

INTRODUCTION

87. The discovery by the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) in late 2005 of three mass graves in North Kivu was a painful reminder that past gross human rights violations committed in the Democratic Republic of the Congo (DRC) had remained largely uninvestigated and that those responsible had not been held accountable. Following a number of consultations within the UN system, an initial idea to “reactivate” the Secretary-General’s 1997–1998 investigative Team was abandoned in favour of a plan with a broader mandate aimed at providing the Congolese authorities with the tools needed to break the cycle of impunity. Consultations between the Department of Peacekeeping Operations (DPKO), MONUC, the Office of the High Commissioner for Human Rights (OHCHR), the Department of Political Affairs (DPA), the Office of Legal Affairs (OLA) and the Office of the Secretary-General’s Special Adviser on the Prevention of Genocide led to an agreement recommending the conduct of a mapping exercise covering the period March 1993 to June 2003. The agreed purpose was to gather, analyse and publish *prima facie* evidence of human rights and international humanitarian law violations and, on the basis of the findings of the exercise, to carry out an assessment of the existing capacities within the national justice system in the DRC to address such violations as might be uncovered. It was agreed that the initiative should also result in the formulation of options on appropriate transitional justice mechanisms to adequately address the legacy of these violations. Lastly, it was decided that MONUC’s human rights mandate, approved by the Security Council in 2003 (Resolution 1493 (2003)),⁶⁶ would provide the basis for the proposed “Mapping Exercise”.

88. The so-called Mapping Exercise was aimed at providing a key advocacy tool *vis-à-vis* the Government and Parliament, as well as the international community regarding the establishment of appropriate transitional justice mechanisms and to encourage concerted efforts to combat impunity in the DRC. In his report of 13 June 2006 to the Security Council on the situation in the DRC, the Secretary-General indicated his intention to “dispatch a human rights team to the Democratic Republic of the Congo to conduct a mapping of the serious violations committed between 1993 and 2003”.⁶⁷ This intention was reaffirmed in the two following reports of the Secretary-General of 21 September 2006 and 20 March 2007.⁶⁸ On 8 May 2007, the Secretary-General approved the Terms of Reference of the Mapping Exercise. The Mapping Exercise was subsequently presented to the Congolese authorities, notably to President Joseph Kabila, by whom it was well received, and to some of his cabinet ministers, by the UN High

⁶⁶ In paragraph 11 of Resolution 1493 (2003), the Security Council “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 DRC in order to put an end to impunity”. In paragraph 5, subparagraph g of Resolution 1565 (2004), the Security Council “decides that MONUC will also have the mandate, in support of the Government of National Unity and Transition: (...) to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations to put an end to impunity, and continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations.”

⁶⁷ *Twenty-first report of the Secretary-General on MONUC* (S/2006/390), paragraph 54.

⁶⁸ *Twenty-second and twenty-third reports of the Secretary-General on MONUC* (S/2006/759 and S/2007/156 and Corr.1).

Commissioner for Human Rights during her visit to the DRC in May 2007. In Resolution 1794 (2007) of 21 December 2007, the Security Council requested the full support of the Congolese authorities for the OHCHR-initiated Mapping Exercise. On 30 June 2008, a letter was sent by the High Commissioner to President Kabila announcing the imminent arrival of the Mapping Exercise Team. The Mapping Exercise began officially on 17 July 2008 with the arrival of the Chief of the Mapping Team in Kinshasa. Around twenty human rights officers were deployed over the entire territory of the DRC between October 2008 and May 2009 to gather documents and information from witnesses to meet the three objectives defined in the Terms of Reference. The Congolese Government has expressed its support for the Mapping Exercise on several occasions, notably in the statement delivered by the Minister of Human Rights at the Special session of the Human Rights Council on the human rights situation in the East of the DRC in November 2008 and in various meetings between the Chief of the Mapping Exercise, the Minister of Justice and the Minister of Human Rights.

TERMS OF REFERENCE

89. On 8 May 2007, the Secretary-General approved the ToR of the Mapping Exercise, delineating the following three objectives:

- Conduct a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.
- Assess the existing capacities within the national justice system to deal appropriately with such human rights violations that may be uncovered.
- Formulate a series of options aimed at assisting the Government of the DRC in identifying appropriate transitional justice mechanisms to deal with the legacy of these violations, in terms of truth, justice, reparation and reform, taking into account ongoing efforts by the DRC authorities, as well as the support of the international community.⁶⁹

90. It was decided that OHCHR would lead the Mapping Exercise and the project was funded by the voluntary contributions of ten interested partners.⁷⁰ The UNDP Country Office in the DRC was responsible for the financial administration of the Mapping Exercise and MONUC provided logistical support. The three parties signed an agreement defining their respective rights and obligations.⁷¹ The continued and overwhelming support of these three bodies for the Mapping Exercise should be mentioned at this juncture.

91. In the words of the High Commissioner in office at the time, the Mapping Exercise report was “expected to be the first and only comprehensive United Nations

⁶⁹ Article 1, ToR.

⁷⁰ Austria, Belgium, Canada, Germany, the Netherlands, the Republic of Korea, the United Kingdom, Sweden, Switzerland and the MacArthur Foundation.

⁷¹ Memorandum of understanding between UNDP, MONUC and OHCHR relating to the implementation of the Mapping Exercise on serious violations of human rights and international humanitarian law committed in the DRC between 1993 and 2003, signed in December 2007.

report documenting major human rights violations committed within the territory of the DRC between 1993 and 2003. In this regard, the report should be of fundamental importance in the context of efforts devoted to protecting human rights and combating impunity.” By contributing significantly to the documentation on the most serious violations of human rights and international humanitarian law committed in the DRC during this time of conflict,⁷² this report aims to assist the Congolese authorities and civil society in defining and implementing a strategy that will enable the many victims to obtain justice and thereby fight the widespread impunity. This should also enable the mobilisation of other international resources to address the principal challenges faced by the DRC with regard to justice and reconciliation.

92. The ToR required the Mapping Exercise Team⁷³ to “start and complete this exercise as soon as possible (...) to assist the new Government with the tools to manage post-conflict processes”.⁷⁴ It was expected to take at least two months for the Team to be recruited, deployed and become fully operational, followed by an additional period of six months to carry out the Mapping Exercise, extendable should the circumstances require it. Although many considered the timeframe for the Mapping Exercise to be too short for the scale of the task at hand, it was nonetheless necessary given the urgent need to bring the operation – the launch of which had been reported on many occasions – to a speedy conclusion so that the Congolese people could start benefiting from it right away. In the end, the Mapping Exercise would last just over ten months in total, from the arrival of the Chief of the Mapping Exercise in late July 2008 to the submission of the final report to the United Nations High Commissioner for Human Rights in mid-June 2009.

METHODOLOGY

⁷² As the DRC was formerly known as “Zaire”, this name will appear in this report for the period ending May 1997.

⁷³ “Team” is used to designate the body of human rights specialists who led the Mapping Exercise investigations across the DRC. These specialists may also be designated “Mapping Exercise Teams” or “Mapping Teams”.

⁷⁴ Article 2.3, ToR.

93. A “mapping exercise” is a generic expression implying no predefined methodology or format.⁷⁵ A mapping exercise itself should be concerned not only with the violations themselves but also with the context(s) in which they were committed, either in a given region or across an entire country, as is the case here. Such an exercise may include various activities, such as the collection, analysis and assessment of information, surveys and witness interviews, and consultation with field experts and consultants, among others. This type of project is not an entirely new concept. It has much in common with international commissions of inquiry, commissions of experts and fact-finding commissions. It functions perfectly as a preliminary step prior to the formulation of transitional justice mechanisms, whether they be judicial or not, to enable the identification of challenges, the assessment of needs and better targeting of interventions. It can also be found in international and hybrid jurisdictions, where it is used to better define investigations and devise global completion strategies. Among the recent examples of mapping exercises, some have been based solely on documents in the public domain (Afghanistan) and others on interviews with thousands of witnesses (Sierra Leone).

94. Mapping remains a preliminary exercise that does not seek to gather evidence of sufficient admissibility to stand in court, but rather to “provide the basis for the formulation of initial hypotheses of investigation by giving a sense of the scale of violations, detecting patterns and identifying potential leads or sources of evidence”.⁷⁶ With regard to human rights and international humanitarian law violations, the Mapping Exercise should provide a description of the violation(s), their nature and location in time and space, the victim(s) and their approximate number and the – often armed – group(s) to which the perpetrators belong(ed), among others. As a result, the findings of such an operation should be very useful for all transitional justice mechanisms, whether they be judicial or not.

95. The six-month deployment timeframe set by the Secretary-General for the Mapping Exercise, with the mandate of covering the most serious violations of human rights and international humanitarian law committed across the whole territory of the DRC over a ten-year period, provided a methodology of sorts. It was not a case of pursuing in-depth investigations, but rather gathering basic information on the most serious incidents, chronologically and province by province.⁷⁷ The collection, analysis and use of any existing information sources on the violations committed during the period under examination was also established as a starting point for the Exercise, in particular “the outcome of past United Nations missions to the country”.⁷⁸ The subsequent six-month deployment of five in-field mobile Teams would enable this information to be verified and corroborated or invalidated with the aid of independent sources, while also enabling the reporting of previously undocumented violations.

⁷⁵ As a point of interest, the French translations of “mapping” – *cartographie*, *inventaire* or *état des lieux* (inventory) – fail to reflect accurately the potential scope of a mapping exercise, and it was decided by the team to retain the generic English term to designate this exercise in French.

⁷⁶ OHCHR, *Rule-of-Law tools for post-conflict states: Prosecution initiatives*, United Nations, New York and Geneva, 2008, p.6.

⁷⁷ Article 4.2, ToR: “It should be carried out province by province, and in chronological order of events. It should gather basic information and not replace in-depth investigations into the incidents uncovered.”

⁷⁸ Article 4.1, ToR.

96. A document outlining the methodology to be followed by the Mapping Team was drafted on the basis of United Nations-developed tools, in particular those of OHCHR. These methodological tools covered the following areas in particular: a gravity threshold for the selection of serious violations, standard of evidence required, identity of perpetrators and groups, confidentiality, witness protection, witness interviewing guidelines with a standardised *fiche d'entretien*, and physical evidence guidelines (including mass graves), among others. It was important that the methodology adopted for the Mapping Exercise catered for the requirements and constraints of the ToR, in particular the necessity to cover the entire Congolese territory as well as the period from 1993 to 2003, to report only the “most serious” violations of human rights and international humanitarian law and to ensure that the security of witnesses was not compromised and that information was kept confidential.

➤ Gravity threshold

97. The expression “serious violations of human rights and international humanitarian law”, used by the Secretary-General to define the first objective of the Mapping Exercise, is non-specific and open to interpretation. Generally speaking, it is intended to apply to violations of the right to life and the right to physical integrity. It may also cover violations of other fundamental human rights, in particular where such violations are systematic and motivated by forms of discrimination forbidden under international law. In international humanitarian law, violations are considered serious when they endanger protected persons and property, or when they violate important values.

98. Given the scale of the violations committed in the ten years of conflict over a very vast territory, it was necessary to select from the most serious crimes. Each recorded incident demonstrates the commission of one or several serious violations of human rights and international humanitarian law localised to a given date and location. Occasionally, a wave of individual violations (e.g. arbitrary arrests and detentions, summary executions, etc.) is considered as one incident.

99. To identify the most serious incidents (those describing the commission of the most serious violations) a gravity threshold similar to that used in international criminal law to identify the most serious situations and crimes for investigation and prosecution was used.⁷⁹ The gravity threshold provides a set of criteria enabling the identification of incidents *of sufficient gravity* to be included in the final report. These criteria function as a whole. No one criterion alone can be the decisive factor and all may be used to justify the decision to class an incident as serious. The criteria used to select the incidents listed in this report fall into four categories:

⁷⁹ The main organisations that were contacted were: Human Rights Watch, Amnesty International, International Center for Transitional Justice, Global Rights, Global Witness, Open Society (Justice Initiative), Right and Accountability in Development, International Crisis Group, The International Federation for Human Rights, Coalition to Stop the Use of Child Soldiers, Minority Rights Group International, Droits et démocratie, Médecins sans frontières and the International Committee of the Red Cross.

- **Nature of the crimes and violations revealed by the incident:** Each recorded incident reveals the commission of one or more crimes under international law, be they war crimes, crimes against humanity, genocide or other crimes constituting serious human rights violations. All of these crimes can be classified on the basis of the objective gravity threshold, where violations of the right to life are considered most serious (murder, massacre, summary execution, etc.), followed by violations of the right to physical and mental integrity (sexual violence, torture, mutilation, injury to body, etc.), the right to liberty and security of person (arbitrary arrest and detention, forced displacement, slavery, recruitment and use of child soldiers, etc.), the right to equality before the law and equal protection of the law without any discrimination (persecution) and, lastly, violations relating to the right to own property (destruction of civilian property, pillage, etc.).
- **Scale (number) of crimes and violations revealed by the incident:** Each recorded incident reveals the commission of numerous crimes resulting in many victims. The number of crimes committed and the number of victims is taken into consideration when establishing the gravity of an incident.
- **How the crimes and violations were committed:** Crimes and violations of a widespread and systematic nature, crimes targeting a specific group (vulnerable groups, ethnic groups, political groups, etc.), and indiscriminate/disproportionate attacks with many civilian victims are all elements that will contribute to raising the gravity level of an incident.
- **Impact of the crimes and violations committed:** Aside from the number of victims of the crimes revealed, some incidents may have a devastating impact in the context, either by triggering conflict, threatening existing peace efforts, or preventing humanitarian relief efforts and the return of refugees or displaced persons, etc. The regional impact of an incident or its legacy for a specific community, and its particular significance for certain ethnic, political, religious or other groups may also contribute to raising its gravity level.

➤ Standard of evidence

100. Since the primary objective of the Mapping Exercise is to “gather basic information on incidents uncovered”, the level of evidence required is naturally lesser than would normally be expected in a case brought before a criminal court. It is not a question, therefore, of being satisfied beyond all reasonable doubt that a crime was committed, but rather having reasonable suspicion that the incident did occur; a level of evidence decidedly lower than that required to secure a criminal conviction. Reasonable suspicion is defined as “**a reliable body of material consistent with other verified circumstances tending to show that an incident or event did happen**”.⁸⁰ In cases where such reliable bodies of material were gathered by the Mapping Team, it was decided that incidents would be described using the past tense, without the use of hypothetical formulations.

➤ Assessing the reliability of information

101. Assessing the reliability of the information obtained was a two-stage process involving evaluation of the reliability and credibility of the source, and then the pertinence and truth of the information itself. This method is known as the *admiralty scale*. Reliability of the source is determined using several factors, including the nature, objectivity and professionalism of the organisation providing the information, the methodology used and the quality of prior information obtained from the same source. The validity and authenticity of the information is assessed by comparing it to other available data relating to the same incidents to ensure that it tallies with already verified elements and circumstances. In other words, the process involves corroborating the originally obtained information by ensuring that the corroborating elements do in fact come from a different source than the primary source that provided the information in the first place. Such corroboration will generally be obtained from evidence gathered in the Mapping Exercise, but may also come from other reports and documents. However, different reports on the same incident and based on the same primary source would not constitute corroboration by a separate source.

➤ Identification of individual and group perpetrators

102. Unlike some commissions of inquiry with a specific mandate to “identify the perpetrators of violations and make them accountable for their actions”,⁸¹ the objective of the Mapping Exercise is limited to compiling an inventory of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003.⁸² The objective of the Mapping Exercise was

⁸⁰ Another possible formulation would be “reliable and consistent indications tending to show that the incident did happen”.

⁸¹ See *Report of the International Commission of Inquiry on Darfur to the Secretary-General (S/2005/60)*; see also *Security Council Resolution 1564 (2004)* of 18 September 2004.

⁸² The mandate of the Mapping Exercise is closer to that of the Commission of Experts reviewing the prosecution of serious violations of human rights committed in Timor-Leste (then East Timor) in 1999 (S/2005/458), whose mandate was to “gather and compile systematically information on (...) violations of

therefore not to establish or to try to establish individual criminal responsibility of given actors.

103. The only reference to this matter in the ToR for the Mapping Exercise can be found in the Methodology section, in which it states that the Exercise “should gather basic information (e.g. establishing the locations, timings and backgrounds of major incidents, the approximate numbers of victims, the alleged perpetrators, etc.) and not replace in-depth investigations into the incidents uncovered”. Although the primary objective of the Mapping Exercise is not to identify the alleged perpetrators or people who should be held accountable for their actions, it was nevertheless necessary to gather basic information relating to the identity of alleged individual or group perpetrators. Given the level of evidence used in this Exercise, however, it would be unwise – unjust, even – to seek to ascribe criminal responsibility to certain individuals. Such a conclusion should be dependent on legal proceedings pursued on the basis of an appropriate level of evidence. However, it seems essential to identify the groups involved in order to classify these serious violations of international humanitarian law. Finally, the identities of the alleged perpetrators of some of the crimes listed will not appear in this report but are held in the confidential project database submitted to the United Nations High Commissioner for Human Rights, who will determine the conditions for its access.⁸³ However, the identities of perpetrators under warrant of arrest and those already sentenced for crimes listed in the report have been disclosed. It should also be noted that where political officials have assumed public positions encouraging or provoking the violations listed, their names have been cited in the sections relating to the political context.

➤ Other aspects accounted for in the methodology

104. Beyond the methodological tools presented above, certain constraints particular to the Mapping Exercise, the prevailing situation in the DRC and the accessibility of certain sites have been taken into consideration during investigations to verify previously identified incidents. For example, the capacity of the Mapping Exercise to investigate certain incidents has at times been limited due to difficulties accessing some remote regions of the country, or due to security issues that prevent their access. The choice of priority areas for investigation and the main incidents for verification was also influenced by the short timeframe – six months – allocated to the implementation of the Mapping Exercise itself. Investigations that would take too long to achieve the anticipated findings that would feature in the final report were not included. To an even greater extent, acknowledgement of the global mandate of the Mapping Exercise – to cover the whole of the Congolese territory for the entire period from March 1993 to June 2003 so as to present a detailed and well-balanced report of the many violations of human rights and

human rights and acts which may constitute breaches of international humanitarian law committed in East Timor (...) and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions”; see Commission on Human Rights Resolution 1999/S-4/1.

⁸³ Article 4.3, ToR: “Sensitive information gathered during the Mapping Exercise should be stored and utilised according to the strictest standards of confidentiality. The Team should develop a database for the purposes of the Mapping Exercise, access to which should be determined by the High Commissioner for Human Rights.”

international humanitarian law committed at that time – for the most part dictated the choice of the main incidents reported.

105. In this report, each verified (corroborated) incident is reported in a separate paragraph, indented and preceded by a bullet point. Each of these paragraphs includes a brief description of the incident identifying the nature of the violations and crimes committed, their location in time and space, a description of the individual or group perpetrators involved and details of the victims and their approximate number. In the reported incidents, figures relating to the number of victims have been provided as a means of assessing the scale of violations and are in no way intended to be definitive. As a general rule, the Mapping Exercise has used the lowest and most realistic assessment of victim numbers indicated by the various sources and has sometimes resorted to estimates. In light of its mandate, it was not the responsibility of the Mapping Exercise to ascertain the total number of victims of violations of human rights and international humanitarian law in the DRC during the period in question, given that precise victim counts are not essential to determining the legal classification of violations. Each paragraph describing an incident is followed by a footnote identifying the primary and secondary sources of the information reported. Incidents not corroborated by a second independent source have not been included in this report, even in cases where the information came from a reliable source. Such incidents are, however, recorded in the database.

IMPLEMENTATION OF THE MAPPING EXERCISE

106. The Mapping Exercise was rolled out in three successive phases. Phase one, known as the “Pre-Deployment Phase”, began with the arrival of the Chief of the Mapping Exercise on 17 July 2008 and ended with the deployment of the in-field Teams from 17 October 2008 onwards. Phase two covers the deployment of the Teams across the country to cover all provinces of the DRC from five regional field offices. The deployment phase lasted seven months and ended on 15 May 2009 with the closure of the field offices. In the final, post-deployment phase, all the data were compiled and final verifications made with a view to completing the draft of the final report, which was submitted to the United Nations High Commissioner for Human Rights on 15 June 2009.

107. Phase one (17 July 2008 to 17 October 2008) was essentially aimed at ensuring the successful start-up of the Mapping Exercise, obtaining logistical support and developing the necessary methodological and legal tools for the Mapping Team to carry out the mandate.

108. Meetings were also held with the main partners of the Mapping Exercise (MONUC and UNDP), diplomatic missions as well as actors involved in human rights and the fight against impunity in the DRC (UN organisations, international NGOs, religious groups and trade unions, among others) to explain the Exercise and seek their collaboration.

109. Phase two (17 October 2008 to 15 May 2009) was dedicated to carrying out the mandate itself, including all analyses, investigations and consultations necessary both to

prepare the inventory of the most serious violations of human rights and international humanitarian law and also to assess the existing capacities of the Congolese judicial system to deal with this, including options relating to transitional justice mechanisms that could contribute to the fight against impunity.

110. Phase three (15 May 2009 to 15 June 2009) saw the closing down of the Mapping Exercise with the compilation of data, final updating of the database, the organisation, digitisation and classification of all the archives and the drafting of the final version of the report. Regional consultations regarding transitional justice were held in this last phase in the form of round-table meetings with civil society representatives in Bunia, Bukavu, Goma and Kinshasa.

ACTIVITIES OF THE MAPPING EXERCISE

➤ Official meetings

111. The Chief of the Mapping Exercise attended official meetings with nearly one hundred actors, partners and individuals involved in matters of justice and the fight against impunity in the DRC to explain the objectives of the Exercise and seek their support. Among these, the following should be noted:

- DRC government authorities, i.e. the Minister of Justice (on two occasions) and the Minister of Human Rights (also on two occasions). Both Ministers assured the Chief of the Mapping Exercise of their collaboration and support for this exercise.
- Donors, who were met at the start, mid-point and end of the Exercise, and to whom a progress report was submitted on each occasion. Meetings were held with the following: the Ambassadors of Belgium, Canada, Germany, the Netherlands, Sweden and the United Kingdom, and representatives of the Republic of Korea and Switzerland.
- Representatives of United States, French and European Union diplomatic missions.
- Heads of United Nations organisations: UNDP, UNICEF, UNHCR, UNEPA/UNIFEM.
- MONUC leaders: Special Representative of the Secretary-General, Alan Doss, and his deputies, Ross Mountain and Leila Zerrougui; and representatives of the various MONUC offices, including Human Rights, Child Protection, Rule of Law and the Gender Office.
- Francis Deng, Special Adviser for the Prevention of Genocide; Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons.

- Head of the International Committee of the Red Cross (ICRC) delegation; representatives in the DRC of OXFAM, Save the Children, Global Rights, *Médecins Sans Frontières* (France and Belgium), International Center for Transitional Justice (ICTJ), *Avocats Sans Frontières* (Belgium) and a representative of the International Criminal Court (ICC).
- A number of local NGOs involved in human rights and justice in the DRC.

➤ Professional contacts

112. A number of contacts were established with Congolese non-governmental organisations (NGOs) in order to obtain information, documents and reports on the serious violations of human rights and international humanitarian law that occurred in the DRC during the period covered by the ToR. To this end, meetings were held with over two hundred NGO representatives during the course of the mandate, both to present the Mapping Exercise and request their collaboration. Thanks to this collaboration, the Mapping Team has had access to critical information, witnesses and reports relating to the violations committed between 1993 and 2003. Without the courageous and outstanding work of the Congolese NGOs during these ten years, documenting the many violations in such a short period of time would have been incredibly difficult.

113. Contacts were also established with international organisations and NGOs to obtain information, reports and documents relating to the Mapping Exercise mandate.⁸⁴ Almost all responded positively to this request.⁸⁵ Research and documentation centres also contributed to the success of the Exercise by allowing Team members to consult their archives and meet with researchers.⁸⁶ Several DRC experts also visited the Mapping Exercise on trips to Kinshasa to speak to the Team.⁸⁷

➤ Collection and analysis of information

114. The main activity of the Mapping Exercise consisted in collecting and analysing as much information as possible on the serious violations of human rights and international humanitarian law committed during the period covered by the ToR. The Mapping Teams obtained over **1,500 documents**. The documents come from many

⁸⁴ The main organisations contacted were the following: Human Rights Watch, Amnesty International, International Center for Transitional Justice, Global Rights, Global Witness, Open Society (Justice Initiative), Rights & Accountability in Development, International Crisis Group, International Federation for Human Rights, Coalition to Stop the Use of Child Soldiers, Minority Rights Group International, Rights & Democracy, *Médecins Sans Frontières* and the International Committee of the Red Cross.

⁸⁵ Two organisations, Rights & Democracy and Global Witness, were also important contributors and prepared special reports on the issues of sexual violence and human rights violations relating to the illegal exploitation of natural resources respectively.

⁸⁶ Groupe Jérémie/RODHECIC (Kinshasa-based network of Christian organisations working to promote human rights and education), Centre d'information et de solidarité avec l'Afrique (France), IPRA's (International Peace Research Association) Congo Peace Project, Centre for Peace Research and Strategic Studies, Institute for International and European Policy, Faculty of Social Sciences, Catholic University of Leuven (Belgium), Entraide Missionnaire (Canada) and the University of Pittsburgh (USA).

⁸⁷ Suliman Baldo (ICTJ – International Center for Transitional Justice), Anneke Van Woudenberg (HRW – Human Rights Watch), Filip Reintjens (University of Antwerp), Peter Rosenblum (Columbia Law School), Jason Stearns (UN Group of Experts on the DRC) and Arthur Kepel (ICG – International Crisis Group).

sources, including the United Nations and its agencies, the Congolese government, major international human rights organisations, Congolese human rights organisations, the national and international media and various NGOs (unions, religious groups, aid agencies, victims' associations, etc.). Among the documents, over three hundred are confidential, notably the archives of the Secretary-General's 1998 investigative Team, and some internal NGO reports. The Mapping Teams also consulted a large number of articles in the national and international press, as well as monographs on topics related to the mandate. Lastly, various sources, individuals and experts, national and international, were also consulted in order to open up new avenues of research, corroborate some of the information obtained and streamline the overall analysis of the situation.

115. Analysis of all these documents enabled the Team to establish a chronology by region of the main incidents revealing serious violations of human rights and international humanitarian law committed on the territory of the DRC between March 1993 and June 2003. The analysis resulted in the initial identification of over 660 major incidents for verification. Only incidents meeting the gravity threshold developed in the methodology were considered. Subsequently, investigative work in the different provinces revealed the existence of new and unreported serious incidents which were added to the original chronology as and when they were found, bringing the number of major incidents in the database to **782 major incidents**.

➤ In-field verification investigations

116. On the basis of the chronology, five in-field mobile Teams had the task of verifying, confirming or invalidating information relating to the occurrence of key incidents revealing the commission of serious violations of human rights and international humanitarian law. Each Team comprised two international human rights officers, supported by a Congolese human rights associate. The work of these Teams consisted essentially of meeting with witnesses to confirm or invalidate the occurrence of the most serious violations reported in the chronology. To this end, each reported incident had to be confirmed by at least one independent source in addition to the primary source in order to confirm its authenticity. Every incident investigated by the Teams was then recorded in the Mapping Exercise database.

117. Over **one thousand witnesses** were interviewed by the Mapping Exercise Teams about major incidents identified in the chronology. Of the **782 open incidents and cases in the database**, the Teams were able to close **563 (71%) cases** in the verification process. **Although some cases were invalidated, the majority of them were confirmed.** It was not possible, however, to verify the **219 remaining cases (29%)**, either through lack of time or being unable to access the regions in question or the witnesses of incidents, or being unable to find an independent source to confirm the information obtained from an initial source. Some cases include several incidents, meaning, for example, that a large-scale attack could manifest itself in different types of violations or target different groups. Consequently, in the report, confirmed cases constitute 617 incidents.

118. All the relevant information relating to the **782 open incidents and cases** can be found in the Mapping Exercise database, which was submitted to the UN High Commissioner for Human Rights in Geneva. The following entries can be found in the database for each incident or case: the source(s) of the original information, *fiche(s) d'entretien* with witnesses to the incident, the nature of the violations committed, a description of the violations and their location in time and space, preliminary classification of crimes revealed by the incident, the approximate number of victims, the armed group(s) involved and the identities of some of the victims and the alleged perpetrators.

- Investigation and analysis of specific acts of violence against women and children, and acts of violence linked to the illegal exploitation of natural resources

119. Given that the methodology used for the first part of the report would not enable full justice to be done to the numerous victims of specific acts of violence such as sexual violence and violence against children, nor adequately reflect the scale of the violence practised by all armed groups in the DRC, nor enable an analysis of the causes of some of the conflicts, it was decided at the beginning of the Exercise to devote a part of it to these subjects, based partly on the investigations of the Mapping Team but also to a large extent on specific documents supporting these violations. Although these specific acts of violence are mentioned in several incidents recorded in the first part of the report, this more global approach enabled the Team to better illustrate in Part II the scale of the phenomena of rape, recruitment of child soldiers and violations of human rights linked to the illegal exploitation of natural resources. This has helped to highlight the recurrent, widespread and systematic use of these specific violations by all parties in the various conflicts and enabled a brief analysis to be produced.

- Assessment of the resources available to the national justice system to deal with the serious violations identified

120. One important aspect of the ToR for the Mapping Exercise is the assessment of the resources available to the Congolese justice system to deal with the numerous crimes committed. A “Justice Team” was created within the Mapping Exercise to address these matters. **Around 200 actors in the judicial system as well as national experts in domestic criminal law and international law** were interviewed by the Justice Team in Kinshasa and in the provinces, notably the civilian and military judicial authorities, government representatives and the government agencies responsible for the reform of the Congolese judicial system.

121. The Justice Team began by carrying out an analysis of the domestic and international law applicable in this area, as well as the courts with jurisdiction to prosecute and judge the alleged perpetrators of the serious violations of human rights and international law committed between March 1993 and June 2003. A study of Congolese case law on crimes under international law was also carried out to illustrate domestic judicial practice in this area. The Team then assessed the capacities of the national justice

system with regard to fighting impunity. The Team integrated the points of view and the needs expressed by judicial system actors met in Kinshasa, Orientale Province, Ituri, South Kivu and North Kivu, as well as in audit reports for the Congolese justice system created by the Congolese authorities (Plan of Action for Justice Reform) and by international agencies and some donors involved in the reform of the Congolese justice system.

- Formulation of options in the field of transitional justice mechanisms that could help to combat impunity in the DRC

122. To formulate options for transitional justice mechanisms that were compatible with efforts already underway and with the international obligations of the DRC concerning the fight against impunity, consultations were held in Goma, Bukavu and Kinshasa with professors of criminal law, human rights NGOs, victims' associations, civil society experts working in the fight against impunity and representatives of bar societies and judges' associations. Regional consultations regarding various areas of transitional justice were organised in the form of round-table meetings with civil society representatives in Bunia, Bukavu, Goma and Kinshasa. In all, these round-table meetings attracted more than one hundred representatives of victims' associations and human rights organisations involved in matters of justice and the fight against impunity.

123. In particular, the Team assessed the extent to which current reforms of the justice system and the security sector address the imperative to prevent further violations of human rights, combat impunity and meet the needs of the many victims in terms of truth and reparation. Finally, the Team was in a position to formulate several transitional justice options as part of the current efforts in the country to reform the judicial system, to reform Congolese law and to create new institutions that would promote greater respect in the DRC for its international obligations concerning justice and the fight against impunity.

CONCLUSION

124. Drawing up an inventory of the most serious violations of human rights and international humanitarian law that were committed on DRC territory between March 1993 and June 2003, the report concludes that the vast majority of the 617 listed incidents constitute crimes under international law. These were war crimes committed during armed conflict, either internal or international, or crimes against humanity committed in the context of a generalised or systematic attack against a civilian population, or in many cases both. The issue of whether the many serious acts of violence committed against Hutus in 1996 and 1997 constitute crimes of genocide has also been addressed, and the report emphasises that there are elements that could indicate that genocide has been committed, but that the question can only be addressed by a competent court that would rule on individual cases.

125. The lack of political will to prosecute those who are responsible for serious violations of human rights and of international humanitarian law committed in the DRC

has only encouraged further serious violations, which continue to this day. The report notes that, because of the many issues that arise when seeking justice for the crimes committed in the DRC, it is crucial that a holistic policy of transitional justice be implemented, which will depend on the creation of diverse and complementary mechanisms, both judicial and non-judicial. The report does not give any recommendations or directives in the strict sense of the word, but it does examine the advantages and drawbacks of various transitional justice options in terms of truth, justice, reparation for and rehabilitation of victims, reform of judicial and security institutions (including vetting measures), and reconciliation, or indeed reconstruction of the historical truth in the current Congolese context. These options, which must be examined by the Government of the DRC and civil society, include: *a)* the creation of a mixed jurisdiction; *b)* creation of a new Truth and Reconciliation Commission; *c)* reparation programmes; and *d)* reforms of both the legal sector and the security forces. In order to achieve this, the report recommends that national consultations be carried out in order to provide credibility and legitimacy to the mechanism(s) to be adopted.

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