2002 soldiers of the RCD-Goma have committed grave abuses of human rights, violations of common Article 3 of the Geneva Conventions and other serious violations of international humanitarian law against Bambuti communities throughout North and South Kivu. Authorities of the RCD-Goma were repeatedly made aware of allegations of abuses but the soldiers were able to continue in a climate of total impunity. The high incidence of rape of Bambuti women and children, and the systematic character of instances of mass rape, indicate the commission of a crime against humanity. The fact that such attacks were specifically targeted against Bambuti civilians, either on account of a belief in their supernatural powers or to punish them for the supposed collaboration of the Bambuti with the Maï-Maï, indicates the commission of the crime of persecution.

Alleged crimes perpetrated by the Rwandan *Interahamwe*

Despite the fact that the Kivus have been largely controlled first by the Rwandan army and then by the Rwandan ally RCD-Goma, there remain in the region significant numbers of ex-FAR troops and *Interahamwe*. The main focus of the operations of MONUC until its mandate was expanded in July 2003 was the disarmament, demobilization and repatriation of foreign ex-combatants. However, despite the commitments made in the bilateral agreement with Rwanda in July 2002, the DRC government, after some initial progress, did little to address the continuing presence of ex-FAR and *Interahamwe* fighters. Nor did the RCD-Goma offer MONUC its full cooperation, often limiting the freedom of movement of MONUC personnel. Maï-Maï groups – who were sometimes allied to ex-FAR/*Interahamwe* in their struggle with the Rwandan army and RCD-Goma – were also found by MONUC to be unreliable collaborators.²⁰

MONUC, however, has been able to intensify its activities in the area of disarmament, demobilization and repatriation in support of an agreement by the governments of the DRC and Rwanda in November 2003 to resolve the problem of Rwandan armed groups by the end of 2004. The pace of repatriation accelerated from 2,900 people in November to over 9,600 by March 2004.²¹ A major programme of disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) for all former rebel combatants is due to be funded by the World Bank. However, the regrouping of rebel combatants for DDRRR has itself created security problems.

Interahamwe and other Rwandan rebels continue to prey on Bambuti villages. In many cases, the primary

motive appears to be looting, but this is typically accompanied by violent intimidation and more serious human rights abuses. Villages situated in or near the forests in the Kivus where the *Interahamwe* operate are particularly at risk.

Kaofu S. from B. village in the neighbourhood of Buloho in Bunyakiri, South Kivu, described how the villagers had seen a column of armed men on the hill at about 10 a.m., some dressed in military uniform, the others in civilian clothes. The villagers went to hide in the bush, from where they could see what happened. As the *Interahamwe* approached, they fired shots into the air to frighten away the villagers. 'We think that they were hungry and were looking for provisions, particularly game, in Pygmy villages.' Then the *Interahamwe* set fire to 12 houses in the village. One Pygmy man called Makelele C. who was visiting the village was tied up, thrown into a hut and then burned alive.

According to Venant M., from M. village in Bunyakiri, it was 4 a.m. in January 2003 when a group of *Interahamwe* arrived in the village.

'They started to force open the doors and directly whipped the people. Some were able to flee, notably myself. They whipped my son. Some time after, Mr. Makere wanted to go back to the village to verify if they had left. Unfortunately he had taken the way by the well and some of them had left for there to look for water to drink. They captured him and took him back into the house and burned him inside.'

The attackers burned down the village. Another man who was sleeping in one of the houses was burned badly and left disabled when he threw himself through the fire to get out. Afterwards, the *Interahamwe* stayed in the neighbouring villages so the Bambuti were unable to return to their village, for fear of being attacked again.

Mawazo K., from the village of B. in Kalehe, South Kivu, was at home with her husband at about 8 p.m. when six *Interahamwe* arrived armed with knives and firearms.

'They started to ask us for money, saying that the aid organizations bring us dollars. We explained that we didn't have any. So they started to slap me, and my husband much worse, and they sunk a knife into his cheek and tied him up, and he started to bleed. They made him carry their loot. He took the bags and they left. Because he bled alot on the way, became very weak and could not walk any longer, they abandoned him in the forest where he passed the night and it was passers-by who brought him to the health centre. Of the six of them, three raped me.'

When the local chief was informed of what had happened, he told them that they had to sleep in the forest to avoid being attacked.

Many Bambuti communities at risk regularly leave their homes at night to go and sleep hidden in the forest, returning in the morning. Exposed to the elements and insects, as well as wild animals, this increases the risk of disease and takes a particular toll on the children and old people. Tantine K., aged 19, from Ny. village in Kalehe, was still at home with her husband at 10 p.m. one night because they did not want to go and sleep in the open forest as usual.

'We were tired of the bad weather and unfortunately they came that day. They forced open the door and asked us for money that we didn't have. My husband had fled; when I wanted to flee in turn they caught me. Three of them raped me and I was three months pregnant... I had a problem giving birth which has continued until now.'

When Tantine informed the village chief what had happened, he told her that it was her fault because she had refused to go and sleep in the forest like the others.

Kombara S., aged 57, from K. village in Kalehe, was killed by a group of *Interahamwe* when he refused to leave his home. The week before he had been tortured and fined by the military authorities for alleged complicity after he failed to inform them of the presence of a suspected *Interahamwe* fighter by whom he had been intimidated. On this occasion, they arrived at his village at about 9 p.m., took his food and told him to flee. According to his niece, Vinciana M.:

'With all his tiredness and weaknesses, he refused to leave the house to go into the forest in the rain. He told them that he was tired of sleeping in the forest and he didn't want to go. He was still debating with the first one when three others arrived. The three asked why the first was arguing with him instead of killing him directly.'

When Kombara still refused to comply, they shot him, slit his throat and threw him by the fire.

Although the *Interahamwe* force the Bambuti to abandon their homes for the forest, they also kill Bambuti whom they find in the forest itself. Awezaye K., from C. village in Bunyakiri, was summarily executed in September 2002 by *Interahamwe* fighters who found him hunting in the forest near the Kahuzi Biega national park. His elder brother reported that his body was found with marks of a beating and stab wounds, and bore a letter stipulating that the forest belonged to the *Interahamwe*

and that it was strictly forbidden for the Bambuti to undertake any activities there. In October 2003, Pascal M. from the same village was also killed when he met four *Interahamwe* while hunting in the forest at Kahuzi Biega. His companions managed to flee but as he had climbed a tree, he was captured. He was beaten and then cut into pieces with machetes. His companions later recovered the body and he was buried with his wife in attendance.

There are also many cases where Bambuti are abducted and forced to act as porters for *Interahamwe* fighters. Moise N., from N. village in Kalehe, was one of six Bambuti abducted on the night of 10 December 2003 in the forest of Mutukutu/Ziralo where they were prospecting for minerals. They were tied up from 11 p.m. until 7 a.m. and Moise still bears the marks of the bonds on his right arm. 'These *Interahamwe* knew that we were Bambuti. They were delighted with our capture. They said that we were going to be their guides in the forest and help them carry things they had stolen.' Moise estimated that there were about 150 fighters in the group and their commander, who ordered the Bambuti to be tied up, was called Kazungu. The captives were also verbally abused in Kinyarwanda. Although it is usually men who are forced to act as porters, on some occasions women are also abducted, when they are additionally at risk of rape. Malikano M. from Ch. village in Bunyakiri was abducted from her home in December 2002 at 10 p.m. by three *Interahamwe*, in order to help them carry their loot. She was forced to spend two days in the forest with them, during which time she was raped by two of the three men.

Interahamwe raids on Bambuti villages are frequently accompanied by rapes and by other acts of deliberate and often appalling cruelty. Odeta M. from B. village in Kalehe, was raped twice by *Interahamwe* in September and October 2003. On the first occasion she was at home when about 10 men came at night. The leader demanded money, putting a bayonet to her throat and beating her and her family. Then five of them raped her in front of her two young girls. They took all her possessions. On the second occasion, she and a group of other women were raped during the day when they were returning from the fields. The soldiers fired into the air to frighten them and said that the Bambuti benefit from lots of support and aid from their chiefs.

On New Year's Eve, 31 December 2003, three *Interahamwe* came to the house of Sofia N. from M. village in the neighbourhood of Kalima, Bunyakiri, where she was with her husband, Mungwaere B.

'They asked us for money and provisions. They beat us up and afterwards they took my husband outside. I heard a cry and a groan. My husband was killed,

stabbed with machetes. After his eyes were torn out he gave up his soul.'

In mid-December 2003, the village of K. in the neighbourhood of Bushulishuli, South Kivu, was attacked by a group of *Interahamwe* fighters at about 11 p.m. Some of the residents were able to escape, while others were forced to transport what their attackers could steal. Musumbuko S. reported:

'They came with the object of stealing and killing. They knew very well that K. was a Bambuti village. They knew very well that my uncle was a Pygmy but I know that he didn't have anything to give them by way of provisions or money. That's why they killed him.'

Musumbuko had been able to flee into the forest, but when he returned with others, they found the mutilated body of his uncle in his own home. He had been cut with machetes and his throat slit.

Although in most cases rapes and other acts of violence are perpetrated in the course of pillaging Bambuti villages, this is not always so. Bahemuke S., from M. village in North Kivu, was one of six Bambuti women collecting firewood in the Shove forest when they were met by seven armed men in military clothes, speaking Swahili and Kinyarwanda. 'In my opinion, they were *Interahamwe*. First they threatened us with their bayonets. They insulted us, saying we were animals. I was at the mercy of these torturers from 2 p.m. until 6 a.m.' Shukrani B. reported: 'They said to us "You are Pygmies, you are animals." One of them stated that he was raping us for superstitious reasons – to heal back trouble. Personally, they used me in turn for at least two hours. They injured and tore me terribly.'

The humiliation or dehumanization of the victims is a common feature of *Interahamwe* attacks. Julita M. from the village of B. in Kalehe, South Kivu, was attacked by six armed men in military clothes, speaking Kinyarwanda. She thought they were *Interahamwe* living in the Kahuzi Biega national park. Four of the men raped her for about four hours. They beat her heavily, causing her to lose a front tooth, and verbally abused her. Nakalimira N. from M-C village in Bunyakiri was 65 years old when she was raped by a group of *Interahamwe*. 'I don't know what they were looking for with a woman of my age. These *Interahamwe* are madmen.'

Conclusion

Since 1 July 2002, Rwandan rebels including ex-FAR forces and *Interahamwe* have repeatedly carried out unprovoked attacks against Bambuti villages, sacking, looting and committing grave abuses of human rights, despite no resistance being offered. They have committed violations of common Article 3 of the Geneva Conventions, including murder, mutilation, cruel treatment and torture, and outrages upon personal dignity, and other serious violations of international humanitarian law, including pillage, rape and displacement of the civilian population.

Abuses committed by other forces

In addition to the alleged crimes detailed above perpetrated by the MLC, RCD-N, RCD-Goma, and the *Interahamwe* and other Rwandan rebels, other armed groups operating in the eastern DRC have also committed human rights abuses attracting criminal penalties under international law.

On 19 December 2003, two local human rights activists representing a NGO were reportedly arrested and tortured by an officer of the 22nd battalion of the APC.²² The men were taken from the town centre and driven to a military camp where they were whipped and forced to lie down in stagnant water. They were kept in a hole in the ground and forced to carry water for the camp commandant. The two men had criticized the APC for abuse and harassment of the local civilian population. They were freed the next day through the intervention of local community leaders.

Mai-Mai fighters have also committed abuses, either acting alone or in conjunction with the *Interahamwe*. Babuya M., from the village of M. in the neighbourhood of Buloho in Bunyakiri, South Kivu, was 16 when a group of five men in military attire knocked at her door at about 2 a.m. in January 2003. They spoke Swahili and Kinyarwanda, and she understood that they were Mai-Mai. Two of the men raped her, leaving her pregnant. Anna M. from K. in the neighbourhood of Kalima in Bunyakiri also reported that she was raped in April 2003. She was with her children when she was accosted by three men, who accused her of being the wife of a Tutsi or a soldier of the RCD-Goma. She said that one of the men, a Mai-Mai, attempted to intervene but the other two, who were *Interahamwe* fighters, raped her and stole her belongings.

Recommendations

To the international community:

1. The Prosecutor of the International Criminal Court should undertake a full investigation into persecution, extermination and other crimes against humanity and war crimes committed against the Bambuti population, as part of his wider investigation into crimes committed in the eastern DRC, with a view to prosecuting those responsible.
2. As part of its mandate to protect civilians under imminent threat of physical violence, the United Nations Mission in the DRC (MONUC) should implement specific measures to protect the Bambuti population in the eastern DRC, whose identity and marginalization makes them especially vulnerable to continuing abuses from all armed forces in the region. Sexual violence against Bambuti women and children should be explicitly included in MONUC's pilot work in Beni and other areas to address sexual violence and provide medical, legal and psycho-social assistance to victims.
3. In view of the extreme poverty and deprivation experienced by the Bambuti and their widespread exclusion from development projects, the UN Office of the Coordinator for Humanitarian Affairs and international development agencies operating in the DRC should take steps to a) ensure that Bambuti communities benefit from their mainstream assistance programmes and development projects, and b) establish specific projects to target assistance at Bambuti communities.
4. The international community should support the transitional government of the DRC in the development of a national justice system that is independent and impartial, and in the establishment and effective working of institutions of transitional justice and human rights monitoring, including the National Truth and Reconciliation Commission and the National Observatory for Human Rights.
5. The UK, US, Canadian, Belgian and other donor governments should seek to influence and put pressure on the governments of Rwanda and Uganda not to engage in activities likely to destabilize further the DRC. Development cooperation with, or aid to, these governments should be sufficiently controlled and monitored to prevent it being diverted towards military, criminal or other activities in the DRC likely to lead to serious abuses of human rights. Governments should investigate and take appropriate action against companies registered in their jurisdictions involved in the illegal exploitation of resources from the DRC.

To the government of the DRC:

6. The government of the DRC should support the development of an independent and impartial national justice system as a priority in the country's transition. Special measures should be implemented to ensure access to justice for disadvantaged and vulnerable groups, including the Bambuti.
7. The government of the DRC should increase its efforts to complete by the end of 2004 the disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) of the *Interahamwe* and other remaining Rwandan rebels operating in the eastern DRC, and should cooperate fully with MONUC in this regard.

To the governments of Rwanda and Uganda:

8. The governments of Rwanda and Uganda should cease to fund, arm or otherwise support armed rebel groups operating in the eastern DRC, and should cooperate fully with MONUC and the DRC government in the DDRRR process for all rebel groups.
9. The governments of Rwanda and Uganda should monitor and declare the import of minerals, timber and other resources from the DRC and take action against companies and individuals involved in the illegal exploitation of the DRC's resources.

Appendices

1. The RAPHY/MRG research mission

The international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern Democratic Republic of Congo was coordinated by the Réseau des Associations Autochtones Pygmées du Congo (RAPHY) and Minority Rights Group International (MRG). The members of the mission were Mark Lattimer, Pacifique Mukumba, Adolphe Muley Byayyuwa and Adrien Sinafasi Makelo.

Between 6 January and 10 February 2004 the research mission visited Mambasa, Mandima, Epulu, Byakatu, Mangina, Beni, Butembo, Goma, Masisi,

Bukavu, Bunyakiri, Kabare and Kalehe. Over 80 interviews were held with the victims or witnesses of violations against Bambuti Pygmies. The interviews were conducted in Swahili, with a contemporaneous note taken in French.

The research mission would like to record its gratitude to the Beni-based Programme d'Assistance aux Pygmées (PAP) for its logistical and other assistance during the Ituri leg of the mission; and to Hakima Abbas and Sam Gregory of Witness in New York for technical advice on video testimony.

2. Excerpts from the Rome Statute of the International Criminal Court

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
 - (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.
2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity"

means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
 - (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
 - (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
 - (xxi) Committing outrages upon personal dignity, in particular

- humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

3. Mandate of the UN Mission in the Democratic Republic of Congo (MONUC)

The mandate of MONUC was established in UN Security Council resolution 1291 of 24 February 2000. The Security Council resolved as follows:

7. Decides that MONUC, in cooperation with the JMC, shall have the following mandate:
- (a) to monitor the implementation of the Ceasefire Agreement and investigate violations of the ceasefire;
- (b) to establish and maintain continuous liaison with the field headquarters of all the parties' military forces;
- (c) to develop, within 45 days of adoption of this resolution, an action plan for the overall implementation of the Ceasefire Agreement by all concerned with particular emphasis on the following key objectives: the collection and verification of military information on the parties' forces, the maintenance of the cessation of hostilities and the disengagement and redeployment of the parties' forces, the comprehensive disarmament, demobilization, resettlement and reintegration of all members of all armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement, and the orderly withdrawal of all foreign forces;

- (d) to work with the parties to obtain the release of all prisoners of war, military captives and remains in cooperation with international humanitarian agencies;
 - (e) to supervise and verify the disengagement and redeployment of the parties' forces;
 - (f) within its capabilities and areas of deployment, to monitor compliance with the provisions of the Ceasefire Agreement on the supply of ammunition, weaponry and other war-related matériel to the field, including to all armed groups referred to in Annex A, Chapter 9.1;
 - (g) to facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers, as MONUC deems within its capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations and non-governmental organizations;
 - (h) to cooperate closely with the Facilitator of the National Dialogue, provide support and technical assistance to him, and coordinate other United Nations agencies' activities to this effect;
 - (i) to deploy mine action experts to assess the scope of the mine and unexploded ordnance problems, coordinate the initiation of mine action activities, develop a mine action plan, and carry out emergency mine action activities as required in support of its mandate;
8. Acting under Chapter VII of the Charter of the United Nations, decides that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect United Nations and co-located JMC personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.

The mandate of MONUC was then extended in further Security Council resolutions, including resolution 1316 (23 August 2000), resolution 1323 (13 October 2000), resolution 1332 (14 December 2000), resolution 1355 (15 June 2001), resolution 1417 (14 June 2002), resolution 1445 (4 December 2002), resolution 1468 (20 March 2003) and resolution 1489 (26 June 2003). Resolution 1493 of 28 July 2003 among other things extended the mandate of MONUC to 30 July 2004, increased the military strength of the mission to 10,800, authorized MONUC to take the necessary measures in the areas of deployment of its armed units to protect civilians and humanitarian workers under imminent threat of physical violence, and authorized it to use all necessary means to fulfil its mandate in Ituri and North and South Kivu. The full text of the resolution is given below.

Resolution 1493 (2003)

Adopted by the Security Council at its 4797th meeting, on 28 July 2003

The Security Council,

Recalling its previous resolutions and the statements by its President concerning the Democratic Republic of the Congo, *Reaffirming* its commitment to respect for the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo and all the States of the region, *Reaffirming* also the obligations of all States to refrain from the use of force against the territorial integrity and political indepen-

dence of any State or in any other manner incompatible with the purposes and principles of the United Nations, *Concerned* by the continued illegal exploitation of the natural resources of the Democratic Republic of the Congo, and *reaffirming* in this regard its commitment to respect for the sovereignty of the Democratic Republic of the Congo over its natural resources,

Welcoming the conclusion of the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo (signed in Pretoria on 17 December 2002), and the subsequent establishment of the Government of National Unity and Transition,

Deeply concerned by the continuation of hostilities in the eastern part of the Democratic Republic of the Congo, particularly in North and South Kivu and in Ituri, and by the grave violations of human rights and of international humanitarian law that accompany them,

Recalling that it is incumbent on all the parties to cooperate in the overall deployment of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), *Renewing* its support to the Interim Emergency Multinational Force deployed in Bunia and stressing the need to ensure effective and timely replacement of the Force, as requested in resolution 1484 (2003), to contribute in the best way to the stabilization of Ituri,

Taking note of the second special report of the Secretary-General on MONUC, of 27 May 2003 (S/2003/566), and of its recommendations,

Taking note also of the report of the Security Council Mission to Central Africa, of 18 June 2003 (S/2003/653),

Noting that the situation in the Democratic Republic of the Congo continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Expresses satisfaction* at the promulgation, on 4 April 2003, of the Transitional Constitution in the Democratic Republic of the Congo and at the formation, announced on 30 June 2003, of the Government of National Unity and Transition, *encourages* the Congolese parties to take the necessary decisions in order to allow the transitional institutions to begin functioning effectively, and *encourages* them also in this regard to include representatives of the interim institutions that emerged from the *Ituri Pacification Commission* in the transitional institutions;
2. *Decides* to extend the mandate of MONUC until 30 July 2004;
3. *Notes with appreciation* the recommendations in the second special report of the Secretary-General and *authorizes* increasing the military strength of MONUC to 10,800 personnel;
4. *Requests* the Secretary-General to ensure, through his Special Representative for the Democratic Republic of the Congo, who convenes the International Committee in support of the Transition, the coordination of all the activities of the United Nations system in the Democratic Republic of the Congo, and to facilitate coordination with other national and international actors of activities in support of the transition;
5. *Encourages* MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance, during the transition period, for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections, throughout the territory of the Democratic Republic of the Congo, and *welcomes*, in this regard, the efforts of the Member States to support the transition and national reconciliation;
6. *Approves* the temporary deployment of MONUC personnel intended, during the first months of the establishment of the transitional institutions, to participate in a multi-layer security system in Kinshasa in accordance with paragraphs 35 to 38

- of the second special report of the Secretary-General, *approves also* the reconfiguration of the MONUC civilian police component as outlined in paragraph 42 of that report, and encourages MONUC to continue to support police development in areas of urgent need;
7. *Encourages* donors to support the establishment of an integrated Congolese police unit and *approves* the provision by MONUC of the additional assistance that might be needed for its training;
 8. *Strongly condemns* the acts of violence systematically perpetrated against civilians, including the massacres, as well as other atrocities and violations of international humanitarian law and human rights, in particular, sexual violence against women and girls, *stresses* the need to bring to justice those responsible, including those at the command level, and *urges* all parties, including the Government of the Democratic Republic of the Congo, to take all necessary steps to prevent further violations of human rights and international humanitarian law, in particular those committed against civilians;
 9. *Reaffirms* the importance of a gender perspective in peace-keeping operations in accordance with resolution 1325 (2000), *recalls* the need to address violence against women and girls as a tool of warfare, and in this respect *encourages* MONUC to continue to actively address this issue; and *calls* on MONUC to increase the deployment of women as military observers as well as in other capacities;
 10. *Reaffirms* that all Congolese parties have an obligation to respect human rights, international humanitarian law and the security and well-being of the civilian population;
 11. *Urges* the Government of National Unity and Transition to ensure that the protection of human rights and the establishment of a State based on the rule of law and of an independent judiciary are among its highest priorities, including the establishment of the necessary institutions as reflected in the Global and All-inclusive agreement, *encourages* the Secretary-General, through his Special Representative, and the United Nations High Commissioner for Human Rights to coordinate their efforts in particular to assist the transitional authorities of the Democratic Republic of the Congo in order to put an end to impunity, and *encourages also* the African Union to play a role in this regard;
 12. *States that it is profoundly preoccupied* by the humanitarian situation throughout the country and, in particular, in the eastern regions, and *demands* that all the parties guarantee the security of the civilian population thereby enabling MONUC and humanitarian organizations to have total, unrestricted and immediate access to the population groups in need;
 13. *Strongly condemns* the continued recruitment and use of children in the hostilities in the Democratic Republic of the Congo, especially in North and South Kivu and in Ituri, and *reiterates* the request addressed to all the parties, in Security Council resolution 1460 (2003) to provide the Special Representative of the Secretary-General with information on the measures that they have taken to put an end to the recruitment and use of children in their armed components, as well as the requests concerning the protection of children set forth in resolution 1261 (1999) and subsequent resolutions;
 14. *Strongly condemns* the continuing armed conflict in the eastern part of the Democratic Republic of the Congo especially the serious ceasefire violations that occurred recently in North and South Kivu, including in particular the offensives by the Congolese Rally for Democracy (RCD-Goma), *demands* that all the parties, in compliance with the Bujumbura "Acte d'Engagement" of 19 June 2003, establish without delay or precondition the full cessation of hostilities and withdraw to the positions agreed to in the Kampala/Harare disengagement plans, and that they refrain from any provocative action;
 15. *Demands* that all the parties desist from any interference with freedom of movement of United Nations personnel, *recalls* that all the parties have the obligation to provide full and unhindered access to MONUC to allow it to carry out its mandate, and *asks* the Special Representative of the Secretary-General to report any failure to comply with this obligation;
 16. *Expresses concern* at the fact that the continuing hostilities in the eastern part of the Democratic Republic of the Congo are seriously compromising MONUC action in the process of the disarmament, demobilization, repatriation, reintegration or resettlement (DDRRR) of the foreign armed groups referred to in chapter 9.1 of the Lusaka Ceasefire Agreement (S/1999/815), *urges* all the parties concerned to cooperate with MONUC and *underscores* the importance of making rapid and appreciable progress in that process;
 17. *Authorizes* MONUC to assist the Government of National Unity and Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process within the framework of the Multi-Country Demobilization and Reintegration Programme, pending the establishment of a national DDR programme in coordination with the United Nations Development Programme and other agencies concerned;
 18. *Demands* that all States and in particular those in the region, including the Democratic Republic of the Congo, ensure that no direct or indirect assistance, especially military or financial assistance, is given to the movements and armed groups present in the Democratic Republic of the Congo;
 19. *Demands* that all parties provide full access to MONUC military observers, including in ports, airports, airfields, military bases and border crossings, and *requests* the Secretary-General to deploy MONUC military observers in North and South Kivu and in Ituri and to report to the Security Council regularly on the position of the movements and armed groups and on information concerning arms supply and the presence of foreign military, especially by monitoring the use of landing strips in that region;
 20. *Decides* that all States, including the Democratic Republic of the Congo, shall, for an initial period of 12 months from the adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related material, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo;
 21. *Decides* that the measures imposed by paragraph 20 above shall not apply to:
 - supplies to MONUC, the Interim Emergency Multinational Force deployed in Bunia and the integrated Congolese national army and police forces;
 - supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training as notified in advance to the Secretary-General through its Special Representative;
 22. *Decides* that, at the end of the initial 12 months, the Security Council will review the situation in the Democratic Republic of the Congo and in particular in the eastern part of the country, with a view to renewing the measures stipulated in paragraph 20 above if no significant progress has been made in the peace process, in particular an end to support for armed groups, an effective ceasefire and progress in the DDRRR by foreign and Congolese armed groups;
 23. *Expresses its determination* closely to monitor compliance with the measures laid down in paragraph 20 and to consid-

er necessary steps to ensure the effective monitoring and implementation of these measures, including the possible establishment of a monitoring mechanism;

24. *Urges* the States neighbouring the Democratic Republic of the Congo, particularly Rwanda and Uganda, which have an influence over movements and armed groups operating in the territory of the Democratic Republic of the Congo, to exercise a positive influence on them to settle their disputes by peaceful means and join in the process of national reconciliation;
25. *Authorizes* MONUC to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities:
 - to protect United Nations personnel, facilities, installations and equipment;
 - to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or DDRRR;
 - to protect civilians and humanitarian workers under imminent threat of physical violence;
 - and to contribute to the improvement of the security conditions in which humanitarian assistance is provided;
26. *Authorizes* MONUC to use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu;
27. *Requests* the Secretary-General to deploy in the Ituri district, as soon as possible, the tactical brigade-size force whose concept of operation is set out in paragraphs 48 to 54 of his second special report, including the reinforced MONUC presence in Bunia by mid-August 2003 as requested in resolution 1484 (2003), particularly with a view to helping to stabilize the security conditions and improving the humanitarian situation, ensuring the protection of airfields and displaced persons living in camps and, if the circumstances warrant it, helping to ensure the security of the civilian population and the personnel of the United Nations and the humanitarian organizations in Bunia and its environs and eventually, as the situation permits, in other parts of Ituri;
28. *Condemns* categorically the illegal exploitation of the natural resources and other sources of wealth of the Democratic Republic of the Congo and *expresses its intention* to consider means that could be used to end it, *awaits with interest* the report to be submitted shortly by the group of experts on such illegal exploitation and on the link that exists between it and the continuation of hostilities, and demands that all parties and interested States offer full cooperation to the group of experts;
29. *Encourages* the Governments of the Democratic Republic of the Congo, Rwanda, Uganda and Burundi to take steps to normalize their relations and cooperate in assuring mutual security along their common borders, and *invites* these Governments to conclude good-neighbourly agreements among themselves;
30. *Reaffirms* that an international conference on peace, security, democracy and development in the Great Lakes region of Africa, with participation by all the Governments of the region and all the other parties concerned, should be organized at the appropriate time under the aegis of the United Nations and the African Union with a view to strengthening stability in the region and working out conditions that will enable everyone to enjoy the right to live peacefully within national borders;
31. *Reiterates its support* unreservedly for the Special Representative of the Secretary-General and for all MONUC personnel, and for the efforts they continue to make to assist the parties in the Democratic Republic of the Congo and in the region to advance the peace process;
32. *Decides* to remain actively seized of the matter.

Notes

1. For a recent history of the country by a Congolese political historian, see Nzongola-Ntalaja, G., *The Congo from Leopold to Kabila: a people's history*, London, Zed Books, 2002.
2. See Swing, Ambassador W.L., Special Representative of the Secretary-General and Coordinator of United Nations activities in the DRC, 'The role of MONUC in the DRC's peace process' in *Conflict Trends*, issue 4 / 2003, Durban, ACCORD.
3. 'Second Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo', 27 May 2003, UN Doc. S/2003/566, para. 10.
4. For a detailed listing of such incidents, see African Union, Peace and Security Council, 'Report of the Chairperson of the Commission on the Situation in the Democratic Republic of Congo', Fifth Session, 13 April 2004, Addis Ababa, PSC/PR/4 (V).
5. UN Security Council Resolution 1493 (2003).
6. UN Doc. S/2001/357 and S/2001/1072.
7. UN Doc. S/2002/1146.
8. UN Doc. S/2003/1027, para. 10.
9. UN Doc. S/2003/1027.
10. See Lattimer, M., 'The Silent War', *The Times Magazine*, London, 20 March 2004.
11. For overviews of the situation of the Batwa in the Great Lakes see Lewis, J., *The Batwa Pygmies of the Great Lakes Region*, London, MRG, 2000, and Jackson, D., *Twa Women, Twa Rights in the Great Lakes Region of Africa*, London, MRG, 2003.
12. Interview with MRG, February 2004.
13. See appendix 2.
14. Letter dated 16 January 2003 from the Permanent Representative of the Democratic Republic of Congo to the United Nations addressed to the President of the Security Council, S/2003/52.
15. Reuters, 'War Crimes Panel to Take on Congo Case', 28 January 2004.
16. ICC press release, 'Prosecutor receives referral of the situation in the Democratic Republic of Congo', The Hague, 19 April 2004.
17. 'Report of the United Nations High Commissioner for Human Rights to the Security Council on the situation of human rights in the Democratic Republic of Congo', 13 February 2003, UN Doc. S/2003/216.
18. 'Second Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo', 27 May 2003, UN Doc. S/2003/566, paras 18–19.
19. 'Progress report of the Secretary-General on the recommendations of the Security Council mission to Central Africa', 20 January 2004, UN Doc. S/2004/52, para 11.
20. See 'Second Special Report of the Secretary-General', above, at paras 20–21.
21. 'Fifteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo', 25 March 2004, UN Doc. S/2004/251.
22. *Les Coulisses* No 134, 2003, Beni, North Kivu.

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‘Erasing the Board’: Report of the international research mission into crimes under international law committed against the Bambuti Pygmies in the eastern Democratic Republic of Congo

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The atrocities have been committed in the context of a war which has cost over 3.3 million lives through violence and conflict-related starvation and disease. Over 60,000

people have been killed in the north-eastern district of Ituri alone, according to United Nations estimates. The involvement of neighbouring states in the conflict, including Rwanda and Uganda, has been justified by them on security grounds, but is also directed towards the large-scale plunder of the DRC’s natural resources, including gold, diamonds and other minerals.

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