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## Making Justice Work: Restoration of the Legal System in Ituri, DRC *A Human Rights Watch Briefing Paper*

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### I. Introduction

Justice is an essential element in the long-term work to rebuild the Democratic Republic of Congo (DRC). In a recent report to the Security Council on the protection of civilians in armed conflicts, the secretary-general of the United Nations noted that societies in conflict look forward to and deserve justice as one of the benefits of peace. He underscored the fact that “[p]rocesses of justice and reconciliation are critical responses (...) to sustainable peace,” and that, while emphasizing accountability for past atrocities could destabilize post-conflict situations and compromise national reconciliation, “[i]mpunity... can be an even more dangerous recipe for sliding back into conflict.”<sup>1</sup> Systematic human rights abuses cannot be halted until their perpetrators are held to account.

Ituri is often described as the most bloodstained region of the DRC. Its population has been subject to grave atrocities committed by rival armed groups. War crimes and crimes against humanity were committed following systematic abuses of human rights. Justice is a fundamental requirement in this part of the country, both to assist the reconstruction of society and to ensure that those who have committed and continue to commit human rights abuses are no longer at liberty to do so.

Human Rights Watch is pleased with the implementation six months ago of a program for the urgent restoration of the criminal justice system in Bunia, Ituri province (“the program”). This program is the result of a joint effort by

<sup>1</sup> Report of the secretary-general to the U.N. Security Council on the protection of civilians in armed conflicts, S/2004/431, May 28, 2004.

the government of the DRC, the European Commission (EC), and the Cooperation Department of the French government (French Cooperation). It aims to restore quickly judicial structures in the Ituri district in order to put an end to the impunity that has fostered the cycles of violence and serious crimes there since 1998.

The program is a pilot experiment for the reconstruction of the justice system throughout the DRC and, for that reason, has repercussions well beyond Ituri. The need for an effective and functional judicial system is thought to be of particular urgency in the entire eastern region of Congo. The lessons learned from the program should help the government of the DRC and donors in their long-term efforts to rebuild an effective judicial system. Moreover, the prosecutor of the International Criminal Court (ICC) recently announced the start of investigations into the crimes committed in the DRC.<sup>2</sup> Given the necessity of collaboration with Congolese judicial authorities and the limited number of cases that the ICC will be able to try, the effectiveness of the ICC investigations will depend to a large extent on a strong and efficient Congolese judicial system.

As in the rest of the country, the judicial system in Bunia was in an almost total state of dilapidation. The program is the first real investment in the Congolese judicial system in several years.<sup>3</sup> Six months after being implemented, the program has made remarkable progress. The *Tribunal de grande instance* (“the court”) of Bunia and the Prosecutor’s Office are once again operating effectively. Five judges in the court and four investigative judges in the Prosecutor’s Office, appointed in 2003, took office in February 2004. This is a major development in the Ituri peace process. The district of Ituri had long been deprived of an effective legal system, during which time armed groups imposed their own law. The reconstruction of the legal system in Bunia in such a short time has sent a clear message that impunity will no longer be tolerated. It has also clearly demonstrated both that justice is possible in a post-conflict environment and that, above all, justice is a necessary component of the process of political transition. In this respect, the program has made Ituri an example that could potentially inspire the entire Congolese judicial system.

To achieve this impact on the judicial system, much remains to be done after this initial phase of the program. The program will need to be re-defined to make it an instrument to address impunity for serious crimes committed in Ituri, including war crimes and crimes against humanity, and not just for offenses categorized as more minor crimes. Its basic structure will need to be re-designed so that the contradictions created by institutional management by a nongovernmental organization do not affect the operation of the judicial system in Ituri. Additionally, the new criminal justice system in Ituri will face many challenges, including security conditions that are still deplorable, the inadequacy of the existing criminal law, the lack of police resources required for investigation, the inadequacy of the material and financial resources to support investigative judges and judges, and the absence at the government level of a clear policy for fighting impunity.

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<sup>2</sup> International Criminal Court, “The Office of the Prosecutor of the International Criminal Court opens its first investigation,” *press release*, June 23, 2004.

<sup>3</sup> For information on the state of the judicial system in the DRC, see “Democratic Republic of Congo: Confronting Impunity,” *Human Rights Watch Briefing Paper*, January 2004.

This document is not an exhaustive evaluation of all the obstacles and accomplishments of the program. It selects the most salient ones with a view to identifying the challenges that will loom ahead in the fight against impunity in Ituri. It is based essentially on in-depth interviews carried out by Human Rights Watch in Bunia and Kinshasa with members of the judiciary, government officials, representatives of U.N. agencies and European institutions involved in the program, and members of national and international nongovernmental organizations involved in the operation of the judicial system in Ituri. The main objective of this document is to contribute to the improvement of the ability of the courts in Bunia to prosecute the perpetrators of the most serious violations of human rights. It makes recommendations to this end, which Human Rights Watch hopes will be taken into account as the second phase of the program is negotiated.

## **II. Contribution to maintaining peace and security in Ituri**

The rapid restoration of the judicial system in Bunia was required as a logical consequence of the mandate of the “Interim Emergency Multinational Force” (the “Artemis force”) deployed in Bunia by the European Union between June and September 2003 with the authorization of the U.N. Security Council.<sup>4</sup> In their normal policing activities, the troops of the Artemis force – and, subsequently, those of the Mission of the United Nations to the Congo (MONUC) – arrested individuals who had committed acts of violence or who had defied their authority. Among those arrested were leaders of armed groups responsible for the crimes that characterized the conflict in Ituri. However, in the absence of courts and judges<sup>5</sup>, the individuals arrested were sometimes released immediately. In the eyes of the local population, this seriously damaged the credibility of the operations by the Artemis force and MONUC to restore security and maintain peace. Therefore, it seemed necessary to restore the judicial system in Bunia as a matter of urgency.

The restoration of the judicial system in Ituri also addressed the need for complementing and supporting the process of reconciliation, which had been started at the grass roots level in September 2003 by Hema and Lendu communities weary of inter-ethnic conflict. Community leaders in rural towns and villages affected by ethnic conflicts regularly organized dialogues. The prolonged absence of justice risked hindering these efforts and encouraging the use of more violent means of settling conflicts.

To address this issue, a memorandum of understanding was proposed by the European Union and signed on December 16, 2003, by the government of the DRC, the European Commission, and the French Cooperation (“Memorandum of Understanding”). It defined the tasks to be carried out by each of the parties involved and MONUC.<sup>6</sup> The European Commission was to contribute support and funding for the deployment of investigative judges and judicial personnel, their salaries and training, and the supply of operational materials. MONUC agreed to provide transportation for judicial personnel and all necessary assistance relating to the security of judges

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<sup>4</sup> Security Council Resolution 1484 (2003), authorizing deployment, under Chapter VII of the United Nations Charter, of a temporary multinational emergency force in Bunia “with a view to contributing to stabilizing the security conditions there, and improving the humanitarian situation.”

<sup>5</sup> The five years of violent conflict in Ituri had led to the total collapse of the judicial system, which was already in worse condition than elsewhere in the country. See “Democratic Republic of Congo: Confronting Impunity,” *Human Rights Watch Briefing Paper*, January 2004.

<sup>6</sup> MONUC did not sign the Memorandum of Understanding, but took part in the negotiation of its terms, and it has specific obligations under the memorandum.

and individuals involved in the judicial process. The reconstruction of the court buildings, the investigative judges' offices, and the prison facilities was to be handled by the French Cooperation.

Since implementation of the program began at the end of January 2004, it has had some notable successes. Its deterrent effect was felt immediately as the first investigative judges arrived in Ituri. Many people have testified to the impact that the arrival of the investigative judges had on the attitude of members of armed groups.<sup>7</sup> The intensity of the criminal activities of these groups decreased significantly over the months following the first indictments.

The first prosecutions launched by the new prosecutor of the court ("the prosecutor") included cases against notorious leaders of armed groups, among them Matthieu Ngunjolo, Chief of Staff of the FNI (Front des Nationalistes Intégrationnistes – a Lendu armed group), and Aimable Rafiki Saba, Head of Military Intelligence of the UPC (Union des Patriotes Congolais – a mainly Hema armed group).<sup>8</sup> In total, some thirty leaders of armed groups were arrested, and some of them have already been referred to presiding investigative judges. This made an enormous contribution to the slow but gradual normalization of security conditions in Ituri, despite the fact that these individuals were generally arrested or prosecuted for more minor offences, rather than for the serious crimes in which they had been involved. The investigative judges themselves stated that they have noticed an attitude of growing respect for the judicial system since the first indictments.<sup>9</sup> When speaking about the leaders of the armed groups, one of them stated that, from now on, "nobody can do things as openly as they could before we arrived."<sup>10</sup>

The first court hearings for some of these leaders in April 2004 took place in a particularly tense atmosphere. Militia fighters were demonstrating noisily outside the court building in Bunia. They were chanting slogans hostile to the judges and MONUC, with the apparent aim of intimidating court officials and potential witnesses. In the case against Matthieu Ngunjolo, for example, supporters of the FNI openly demonstrated their allegiance by standing to attention when he entered the courtroom. The judges, however, were able to impose discipline inside the courtroom. Officials interviewed by Human Rights Watch emphasized the control that the president of the *Tribunal de grande instance* had over the courtroom to restore discipline and respect for the judicial system during the hearings.<sup>11</sup>

The local population saw the detention of leaders of local armed groups and their subsequent appearance before the court as a highly significant demonstration of the positive change that the judicial system can bring about, particularly after its past negative contribution to exacerbating the conflict in Ituri.<sup>12</sup> Trust in the judicial system is gradually being restored. According to one

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<sup>7</sup> Human Rights Watch interviews with civil society groups in Bunia, May 2004.

<sup>8</sup> Ngunjolo was prosecuted, among other charges, for the disappearance of a leader of the UPC. Rafiki is being prosecuted on various charges, including organized crime, arbitrary arrest, and unlawful detention.

<sup>9</sup> Human Rights Watch interviews with a group of investigative judges from the Prosecutor's Office in Bunia, May 8, 2004.

<sup>10</sup> Ibid.

<sup>11</sup> Human Rights Watch interviews in Bunia, May 2004.

<sup>12</sup> A case about a land dispute in which judges were suspected of corruption is said to have been one of the elements that triggered the conflict in Ituri in 1999.

investigative judge, an increasing number of people are now coming forward and offering to testify anonymously.

This renewed confidence in the judicial system and the virtues of the constitutional state is seen by local observers as the program's greatest achievement. The judges appear to be aware of their personal contribution and the historic nature of their role. One of them stated: "We are aware that our conduct will determine the course of justice in the rest of the country."<sup>13</sup>

### **III. Prosecuting the most serious crimes**

Despite the accomplishments described above, the program has lacked ambition since its conception. Its implementation seems to be connected more with the necessity to quell more minor crime, which was hampering MONUC's peacekeeping efforts in Ituri, than with the fight against impunity itself. The possibility of prosecuting the perpetrators of serious crimes committed during the conflict in Ituri has been ruled out. The Congolese government did not give the prosecutor any mandate relating specifically to the prosecution of war crimes and crimes against humanity committed in Ituri.

The Minister of Justice recently stated that the prevention of the serious crimes that continue to be committed in Ituri remains one of his priorities.<sup>14</sup> He could demonstrate this in various ways, in particular by speeding up the procedure for the approval of the draft law implementing the statute of the International Criminal Court, or by using his power of injunction to urge the prosecutor to prosecute serious crimes in cases which he has identified as being of special interest.<sup>15</sup> That would represent a significant step forward in comparison with the first six months of the program, when there was no Congolese government policy aimed at the prosecution of perpetrators of serious crimes committed during the conflict in Ituri to support the program.

The draft law implementing the statute of the International Criminal Court has the advantage of defining war crimes and crimes against humanity and introducing them into Congolese law.<sup>16</sup> Such a law would have enabled the prosecutor to prosecute Matthieu Ngunjolo for the crime

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<sup>13</sup> Human Rights Watch interviews with the president of the *Tribunal de grande instance*, Bunia, May 7, 2004.

<sup>14</sup> Human Rights Watch telephone interview, July 2, 2004.

<sup>15</sup> Congolese law gives the Minister of Justice the power to issue an "injunction" to the Chief Prosecutor of the DRC to initiate a trial and prosecute certain crimes before any jurisdiction (Article 12 of the Code of Judicial Organization and Competence). The power of injunction is usually exercised by the Minister of Justice to reflect and apply the government's criminal policy. It has sometimes been used negatively, for example when, under previous regimes, Ministers of Justice issued injunctions to encourage the prosecution of journalists or opposition leaders. The Minister of Justice told Human Rights Watch that he intends to exercise this power in a more positive way, to reflect a firm government policy against impunity in Ituri. Human Rights Watch believes that this power should be used in a way that does not infringe on the rights of the accused nor prejudice the presumption of innocence and other fundamental principles of a fair trial.

<sup>16</sup> This draft law, prepared by the Standing Committee on Reform of Congolese Law in 2002, was submitted to the Minister of Justice in April 2003. It has to be approved by the Cabinet before its adoption by the Parliament, but it seems that this process has not yet been initiated.



against humanity of enforced disappearance,<sup>17</sup> for which the court would not have demanded evidence of the victim's death, as it did in its decision of June 3, 2004.

However, even in the absence of a law to implement the ICC statute, the prosecutor is not entirely without legal instruments to fight against impunity for serious crimes in Ituri. First of all, the majority of these crimes can be qualified as offences that exist in the prevailing penal code. The judges can also apply the ICC statute directly in any case, since it is now part of internal Congolese law under the transitional constitution.<sup>18</sup>

Fifteen major leaders of armed groups are currently under arrest. However, they have not been arrested or prosecuted for the atrocities that the population witnessed them commit, order, or approve. MONUC has not provided the prosecutor with information in its possession regarding serious crimes involving these leaders, for which it had arrested some of them before the arrival of the new judges.<sup>19</sup> These individuals were prosecuted for less serious offences and often were acquitted or given sentences that could have led the local population to doubt the seriousness of the new judicial authorities in Bunia. On June 3, 2004, the court only sentenced Prince Mugabo Taganda to 48 months in prison for "ordinary theft" of a stereo system, although this major leader of an armed group was "commander of the operations of the UPC in Bunia" for all or part of the period from August 2002 to June 6, 2003.<sup>20</sup> Sentencing Prince Mugabo for the theft of a stereo system while, under his command in Bunia, the UPC carried out systematic attacks against the Lendu and other groups involving torture, arbitrary arrests, summary executions, and enforced disappearances<sup>21</sup> does not seem to meet the need for justice of a population traumatized by years of bloody conflicts.

From the conception of the program, the decision was made to focus only on offences classified as more minor crimes, thereby excluding serious crimes of an international nature. This decision is becoming untenable. The judicial system in Ituri is undermining its own credibility and placing its legitimacy at risk by sentencing an individual for the theft of a stereo system when that individual was notorious for supervising torture chambers and presiding over the summary execution and enforced disappearance of numerous victims.

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<sup>17</sup> Article 17 of the draft law introduces Article 222 into the Congolese Penal Code, under which paragraph 7 defines the crime against humanity of enforced disappearance.

<sup>18</sup> The Minister of Justice has suggested that the argument of the inadequacy of the criminal legislation could be used by judges as a pretext for concealing fear of taking action against the major war criminals in Ituri. (Human Rights Watch telephone interview, July 2, 2004) Nevertheless, Human Rights Watch considers the adoption of this draft law necessary due to its importance for cooperation between the ICC and the Congolese judicial authorities and the fact that it provides for practical procedures and provisions, such as those relating to sentencing, which are not contained in the ICC statute.

<sup>19</sup> Since the beginning of 2003, MONUC has carried out several investigative missions that have enabled it to collect information about serious crimes committed during massacres in Ituri and their perpetrators. See "La MONUC enquête sur les violations des droits de l'Homme en Ituri," Agence France-Presse (AFP), Kinshasa, January 10, 2003.

<sup>20</sup> Prince Mugabo even admitted this role during a hearing of the court in April 2004.

<sup>21</sup> Human Rights Watch, *Ituri: "Covered in Blood." Ethnically Targeted Violence in Northeastern DR Congo*, July 2003, p. 29.

#### IV. Obstacles linked to security conditions

Security in Ituri is still very precarious. The program was based on the assumption that the security situation would gradually improve and allow the judicial system to function normally. That has not been the case. Security was mentioned by the judges as one of the most serious obstacles they face. “The judges are uneasy,” the prosecutor told the press, adding that he had received threats himself.<sup>22</sup>

The judges recently criticized the poor security conditions in Bunia in a joint memorandum handed to the Réseau Citoyens Network (RCN) on May 22, 2004.<sup>23</sup> The memorandum points out that the judges and judicial personnel “are working in a total psychosis relating to the numerous threats to their physical integrity, made against them by extremists on all sides, formerly active members of the various armed groups, several of whose leaders are under arrest, awaiting judgement as the instigators or perpetrators of the orchestrated massacres in the District [of Ituri].”<sup>24</sup>

- *A wide impunity gap*

In Bunia, the presence of MONUC has contributed to improving a dire security situation. It has had a substantial deterrent effect on the armed groups, which were not disarmed. Patrols are organized regularly in some quarters of the town to reassure the population. Outside the town, however, the situation is less rosy. MONUC's control is limited to the immediate outskirts of the town of Bunia and a number of larger towns in the interior, leaving entire areas of the Ituri district to the control of armed groups. MONUC's control over the town of Bunia itself is neither total nor entirely effective. The town is still subject to sporadic security breakdowns and whole neighborhoods are still under the effective control of armed groups.

Therefore, MONUC faces tremendous difficulties in serving warrants issued by the prosecutor or conducting investigations in these no-go areas. The judges have still not begun investigating in some areas within Ituri and will probably not be able to do so in places where MONUC is not able to patrol.<sup>25</sup>

An impunity gap is opening up between crimes committed in Bunia, which are mostly within the reach of the investigations of the court, and those carried out in the remainder of Ituri, which escape prosecution. According to a local organization, “the *Tribunal de grande instance* of Bunia, which by definition has competence for offences committed in the whole Ituri district, only exercises its powers in the town of Bunia. Residents of the territories of Aru, Mahagi,

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<sup>22</sup> “Pour la fin de l’impunité en Ituri, les moyens ne sont pas au rendez-vous,” AFP, April 11, 2004.

<sup>23</sup> “Réseau Citoyens Network” (RCN Justice et Démocratie) is a Belgian nongovernmental organization that is managing the program for rapid restoration of the judicial and criminal system in Bunia on behalf of the European Commission. In particular, it deals with the supply of operational materials for the court and the Prosecutor’s Office, the supervision of living conditions in the prison, the granting of training courses and follow-up trainings for judges, payment of judges’ “stipends,” etc.

<sup>24</sup> Confidential note for the attention of the NGO RCN/Bunia, May 22, 2004.

<sup>25</sup> This situation could change gradually: MONUC investigators and representatives of the Prosecutor’s Office recently carried out joint investigative missions, including in the areas of Tchomia, Kasenyi, and Fataki.

Irumu and Djugu know that the court exists, but are unaware of its action in their everyday lives.”<sup>26</sup>

- ***Afraid to testify***

Due to the precarious security situation, the judiciary in Bunia cannot rely on effective cooperation from the population. Potential witnesses refuse to make statements, citing the limitations of MONUC and its inability to establish security throughout the Ituri district. They also mention threats made against the judges themselves, like those contained in a document delivered to the offices of the judges promising that they would die and describing plans to set fire to the court building.<sup>27</sup> Fear of testifying is therefore depriving the judges of the means to investigate crimes committed in Ituri. According to one judge, the majority of the victims who make statements then refuse to sign them, making them useless in court. Additionally, when witnesses are summoned, many insist that they will only talk to the investigative judges on the condition that they are not called to testify in court.

The fear of testifying is justified by the still very active presence of armed groups. At the same time that the judges have succeeded in imposing relative discipline in the courtroom, armed groups have stepped up their activities outside the trials. Acts of intimidation have been reported by potential witnesses and the families of victims. One manager of a local public-sector company received phone calls containing death threats while he was preparing to testify against Aimable Rafiki. Some of the individuals issuing threats openly identified themselves as members of the UPC or said they were calling on behalf of Thomas Lubanga, president of the UPC.<sup>28</sup> The judges have criticized the fact that they have no means of protecting witnesses.

Fear of testifying could explain, in part, the acquittal of Matthieu Ngunjolo by the court on June 3, 2004. Ngunjolo was prosecuted, among other charges, for the kidnapping and murder in September 2003 of a UPC sympathizer who had been sent to the headquarters of the FNI to negotiate with FNI leaders and invited them to a meeting organized by MONUC. While he appeared very confident at the start of the trial,<sup>29</sup> ultimately the prosecutor was only able to produce one prosecution witness. The other witnesses who had made statements during the investigation withdrew them and refused to appear in court due to pressure from the leaders of the FNI. The sole prosecution witness only testified at the court’s first hearing, before refusing to appear at subsequent sessions, citing increasingly insistent threats by FNI supporters. In the end, the prosecution had nothing left to support its case and the only option left to the court was to acquit Matthieu Ngunjolo due to lack of evidence.

- ***Relocating the trials***

Referring to the threats and the climate of insecurity, the prosecutor proposed that the cases be investigated locally, but that the trials take place elsewhere.<sup>30</sup> The idea that certain trials should be held outside Ituri as a possible solution to the lack of safety for witnesses was endorsed by

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<sup>26</sup> Justice Plus, “Une justice sélective contre une masse d’impunité,” *press release*, Bunia, May 8, 2004.

<sup>27</sup> Memorandum from the judges, see note 24 above.

<sup>28</sup> Human Rights Watch interviews in Bunia, May 2004.

<sup>29</sup> In particular, he told AFP that “the facts of the case appear indisputable and [Ngunjolo] is liable to get the death penalty,” “Pour la fin de l’impunité en Ituri, les moyens ne sont pas au rendez-vous,” AFP, April 11, 2004.

<sup>30</sup> “Pour la fin de l’impunité en Ituri, les moyens ne sont pas au rendez-vous,” AFP, April 11, 2004.



MONUC, which submitted the proposal to the Minister of Justice.<sup>31</sup> The Minister of Justice seems to be in favor of the idea that Kinshasa host certain trials. A list of accused that could be transferred to Kinshasa to stand trial was under preparation at the Ministry of Justice, even though some of the minister's advisers claimed that there were constitutional obstacles to relocating the trials.<sup>32</sup>

The relocation of certain trials offers some advantages. In Kinshasa, some witnesses might be less fearful of pressure and threats from the armed groups. The protection of witnesses by the police or MONUC in Kinshasa could also be easier than in Bunia.

However, conducting investigations in Bunia and holding trials in Kinshasa seems like a poor compromise between witness safety and effective prosecutions. Verbal testimony is just as necessary – if not more so – during the investigation than at trial. The safety of witnesses at a trial only makes sense if the investigation phase reflects the same safety measures. However, if investigations take place in Bunia, they will continue to be negatively affected by witnesses' fear of giving testimony. If they take place outside Ituri, the investigations will be made inefficient due to their distance from the place where the crime was committed.

Some judges in Bunia would prefer to see the trials held locally. According to one judge, “the crimes were committed here, so it is important that the perpetrators should be tried here.”<sup>33</sup> Another expressed the fear that the transfer of the most important cases to Kinshasa might harm the prestige and the authority of the local judicial system. According to him, transferring cases to Kinshasa could lead to doubts about the deterrent effect of the judicial process: “The arrests that we have made so far have started to be a deterrent here. We saw that the leaders of the armed groups were weakened by the judicial system.”<sup>34</sup>

Human Rights Watch believes that systematically transferring all or most of these trials to Kinshasa could establish an unfortunate precedent and divert the government from its obligation to take all necessary measures for the protection of witnesses. It appears reasonable to explore all the possibilities available and take any measures that could allow the trials to be held in the place where the crimes were committed and only relocate the trials as an absolutely exceptional measure.

## **V. Lack of support for judges**

In light of the fact that the program was intended to compensate for the virtual absence of the state in terms of Ituri's judicial system, the limited support that the judges and the Prosecutor's Office are receiving is paradoxical, to say the least. The judges and investigative judges complain about the lack of resources, their modest pay, and the inadequate management system set up by the European Commission.

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<sup>31</sup> Human Rights Watch interview with Mr. Yenyi Olungu, Chef de Cabinet for the Minister of Justice, Kinshasa, May 3, 2004.

<sup>32</sup> Ibid. Mr. Yenyi Olungu quoted Article 22 of the Transitional Constitution, which provides that: “nobody can be removed from the court that is assigned to him by law.”

<sup>33</sup> Human Rights Watch interviews, Bunia, April 8, 2004.

<sup>34</sup> Ibid.

The resources allocated to the judicial system in Bunia are inadequate and do not appear to be satisfactorily managed. Neither the president of the court nor the Prosecutor's Office has a budget for the operation of their respective organs. The budget is managed by RCN on behalf of the European Commission according to a system of priorities that has not been explained to the judges. The judges state, for example, that more than three months after the start of the program, the Prosecutor's Office was still operating with a single typewriter. The purchase of computers, which the judges considered essential for their work, was rejected as a luxury. They also pointed out that their needs are completely controlled by RCN, down to the tiniest details, like their daily meals and the furniture for their homes.<sup>35</sup>

The follow-up trainings for judges is another area in which the priorities of the program could be re-oriented for the better. Under the Memorandum of Understanding, RCN organizes regular training and follow-up training sessions for investigative judges, judges, and judicial personnel. However, the investigative judges question the usefulness of these sessions in light of their content and cost. Several investigative judges are of the opinion that these sessions do not teach them anything particularly new. "These are things that we already know or could learn at lower cost," stated one investigative judge, citing an instance in which a French expert was recently paid 5,000 euros to run two weeks of training for prison staff.<sup>36</sup> This money, continued the investigative judge, could have been better spent, for example in providing equipment for the Prosecutor's Office or the court.<sup>37</sup>

The salary of investigative judges, judges, and personnel of the Registry and the Prosecutor's Office should also be improved and paid by the government of the DRC. The Minister of Justice recently reaffirmed that the restoration of the authority of the state in Ituri remains at the top of the government's list of priorities.<sup>38</sup> The government must demonstrate this by paying the investigative judges a decent salary at regular intervals. At present, the program does not enable payment of the salary of personnel of the Registry or the Prosecutor's Office. The judges and investigative judges receive a monthly stipend of \$233. This amount, according to the investigative judges, is "worse than meaningless because it does not even cover 30% of our monthly needs."<sup>39</sup> The investigative judges also criticized "the untimely exhaustion of stocks of food."<sup>40</sup> On the occasion of the program renewal, all the parties involved should reaffirm the principle that the burden of paying the salaries of judicial personnel should be borne by the government.

It is also important for donors to ensure that the funds of this program are managed efficiently. The interests of justice must guide any future long-term planning. In this regard, donors should take into account the concerns expressed by the investigative judges, judges, and other judicial experts on the management of the program. This program must go beyond ad hoc short-term

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<sup>35</sup> According to one judge, "They manage us like little children; they even buy our soap." Interview carried out by Human Rights Watch, April 8, 2004. This was formally challenged by RCN which, in a letter to Human Rights Watch, stated recently: "It is completely incorrect that any soap has ever been supplied, and the only meals provided were as part of training courses, as is usual practice, and never under any other circumstances."

<sup>36</sup> Human Rights Watch telephone interview, June 16, 2004.

<sup>37</sup> Ibid.

<sup>38</sup> Human Rights Watch telephone interview, July 2, 2004.

<sup>39</sup> Memorandum from the judges, see note 24 above.

<sup>40</sup> Ibid.

assistance and form the foundation on which the reconstruction of an independent and effective judicial system can be based, in Ituri and beyond.

## **VI. Limited investigative capability of the Prosecutor's Office**

The Prosecutor's Office is not prepared to investigate the serious crimes that have cast a shadow over Ituri since the conflict in this region began in 1998, nor does it have the personnel to deal with more minor crimes. Four investigative judges are not sufficient to inquire into all the cases that have been accumulating during the years of judicial collapse in Bunia. Until the beginning of May 2004, 300 cases were under investigation at the Prosecutor's Office, 45 had been referred for trial, and 30 judgments had been handed down.<sup>41</sup> These figures mean that each of the four investigative judges in the Prosecutor's Office currently has an average of 75 cases to investigate. Under these conditions, and in the absence of police expertise and adequate equipment, either the investigative judges need an excessively long time to complete their investigation of each case or the investigations have to be rushed.

Three things must be accomplished quickly. First, it is imperative to increase the number of staff for investigative judges and judges if they are expected to carry out serious investigative work. There are insufficient personnel in the judicial police and the Prosecutor's Office to handle the high level of crime in Ituri, including for more minor crimes. Second, the Prosecutor's Office must be provided with a judicial police force consisting of armed police officers and inspectors experienced in criminal investigations. The government, which is responsible for this, has not provided Bunia with any police force to date. At the beginning of April, Emmanuel Leku, one of the leaders of the interim administration of Ituri, complained that "not one police officer or soldier had been sent by Kinshasa."<sup>42</sup> This vacuum forces the Prosecutor's Office to rely on the forces of MONUC to execute its warrants. However, MONUC, which cannot take over the functions of the national judicial police, only cooperates with the Prosecutor's Office in cases which correspond to its own security policy.

In addition to the bureaucratic procedures of MONUC that slow investigations down, the support of MONUC forces in executing the warrants of the Prosecutor's Office creates dependence, or a perception of dependence, on MONUC by the Prosecutor's Office. Such dependence is reinforced by the absence of a clear government policy on crimes committed in Ituri. It is up to the government to remedy this inconsistency by giving the judicial system in Bunia its own police force. Cutting the cord of dependence between the Prosecutor's Office and MONUC is necessary so that the judicial system in Bunia ceases to function as a body legitimizing the various arrest measures of MONUC. The investigative judges should also make a personal effort to distance themselves from MONUC. It is very worrying to learn that the investigative judges have been reduced to seeking the opinion of MONUC on applications for provisional release submitted by prisoners.

Finally, the investigative judges must be given appropriate expertise to enable them to investigate complex crimes of the type that have been committed in Ituri, often characterized by the involvement of multiple perpetrators and multiple victims, and requiring an investigation

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<sup>41</sup> Ibid.

<sup>42</sup> Francois-Xavier Harispe, "Wheels of justice turning in Congo," AFP, April 2004.

backed by forensic expertise. In this regard, it is necessary to urgently create a team of investigators for Ituri that would work in cooperation with the Prosecutor's Office in Bunia. Such a team of investigators would consist of investigative judges, experienced police investigators, and forensic experts. They would form a mobile team that could be deployed anywhere in Ituri, depending on the situation and the sites where the crimes took place. This team would support the Prosecutor's Office both to clear the backlog and give it more useful training on investigative methods.

## **VII. Recommendations**

To the government of the Democratic Republic of Congo:

- Define a clear judicial policy on the fight against impunity in Ituri and extend the program to include serious crimes committed during the armed conflict in Ituri.
- Remedy the shortage of judicial personnel; in particular, increase the number of investigative judges and investigators in the Prosecutor's Office.
- Pay a regular, decent salary to judicial personnel.
- Instruct the investigative judges at the Prosecutor's Office and the judges to extend their work beyond the town of Bunia through regular hearings in the various territories of the district of Ituri outside of Bunia.
- Reinforce the investigative capability of the Prosecutor's Office, particularly by providing it with a judicial police force, an experienced mobile investigative team, and an adequate budget.
- Establish a witness protection program as a matter of urgency, if necessary with international assistance.

To the European Commission and other donors:

- Renew the program of support for the judicial system in Ituri for an additional period of at least one year. Use that period to plan a longer-term assistance program to aid the judicial system in Ituri, and the rest of the DRC, in order to guarantee the program's continuity.
- Restructure the management of the program, giving the Congolese judicial authorities a greater role, particularly the Judicial Police of the Prosecutor's Offices (*Police Judiciaire des Parquets*), the Documentation and Studies Service, and the Judicial Services Inspectorate, which are better suited to enhance the capabilities of judicial personnel than a nongovernmental organization.
- Increase the financial resources of the program with a view to improving the performance of the judicial system in Ituri, particularly through the following measures:
  - Increase funding for office equipment.
  - Enhance the operational capabilities of the Prosecutor's Office by holding regular training sessions for investigative judges on investigation methods, with the assistance of more experienced investigative judges, and by increasing the technical personnel at the Prosecutor's Office.

To MONUC:

- Improve security conditions in Bunia, and in Ituri more generally, through specific measures, particularly by accelerating the implementation of the program for disarmament and demobilization of members of armed groups.
- In collaboration with the National Transitional Government, set up a witness protection program and increase the security for judicial personnel.
- Make the process of collaboration with the judicial system more flexible in order to enhance efficiency. This could result, for example, in the designation of a point person within MONUC/Bunia responsible only for centralizing the granting of assistance to the Prosecutor's Office.
- Participate in the fight against impunity, particularly by providing the Prosecutor's Office with information on serious crimes committed in Ituri and their perpetrators.