

PUBLIC

Annex D

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/04-01/06**

Date: **25 June 2009**

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Thomas Lubanga Dyilo***

Public Document

**Submission of Corrections to the Expert Report
Filed on 28 January 2009 by Mr Roberto Garretón**

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DRC-OTP-2083-0583
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Official Court Translation

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Mr Roberto Garretón

No. ICC-01/04-01/06

2/4

25 June 2009

DRC-OTP-2083-0584

[barcode]

The Registrar of the International Criminal Court (“Court”),

HAVING REGARD to the “Instructions to the Court’s expert on background and context”¹ (“Instructions”) dated 17 December 2008;

HAVING REGARD to the “Submission by the Registrar of correspondence received from the United Nations in relation to the expert testimony of Mr. Roberto Garretón”² dated 26 January 2009;

HAVING REGARD to the “*Soumission du rapport d’expert de M. Roberto Garretón*”³ dated 28 January 2009 (“Report”);

HAVING REGARD to the public hearing of 17 June 2009;⁴

HAVING REGARD to regulations 24 *bis* and 44 of the Regulations of the Court;

WHEREAS at the public hearing of 17 June, Mr Garretón stated that his Report submitted on 28 January, albeit accurate and reliable, contained a few minor errors as to the dates in certain documents;⁵

WHEREAS the Presiding Judge asked Mr Garretón to “point out to the Court Officer those dates that you noted as being inaccurate so that we can find a mechanism for making an appropriate amendment”;⁶

¹ ICC-01/04-01/06-1558.

² ICC-01/04-01/06-1651.

³ ICC-01/04-01/06-1655.

⁴ ICC-01/04-01/06-T-193-FRA.

⁵ *Ibid.*, p. 19.

⁶ ICC-01/04-01/06-T-193-ENG.

~~ICC-01/04-01/06-1987-Corr-26-06-2009-4/4-EO-T~~

WHEREAS the corrections to the said report were imparted to the Registry on 22 June 2009 and were marked in red in the text of Mr Garretón's report;

SUBMITS the annexed report, as corrected by the expert, for the Chamber's attention.

[signed]

Marc Dubuisson, Director of the Division of Court Services
On behalf of Silvana Arbia, Registrar

Dated this 25 June 2009

At The Hague, Netherlands

ROBERTO GARRETÓN

LAWYER

REPORT FOR THE INTERNATIONAL CRIMINAL COURT

DOCUMENT ICC 01/04-01/06

1. GENERAL INFORMATION

A. MANDATE OF THE SPECIAL REPORT ON HUMAN RIGHTS IN ZAIRE

This report has been prepared for the International Criminal Court pursuant to its resolution of 3 December 2008, document no. ICC-01/04-01/06, and was transmitted to Roberto Garretón, former Rapporteur for the United Nations Commission on Human Rights.

The following documents were used in compiling this report:

Reports submitted to the Commission on Human Rights;

Reports submitted to the United Nations General Assembly;

Notes and documents from United Nations bodies, in particular reports of other rapporteurs and treaty bodies and from UNICEF, UNESCO, and WFP.

Notes, papers, reports and various documents belonging to non-governmental organisations.

And also, what the Rapporteur remembers but did not write down.

In its resolution 1994/87 of 9 March 1994, entitled *Situation of human rights in Zaire*, adopted by consensus, the United Nations Commission on Human Rights invited its President to appoint, in consultation with the bureau,

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a Special Rapporteur mandated to establish direct contacts with the Zairean authorities and population, and to “report to the Commission, at its fifty-first session, on the basis of any information which might be gathered on the situation of human rights in Zaire, including information supplied by non-governmental organizations”. It also decided to reconsider the question at its fifty-first session under the agenda item *Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories*. This mandate was renewed annually and, since 1997, the Rapporteur has been asked to submit a report to the General Assembly. The Rapporteur resigned from his post in November 2001 as he was appointed Representative of the Office of the High Commissioner for Human Rights for Latin America and the Caribbean.

Despite the long period of dictatorship under Joseph Désiré Mobutu (1965 to 1996), the former United Nations Commission on Human Rights (CHR) never conducted an in-depth investigation into the overall situation of human rights in Zaire, in line with the ‘public’ or ‘non-conventional’ procedure established in 1967 by Economic and Social Council (ECOSOC) resolution 1235. Although a number of Thematic Rapporteurs reported cases of human rights violations during their mandates, we can recall only one Special Rapporteur’s investigation into the extrajudicial, summary and arbitrary executions in 1991, as well as a number of investigations pursuant to a confidential appeal (ECOSOC 1503 procedure). It is reasonable to think that Mobutu was regarded as a defender of what was seen as western civilisation in the middle of Africa which had recently been liberated from colonisation.

After the end of the Cold War, the CHR decided to begin research under the leadership of an independent expert, a system used further to above-mentioned resolution 1235. The expert commissioned at the time was the very same

'expert witness' signing this report. His mandate was renewed annually by the Commission until his resignation in 2001 due to the incompatibility of this work with the post he had just accepted with the Office of the High Commissioner for Human Rights.

In addition, on three occasions, the UN Security Council invited the Rapporteur to share his impressions and the results of his research under the 'Arria formula'. This took place on 27 October 2000, 23 February 2001 and 8 May 2001.

Aside from the occasions mentioned below, the Rapporteur was authorised to enter the country to gather information. These visits are essential, but the fact that under certain circumstances they were not possible because of government opposition does not invalidate the report.

In July 1996, Mobutu's government did not allow the Rapporteur to enter the country in order to carry out an investigation into complaints lodged by Congolese citizens of Tutsi ethnicity who were being persecuted by that government in the North Kivu region. The Rapporteur conducted the mission from Rwandan territory, where he did not encounter difficulties because the Rwandan government was largely ethnic Tutsi and because the victims of the persecution by Mobutu had sought refuge in Rwanda, the land of their ancestors until Belgian colonisation, which displaced the Rwandan population into what would later become the Democratic Republic of the Congo, and later, Zaire, to use its current name. This subject will be elaborated upon this subject at a later point. In his mission report, the Rapporteur stated the opinion that the same problem which had occurred in North Kivu might also arise in South Kivu.

His assertion was prescient. On 31 August, Rwanda invaded Zaire, entering the country in fact through the province of South Kivu, which was justified as protecting the ethnic Tutsis who had been living for at least several hundred years in the territory of what is now the DRC. These

Tutsis were referred to in the Kingdom of Congo, the DRC and in Zaire as the *Banyamulenge*,¹ because they lived in the Mulenge hills of South Kivu.

The second refusal to grant the Rapporteur entry was in 1997 and this lasted two years. The new President of what is currently known as the Democratic Republic of the Congo (DRC), Laurent Désiré Kabila, – who came to power with the support of the Rwandan government and armed forces – dissatisfied with one of the Rapporteur's reports, declared that the Rapporteur would never again set foot on DRC territory. Later, however, once the same Rwandans who had brought him to power and with whom he had governed were expelled, President Kabila acknowledged the Rapporteur's objectivity and agreed to his visiting the country.

The Rapporteur's sources were United Nations documents (treaty bodies, Rapporteurs and CHR Working Groups), and interviews with government authorities, former political leaders, judges, prosecutors, religious authorities of every faith, victims of human rights violations, lawyers, non-governmental organisations, officials from the United Nations (including MONUC) and the Organisation of African Unity, diplomats, exiles, prisoners and journalists. He acquired many official and unofficial documents from a large number of sources.

During these missions, the Rapporteur made several visits to the capital, Kinshasa, and to Goma (North Kivu); Bukavu (South Kivu, four times); Lubumbashi (Shaba, nowadays known as Katanga (twice)); Mbuji-Mayi (province of Kasai Oriental, once); Gemena (Equateur, once); Gbadolite (Equateur, twice); Kisangani (Orientale Province, twice); Bunia in Ituri (Occidentale Province) and Beni in the frontier province of North Kivu. He also conducted interviews in Geneva, Brussels, Paris, New York, Washington and Montreal.

¹ Banya = people in Swahili; Banyamulenge = people of the Mulenge.

B. BRIEF HISTORICAL SUMMARY

1960 - 2002

It is impossible to understand the current situation in the DRC without going back to a history marked by violence, dictatorships and conflicts which erupted on the very day of its independence, 30 June 1960 – independence which was also violent and rebellious in reaction to the abuses during the period of colonisation.

Indeed, it is necessary to revisit events which took place before independence.

The DRC is a country almost the size of Western Europe – with a territory covering the equivalent of the distance from London to Vienna and Helsinki to Naples. It has almost 450 ethnic groups, the six major ones being the Bantu (who make up 80% of the total population and which comprises the Luba, Kongo, Mongo, Lunda, Tchokwe, Tetala, Lulua, Bangala and Ngombe); the Sudanese (Ngbandi, Ngabaka, **Lendu**, Mbanja, Moru-Mangbetu and Zande); the Nilotes (Alur, Lugbara, **Hema** and Logo); the Pygmies or Twa; the Bambutis and the Hamites.

The ethnic groups lived together in peace prior to and even during colonisation. Tribal problems usually related to land ownership, particularly amongst people working the land and those raising livestock, as each laid claims to the same land. Such conflicts were usually resolved by agreements amongst the tribal chiefs, the traditional leaders.

All this changed in 1994 with the influx of Rwandan refugees in the east of the country some of whom were Hutus who had participated in the genocide against the Tutsis (largely between April and June of that year) and who were fleeing reprisals from the Tutsis who had won the war. However there were also the so-called moderate Hutus who, although they had played no part in the genocide, nonetheless feared Tutsi reprisals.

Between 1960 and 2003 the only periods of normal political activity in the DRC were the first tumultuous years of independence and the time around the end of the Mobutu dictatorship before the dictator Laurent Kabila came to power.²

From the time of their arrival around 1875 until independence, the Belgian administrators perpetrated many abuses against the indigenous population, a situation with ramifications to this day, as manifested in the peculiar love-hate relationship (in relation to the past), since it is in Belgium that these people seek refuge in times of dictatorship and war. They expect help and assistance from Belgium in order to escape the misery affecting the immense majority of the population, even though their country possesses extraordinary riches.³

During the colonial era and in particular after the end of the First World War, when the German colonies of Rwanda and Burundi were handed over to Belgian administration, there were two large-scale displacements of indigenous peoples – for example that of the Rwandan Tutsis – to the Congolese colony, which is a major cause of the violence in the east of today's DRC. Some 80,000 Rwandans are estimated to have been displaced to the province of North Kivu between 1939 and 1954. The province of North Kivu borders Occidentale Province and is very close to the Ituri region.

From independence to Mobutu's coup d'état (1960-1965)

Shortly after the declaration of independence, the first war of succession erupted in the province of Katanga (the second war would be in 1977) and the Belgians returned. President Kasavubu deposed and imprisoned

² The 2006 presidential election was the second such process in the country's history, and the first free election, since it is impossible to consider the elections organised by Mobutu in 1970 free as they were only an electoral masquerade designed to give him legitimacy. By that time 2006 the witness had ceased to be Rapporteur.

³ In Europe, Katanga Province is thought to be something of a geological aberration, with its incredible deposits of gold, copper, uranium and cobalt. The area also contains immense riches – diamonds, rubber, precious woods and extremely fertile land.

Patrice Lumumba – Prime Minister and absolute independence leader – who would be killed six months later while in prison by Colonel Mobutu Sese Seko.

No in-depth investigation was ever carried out into the human rights violations perpetrated between the day of independence and Mobutu's coup d'état on 24 November 1965. However, the murder of Patrice Emery Lumumba on 17 January 1961 was a portent of what was to come.

On 24 November 1965, Mobutu, who had become Commander-in-Chief of the Armed Forces, seized power through a coup d'état and proclaimed the Second Republic. In 1966, he went on to found the Popular **Movement** of the Revolution which, for a quarter of a century, would be the sole and, as of 1967, state-run party.⁴

The Mobutu dictatorship (1965-1997)

A cruel and corrupt dictator, Mobutu was useful to the West during the Cold War. In the final period of his mandate, the attacks – all reported by this witness – in 1993 and the following years, instigated or backed by Mobutu and carried out by the Zairean Armed Forces (FAZ) on the Zairean Tutsi minority in North Kivu, were indicative of the unchanged nature of the regime.

The end of the Cold War signalled an end to Mobutu's absolute hold on power as the West no longer needed him. In 1990, people could again hope to see a return to democracy. On the back of a powerful and unprecedented wave of public protest stemming from Mobutu's failure to keep his liberation promises of 1965 and 1977, the dictator authorised the creation of political parties and non-governmental organisations, and in 1992, consented to convening a Sovereign National Conference which was highly focused on democratic processes. This led to activism within the democratic opposition. However, once again, Mobutu managed to avoid its implementation.

⁴ First report of the Special Rapporteur for the United Nations Commission on Human Rights, E/CN.4/1995/67, paragraphs 28 and 29.

The influx of over a million Rwandan Hutu refugees in 1994 in the east of the country, hundreds of whom had participated in the Rwandan genocide, provoked many incidents in the region. Congolese Tutsis of Rwandan origin (the people who had been displaced by the Belgians to the Congo) came under attack by the recently-arrived Hutus. Meanwhile others, such as the Banyamulenge, used force to support their ethnic cause in Rwanda. The Rwandan conflict shifted to Zairean territory. Neither Mobutu nor the international community had anticipated this turn of events, with the exception of the Special Rapporteur, who predicted them in his first report where he wrote: “if the political situation in Zaire explodes, its consequences will be far greater than those in Rwanda or Burundi. The current level of tension and the tribal and regional rivalries that have been stirred up, and have been further inflamed by the huge inflow of Rwandan refugees, give reason to fear this may occur. The international community, and in particular those countries with historical responsibilities in the region, cannot disregard a situation of this scale”.⁵

The 1996 and 1998 wars. The dictatorships of Laurent and Joseph Kabila (1996-2003)

Both Mobutu and the international community failed to act. In 1996, the *Alliance des Forces Démocratiques de Libération du Congo Zaïre* [Alliance of Democratic Forces for the Liberation of Congo-Zaire] (AFDL) – put together in *ad hoc* fashion by the *Armée Patriotique Rwandaise* [Rwandan Patriotic Army] and Zairean rebels led by the former, exiled guerilla Laurent Désiré Kabila – invaded Zaire with the support of Uganda, Burundi, the United Kingdom and the United States. In May 1997, they captured Kinshasa, Kabila took power, and, like Mobutu, governed like a true dictator.⁶

During this so-called *war of liberation*, many atrocities were committed. The CHR commissioned an investigation into them but never managed to

⁵ Report cited, paragraph 274.

⁶ Mobutu went into exile in Morocco, where he died a few months after the fall of his régime.

shed any light on them due largely to opposition by Kabila (first as Rebel Chief and later as Head of State of the Congo) and to constant obstruction by the Rwandan government. Nevertheless a CHR team⁷ and another team appointed by the UN Secretary-General⁸ supported (acknowledged) the existence of acts constituting genocide, war crimes and crimes against humanity. Despite recommendations by the then Rapporteur and his successors, as well as CHR and General Assembly resolutions, all these crimes remain unpunished.

The mounting tensions within Kabila's government forced him to expel his Rwandan protectors and partners. On 2 August 1998, six days after the expulsion, Rwanda invaded Zaire and war broke out between the Democratic Republic of the Congo (DRC) and its former ally, Rwanda. A little-known party, later to be known as the *Rassemblement Congolais pour la Démocratie* [Congolese Rally for Democracy] (RCD), attacked the Democratic Republic of the Congo with the open support of Rwanda and Uganda as well as support from Burundi, which to date continues to deny this. In November 1998, another armed group, the *Mouvement de libération du Congo* [Movement for the Liberation of Congo] (MLC) went into action. These groups occupied 60 percent of the territory. However, they forged alliances, split apart, forged new alliances, and clashed with each other.

The conflict became international with the participation of Rwanda, Uganda and Burundi. Invoking article 51 of the Charter of the United Nations, which recognises the right of self-defence, whether individual or collective, Kabila appealed for support from foreign troops in pushing back what he termed an "aggression". Angola, Namibia, Sudan, Chad and Zimbabwe rallied around him, and were recognised as invited countries as indeed they were.

⁷ Made up of the Special Rapporteurs on the situation of human rights in Zaire and on extrajudicial, summary and arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances. Report to the General Assembly A/51/942.

⁸ The research team was made up of Atsu-Koffi Amega, Team Leader, Andrew Chigovera and Reed Brody. The latter two were succeeded by Paul Laberge and Daniel O'Donnell. Report to the General Assembly A/581/942.

What the Congolese have however never understood is why the invading countries (Rwanda, Uganda, and Burundi) were characterised by the United Nations Security Council as ‘uninvited’ countries.⁹

The reaction to the aggression brought about a resurgence in the activities of the Mai-Mai, traditional combatants who, in the Sixties, had supported Lumumba’s faithful ally Pierre Mulele who was a leader of a leftist movement which governed Kisangani province. Mulele was murdered – dismembered alive – in an ambush set by Mobutu himself and his Minister of Foreign Affairs.

Worse still, on two occasions the rivalry between Rwanda and Uganda caused their armies to clash on Congolese territory, with most civilian casualties on the Congolese side. The beautiful old city of Kisangani was left in ruins.

In addition, the participation of the Ugandan army brought about a fresh tribal conflict in the DRC, in the Ituri region, between the (Nilote) Hemas – of Ugandan descent – and the Lendus – of Sudanese descent – resulting in thousands of deaths, all Congolese.

Kabila was assassinated on 17 January 2001, the eve of the commemoration of the 40th anniversary of the death of Lumumba, whose successor he claimed to be. No light has ever been shed on this crime either. The norms of institutional hierarchy imposed by Kabila himself had failed to make provisions for his death or succession, and for this reason his close entourage decided to appoint his son Joseph as successor.

II. THE COURT’S QUESTIONS

A) THE SITUATION IN ITURI: RECENT HISTORY OF THE REGION FROM 1996 TO AUGUST 2003 IN TERMS OF ITS PEOPLE AND ITURI’S POSITION WITHIN THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

⁹ S/RES/1234 (1999), para. 2.

Joseph Kabila inherited power at a difficult time, with at least ten domestic and international conflicts developing on Congolese territory:

1. Government of the Democratic Republic of the Congo / *Rassemblement Congolais pour la Démocratie / Goma*;
2. *Rassemblement Congolais pour la Démocratie / Mouvement de Libération*, and *Mouvement de Libération du Congo*;
3. Government of Rwanda / ex-FAR and Interahamwe;
4. Government of Sudan / various armed opposition groups;
5. Government of Uganda / various armed opposition groups;
6. Government of Burundi / *Front pour la Défense de la Démocratie* [Front for the Defence of Democracy];
7. Government of Angola / *Union nationale pour l'indépendance totale de l'Angola et Cabinda* [National Union for the Total Independence of Angola and Cabinda];
8. Government of the Republic of the Congo / various armed opposition groups;
9. Government of Rwanda / Government of Uganda;
10. Tribal conflict between the Hemas and Lendus.¹⁰

Conflicts 2, 4, 5, 8, 9 and 10 (above) took place partly or entirely in Orientale Province – of which the Ituri region is a part – or within this region.

Nine national armies intervened in this conflicts: those of the DRC, Rwanda, Uganda, Burundi, Sudan and Chad (the participation of the latter two was provisional and less important); Angola, Namibia and Zimbabwe, and 19 irregular armed groups, eight of which took part in peace negotiations. All perpetrated the most serious violations of

¹⁰ Report of the Special Rapporteur E/CN.4/2000/42, Annex IX and E/CN.4/2001/40, Annex V.

international humanitarian law. Because the States and the irregular armed groups¹¹ had authority over the civilian populations under their command, they also perpetrated appalling human rights violations.

All these conflicts were closely linked, since they were triggered by the arrival of the Hutu refugees in Zaire in 1994. In fact this event again brought latent conflicts to the surface such as those about land allotted to the displaced Rwandans by Belgium and the issue of the nationality of these Rwandans.

And so the Rwandan conflict spread to Zaire, where the Hutu refugees were attacked by Rwanda and its allies Uganda and Burundi. The Rwandan Hutus who had participated in the Rwandan genocide abandoned their refugee camp and headed back to Rwanda for the purpose of completing their task by attacking the Tutsis who had been displaced to Zaire by the Belgians, with the help of the Zairean Armed Forces (FAZ). With the aim of pursuing those responsible for the genocide who had gone unpunished and taken refuge in Zaire, the Rwandan Patriotic Army (APR) – backed by the government and allied to a Congolese exile, Laurent Désiré Kabila – founded the *Alliance Démocratique de Libération du Congo/Zaire* (AFDL), attacked Zaire and, in a war that lasted nine months, seized power over the entire territory, which regained its name of the Democratic Republic of the Congo (September 1996 - May 1997). The discontent among the Congolese population forced Kabila to expel the Rwandans in July 1998, which in turn triggered Rwanda's aggression. Once more, Rwanda was able to count on the support of its longtime ally, Uganda, where the Rwandan President Paul Kagame had lived in exile throughout his

¹¹ 1. *Rassemblement congolais pour la démocratie* (RCD); 2. Ex-Rwandan Armed Forces (ex-FAR)*; 3. Interahamwe*; 4. *Mouvement de libération du Congo* (MLC); 5. *Union nationale pour l'indépendance totale de l'Angola* (UNITA)* 6. South Kivu Mai-Mai 7. North Kivu Mai-Mai; 8. *Front pour la défense de la démocratie* (FDD)* 9. Lord's Resistance Army; 10. Sudan People's Liberation Army (SPLA); 11. The Simbas; 12. *Union des nationalistes républicains pour la libération* [Union of Republican Nationalists for Liberation (UNAREL)]; 13. *Mouvement pour la sécurité, la paix et le développement* [Movement for Security, Peace and Development] (MSPD); 14. Former National Ugandan Army (FNUA)*; 15. West Bank Nile Front (WBNF)*; 16. National Army for the Liberation of Uganda (NALU)*; 17. Allied Democratic Forces (ADF)*; 18. *Front de Libération du Congo* [Congolese Liberation Front]; 19. *Rassemblement congolais pour la démocratie/Mouvement de libération* [Rally for Congolese Democracy/Congolese Liberation Movement] (RCD/ML), also known as the RCD/Kisangani and RCD/Bunia. Report of the Special Rapporteur E/CN.4/2000/42, annex VIII.

childhood and youth, and whose dictator Yoweri Museveni, like Kagame, was the son of a Tutsi.

As with the AFDL in 1996, this second incursion into the DRC by Rwanda and Uganda was carried out with Congolese allies with whom they formed the *Rassemblement Congolais pour la Démocratie* (RCD). The RCD set up in South Kivu (capital Bukavu), North Kivu (capital Goma) and in the Orientale region (capital Kisangani), spreading out also to the north, to the west (Orientale region), and to the south-west (northern Katanga).

The RCD divided into different factions as a result of internal political disputes arising from personal ambitions, which explains the emergence of RCD/Goma, RCD/Kisangani and RCD/Bunia. In the north, with direct backing from Uganda, the *Mouvement de Libération du Congo* (MLC) was formed, which at the same time allied itself to RCD/Kisangani (later known as RCD/ML). The MLC was largely constituted of former Mobutu supporters, and its leader, Jean Pierre Bemba – son of one of the most important strongmen of the fallen dictator – is currently being prosecuted by the International Criminal Court, to whom this report is being submitted.

The presence of Uganda in the north, in support first of the RCD factions and then of the MLC and RCD/ML factions – later known as RCD/Bunia –, is what caused the two Kisangani wars referred to above. These wars, which set the Ugandan army (Ugandan People's Defence Force, UPDF) and the Rwandan army against each other, completely destroyed the town and resulted in the death of hundreds of people – all Congolese.

It was at this point that the United Nations Special Rapporteur commented "that there is in fact a combination of internal conflicts (RCD against the Kinshasa Government and MLC against Kinshasa) and international conflicts, such as the conflict between Rwanda and Uganda in Congolese territory, clashes between the Rwandan and Ugandan armies and FAC. In the international conflicts, respect for the

four Geneva Conventions is required, while, in the internal conflicts, the provisions of article 3 common to the four Conventions are applicable".¹² Responsibility in the case of human rights violations must be governed by both international and African human rights instruments.

According to the American non-governmental organisation the *International Rescue Committee* in 2004, the conflict in Congo is the deadliest the world has seen since the Second World War (with an alleged 3.8 million deaths between August 1998 and April 2004) and with the current death toll estimated at over 1,000 a day, which over the period of May 2004 to January 2005 would mean a further 280,000 victims.

As many initiatives failed,¹³ it was not until 17 December 2002, one year after the resignation of the Rapporteur – the very same Rapporteur who is writing this document in his capacity as witness, that a Global and Inclusive Agreement (hereinafter, GIA) on peace and democratic transition was finally implemented and signed in Pretoria by the eight parties, including the six following elements: the Government; the *Rassemblement Congolais pour la Démocratie* (RCD); the *Mouvement de Libération du Congo* (MLC); the *Rassemblement Congolais pour la Démocratie/ Mouvement de Libération du Congo* (RCD/ML); the *Rassemblement congolais pour la démocratie/National* (RCD/N); and the Mai-Mai – all called 'entities' (political opposition and vital forces of the nation).

B) THE CONFLICT IN ITURI: REASONS FOR THE CONFLICT AND ROLE OF PARTICIPANTS, IN PARTICULAR THE GOVERNMENT OF THE DRC, OTHER COUNTRIES IN THE REGION AND NON-STATE ACTORS, INTERNATIONAL ORGANISATIONS AND PRIVATE SECTOR INCLUDED

¹² E/CN.4/2000/42, paragraph 20.

¹³ The report of the Special Rapporteur E/CN.4/2000/42 in annex X states that 30 international peace initiatives on peace in Congo took place between 1998 and 1999.

The region of Ituri, with its population of approx. 4,600,000 people, is home to **four of the major** ethnic groups which make up the Democratic Republic of the Congo: the Bantus (Babira and others), the Nilotes (Alur, approx. 1.2 million people, ethnic majority, and the Hemas, approx 380,000 people), the Sudanese (Lendus, approx one million people) and the Twa or Pygmies. The district of Ituri is the most densely populated part of the country; it is also extremely rich in gold mines, precious woods, etc., and the border crossing at Kasindi is the second largest customs post in the country in terms of turnover. Its capital is Bunia, a town close to the town of Beni, also affected by this conflict.

The overwhelming presence of armies and groups in the region has led to numerous national and foreign conflicts, such as the one which broke out in Irungu and Djugo, in Orientale Province. Firstly, the conflicts between the various political factions operating in the region. RCD/Goma v. RCD/Kisangani; RCD/Kisangani v. *Mouvement Populaire de Congo* MLC.

Another conflict was the one in the densely-populated town of Beni (with an estimated population of 740,000 inhabitants from the Nande, Bila, Mbuba and Talinga ethnic groups) involving the Ugandan troops who, under the pretext of halting the attacks launched from the Congolese territory by the rebels of the National Army for the Liberation of Uganda (NALU) and the Allied Democratic Forces (ADF), caused numerous Congolese casualties. Information collected by the author of the present report indicated that there was a real presence of NALU and the ADF, and that this had led to high levels of insecurity, and also that the behaviour of the Ugandan army (UPDF) in respect of the Congolese population was extremely violent.

This is one of the most serious conflicts known in which the peoples of the Hema ethnic group (of Ugandan origin) and the Lendu ethnic group (of Sudanese origin) were pitted against each other. It took place in much of Ituri territory, even in the capital Bunia, and in Beni too. Both are administered by the FLC, a movement founded on 16 January

2001 and made up of the *Mouvement de libération du Congo* (MLC), the *Rassemblement congolais pour la démocratie/Mouvement de libération* (RCD/ML) and the *Rassemblement congolais pour la démocratie/National* (RCD/N), under the presidency of the President of the MLC, Jean-Pierre Bemba. From that point on, the entire north and north-east of the DRC was under the control of the FLC.

Although this conflict had tribal origins it was in fact political and triggered by Ugandan presence in the region. Indeed, with the exception of a small number of incidents in 1887, 1911, 1923 and 1966, the two ethnic groups had lived together quite harmoniously for nearly three centuries, settling their disputes – mainly relating to land ownership – by the age-old methods of the traditional chiefs.

The Hema were originally shepherds or livestock raisers, whereas the Lendus farmed the land. The Hemas were favoured during the Belgian colonial era and had easier access to education, which today still has in particular allowed them to hold important posts in the economic, cultural, religious and **political** sectors. The historical absence of a Congolese authority, compounded by the wars which had been raging for several months, and the bias of the Uganda authorities, explain why the disputes could not be resolved like in the past, which led to killings.

When the Ugandan forces arrived in the Ituri region, they provided military support to the Hemas and incited them to seize land from the Lendus, who had been settled in the region longer than they were. Furthermore, all the authorities appointed by the Ugandan military are of Hema ethnicity. The clashes referred to here resulted in nearly 10,000 casualties in 2001, and were responsible for the displacement of some 50,000 persons. Some of the measures taken by the Ugandan authorities provoked indignation not only among the Lendus but also among other local ethnic groups.

In addition, many Hemas came over from Uganda to settle in the DRC, which reinforced the sense among the Congolese population that the conflict provoked

by the RCD with the backing of Rwanda and Uganda was seeking to divide the country or even trigger secession.

The clashes between the Bahema and the Balendu started on 1 June 1999. The Bahema, known in Uganda as the Hima, came under attack by the Balendu, although, as usual, there is also a report to the contrary. The impression of the author of the present report is that for about a year the two groups had been preparing to defend themselves, which of course means they were also preparing to attack.

The creation of new regions and the appointment of authorities – either Ugandan or with clear ties to the Ugandans – (for example there was the case of a Muhema governor being appointed who obviously acted in defence of his ethnic group, by stirring people up and inciting the clashes) are proof of the military nature of the Ugandan presence. This fact was even reflected in the report of a Panel of Experts on the exploitation of the Congo's riches by foreign forces. The report maintained that UPDF soldiers distributed Lendu land amongst the Hema and that all their clearly arbitrary actions were detrimental to the Lendus.

It is also evident that the Hemas received preferential treatment not only because of their greater economic clout but also, rather alarmingly, through the rather unconciliatory rhetoric of certain representatives of the local Catholic church (in particular the Bishop of Bunia and the rector of the seminary whom the Rapporteur interviewed), all Hemas and intellectuals, and, lastly, by the favouritism and support shown by the Ugandan forces. Some Bahemas told the Rapporteur at the time that the Catholic church's preference for the Bahemas was due to the Bahemas' Catholicism as opposed to the Lendus' Protestantism, which – if true – would in no way justify the aggressive and degrading language used by the Bishop and his entourage.

The majority of the remaining ethnic groups in the region made obeisance to the Balendu, especially after the absorption of the Bahema into the Rwandan Batutsi.

People interviewed in Bunia by the author of this report told him that, “despite their differences, Rwanda and Uganda, Kagame and Museveni are enemies of the DRC and want to steal our riches”.

This is why both in Bunia and Beni most people refuse to accept the presence of the Ugandan authorities. “Nobody can deny that all the important decisions are taken in Kampala”, was an opinion expressed by everyone. The population stood squarely behind the Mai-Mai Congolese militia fighting against the Ugandan authorities. The people interviewed by the then Rapporteur all said the same thing: “What would become of us without the Mai-Mai? It is the only force resisting the Ugandan presence; granted, more and more of them are thugs nowadays and following the Mai-Mai’s attacks on the Ugandan positions the population is defenceless and must face the reprisals of the Ugandans, who accuse us of supporting them”. And sure enough, the participation of the Mai-Mai militia increased the levels of violence in the region.

The historical absence of a central State and the bias of the **Ugandan** authorities allowed the territorial conflict to develop triggering the killings we now see today.

During the period when the author of the present report was working as Rapporteur for the United Nations CHR, numerous efforts were made to put an end to such events, all without success.

At the start of 2000, the President of the RCD/ML, Ernest Wamba dia Wamba, set out with the intention of bringing peace, which led to ceasefires and partial agreements; however these solutions always ended up being abandoned by one or other of the parties. Accordingly, the **Ugandans** ignored such efforts and accused Wamba of siding with the Hemas, and then, as is habitual in the region, of being a killer.

In 1999, two players came onto the scene, Mbusa Nymwisi and Tibasima Mbongemu. Both were enemies of Wamba, but they were also

one another's enemy and had armed clashes with each other. At this time their roles were not clear, but both obeyed Uganda.

In 2001, when Bemba took the reins of the unified movement RCD/ML, now called the FLC, he tried in January to broker an agreement between the Hema and Lendu belligerents. He got more than 150 traditional chiefs to participate in this agreement (had the Ugandans acted unilaterally, they would never have managed to achieve this), thus securing a halt to military training and youth recruitment by the UPDF, a measure of security on the roads, food security for the livestock, and the appointment of a governor who was not from the region as a way of providing greater assurance to all the parties. In the end, though, it was Bemba's dependence on the Ugandans that frustrated the entire peace process.

The testimonies the then Rapporteur, now Witness, received indicated that according to Olivier Kamitatu, Bemba's main adviser at the time (2001), the agreements managed to put an end to the violence but not to the tensions. Other persons interviewed however held that the cessation of the clashes was more of a reality in Bunia and in the towns than in the countryside.

The witness for the International Criminal Court made only one visit to Ituri during his mandate, and this was in March 2001. He was able to see for himself the atrocities committed in both Bunia and Beni (a town in North Kivu, next to Orientale Province and close to Bunia) by the local Congolese authorities, who were allied to or dependent on the Ugandans. In Bunia, he visited individual underground pits where prisoners had been held just a few days earlier. Almost no air was able to get into these pits and they were extremely damp. These are things he would not have known had he not visited them himself. On a surprise visit to a military terrain in Beni, the witness heard the moaning of a man who had been imprisoned in such a way coming up from under the ground. He had been informed of the existence of such pits but on this occasion was able to witness them first-hand.

On more than one occasion, Bemba tried to exert his influence over the Ugandan Government, but Uganda ultimately took the final decisions.

On 26 April 2001, a few days after the then Rapporteur's visit to Bunia, an ICRC-marked car carrying four local officials, a Swiss woman and a Colombian, all from the local ICRC, were the target of unknown attackers. The attack took place in a zone strictly controlled by the Ugandan military, and according to information given by various witnesses, it was the Ugandan military that took away the bodies in the same car in which the murderers were taken to the site.

For the then Rapporteur, this incident was distressing to the extreme, not only because he had interviewed the ICRC officials during their mission in March, but also because the ICRC and the humanitarian agencies believed that the attack was a reprisal aimed at the Rapporteur himself because of something he had said in Kinshasa on completing his mission. These agencies suggested that a system had to be found where it was possible to speak the truth without endangering people involved in humanitarian activities.

There has been unequivocal corroboration of the atrocities committed by the Ugandan military: in the course of the conflicts between the two leaders, Wamba dia Wamba, former President of the RCD/ML, and Jean-Pierre Bemba, the then Rapporteur was able to corroborate a horrific recurring practice. He was able to ascertain the existence of an underground holding cell in Wamba's former residence and also interviewed a person who had been held there for several days. The cell was about 1.60 m deep and without ventilation of any kind; it was covered over with metal sheeting and disguised with straw. In Beni, the Rapporteur saw two underground cells in the Ugandan military camp. On this visit, English-speaking soldiers were being held in these pits, which had also been used to keep Congolese political prisoners in sub-human conditions.

According to the final report submitted by the then Rapporteur (the person signing the present document) before leaving his post, the clashes between the Balendu and the Bahema have allegedly killed over 15,000 people and displaced nearly 175,000 since 1999, almost 50,000 of which displacements occurred between January and March 2001 alone.

There was also very significant material damage; for example on the road to Uganda a great many villages were pillaged, burnt and destroyed.

One of the matters of most concern to the international community during the period this witness was Special Rapporteur to the CHR was the situation of children – in particular their economic, social and cultural rights – and later, during the wars, their recruitment for the war effort. On the Rapporteur's second appearance before the Security Council under the Arria formula on 23 February 2001, the vast majority of the delegations expressed their concern about the specific situation in Ituri district, and requested that a further session be held in May 2001 to hear back from the Rapporteur, before members of the Security Council themselves went on mission to the region to see what progress had been made in implementing its resolution 1341.

In his last report for the CHR, following his visit to Bunia and Beni (in addition to Kinshasa, Goma and Bukavu), and pursuant to the Security Council's request, the former Rapporteur devoted 34% of the report to the topic of the recruitment and use of child soldiers by all the parties in the conflict, and ways to eradicate this phenomenon.

It is for this reason that as the Court's witness he has chosen to copy what he wrote in his final report, with some adjustments and a few small updates.

From the start of my mandate I expressed my concerns about the situation of children in Zaire, a situation which greatly deteriorated after the start of the wars. There is no application of international instruments, and children have no protection whatsoever against the many abuses to which they are frequently subjected.

The lack of education, especially for girls – who are disadvantaged as compared to boys – and the failure to observe children's rights to health and to sufficient food, have always been criticised. The fragmentation of the family unit, poverty, neglect, and the increasing numbers of children orphaned by the HIV epidemic have thrown many of them onto the streets where they are known as 'shégués'.

As a UNICEF official once said, “In the Congo, children are always guilty and never victims”.

All the above has been compounded by the armed conflicts, starting with the AFDL invasion in 1996 and the coming to power of Laurent Kabila and his Rwandan accomplices. Children have been made victims of mutilation, educational neglect, psychological trauma, etc. But the worst has been the recruitment, enlistment and use of child soldiers by all parties to the conflict, and many declarations of demobilisation have not been respected.

Child soldiers have certain advantages over adults, as they are **not only** loyal, obedient, and not given to demands for payment. Most important is their lack of fear about fighting. It is very difficult to give a precise estimation of their number; not one of the Congolese parties that are signatories to the Lusaka Peace Accord (Government, RCD/Goma, MLC) was able to estimate the number of child soldiers in its ranks, despite the repeated demands made of them in this respect.

The phenomenon of child soldiers first became apparent in the country during the ‘war of liberation’ started by the *Alliance des Forces Démocratiques pour la Libération du Congo* (AFDL) formed by Kabila and backed by Rwanda, in 1996. The AFDL had many children in its ranks who were known as ‘kadosos’.

This was a practice which the President of Uganda both at that time and today, and the Rwandan Patriotic Army under the current President of Rwanda, used in wars in order to seize power. This was not the practice in the Zairean Armed Forces (FAZ) **before the first war**.

The Democratic Republic of the Congo is party to the Convention on the Rights of the Child, which *inter alia* states that States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities; that no child under the age of fifteen shall be recruited into the armed forces; and that States shall ensure the

protection and care of children who are affected by an armed conflict, according to the relevant provisions of international law (art. 38). The Congo is also party to the four Geneva Conventions and Additional Protocol I, articles 77 and 78 of which deal specifically with the protection of children. On 8 September 2000 the Congo signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts adopted by the General Assembly in May 2000. Moreover, all parties to a conflict must observe the Geneva Conventions.

In late 1999, a Pan African forum was held on the initiative of UNICEF and the Human Rights Ministry in Kinshasa-controlled territory on the topic of children. In 2000 the late President Kabila signed a presidential decree demobilising and rehabilitating vulnerable groups present among the combating forces. Despite such initiatives, however, the then Rapporteur was able to confirm through various sources that the recruitment of children was continuing, that there was no effective demobilisation, and finally, that they were still on the front line. Three deserters from the ranks of the FAC now reintegrated in the RCD/Goma army, who witnessed the execution of a very charismatic Congolese commander, told the Rapporteur that there were many child soldiers in the 15th brigade in which they were serving. "In my battalion, which was around 800-man strong, some 80 percent were children and the vast majority of them died in combat between 28 and 29 November 2000 in Kizabi, approximately 90 km from Pweto (Katanga province). I did not see any children within the ranks of the RCD, although I must admit that I don't know everything that is going on".

Furthermore the author of the present report received information to the effect that children, in particular those living on the streets (the "shégués"), were forcibly recruited and integrated into the *Forces d'Autodéfense Populaire* [Popular Self-Defence Forces] (FAP), a militia recently set up by the Government.

At that time he had not received any information about what happened to the children recruited by the forces allied to the Government, that is, Angola, Namibia and Zimbabwe.

As for the RCD/Goma, although its President signed a decision establishing an inter-departmental commission for the process of disarmament, demobilisation and social rehabilitation of the child soldiers and combatants, this had little or no real effect. Not only did child recruitment continue – more particularly in the Kivus – official recruitment campaigns were broadcast on the radio to integrate the “watoto” (Swahili for children) into both the army and the ‘local defence unit’ militia. The message was that the members of the RCD executive committee, the provincial governors and the local authorities were to reach out to and recruit “watotos”, essentially children between the ages of 13 and 17.

When questioned by the former Rapporteur about these public appeals, the RCD authorities stated that when they said “watoto”, they meant the sons and daughters of the country and that they had not intended to encourage minors to join the army. However, the fact that the recruitment camps were maintained is a reason to doubt this interpretation. In addition, the Rapporteur was informed that on various occasions the RCD authorities organised meetings in order to encourage people to enlist their children. These campaigns were stopped further to a great deal of sharp international condemnation. Child recruitment continued but less visibly, and largely in rural areas. As far as the RCD/Goma authorities are concerned, the children volunteered or were volunteered by their parents.

According to reliable information, the Rwandan Patriotic Army (APR) ran a number of training camps for children, mostly in Rutshuru (north of Goma, in North Kivu); in the province of Maniema (Lwama, which is 7km from the capital Kindu, where some 500 children are said to have received military training before being transferred to Goma; and Makuta and Lokando).

The then Special Rapporteur learned of the arrival by boat of the children, from Kore, Yahuma and Mongandjo who were taken to the camp in Kapalata on the right bank, 6km from Kisangani, before being transferred to Goma. After that, over 300 soldiers, including many child soldiers, are said to have arrived in Kisangani on board the *Boyoma* and to have then been transferred to a camp used by the soldiers. According to this same information, the children were later taken to camps in Lulus and Lula where they allegedly underwent military training. Another 60 from Opale province were allegedly transferred to the same camp before being taken to Lulus camp.

When the Rapporteur reported having seen several dozen children, mostly at Bunia airport, the President of the FLC, Jean-Pierre Bemba, replied: "We took them out of Bunia and Beni to send them to Buta to be away from the front line." He added, "You understand, Special Rapporteur, that those you think are children are not necessarily children. There are tribes in the Congo whose people are extremely small." The President concluded by saying: "I, Jean-Pierre Bemba, on this 16th day of March 2001, undertake to ensure the rapid demobilisation of any child soldiers there may be in our ranks." It should be noted that the *Mouvement de libération du Congo* (MLC) and the RCD/ML never made written provision for the demobilisation of child soldiers, a deficiency regretted by UNICEF.

The Special Rapporteur was able to ascertain that while Bunia and Beni were under RCD/ML administration, a military camp had been set up in Nyaleke to train new recruits, most of whom were Congolese children aged between 10 and 20 years old. The military training, which lasted about two months, was given by Ugandan officers; there were allegedly two classes of a few hundred children each.

Living conditions for the children in the camps were atrocious: they slept in holes and many are said to have died from mistreatment, lack of food and lack of medical care. In this camp there

were also very young girls who “were the forced companions of the Ugandan instructors”. All these young girls became pregnant or were infected with sexually-transmitted diseases.

Worst of all, the Congolese children who were recruited were trained to defend the interests of Uganda rather than those of their own country. In addition they were then taken to Uganda, by land, water or air. This is how UNICEF was able to detect a group of around 700 soldiers in a military training camp close to Kampala including 160 Congolese boys and three Congolese girls from Orientale province. After repeated attempts, UNICEF finally received permission from the Ugandan authorities to meet these children who, according to their testimonies, had been recruited at the time Professor Wamba was President of the RCD/ML. The group was to fight against the militias of its rivals, Tibasima and Mbusa. And there are others about whom nothing is allegedly known. Most of these children are said to be Hemas but Lendus are also said to be among them.

Further research by UNICEF confirmed the presence of training camps for militias and armed groups under the command of the UPDF in which there were a great many children, including girls. The UPDF’s involvement was clear. It was responsible not only for the overall recruitment of children, their transfer to Uganda and their military training, but also for sending them to the front lines in the Democratic Republic of the Congo.

The presence of young children was observed within the ranks of the MLC, in particular in Equateur province. Amongst the MLC troops deployed in the district, children have been identified.

During his March 2001 mission, the Special Rapporteur was unable to examine in depth the issue of child recruitment by the abovementioned movements. In any event, he received information to the effect that the majority of the Mai-Mai militia were children. He was informed by one expert that “the philosophy of the Mai-Mai – if it has one – is based on the initiation and

use of very young children in combat. The Mai-Mai very often recruit by abducting children from rural areas and conditioning them to practices of war". The inherent philosophy of such movements is that Congolese children, in the broadest and strictest definition of the term, have a duty to defend the country and to fight the foreign occupiers of the land of their ancestors. During clashes most of the killed or wounded combatants were under the age of 18.

At Beni central prison, the Special Rapporteur saw eleven children between 11 and 14 years old. These children, who said they were Mai-Mai, had been arrested following an attack on the Governor of Beni's convoy in February 2001. They said that the majority of combatants in their group were Mai-Mai and that they had all been forcibly recruited, either on the way to school or when they were working in the fields. They recounted the abuses they had suffered, the lack of food and the deaths of many of the children from lack of medical care. They expressed the desire to be reunited with their families whom most of them had not seen for months or even years.

In their fight against the Ugandan government, the rebel Ugandan movements the NALU and the ADF used techniques for abducting children in a way consistent with a practice widely used in their country of origin. Consistent accounts indicate that an unknown number of Congolese children were taken to the mountains in Ruwensori to receive military training. These movements had forced entire families to follow them, and the youngest of them were separated from their parents and older brothers and sisters who would be released or in certain cases killed.

Unfortunately, the reports submitted during the author's time as Rapporteur do not contain precise information on the recruitment and use of child soldiers by the Interahamwe, the former *Forces Armées Rwandaises* [Rwandan Armed Forces] and the *Forces pour la*

Défense de la Démocratie [Forces for the Defence of Democracy], all three in the Rwandan-Hutu sphere of influence. He was informed by many people however that they frequently used children.

The Court also asked the witness to report on the role of the various participants in the conflicts in Ituri. In all his reports, for each conflict the witness makes a clear distinction between the responsibilities falling within the jurisdiction of the central State, (Kinshasa) and the participating foreign armies and different attacking and rebel factions. This distinction is entirely in line with international humanitarian law and international human rights law.

Government of the DRC: According to the witness, the Government had great responsibilities when it came to the human rights violations perpetrated in the territories under its control (initially, in the entire west of the country, and since 1999, in the south-west only, in other words, in just 40% of this immense territory). However, it had no responsibility in respect of the controlled territories of the areas occupied initially by Rwanda and the RCD and later by its factions. Nor was it responsible in the north-west, an area occupied by Uganda and the MLC. The conflicts in Ituri took place in territories controlled by the groups and States mentioned above, which themselves therefore had responsibility in respect of the events which occurred. In addition they fought amongst themselves on various occasions causing civilian casualties among the Congolese.

Likewise, the witness does not attribute responsibility to the States which invaded the DRC for events that took place under the control of Kinshasa.

Nevertheless, the actions taken by Rwanda, Uganda, and the rebels under their command prompted a response from the Mai-Mai groups, which although never under the control of the authorities in Kinshasa, benefited on various occasions from political and financial support and even support in military training (see below).

As for the remainder of the country, another possible addition to the list of participants in the Congo wars would be the foreign armies brought in by the Kinshasa government as support against the Rwanda-Uganda invasion. Towards the end of

August, at Kinshasa's request and in the inherent exercise of individual or collective self-defence in case of an armed attack and pursuant to article 51 of the Charter of the United Nations, the armed forces of Zimbabwe, Angola, Chad and Sudan intervened in support of the DRC. Accordingly, given the obvious participation of Rwanda and Uganda in support of the rebels, there were seven countries involved in the conflict at that time. Chad and Sudan pulled out, but the States of Namibia and Angola joined in the fight.

The abovementioned armies were however not involved in the conflicts in the Ituri region.

Government of Rwanda and *Rassemblement Congolais pour la Démocratie* (RCD):

The Rwandan authorities, who had brought Laurent Kabila into the government during the 1996-1997 war and who were expelled from the DRC because of their abuses, invaded the DRC on 2 August 1998. When they reached the town of Goma, and with the additional support of the Ugandan and allied Congolese forces, they set up the *Mouvement Congolais pour la Démocratie* [Congolese Movement for Democracy] (MCD), a movement with an immense Tutsi majority led by Rwanda under the command of Arthur Z'Ahidi Ngoma.¹⁴ The MCD had to confront its first crisis immediately. The Rwandans replaced Z'Ahidi Ngoma with Ernest Wamba dia Wamba and the new movement adopted the name of *Rassemblement Congolais pour la Démocratie* (RCD). Within the movement, there were internal divisions between the people who came from Rwanda – who were in favour of expelling Kabila and recapturing the power they had lost as a result of that expulsion – and the democratic sectors who wanted reconciliation with the Congolese.

¹⁴ Arthur Z'Ahidi Ngoma had been an important leader and supporter of Mobutu and in 1997 he was detained and brought before the *Cour d'Ordre Militaire* for a political crime, before being left for dead in the forest. He was finally found on 24 May of the same year and the present witness interviewed him in Paris on 16 July, the date on which he emerged as a peaceful political opponent of Kabila. A fortnight later, he made a reappearance in Goma as liberator of the MCD.

Despite what was patently clear, both Rwanda and Uganda denied taking part in the invasion until November 1998. In the end, the President of Rwanda justified its participation, alluding to a particularly sensitive topic in Africa: his intention to organise a Conference to amend the Berlin accords of 1885 on the borders of European colonies ("Berlin II"). Politically, this new accord would mean the partition of the DRC and the transfer of its enormously resource-rich eastern region to Rwanda.

Sorting out different responsibilities in respect of acts committed by the Rwandan soldiers and those committed by the RCD troops in Congolese territory would be tantamount to making choices which in no way reflect what actually happened. Before 1999 it was not possible to distinguish the atrocities perpetrated by the above groups from those attributed to Uganda and the *Mouvement de Libération du Congo* (MLC).

In March 1999, the RCD split into two factions, one basing itself in the town of Goma (RCD/Goma) and the other moving to Orientale Province (the capital of which is Kisangani) and calling itself RCD/Kisangani (with Wamba as President). Following a further split, Wamba went to Bunia (in the Ituri region) and set up RCD/Bunia, a movement which would later call itself the *Rassemblement Congolais pour la Démocratie/Mouvement de Libération* (RCD/ML), better known as RCD/Bunia.

There were so many internal divisions within the RCD that the movement as such was unable to sign the Lusaka Peace Accord (August 1999) which was signed instead by its 34 leaders individually.

These divisions have three recurring causes: personal ambitions, an interest in appropriating the enormous wealth in the north-west of the DRC, and the frustration of honest Congolese citizens whose interest is to see the country liberated from the presence of the Rwandans and the Ugandans.

At the time the present witness was working as Rapporteur there were no freedom in territories occupied by the RCD, neither in North Kivu nor in Orientale Province. The population was terrorised by the atrocities committed

by both the Rwandan and the Ugandan forces. The Rwandan invasion was a constant reminder to the population of the words of the Rwandan President about the need for a Berlin II, and they feared the country being divided. All the RCD leaders, regardless of their respective factions, supported the foreign forces unconditionally. The print media and radio, church radio broadcasts and any other unauthorised communications were harshly punished. Summary executions, torture, and attacks on human rights activists were commonplace in addition to all the information we have provided about the recruitment of children. The Rapporteur's reports recount unimaginable atrocities and cruelties. Violence against women reached shocking levels and the Rapporteur received reliable information – though he was unable to verify such information with the resources at his disposal – on the spread of HIV by the foreign military forces.

May 1999 saw clashes between supporters of the Goma faction (backed by Rwanda) and the Kisangani faction (backed at that time by Uganda), resulting in eight deaths. Between 15 and 18 August of that year the conflict spread: Ugandan and Rwandan soldiers clashed in Kisangani, resulting in the deaths of 200 soldiers and 30 Congolese civilians and leaving the town utterly destroyed. Violence against the local population was not limited to the capital; various other urban and rural areas in North Kivu and Orientale Province suffered a similar fate.

In typical para-military style the RCD created “self-defence groups” to deal with a largely hostile civilian population and can be held fully responsible for the acts of these groups.

The RCD aggravated the hatred against it by plundering the wealth of the population and carrying it off to Rwanda. At the same time, the Ugandan soldiers did the same thing and took the wealth to Uganda. Other inflammatory measures in the eyes of the Congolese population were the creation of a new flag for the region, the twinning of towns in Kigali

and South Kivu, and the establishment of a regional parliament (or “*Baraza*”) with Governor-appointed constituents. These moves only served to strengthen the Mai-Mai movement, especially in South Kivu, which was also occupied by the Rwandans. The then Rapporteur recalls that what made the most impression on him on his last two visits to the region occupied by Rwanda and the RCD was the sense of terror and humiliation among the Congolese population.

Attempts to reunite the RCD factions were never the result of dialogue between its Congolese leaders but rather between the Presidents of Uganda and Rwanda (November 1999, January 2000). In March 1999, the RCD was abandoned by three of its leaders who, as usual, were later accused of spying for Kabila. Much later still, other internal dissidents split from the movement in order to set up the RCD/National under the leadership of Roger Lumbala whose headquarters were in Bafwasende, near Kisangani. In October 1999, RCD/Goma made a poorly timed change of leadership, removing Dr Emile Ilunga and replacing him with Dr Adolphe Onusumba, a move nevertheless supported by the son of the former dictator, Nzanga Mobutu.

RCD/Bunia also suffered divisions. In April and August 2000, intentions to overthrow the leadership were set aside by the influence, once again, of the Ugandan President and his army, and in September the Ugandan army (UPDF) quashed an uprising against President Wamba instigated by his former comrades Ateenyi Tibasima and Mbusa Nyamwisi. The rebels were pushed back to Kampala, where order was established. By the end of the year, however, the divisions had become untenable and the leadership of the movement was taken by Wamba’s rivals, who had lost favour with Museveni. Wamba was expelled from the movement and, with accusations of being involved in genocide and torture (the Rapporteur saw a pit in which people were imprisoned at his house in Bunia), his house was looted by Rwandan soldiers.

One important piece of information: in 2001 (the witness' final year as Rapporteur), only 25 of the 50 persons who had founded the RCD in 1998 remained, 18 of whom were from the Congolese Tutsi minority.

The Ugandan government and the *Mouvement de Libération du Congo* (MLC):
The *Mouvement de Libération du Congo* (MLC) was founded in November 1998 in Equateur province (north east). Its president was Jean-Pierre Bemba, son of Salaona Bemba – one of the closest and most powerful allies of the dictator Mobutu – who for a long time was head of the Zairean business community. Bemba never felt bound by the Lusaka Peace Accord simply because he had never signed it, and recognised it only in March 1999.

In July 2001, thanks to the efforts of the Ugandan President Yoweri Museveni, the *Mouvement de Libération du Congo* and RDC/Bunia joined forces, taking with them Rober Lubala's RCD/National and thus forming the *Front de Libération du Congo* (FLC).

On his last visit to the area previously under the control of the MLC (Bunia and Beni), the Court's witness observed a different situation to the one he encountered during his visit to Gbadolite, the MLC's initial headquarters. In 2001 he had been struck by how terrified the people were – to a great extent because of the violence suffered by the women at the hands of the Ugandan soldiers, who on numerous occasions seemed much more fearsome than the Rwandans.

At the end of his mandate, the witness believed the human rights situation to be similar to that observed in the areas occupied by the Rwandans or whichever faction of the RCD, and this was the view he expressed on his visit to Bunia, Beni and Gemena in 2001.

Both the Rwandan and Ugandan occupiers very frequently resorted to a policy of repression which consisted of moving dissidents to Rwanda or Uganda. A very well known human rights activist from Kisangani was abducted on his way home from a meeting of the UN Commission on Human Rights in Geneva. He was

kidnapped and taken to Kampala where he was imprisoned, which sparked an international campaign for his release.

In his last report to the CHR (E/C.4/2001/40, paragraph 163), the present witness stated with regard to human rights, that “[in] Government-controlled territory, the rights most affected are political rights (participation, assembly, association and freedom of expression). In RCD and RCD/ML-controlled territory, the rights most often violated are basic rights (life and physical integrity) without prejudice to political freedom. There is insufficient information on MLC-controlled territory, although Gbadolite does not live in the same climate of terror as Goma, Bukavu and Kisangani”. Information he received later that same year however made him change his mind, as he explained above.

Mai-Mai: This former nationalist movement evolved after 1998 into a channel for reacting to the extreme violence of the Rwandans and Ugandans. Admittedly, its response included activities of a terrorist nature and it was overwhelmingly supported by the local population, with the exception of the human rights activists who continued their fight against all forms of violence, a noble fight indeed.

The government of Kinshasa of course bears responsibility for the actions of the Mai-Mai, although in practice, it had no actual control over them, especially in Orientale Province and the north of North Kivu, some of the regions to which it had no access. It did however give them solid political backing by appointing the Mai-Mai commander Sylvestre Luetcha Chief of Staff of the Armed Forces. Furthermore, according to some sources, it supported their operations in other areas of the country by providing them with weapons and training.

The population in the occupied territory believe that those most responsible for the violence against them are the Interahamwe,¹⁵ followed by the Mai-Mai

¹⁵ A Rwandan Hutu militia, the main player in the Rwandan genocide at the start of 2004. After losing the war the Interahamwe sought refuge in various countries, in particular in the then Zaire

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and then by the “Rwandan soldiers”. When asked whom they fear most, however, the order changes, with the Rwandan soldiers in first place, followed by the Interahamwe and lastly the Mai-Mai “who don’t kill the Congolese”, even though they extort food from them. The *Mai-Mai* “are our children” was a phrase heard every day in the DRC.

Santiago de Chile, 27 January 2009

[signed]
Roberto Garretón

(now DRC), where they continued to persecute the Tutsis. Their action provoked the reaction of the Rwandan occupying forces.

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