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**Report of the independent expert on the situation of human rights in the
Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré***

* This report is being transmitted late in order to include important information concerning the elections that took place in the country on 30 July 2006, and to report on their consequences up to December 2006.

Summary

The human rights situation in the Democratic Republic of the Congo remains worrying, particularly in the eastern part of the country and in northern Katanga, where national and foreign militias, as well as the Mai-Mai and the armed forces of the Democratic Republic of the Congo, are committing atrocities and other massive human rights violations with impunity.

The political situation in the first half of 2006 was mostly dominated by the preparations for, and holding of, the presidential and legislative elections, and the accompanying election fever. However, violations occurred - in some cases extremely serious ones - in virtually all spheres of human rights.

The weakness of the judiciary and its lack of independence vis-à-vis the executive branch, which also controls judicial decisions, are also regrettable.

In such a context, the independent expert recommends:

- That the process of disarming militia and armed groups such as the Forces démocratiques de libération du Rwanda, the Interahamwe, the “Rastas” and the Mai-Mai should be accelerated;
- That public freedoms should be respected in all circumstances, and mechanisms set up to combat impunity;
- That all necessary measures should be adopted to ensure respect for the human person, in particular women and children; and that all trafficking and exploitation of all kinds should be stopped, especially the trivialization of sexual violence;
- That the Government should strive to promote the independence of judges and magistrates and to provide the judicial system with a budget that will guarantee its independence.

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Introduction

1. By its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights and to verify that obligations in that field were being fulfilled. The independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/120). He then presented a report to the General Assembly at its sixtieth and sixty-first sessions (A/60/395 and A/61/475). He had also prepared a report for the Commission on Human Rights at its sixty-second session (E/CN.4/2006/113), which was to be examined by the Human Rights Council. Like the special procedures and thematic mandates of the Commission on Human Rights, the mandate of the independent expert on the situation of human rights in the Democratic Republic of the Congo was extended for one year by decision 1/102 of the Human Rights Council. This report was drawn up pursuant to that decision.

2. This report is based on information transmitted regularly to the independent expert by the field office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and representatives of institutions, non-governmental organizations (NGOs), political parties and associations. The report reflects information received up to 31 December 2006.

3. The varied information received revealed that, while attention must be focused on the electoral process under way, lack of security, impunity and serious human rights violations remain cause for concern.

4. Following the announcement of the results of the first round of the presidential elections held on 30 July 2006, the independent expert was informed of a sudden and serious deterioration in the social climate between 20 and 22 August, with clashes, involving heavy weaponry, between the close protection officers of the two winners of the first round of the presidential elections - President Joseph Kabila and his Vice-President, Jean-Pierre Bemba. In this regard, on 25 August 2006, the independent expert sent them both a letter setting out his analysis of the situation and his recommendations.

I. STATUS OF THE TRANSITION - INSTITUTIONAL AND POLITICAL LIFE

5. On 22 August 2006, after the meetings held on 21 and 22 August between the International Committee in Support of the Transition (ICST) and President Kabila and Vice-President Bemba, respectively, a working group was set up to “normalize the situation, with a view to contemplating the second round of the presidential elections in a calm and relaxed manner” (see A/61/475, para. 56).

6. The first meeting between President Joseph Kabila and Vice-President Jean-Pierre Bemba took place on 13 September 2006, on the occasion of the meeting of the *espace présidentiel* and of the Supreme Defence Council, three weeks after the violent incidents of 20 and 22 August.

7. On 22 September, the new National Assembly held its special session to establish a temporary steering committee, verify the mandates of Members of Parliament and adopt the rules of procedure.
8. On 23 September, under pressure from the ICST, an *acte d'engagement* to make Kinshasa “a weapons-free city” was signed by the representatives of President Joseph Kabila and of Vice-President Jean-Pierre Bemba. The scope of that commitment was extended to Kisangani on 18 October, and then to Kananga on 13 November 2006.
9. On 25 September, the Congolese National Police (PNC) conducted an arms control mission in Kinshasa, with the support of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and of the peacekeeping force of the European Union (EUFOR).
10. On 16 October 2006, the Independent Electoral Commission (CEI) announced that for the scheduled elections (presidential, legislative and provincial) it had compiled and registered a list of 25,603,079 voters throughout the country.
11. On 13 November 2006, Cardinal Frédéric Etsou Bamungwabi, Archbishop of Kinshasa, speaking on Radio France Internationale from Paris, expressed his concern about the work of the CEI and demanded that its chairperson, Abbot Malu Malu, respect the verdict of the ballot box.
12. On 16 November, Vice-President Jean-Pierre Bemba declared in a television address that he did not accept the provisional results, published by the CEI on 15 November, designating President Kabila as the winner - with 58.05 per cent of the votes - and himself as the loser - with 41.95 per cent. He then vowed to “use all legal means to ensure that the people’s voice was heard”.
13. A peace agreement was signed on 29 November in Aveba, about 55 km from Bunia, in Ituri district (eastern region), between the Armed Forces of the Democratic Republic of the Congo (FARDC) and the Forces de résistance patriotique de l’Ituri (FRPI) of Cobra Matata, Peter Karim’s Front nationaliste et intégrationniste (FNI) and Mathieu Ngudjolo’s Mouvement révolutionnaire du Congo (MRC), the last militias to be active in the district, which undertook to disarm their fighters and enrol them in the national army. On 24 December, the clashes resumed in Ituri between the forces of Peter Karim and FARDC troops. The hostilities, which went on until 29 December, unfortunately jeopardized the future of the disarmament process.
14. On 27 November, the Supreme Court, through decree RCE 009, rejected the application filed by the Movement for the Liberation of the Congo (MLC) on 18 November contesting the provisional results published by the CEI on 15 November.
15. The 28 November television message by Vice-President Jean-Pierre Bemba in which he agreed to lead a strong, democratic and republican opposition contributed significantly to reducing the tension observed in the city of Kinshasa throughout November.
16. The swearing-in of President Joseph Kabila on 6 December 2006 heralded the beginning of a new era in the Democratic Republic of the Congo.

17. The election of the definitive steering committee of the National Assembly, on 18 December marked the end of the mandate of all the institutions in support of democracy - in particular the CEI, which under the Constitution of 18 February 2006 became the National Independent Electoral Commission (CENI).

18. On 30 December, Antoine Gizenga became Prime Minister responsible for forming the new government, by order of President Joseph Kabila.

II. THE ELECTORAL PROCESS - INCIDENTS AND IRREGULARITIES IN THE VOTE

19. The National Human Rights Observatory (ONDH), in a report dated 12 August 2006, denounced “a day of great commotion culminating in bloody demonstrations and systematic looting” (ransacking of the headquarters of the High Media Authority (HAM) and of ONDH), on the occasion of the return to Kinshasa of Vice-President Jean-Pierre Bemba, and the election rally that followed in the Tata Raphaël stadium of Kalamu Commune on 27 July 2006. The report also tells of the death in Matadi (Bas-Congo), on the same day, of 12 followers of Bundu-Dia-Kongo (a political and religious movement) and of a soldier.

20. Following these clashes of 20 and 22 August, the Minister of the Interior, Théophile Mbemba, stated that, of the 66 reported casualties, 43 had been wounded and 23 killed, including 12 police officers, 7 civilians and 4 soldiers.

21. On 29 October 2006, the day of the elections, soldiers of the sixth integrated FARDC brigade committed human rights violations in Aveba, a village situated about 90 km south-east of Bunia. According to local sources, at least 44 people were admitted to hospital after having been subjected to cruel, inhuman and degrading treatment.

22. Saturday, 11 November 2006 was marked by both small arms and artillery fire in downtown Kinshasa, namely in the district of La Gombe. According to official figures, these disturbances caused the death of three individuals, including a woman and a soldier, and left several injured.

23. On 21 November, during consideration by the Supreme Court of the application filed by Jean-Pierre Bemba’s Union for the Nation, the Congolese National Police had to intervene to disperse a crowd of about 200 people. In the afternoon, clashes marked by occasional small-arms fire took place between the police and followers of Vice-President Jean-Pierre Bemba in the vicinity of the Supreme Court, where demonstrators broke into the premises and looted computers, office supplies and personal belongings.

III. HUMAN RIGHTS VIOLATIONS

A. Summary and extrajudicial executions, enforced disappearances, torture and arbitrary arrests

24. On 22 August 2006, 84 fishermen, mostly from the Équateur province and accused of being “rebels”, were arbitrarily arrested, tortured and subjected to ill-treatment by members of the Republican Guard in Kinshasa.

25. On 30 August, a soldier belonging to the 683rd Battalion of FARDC of Nyunzi, 180 km west of Kalemie, was summarily executed by the Republican Guard. At least nine people, including seven civilians, were abducted and subjected to cruel, inhuman and degrading treatment by soldiers of the aforementioned Guard.

26. The daily report of the OHCHR field office in the Democratic Republic of the Congo dated 12 October 2006 stated that MONUC condemned the illegal detention of 130 persons, including 9 minors, 9 women and 2 infants, at the Inspection provinciale de Kinshasa (IPKIN), since 21 September 2006, for reasons unknown. Moreover, MONUC's Human Rights Division had stressed that it should not be up to the city Governor but to a judicial authority to decide on the fate of those people.

27. On 21 November 2006, three mass graves were discovered by MONUC and the Bunia military prosecutor's office in a FARDC military camp in Bavi, near Gety, Ituri district. According to information that reached the independent expert, the bodies of some 30 men, women and children, who had disappeared three months earlier, had allegedly been buried there.

28. The non-governmental organization called "Journalistes pour la promotion et la défense des droits de l'homme" (JPDH) (Journalists for the Promotion and Defence of Human Rights), in a press release published on 22 October 2006, expressed its disquiet about the disappearance since 20 August 2006 of Doctor Soso Gesevene, Vice-President Jean-Pierre Bemba's medical adviser. Moreover, the investigations undertaken by MONUC's Human Rights Division to check that he was still alive did not yield any result, which makes one fear the worst.

29. The daily report of the OHCHR field office in the Democratic Republic of the Congo dated 11 December 2006 stated that, on 7 December, two people - a woman and her baby - were killed by the police and three others were seriously wounded during incidents involving the population of Popokabaka, located 160 km from Kenge in the Kwango district (Bandundu region).

B. Sexual violence

30. Many cases of sexual violence were reported during the first half of 2006. For instance, the statistics of the United Nations Population Fund (UNFPA), show that from 21 to 22 September over 3,000 rapes were recorded in Katanga; members of the armed forces being allegedly responsible for 70 per cent of them.

31. According to a MONUC monthly human rights report dated October 2006, a mass rape was committed during the Rutshuru crisis in January 2006 by members of the 83rd brigade (former Congolese National Army (ANC)) during the occupation of Kibirizi, a village situated 138 km to the north-west of Goma (North-Kivu). Local sources reported that some 90 women and girls had been raped.

32. In the northern province of Équateur, evidence was brought that a group of policemen acting in collusion with two civilians had been responsible for mass rape, torture, cruel, inhuman and degrading treatment, looting and forced labour inflicted on the civilian population in Bolongo-Loka, situated 530 km north-east of Mbandaka, on 5-6 August 2006. According to local sources, at least 37 women and young girls had been victims of systematic rape and sexual

assault by 12 policemen. Nine of those allegedly responsible, namely seven PNC agents and the two civilians, were arrested and are currently detained in the military prosecutor's office in Lisala.

33. Two collective rapes were allegedly committed by a PNC commander and several PNC officers in two localities of the Bongandanga territory, approximately 400 km north-east of Mbandaka. On 18 September, six women were allegedly raped while being illegally detained in the PNC holding cells in Bossomelo, 412 km north-east of Mbandaka. On 16 October, the same PNC officers allegedly raped an unknown number of women in the village of Bossomokili, 390 km north-east of Mbandaka.

C. Situation of children

34. During a mass arrest that took place in Kinshasa on 21 September, more than 800 street dwellers, including 181 children, commonly known as "*shégués*", were arbitrarily arrested by the PNC and taken to the Police Inspectorate in Kinshasa (IPK). The arrests followed the demonstrations organized on 19 September by supporters of the Mouvement pour la libération du Congo (MLC), joined by street dwellers, to protest against the destruction of Vice-President Bemba's television and radio stations. Following the intervention of the United Nations, all the detained children were released a few days later.

35. During the night of 24/25 October 2006, a 14-year-old girl was allegedly raped by three policemen in the municipality of Dibindi, in Mbuji-Mayi. Those responsible broke into a private residence to loot it and forced the victim to carry the plunder. The three policemen took turns to rape her, not far from her residence.

36. On 20 November 2006, PNC agents were deployed on Kinshasa's central market and arrested street children (*shégués*). Some have contended that it was a continuation of the transfer of *shégués* to Kanyama Kasese (Katanga) for political reasons rather than a move to combat theft and other misdemeanours.

D. The prison situation

37. Despite efforts to improve it, the prison situation remains precarious and serious. Detention conditions are on the whole deplorable almost everywhere, with escape being the prisoner's only chance of survival. In prisons and holding cells everywhere, the situation is one of overcrowding, outdated facilities, lack of hygiene, food and medical care, and disregard of proper procedures resulting in illegal detentions.

38. The daily report dated 19 July 2006 of the OHCHR field office in the Democratic Republic of the Congo stated that in North-Kivu two prisoners who had escaped from the prison of the Beni Military Prosecutor's Offices were killed by police gunfire, which also seriously wounded 10 other prisoners among the 19 who were trying to escape.

39. On 21 October 2006, 20 detainees of the Mbandaka prison, including 5 persons convicted for crimes against humanity in the Songo Mboyo trial, escaped.

40. During the night of 23/24 October, 14 prisoners sentenced to death after the trial for the assassination of President Laurent Désiré Kabila made their escape unhindered from the Kinshasa Penal and Rehabilitation Centre (CPRK). According to corroborative sources, three of them were recaptured in the evening of 25 October. It should be pointed out that the fugitives were former members of the National Intelligence Agency.

41. There is some doubt about the number of casualties of the 26 October mutiny by prisoners of the Kinshasa Penal and Rehabilitation Centre (CPRK), which led to the use of firearms by the Congolese National Police: a few injured, according to the police and prison authorities, and five to seven dead, according to human rights NGOs and the MONUC office in Kinshasa.

42. On 17 and 19 November 2006, two detainees of the Beni prison (North-Kivu) died of sicknesses related to the deplorable conditions of detention in that institution, which was built in 1945 for up to 80 persons and today houses more than 300 prisoners. Pending the rehabilitation of this prison, the Beni administrative and judicial authorities advocate transferring part of the detainees to the Vuovu prison (Lubero), recently rehabilitated by MONUC.

43. According to a news report by the OHCHR field office in Kinshasa dated 11 December 2006, the Director of the Mbuji-Mayi prison regretted the death of five prisoners due to lack of food and necessary treatment. The non-governmental organization International Prison Fraternity, which supplied certain needs such as meals, had halted its assistance three months earlier. The situation remains very precarious.

IV. JUSTICE, IMPUNITY AND FUTURE DIRECTIONS

A. Internal justice and impunity

44. The smooth functioning of the justice system depends on working conditions in its institutions and the resources placed at their disposal. However, the budget allocation for justice in both 2005 and 2006 was insignificant (about 0.6 per cent) when measured against the myriad problems facing this crucial sector, notably the dilapidation of infrastructures, shortages of judges and magistrates and intolerable working conditions.

45. For instance, in the context of reform of the justice system, Act No. 06/020 concerning the status of judges in the Democratic Republic of the Congo was promulgated by the President of the Republic, Joseph Kabila, on 10 October 2006. The Act was published in the Official Gazette of the Democratic Republic of the Congo dated 27 October 2006.

46. The independent expert also draws attention to the verdict in the so-called Songo-Mboyi trial, a decision that created a considerable stir among the general public. On 12 April 2006, the Mbandaka garrison court (Équateur Province) handed down its verdict in the trial of the soldiers of the former 2nd and 3rd Brigades of the Mouvement pour la libération du Congo (MLC), accused of mass rape of a number of women and girls living in the locality of Songo-Mboyi, in Bongandanga territory (see A/61/475, paras. 149-151).

47. It should also be noted that several senior military officers, including Peter Karim, leader of the Front nationaliste et intégrationniste (FNI), and Mathieu Ngudjolo, leader of the Mouvement révolutionnaire congolais (MRC), two militias active in Ituri (eastern region), were promoted to the rank of colonels of the FARDC by presidential decrees of 2 October 2006.

48. The trial of the presumed assassins of journalist Franck Ngyke and his wife Hélène Mpaka is now under way in the Kinshasa/Matete garrison court. The Public Prosecutor has not ruled out political motives nor the possibility of summoning politicians linked to the Parti du peuple pour la reconstruction de la démocratie (PPRD) who are allegedly involved in this dual murder.

49. On 11 September 2006, Sergeant Kipande Kasokota of the FARDC forces was sentenced to 20 years' imprisonment by the Kalemie garrison court for rape, assault and attempted murder of a minor. The convicted offender will be dismissed from the FARDC forces.

50. On 6 November 2006, a lieutenant of the FARDC's naval forces was sentenced to 20 years in prison by the Kalemie garrison court for a rape that took place during the night of 17-18 October. The convicted offender was also dismissed from the army.

51. On 16 November, the Kalemie garrison court sentenced a PNC officer to 15 years in prison for rape. The victim, a heavily pregnant woman, was detained in a PNC cell in Tumbwe, near Kalemie. The convicted officer was also sentenced to pay 115,000 Congolese francs in legal expenses and the equivalent of US\$ 2,000 as damages to the victim's family.

52. On 20 November, the Ituri garrison court, in a circuit court hearing in Watshia, sentenced soldiers and civilians to sentences ranging from 2 to 20 years in prison for misappropriating ammunition and other property belonging to the FARDC.

53. On 8 December 2006, the Kikwit garrison court (Bandundu region), sentenced six police prison guards charged with having freed prisoners. They had released 34 prisoners - 17 civilians and 17 soldiers - because, according to their personal interpretation, the phrase pronounced by the Head of State in his investiture address of 6 December - "the prison doors are open to all those who transgress the law" - amounted to a presidential amnesty. According to the OHCHR report dated 16 December, the released prisoners were recaptured.

54. On 11 December, the Mweka national police commander and five of his junior officers appeared before the Luebo regional court (western Kasai region) on charges of the arbitrary arrest, illegal detention, fraud, assault and wounding with intent of national electoral observer Robert Ngolo. The incidents dated back to 30 July 2006, during the first round of the presidential and legislative elections.

55. The Lubumbashi military court (Katanga province) on 12 December held its first public hearing of the Kilwa massacre trial; the hearing was devoted to identifying the 12 accused - all soldiers - involved in summary executions, rapes, torture, looting and other human rights violations in Kilwa in October 2004. The crimes were said to have been committed during a military operation carried out to quell a small-scale rebellion in Kilwa. Among the accused was Colonel Ademar Llunga, former commander of the 62nd FARDC brigade, who had led the

October 2004 attack against the Kilwa rebels and was charged with crimes against humanity, murder and looting. The Anvil Mining Congo company and three of its former employees were accused of complicity in war crimes for having “deliberately omitted to withdraw vehicles made available to the 62nd infantry brigade during the counter-attack launched in October 2004 to recapture the town of Kilwa” and for having “knowingly facilitated the commission of war crimes by Illunga Ademar and his men”. The trial is under way.

56. The high crime rate in the Democratic Republic of the Congo, the disturbing number of offences committed and the impunity, which encourages repeat offences, compound the impotence of the national courts. The judiciary suffers from a severe lack of financial and human resources and does not have the authority to effectively address the serious crimes committed by warlords or high-placed civil servants. Given the powerlessness of the courts, it is necessary to use other legal mechanisms, in particular the International Criminal Court.

B. The International Criminal Court: severe limits on the campaign against impunity in the Democratic Republic of the Congo

57. On 13 November 2006, the International Criminal Court held preliminary hearings in the trial of the former militia chief of the Democratic Republic of the Congo, Thomas Lubanga Dyilo, whose atrocities committed in Ituri since 1999 had resulted in the death of at least 6,000 people and the displacement of several hundred thousand. He is charged with recruiting and enlisting child soldiers into his militias.

58. It is clear from the foregoing that the International Criminal Court alone cannot try all the crimes and serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, its jurisdiction being limited to acts committed since the entry into force of the Rome Statute (1 July 2002).

59. What is needed, therefore, is a mechanism that would guarantee not only the effective suppression of crimes covered by the Rome Statute committed prior to 1 July 2002 but also the administration of justice and an all-out campaign against impunity.

C. Establishment of a special international criminal tribunal or joint criminal chambers

60. In order to combat impunity, which must be done if there is to be peace in the country and further crimes are to be prevented, the independent expert recommends the creation of a special international tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers to try crimes committed since 1994, the year specified in United Nations resolutions for serious violations of humanitarian law.

61. Certain measures could be taken to reduce the costs of a special tribunal. It could sit within the country, somewhere near its centre, in order to keep down the costs of transporting defendants and witnesses. The host State could provide premises and defray certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the Democratic Republic of the Congo; and the host State could be responsible for appointing lawyers.

62. Should it prove impossible to create an international tribunal, bearing in mind that it is essential to combat impunity and extremely serious crimes, consideration could be given to establishing joint criminal chambers attached to the appeal courts, with the right of appeal (preliminary and final appeal) to a chamber that is competent to hear it but which would come under the Supreme Court:

(a) Chambers of first instance could be attached to five appeal courts, one in Kinshasa and the other four strategically located throughout the country, taking into account the size of the country and distances;

(b) Chambers of first instance could be composed of three judges (two national and one non-national, or vice versa);

(c) The preliminary or final appeal court could be composed of three judges (two non-national and one national, or vice versa);

(d) The Public Prosecutor's Office would be organized and would function according to the same criteria.

63. The name of the institution could be the "Joint Criminal Chamber" and it would be responsible for trying persons accused of acts of genocide or other serious violations of human rights and international humanitarian law committed on the territory of the Democratic Republic of the Congo, as well as citizens of the Democratic Republic of the Congo accused of committing such acts or violations on the territory of neighbouring States.

64. Such an institution would be more flexible and less costly should the creation of a special international criminal tribunal prove unfeasible. It should nevertheless receive full support from the international community, given the country's current destitution.

65. The new joint criminal chambers could also contribute to restoring the country's judicial system in terms of staff, training, equipment and living and working conditions.

V. RECOMMENDATIONS

66. **The independent expert recommends to all the Congolese parties, whether or not signatories to the Global and All-Inclusive Agreement, that they should:**

- **Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration, national unity and patriotism;**
- **Recognize the need for all political actors and the media to foster the culture of dialogue and rejection of violence and ethnic hatred; accept the democratic process, the verdict of the ballot box and recourse where necessary to legal remedies.**

67. The independent expert recommends to the new Government that it should:

- Take all necessary measures to affirm and consolidate the State's authority over the entire territory and foster rapprochement and a spirit of dialogue among the political actors;
- Implement national vetting procedures by suspending members of the FARDC forces, the Congolese National Police (PNC) or the National Intelligence Agency (ANR), allegedly responsible for human rights violations, so as to restore confidence in the country's institutions;
- Provide all necessary support to the "Mapping Team", in order to draw up an objective cartography of the human rights violations committed between March 1993 and June 2003;
- Ensure effective application of the principle of clear separation between *intuitu personae* and *intuitu materiae* areas of jurisdiction between civilian and military courts;
- Ensure the effective integration, reunification, reinforcement and equipment of the army and police;
- Improve the currently precarious and inadequate physical, intellectual and equipment conditions of institutions and employees of the State, especially the judiciary, so that it can respond effectively to the requirements of justice and the fight against impunity;
- Combat the trafficking and illegal exploitation of natural resources;
- Combat all the crimes that continue to be committed, particularly sexual violence against women and children;
- Combat the continuing use of children for war; combat militias and privately armed groups and prevent them from rearming;
- Combat the impunity that serves to perpetuate violations of human rights and international humanitarian law;
- Work to enhance the status of women, protect them and help them to fulfil their potential; promote the rights of the child.

68. The expert recommends to the newly elected Parliament that:

- It adopt laws essential for the administration of justice and other areas of national life, including:
 - (a) Law on the organization and functioning of the Higher Council of the Judiciary (Conseil supérieur de la magistrature);

- (b) Law providing for the application of the Rome Statute of the International Criminal Court;**
- (c) Law on the protection of persons living with HIV/AIDS;**
- (d) Framework Law on the organization and functioning of the new national human rights institution;**
- (e) Framework Law prescribing the organization and functioning of the national police;**
- (f) Law criminalizing torture;**
- (g) Law reforming prison administration;**
- (h) Law on the integration of the army and reform of the security forces;**
- (i) Harmonization of the provisions of certain legal instruments, particularly certain provisions of the Military Penal Code, with the requirements of the Constitution.**

69. **At the international level, the independent expert recommends that:**

- (a) The international community should:**
 - Support the new institutions arising out of the elections in order to permit the establishment of the rule of law, a culture of lasting peace, and democracy;**
 - Support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police;**
 - Support the renewal of MONUC's mandate to enable it to provide broader and greater mentoring and support to the new Government, the army and the national police, so that they may meet the various challenges posed by the constant crime and unrest within the country, particularly on its eastern borders;**
 - Assist the integrated human rights presence in the Democratic Republic of the Congo, consisting of the field office of the Office of the High Commissioner for Human Rights and MONUC's Human Rights Division, in implementing its programmes and activities for the promotion and protection of human rights;**
 - Provide all necessary assistance to enable the independent expert to fulfil his complex mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate;**

(b) The Human Rights Council and, through it, the General Assembly, the Security Council and the Economic and Social Council should:

- **Given the destitution of the judicial system in the Democratic Republic of the Congo and the scale and gravity of the crimes being perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002 and all subsequent crimes.**
