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Republic of Congo

A past that haunts the future

1. Introduction

In January and February 2002 Amnesty International delegates set out to look into on-going human rights concerns in the Republic of Congo. At the end of the visit to the capital, Brazzaville, the delegates found that the violent past continued to haunt the Republic of Congo, despite official protests to the contrary.

In this report, Amnesty International expresses grave concern at the “disappearances” and other human rights violations to which hundreds of refugees returning to Brazzaville were subjected during and after May 1999. The organization is concerned that the Congolese authorities have failed to take adequate measures to establish responsibility for the violations and bring those responsible to justice. The government has also failed in its international obligation to protect the fundamental rights of refugees and asylum-seekers, especially those from the Democratic Republic of Congo (DRC).

Government forces and members of the *Ninja* armed political group have deliberately targeted unarmed civilians, killing dozens and displacing thousands. The judiciary has failed to protect Congolese citizens from arbitrary arrests, unlawful detentions and torture which has, in some cases, resulted in the death of the victims.

On numerous occasions during recent years the United Nations High Commissioner for Refugees (UNHCR) has failed to fulfil its mandate to offer protection to asylum-seekers and refugees. The refugee agency has in some cases facilitated repatriation of refugees when the returnees had no guarantees of safety and dignity on arrival in their country of origin. The UNHCR failed to inform the international community and the refugees about the risks the returnees faced and demand action to prevent refoulement. Lack of transparency in the provision of assistance and protection of asylum-seekers and refugees has engendered a climate of suspicion and even hostility towards the UNHCR and other humanitarian agencies in the Republic of Congo.

Information gathered during the 2002 visit confirmed that several hundred Congolese citizens who had fled Brazzaville at the end of 1998 were “disappeared” by members of the security forces in mid-1999. The official position of the government has remained that no returnees were arrested or “disappeared”. However, amidst sustained

pressure from relatives of the victims and human rights organizations, in late 2001 the government set up a parliamentary commission of inquiry to investigate “disappearances” that have occurred in the country since 1992.

The United Nations High Commissioner for Refugees (UNHCR), a party to a tripartite agreement on repatriation from the DRC to the Republic of Congo, failed to protect the returnees or to secure verifiable guarantees that the returnees would not be subjected to serious human rights violations. Amnesty International is also concerned that the authorities of the Republic of Congo secretly, unlawfully and forcibly returned 19 asylum-seekers from the DRC to the authorities of their country of origin. At the end of an unfair trial which started in March 2002, these victims of forcible return were sentenced to life imprisonment and had no right to appeal against the sentence or conviction. The organization is also concerned that the authorities in the Republic of Congo and the office of the UNHCR were not providing adequate protection to asylum-seekers and refugees in the country.

During the visit, Amnesty International delegates noted that the city looked quite peaceful. Much of the structural damage and scars that the city had sustained during past armed conflicts, particularly in the second half of 1997, were virtually invisible. Indeed the authorities were keen to impress on the delegates that the Republic of Congo, and Brazzaville in particular, was a much safer place than before President Denis Sassou Nguesso returned to power in December 1997¹. The apparent peace was to be shattered barely two months later (see Part II of this report) by fighting in the Pool region and in Brazzaville.

The organization’s previous visit occurred in August 1998 when its delegates received numerous testimonies about grave human rights abuses perpetrated by members of the security forces and combatants of various armed political groups in the context of a violent power struggle a year earlier. An earlier visit in July 1997 had been cut short by an eruption of serious political violence in which as many as 20,000 people were killed. Information gathered during and after the 1998 visit was published by Amnesty International on 25 March 1999 in a report entitled, *An old generation of leaders in new carnage* (AI Index: AFR 22/01/99).

In the March 1999 report, the organization described in detail how government and armed opposition forces in the Republic of Congo had conducted a deliberate campaign of killing, wounding, “disappearing” or abducting and torturing civilians, as well as combatants in custody or who were *hors de combat*. Angolan government forces

¹ Denis Sassou Nguesso, a former army general, first came to power by coup d’Etat in 1979. He lost power to Pascal Lissouba after the country’s first post-independence multi-party general election in mid-1992.

which had been sent to the Republic of Congo to support then armed opposition leader Denis Sassou Nguesso against a government led by President Pascal Lissouba and his Prime Minister Bernard Kolelas were also involved in serious human rights violations, including extrajudicial executions and rape of women and girls. It is only at the end of 2002 that the Angolan Government announced that it would be withdrawing its forces from the Republic of Congo.

In 1998 the new government led by President Denis Sassou Nguesso blamed the abuses on Pascal Lissouba's *Cocoyes* militia and Bernard Kolelas' *Ninjas*. Pascal Lissouba, Bernard Kolelas and their supporters blame the abuses on Denis Sassou Nguesso's *cobra* militia. As a means of establishing the truth about the causes and course of the abuses, and to ensure that justice is done on behalf of the victims, most of them unarmed civilians, Amnesty International recommended that a competent, independent and impartial inquiry be set up to investigate the abuses. No such inquiry was established and the matter remains largely unresolved and further abuses, including unlawful killings and "disappearances", have since been committed with impunity.

Successive Congolese governments have attempted to hold on to power and to build political stability on a foundation weakened by a history of impunity and against a background of grave human rights abuses by their forces and those of their armed opponents. The current government hoped that by winning a Constitutional referendum in January 2002, a presidential election in March and a parliamentary election in June it would eliminate all armed opposition. A month after the referendum, armed conflict erupted in the Pool region, south of Brazzaville. Indeed the general election which was initially scheduled for March 2002 had to be postponed. As fighting between government forces and armed government opponents escalated after the elections, all parties to the armed conflict carried out widespread serious human rights abuses, including unlawful and indiscriminate killings, "disappearances" and abductions, torture, including rape, and other forms of ill-treatment. Other abuses which continued to be reported throughout 2002 included forced displacement of local unarmed civilian populations, some of which were reportedly attacked, killed or injured by government forces using helicopter gunships.

Amnesty International is publishing this report to draw the attention of the international community to the continuing and unresolved human rights concerns, including the 1999 "disappearances", in the Republic of Congo. The organization also seeks to highlight the serious abuses committed by armed government opponents, as well as the failure of the UNHCR to protect asylum-seekers, refugees and returnees. The organization hopes that information published in this report will encourage the UNHCR to take adequate measures to prevent abuses against asylum-seekers and refugees in the Republic of Congo and the wider central African region. Amnesty International also

hopes to contribute to a debate within the Republic of Congo to end a culture of impunity and long history of serious human rights abuses.

2. PART I: REFUGEES DENIED PROTECTION

2A. Returning to “disappear”

As many as 353 refugees returning to Brazzaville from the DRC in May 1999 “disappeared” after they were arrested and taken by members of the security forces to destinations that have not been disclosed by the authorities of the Republic of Congo. Sources in Brazzaville believe that relatives of many others who “disappeared” have opted not to divulge any information for fear of reprisals. According to testimonies gathered from survivors, the victims’ relatives and local human rights groups, it is widely believed in the country that the victims were extrajudicially executed and their bodies secretly disposed of. However, the authorities have largely refused to acknowledge that any arrests were carried out or that any returnees were “disappeared”.

The “disappeared” are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied. “Disappearances” cause agony for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; often they are tortured; many are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead.

The United Nations has condemned “disappearances” as a grave violation of human rights and has said that their systematic practice is of the nature of a crime against humanity. Yet thousands of people “disappear” each year across the globe, and countless others remain “disappeared”. Urgent action is needed to stop “disappearances”, to clarify the fate of the “disappeared” and to bring those responsible to justice.

2A.1 The flight to exile

The victims who “disappeared” were among tens of thousands of people who fled their homes in the context of fighting and widespread human rights abuses, especially in southern Brazzaville and the Pool region in late 1998 and early 1999. Several hundred thousand civilians went into hiding in the forests in the Pool and others crossed to the Bas-Congo province of the DRC.

Responding to an armed incursion by *Ninjas*, apparently supported by *Cocoyes*, in late August 1998, government forces carried out extrajudicial executions of hundreds of unarmed civilians, most of them males, including children as young as 10 years old, who they apparently accused of belonging to or supporting the *Ninjas*. As many as 2,000 civilians, many of them elderly people who were too frail to flee, were killed in southern Brazzaville's Makélékélé and Bacongo districts during December 1998 and in early January 1999. Many other unarmed civilians were reportedly killed by shells lobbed indiscriminately into southern Brazzaville. In early January 1999, the authorities reported that as many as 415 bodies were found in southern Brazzaville and buried. Sources in and outside Brazzaville claimed that most of the victims were unarmed civilians deliberately and arbitrarily killed by *Cobras* and government forces. The authorities did not specify the identities of the victims or their killers.

Many unarmed civilians are reported to have been extrajudicially executed by government forces in the Pool province, including in its capital, Kinkala, in late 1998 and in January 1999. Government forces reportedly killed as many as 200 unarmed civilians in Mouyondzi, Nkayi and other parts of Bouenza region during an offensive in mid to late December 1998 to dislodge *Cocoyes*. Many other civilians were killed during indiscriminate shelling of areas in Bouenza where *Cocoyes* were assumed to be based. The number of dead in the overall armed conflict has never been established nor suspected perpetrators identified by a formal investigation.

Shortly after, the government of the Republic of Congo made public appeals, including using radio and television, to the refugees and internally displaced persons (IDPs) to return to their homes. The government announced that peace had returned to the areas they had fled from and that there would be no retribution or revenge against the returnees.

2A.2 False promises for safety of returnees

At the initiative of the government of the Republic of Congo, it, the DRC Government and the UNHCR signed a tripartite agreement on 10 April 1999 for the repatriation of Congolese refugees wishing to return². The agreement itself suggested that the UNHCR was not convinced that conditions in the Republic of Congo were conducive for the return of refugees in safety and dignity. The agreement says that while awaiting requisite

² *Accord tripartite entre les Gouvernements de la République Démocratique du Congo, de la République du Congo et le Haut Commissariat des Nations Unies pour les Réfugiés portant sur la situation des réfugiés Congolais de la République du Congo en République Démocratique du Congo*

conditions for organized and assisted repatriation, the UNHCR would facilitate return of refugees who wished to return. This would consist of transport and food assistance during the return from the DRC to Brazzaville. During meetings with UNHCR officials in Brazzaville in early 2002, Amnesty International delegates did not get a clear explanation from UNHCR officials as to why the agency became party to the agreement when it clearly had serious reservations. Furthermore, there was no follow-up monitoring and mechanisms set up by the UNHCR to verify that those who returned to Brazzaville could do so in safety and dignity. The tripartite agreement was signed by the ministers of interior of the DRC and the Republic of Congo, and the regional delegate of the UNHCR based in Kinshasa, the capital of the DRC.

According to relatives of the “disappeared”, when they realised that numerous arrests were occurring they quickly informed the government authorities and the UNHCR. The relatives informed Amnesty International that when boats carrying the returnees docked at the Brazzaville port on the Congo River, there were no attempts by UNHCR officials on the boat or in Brazzaville to accompany the returnees to their destinations.

After learning of the arrests, the UNHCR wrote a letter³ on 21 May 1999 to the Congolese Minister of Foreign Affairs, which was copied to the Minister of the Interior, the Minister of Health and the acting Resident Representative of the UN Development Program (UNDP). The letter stated that the UNHCR had already facilitated the return of 6,000 refugees and that without its knowledge some returnees had been arrested. The UNHCR highlighted several examples of human rights violations by security officials of the Republic of Congo. On 5 May 1999 some 20 returning youths were taken away by armed personnel to an unknown destination. The incident was reported by UNHCR representatives to the Minister of Health who was coordinating the return on behalf of the Congolese Government but got no reply. According to the UNHCR letter, on 10 May more arrests occurred. On 12 May 415 returnees from Kasangulu in the DRC were reportedly severely ill-treated by armed elements. These incidents took place at Nganga Lingolo in Brazzaville where returnees had been assembled. The letter concluded by requesting that checks and any arrests of those repatriated be carried out transparently⁴ and demanded an explanation for the incidents mentioned.

According to the UNHCR no reply was received from the government. Nevertheless, UNHCR failed to make public apparent “disappearances” and possible killings of returnees and did not warn the refugees against return. Amnesty International believes that, as a minimum, this should have been done until there were sufficient

³ Reference No.: KIN/DRA/0894/99

⁴ “... de tels controles ... toute arrestation de rapatrié, doivent se faire en toute transparence”.

guarantees for their safety and dignity on return to their country. A UNHCR official in Brazzaville told Amnesty International delegates in February 2002 that the agency facilitated the return of 45,000 Congolese refugees from the DRC between 1999 and 2001. Smaller numbers of refugees who remained behind have continued to repatriate, including 32 who returned to Brazzaville in September 2002. Many of the returns took place after the “disappearances”, despite the fact that the UNHCR had received no guarantees of safety from the Congolese Government or clarification on the issues raised in its 21 May 1999 letter.

Many of the relatives of the victims and human rights organizations in Brazzaville believe that the “disappeared” were actually extrajudicially executed after they were interrogated and tortured. Some of the victims were reportedly tortured on the third floor of the *Direction générale de sécurité présidentielle* (DGSP), General Directorate for Presidential Security, situated opposite the main entrance of the Presidency. Places of execution are reported to have included a former presidential palace which housed the Presidential Guard, near a former residence of Mounali (former President Lissouba’s advisor) on the bank of the Congo River. Bodies of some of the victims were reportedly buried in mass graves at Itatolo cemetery⁵ outside Brazzaville, and in several places at Mbanza-Ndounga in the Pool region. Other bodies were reportedly thrown into the Congo River. It is unclear whether the President or his close aides were aware or ordered the arrests, “disappearances” or reported executions of the returnees. A dissident former member of the Presidential Guard submitted a testimony to the victims’ relatives’ association claiming that he was personally present at the execution of 200 and accused top military officials of ordering the killings. Amnesty International believes that only an independent and impartial inquiry would be able to establish the full truth and the extent of the involvement of security and government officials at various levels of the Congolese administration.

2A.3 Narrow escape of a survivor

When war broke out in August 1998 a 40-year-old survivor whose name is known to Amnesty International but who asked not to be named for fear of reprisals, fled Brazzaville with his wife, two children, mother-in-law and several other members of his extended family. They first went to Bondo in the Pool region and subsequently crossed to Bas-Congo in the DRC. Public calls by the government of the Republic of Congo for all internally displaced and refugees to return convinced the survivor that it was safe to end

⁵ Itatolo cemetery was used in 1997 for burying and, or executing victims of unlawful killings, mostly by *Cobra* militias loyal to Denis Sassou Nguesso. For further information, see Amnesty International’s report entitled, *Republic of Congo: An old generation of leaders in new carnage* (AI Index: AFR 22/01/99), published on 25 March 1999.

his exile. He and his family were registered on 2 May 1999 by DRC immigration and UNHCR officials for return.

On 8 May 1999 they and many other returnees boarded a boat on the Kinshasa side of the Congo River and crossed to Brazzaville, accompanied by an official of the UNHCR and one of the Congolese government. The survivor told Amnesty International delegates that on arrival at the Brazzaville port men were separated from women and young children who were allowed to proceed out of the port. At that point there was no representative of the UNHCR present. He, along with 14 other men, including his son, were searched by members of the Republican Guard, a military unit responsible for the President's security, in a hall. His son and two men originating from northern Congo were allowed to go. The survivor and 10 others, including **Joel Yangi**, were stripped naked and placed in a cell at the port after they were registered by men in civilian clothes. He recognized the face of one of the officials from having met him before in Brazzaville. After a few minutes in the cell, he and his co-detainees were made to board a Mercedes Benz truck and taken to the headquarters of the *Direction de renseignements militaires* (DRM), Military Intelligence Directorate. On the way to the DRM they were beaten and he was stabbed in the left arm.

At the DRM, the survivor and his co-detainees were put in a windowless room that had holes in the walls closed off with iron bars. He estimated that it measured five metres by 1.5 metres. The soldiers removed bullets from their guns, filled cartridges with sand and shot at the detainees within the cell. On the second day one boy was shot in the thigh.

On 12 May they were moved to another cell where they found a large group of other detainees. A boy the survivor found in the cell told him that the survivor's brother had been detained there before he was taken away by soldiers. The boy told him that they heard gunshots soon after. The boy and his co-detainees believed that the survivor's brother was executed.

At about 1 pm on 14 May the survivor and the 11 he was initially detained with were put on to truck and made to lie down. The soldiers loaded their guns. As the truck started to move, a senior officer on an upper floor ordered the soldiers to abort their "mission". The detainees were returned to the cell, given their trousers and moved to another room. At about 5 pm, a group of 13, including a citizen of the DRC who was part of the survivor's group of 11, were taken to what he later learned was a river bank behind the Presidency. He claimed that he and others left in the cell heard gunshots soon after. The survivor and others left in the cell believed that the shootings were carried out by the soldiers executing the 13 detainees. When the soldiers returned they were bragging about the executions. He overheard a soldier telling a colleague, "*Vous aussi assassin*" (You too are a murderer).

Without any explanation, the survivor and 40 others were suddenly released on 17 May 1999. He went to the *Plateau des 15 ans* district where he met a man who had survived the executions in which his brother had been killed behind the Presidency. The man had survived by pretending to be dead when he fell down as soldiers opened fire on the group.

2A.4 “Disappearance” of Narcisse Ladislas Touanga

Narcisse Ladislas Tounga, a 28-year-old gendarmerie sergeant was arrested on 8 May 1999 by members of the Presidential Guard at the Brazzaville port on his return from Mbanza Ngungu in the DRC. His father, Marcel Touanga, a former army colonel immediately mounted a search for him. He wrote a letter to Colonel Ossete Niamba, then Brazzaville commander of the Gendarmerie, and met him on 11 May. Marcel Touanga also wrote to a number of senior security officials, including the army Chief of Staff. He approached the police commissioner who said he was powerless to intervene. According to Marcel Touanga, an assistant to the commander of the President Guard said the force had power over life and death on people from the Pool region. Marcel Touanga never found his son. He is the President of the association for relatives of the “disappeared”.

2A.5 Testimony of *Brigadier*

A survivor of the “disappearances” calling himself *Brigadier* to conceal his identity for his safety said he and at least 50 others were arrested when they arrived at the Brazzaville port on 18 May 1999. For four hours they were kept in a room and photographed. Military officers from the Presidency took them to the police headquarters where they were interrogated about their *Ninja* connections. From there they were taken to a former Presidential palace where they were severely beaten, and then taken to a building on the bank of the Congo River where they saw members of the Congolese and Angolan government forces, as well as armed exiled former Rwandese Hutu combatants and white mercenaries hired by the Congolese government. Thereafter the detainees were taken to a room containing about 200 bodies and were ordered to make heaps of 25 bodies each. The bodies were allegedly doused with petrol and set alight, and ashes thrown into the river. For several days until 24 May the detainees were reportedly ordered to burn more bodies. During their detention, the detainees were repeatedly ordered to sing the Congolese National Anthem.

On 24 May *Brigadier* and his co-detainees were visited by an army colonel he knew. The colonel reportedly paid a Rwandese combatant to remove him from the detention room and he was later helped to escape. *Brigadier* was rearrested three months later but his family bribed security officials to release him. On 31 October 1999 he fled to France.

2A.6 Relatives' campaign for the "disappeared"

From mid-1999 to date relatives of the "disappeared" have demanded that the perpetrators be identified, brought to justice and compensation be paid to the victims' families. In August 1999 the relatives set up an association known as the *Association des parents des personnes arrêtées par la force publique et portées disparues*, Association of Relatives of Persons arrested by government forces and "disappeared". The association has made numerous approaches to the Congolese authorities, representatives of foreign governments and inter-governmental organizations, human rights and humanitarian organizations, seeking assistance to find the victims or know the truth about what happened to them.

Since 2001 relatives of the "disappeared" and their supporters have sought to bring legal action against the government of the Republic of Congo in Belgian and French courts. On 5 December 2001 the Paris-based *Fédération internationale des ligues des droits de l'homme* (FIDH) and the *Ligue française des droits de l'homme et du citoyen* (LDH), together with the Congo-based *Observatoire congolais des droits de l'homme* (OCDH) lodged a complaint in a French court in connection with the "disappearances". The complaint accused top Congolese political and military officials, including President Denis Sassou Nguesso and General Norbert Dabira, the armed forces Inspector General, of responsibility for the "disappearances". The court first summoned General Dabira on 19 June 2002 but he failed to attend and the hearing was adjourned to 8 July 2002. Before General Dabira could appear in court, the Congolese Government announced that it would not authorise him to be prosecuted in France. During a visit to Paris, Gérard Bitsindou, a former army captain and government minister, was reportedly interrogated on 9 October 2002 by a French examining magistrate about the 1999 "disappearances". No further action is known to have been taken by the French judiciary. At the end of January 2003, President Denis Sassou Nguesso appointed Gérard Bitsindou as President of the Constitutional Court without having been cleared of the allegations against him.

In early December 2002 the Congolese Government formally submitted an application to the International Court of Justice (ICJ) to nullify judicial proceedings in a French court based at Meaux, east of the French capital, Paris, against Congolese Interior Minister, Pierre Oba. The Minister was being sued with respect to his alleged role in

connection with the 1999 “disappearances” in Brazzaville. The Congolese government reportedly argued that the action in a French court, in which President Denis Sassou Nguesso was cited as a witness, was a violation of Congolese sovereignty. In a press release, the ICJ announced that it was awaiting a response of the French Government regarding the court’s competence to consider the Congolese government’s application.

During a visit to France in mid-September 2002, President Denis Sassou Nguesso denied that returning refugees had been killed in 1999 but said that any allegations of “disappearances” would be investigated by the Congolese judiciary. His host, French President Jacques Chirac reportedly said his government would not intervene in judicial matters regarding the Republic of Congo. By the start of 2003 no Congolese official had been tried in a French court.

2A.7 Response of the Congolese authorities to the “disappearances”

For many months after reports of the “disappearances” surfaced, the government of the Republic of Congo denied that any returnees had been subjected to arrests or other human rights violations. However, some officials did acknowledge the “disappearances”, although they appeared not to take any practical measures against the suspected perpetrators. For example, on 23 May 2001 Colonel Albert Ngoto, a director of police administration, reportedly condemned the “disappearances”. He reportedly said at the time that sections of the security forces had been responsible for the harassment, persecution, murder, rape and abduction of civilians and members of the security forces.

In an apparent move to diffuse the pressure from the relatives and criticism by human rights organizations, in August 2001 the country’s then transitional parliament known as the *Conseil national de transition* (CNT), National Council for Transition, set up a commission of inquiry⁶ to investigate the “disappearances”. Half of its 12 members were allied to President Denis Sassou Nguesso’s ruling party while the other half were from the opposition. The commission’s mandate extended the investigation to 1992 when former President Pascal Lissouba came to power. In early 2002 members of the relatives’ association told Amnesty International delegates that they had not been asked or allowed to testify before the commission of inquiry. On their part, some members of the commission told the delegates that they had sent out questionnaires to the relatives which would enable them to assess the credibility of possible witnesses wishing to testify. Representatives of the victims’ relatives denied that they had received any questionnaires. Amnesty International is concerned that some members of the commission claimed the

⁶ Commission d’enquête parlementaire sur les cas de disparition de certains citoyens de 1992 à ce jour

allegations of “disappearances” were politically-motivated and therefore not worthy of investigation. One member of the commission claimed that allegations of “disappearances” were an incitement to war and not a service to the cause of human rights.

Members of the commission of inquiry told Amnesty International delegates that their investigation would last six months. Testimonies would be collected in public hearings and in writing from families of the “disappeared”, political parties, human rights and humanitarian organizations, as well as from the ministries of defence and interior, and affiliated security agencies. Members of the commission of inquiry said that their findings would be made public, although no date had been set for its publication. They said civil prosecutions by the victims’ relatives had not been excluded.

In a meeting with Amnesty International delegates, a top military officer denied that the security forces had anything to do or had knowledge of the “disappearances”. To emphasise his assertion, he told the delegates that no member of the security forces had been asked to appear before the parliamentary commission of inquiry. The officer said the armed forces, including himself, had received human rights training, including from the International Committee of the Red Cross (ICRC), and could not violate human rights with impunity. However, he said that in order to end the war and lawlessness the armed forces had had to resort to what he called “draconian measures”. He did not elaborate. He claimed that he had no knowledge of the “disappearances” because he was in Dolisie in the western region of the Republic of Congo at the time. He added that some of the victims may have been killed by *Ninjas*.

In late 2002 a member of the parliamentary commission of inquiry said that it had been dissolved, along with the CNT, on 7 August 2002 before it published its report. The report had not been made public by the end of the year. The member said that the commission had lacked resources to carry out a full inquiry and remained factionalized according to political affiliations of its members. By the time it was dissolved, the commission had just started hearing evidence relating to the May 1999 “disappearances”. After the new National Assembly which replaced the CNT was inaugurated on 13 August 2002 no new commission of inquiry was set up to complete the investigations.

Amnesty International learned that on 15 October 2002 an examining magistrate (*juge d’instruction*) of Brazzaville’s High Court began interviewing relatives of the “disappeared”. The examining magistrate reportedly said that the investigation by the court was to establish responsibility for the “disappearances” with a view to bringing suspected perpetrators to justice. On 11 February 2003 the court reportedly interviewed General Norbert Dabira. A government statement said that about 40 members of the security forces and civilians had testified before the magistrate. At the end of the month it remained unclear whether any security or government officials would be interdicted in connection with the 1999 “disappearances”.

2B. Asylum-seekers forcibly returned to torture and unfair trial

On 24 April 2001 the authorities of the Republic of Congo handed the 19 DRC asylum-seekers over to the authorities of the DRC without any form of judicial or other formal proceedings to rule on the legality of the return. The 19 were asylum-seekers registered by the UNHCR. The victims were being sought by the DRC authorities in connection with an alleged plot in late 2000 to overthrow the DRC Government and, or the assassination of President Laurent-Désiré Kabila on 16 January 2001⁷. They are **Marcellin Bugogero Kabona, Vital Malekera Balolebwami, Joseph Balegamire Bafunyebaka, Adolphe Bashizi Mufungizi, Jimmy Bisimwa Chubaka, Georges Yenga Muhindo, Justin Kikuni Longoma, Théodore Basole Baziraboba and Henri Materanya Kasisi**. Others are **Pascal Marhegane Bishanvu, Gervais Baguma Safari, Depho Balungwe Birhashirwa, André Munganga Njaki, Cyprien Bakenga Kakomere, Yves Kompanyi Kizito, Bernard Bahaya Maheshe, Marcellin Cikuru Chambu, Césaire Muzima Mwenyezi and Elias Kashindi Mubone**. The authorities of the two governments carried out the forcible return in blatant violation of international instruments governing extraditions of suspected criminals and the protection of asylum-seekers and refugees against forcible and unlawful return. During meetings with various senior government and security officials of the Republic of Congo, Amnesty International delegates were taken aback by the contradictory responses ranging from denial to attempts to justify unlawful actions.

Amnesty International agrees that in situations where an asylum-seeker or refugee is sought in his / her country of origin to answer recognizably criminal charges, then extradition proceedings should be instituted in a court of law in the host country. The suspect should have a right to challenge in a court of law the basis for the extradition proceedings and have access to legal counsel. Where the extradition is authorized by a court of law, the authorities in the host country should obtain verifiable guarantees that the suspect's rights, including the right not to be subjected to cruel, inhuman or degrading treatment or punishment and to enjoy a fair trial that conforms to international standards, without recourse to the death penalty, will be fully respected.

⁷ See Amnesty International reports entitled, *Democratic Republic of Congo: Deadly conspiracies?* (AI Index: AFR 62/004/2001), published on 28 March 2001, and *Democratic Republic of Congo: From assassination to state murder?* (AI Index: AFR 62/023/2002), published on 12 December 2002.

2B.1 Fleeing human rights violations in the DRC

Fearing persecution and possible death, several dozen members of the DRC security forces, particularly those belonging to the *Agence nationale de renseignements* (ANR), National Intelligence Agency, based in Kinshasa fled to Brazzaville in late 2000 and at the start of January 2001. The wives and children of some of them followed soon after.

The 19 asylum-seekers were associated to **Anselme Masasu Nindaga** who, as an armed political group leader, had recruited many young men and children as combatants and security agents in a war that led to the overthrow of former President Mobutu Sese Seko in May 1997. Masasu was at the time an ally of Laurent-Désiré Kabila who replaced President Mobutu. The alliance subsequently collapsed and Masasu was detained in November 1997 after the authorities claimed he was plotting against the government. He was sentenced to 20 years' imprisonment by the *Cour d'ordre militaire* (COM), Military Order Court, which found him guilty of endangering the security of the state, treason and forming a private militia. He was released in March 2000 following a presidential amnesty for political prisoners. He was rearrested in October 2000 after the authorities accused him of plotting to overthrow the government. In a secret trial he was reportedly found guilty of treason by the COM which sentenced him to death. Around 24 November 2000, Masasu and at least eight of his alleged co-conspirators were executed near Pweto in Katanga province.

From the time of his initial arrest, during his detention and the period leading up to his execution the DRC government security officials carried out a purge to remove or sideline elements among the security forces known or suspected to be Masasu's recruits, most of whom came from Kivu region's provinces of North-Kivu, South-Kivu and Maniema. Masasu himself, son of a Mushi father and a Tutsi mother, came from South-Kivu. His Tutsi parentage appeared to have been in part instrumental to the official suspicions that he might be an ally of the Tutsi-dominated Rwandese Government which was seeking to overthrow President Kabila. Dozens from among those he recruited were arbitrarily arrested and unlawfully detained, while some others were reportedly killed. One of Masasu's former recruits, **Rachidi Minzele**, is widely reported to have assassinated President Laurent-Désiré Kabila on 16 January 2001.

2B.2 Arrest of asylum-seekers by Brazzaville authorities

About 29 members of the DRC security forces linked to Masasu fled to Brazzaville between 30 November 2000 and 12 January 2001. They joined some of their acquaintances who had fled earlier and who were living at Plot number 55 Franceville in Brazzaville which belonged to a DRC refugee. When the residence became overcrowded

19 of them moved out to Plot number 373 Rue Lweme in the Brazzaville district of *Plateau des 15 ans*. All the 29 had been registered with the UNHCR as asylum-seekers between 5 and 13 January 2001. By 15 January 2001 all the asylum-seekers had received from the UNHCR letters officially acknowledging that they had been in contact with the agency. Some of the asylum-seekers told Amnesty International that while in hiding in Kinshasa they had made contact with the UNHCR in Kinshasa to inform the agency about their persecution and their intention to flee from the DRC. Like many local and international human rights and humanitarian organizations represented in Kinshasa, the UNHCR was aware of the arrest of Masasu and persecution of his associates. Some of the refugees told Amnesty International delegates that they were informed by UNHCR officials in Brazzaville that they would only be formally recognized if, after investigations, it was established that they had not been involved in human rights violations, such as torture⁸.

On 28 January 2001 the 19 living on Rue Lweme were arrested by members of the *Police de sécurité publique* (PSP), Public Security Police, who took them to the headquarters of the *Direction général de surveillance du territoire* (DGST), General Directorate of Territorial Surveillance. The DGST asked them to show that they were genuine refugees and interrogated them about the assassination of President Laurent-Désiré Kabila. They showed the UNHCR letters to the DGST and explained that they had left Kinshasa before the assassination. They remained in custody where UNHCR protection officers, fellow asylum-seekers and wives visited them. The DGST promised to release them.

2B.3 Asylum-seekers secretly handed over to the DRC authorities

For many months it was publicly known in Brazzaville that members of the security forces from the DRC and the Republic of Congo were cooperating on security matters and even carrying out joint patrols on the Congo River and its two banks. Speaking to Amnesty International delegates in January and February 2002, the asylum-seekers who had stayed at Franceville and who had escaped deportation claimed that the DGST demanded in early 2001 that the UNHCR resettle the 19 asylum-seekers and others who had fled with them from the Republic of Congo to a third country. It was unclear why the security services demanded the removal of the asylum-seekers. UNHCR officials in Brazzaville reportedly said they were awaiting instructions from their regional headquarters in Kinshasa. In the meantime, government authorities from Kinshasa were

⁸ Article 1F of the 1951 Convention relating to the Status of refugees states: “When there are serious reasons for considering that an asylum-seeker has committed an international crime, such as torture, that person would be excluded from refugee protection.”

negotiating with their counterparts in Brazzaville for the asylum-seekers in custody to be forcibly returned to Kinshasa. Fellow asylum-seekers made approaches to representatives of foreign governments and intergovernmental organizations in Brazzaville to help secure the release of the detainees. On 23 April the detained asylum-seekers were removed from the DGST, while the authorities claimed that the detainees had been transferred to the interior of the country, ostensibly for their safety. It was soon established that the detainees had been secretly handed over to the Kinshasa authorities. Amnesty International has been unable to confirm reports that they were exchanged for some 40 dissidents from the Republic of Congo who had been living in the DRC.

On arrival in Kinshasa the deportees were quickly detained by the ANR and were interrogated, mostly about their connections with Anselme Masasu Nindaga and the assassination of President Laurent-Désiré Kabila. Virtually all of them were held incommunicado without any access to legal counsel, their relatives or to human rights and humanitarian organizations. Even the UNHCR were reportedly not allowed to visit the detainees. Amnesty International received reports that during numerous interrogation sessions many of these detainees were subjected to torture, including beatings, and other forms of ill-treatment. They were subsequently transferred to Kinshasa's central prison known as the *Centre pénitentiaire et de rééducation de Kinshasa* (CPRK), Kinshasa Penitentiary and Reeducation Centre.

In May 2001 the UNHCR granted refugee status to the eight among the group who had not been forcibly returned and to the wives of the forcibly returned asylum-seekers. When Amnesty International delegates met this group of refugees in January and February 2002 they feared that they too risked a similar fate. Indeed, there was palpable fear for safety among virtually all DRC asylum-seekers and refugees in Brazzaville. On 20 April the eight refugees were transferred by the UNHCR to Pointe-Noire. With UNHCR assistance, they were subsequently transferred in November 2002 to two European countries. However, virtually all the wives and children of those who were forcibly returned to Kinshasa in April 2001 remained in Brazzaville.

In February 2003, the UNHCR informed Amnesty International that subsequent to the forcible return of the 19, the refugee agency "addressed a letter to the ROC [Republic of Congo] authorities, protesting this unfortunate move". The UNHCR approached the office of the UN High Commissioner for Human Rights in Kinshasa to follow up on their trial and detention conditions. The UNHCR added that 18 of them had former combatant status and as such were not of concern to the refugee agency. The status of one of them was still being examined to determine whether he should or not be excluded from UNHCR protection. The UNHCR did not explain whether the eight who had been granted refugee status and assisted by the agency to resettle in Europe had been determined as non-combatants.

The 19 forcibly returned asylum-seekers were among 135 people who were subjected to an unfair trial which started in March 2002 before the *Cour d'ordre militaire* (COM), Military Order Court, in Kinshasa, in connection with the assassination of Laurent-Désiré Kabila and an alleged coup plot against President Joseph Kabila in early 2001. Many of the defendants were reported to have been tortured in custody to force them to incriminate themselves and their co-defendants. The defendants were not given adequate time to prepare their defence: they were notified only two to three days before the start of the trial, and were only able to meet their lawyers for the first time on the opening day of the trial. The presiding judges were all members of the security forces with little or no legal training, whose status as members of the executive put in question their independence and impartiality. When the trial concluded on 7 January 2003, the 19 former asylum-seekers were among 28 defendants sentenced to life imprisonment. At the end of January 2003 the offences for which the 19 were convicted remained unclear. Some 30 other defendants were sentenced to death and about 21 others sentenced to prison terms ranging from six months to 20 years. Forty-nine defendants were acquitted. The violation of the human rights of the 19 men on return to Kinshasa clearly demonstrates why the authorities in Brazzaville should not have forcibly returned the asylum-seekers. Even if their extradition had been authorized by a court of law, the authorities should have obtained verifiable guarantees that their civil and political rights would be safeguarded.

2C. Vulnerability of DRC and other refugees in Brazzaville

During their stay in Brazzaville, Amnesty International delegates interviewed several dozen asylum-seekers and refugees, mainly from central African countries. Virtually all those interviewed expressed grave concern for their safety. Whereas the organization's delegates could not ascertain that every single one of them was a political refugee at risk of serious human rights abuses either by the authorities of the Republic of Congo or by those of their countries of origin, it was clear that a number of them had reason to fear for their safety. Significantly, few Congolese officials acknowledged that the asylum-seekers and refugees were at any risk. UNHCR officials recognized that both formal and informal security agreements between the governments of the DRC and of the Republic of Congo made it more likely that a forcible return similar to that of the 19 DRC asylum-seekers in April 1999 could reoccur. However, no mechanisms had been instituted in these agreements to prevent *refoulement*. Only about five kilometres of Congo River water, which can be crossed by speed boat in a few minutes, separate Kinshasa and Brazzaville.

Separately and in groups, several dozen asylum-seekers and refugees told Amnesty International that many of them had stayed in Brazzaville without any decision on their status by the UNHCR and, or the Congolese authorities on their applications for

asylum. This left many of them insecure and devoid of legal, if not physical, protection. UNHCR officials told the delegates that the huge backlog of asylum applications was largely due to inadequate staff. The agency had less than three international protection staff in Brazzaville at any one time during previous years. However, the officials said that by March 2002 the agency would employ as many as 15 international staff and thereafter asylum-seekers would no longer have to wait long for a decision on their applications. In February 2003 the UNHCR informed Amnesty International that at the start of the year the refugee protection team in Brazzaville consisted of one international Protection Officer and five local Protection Officers.

Several DRC asylum-seekers and refugees told Amnesty International delegates that there had been attempts by DRC security agents to abduct them. Although some of the attempted abductions appear to have been carried out with the knowledge or even collusion of the Congo-Brazzaville officials, some appear to have been foiled by the Brazzaville security officials.

On 30 August 2002 former officers of the *Forces armées zairoises* (FAZ), Zairian Armed Forces, who served under former President Mobutu Sese Seko, wrote to the UNHCR expressing concern about an alleged meeting in July between officials of the refugee agency, those of the International Organization for Migration (IOM) and those of the DRC and Congolese governments to forcibly return them to the DRC. On 24 September *Agence France Presse* (AFP), French News Agency, reported that according to Maximo Halty, the IOM representative in Brazzaville, the IOM and the Congolese Government were preparing the voluntary return of DRC soldiers who were refugees in the Republic of Congo. The IOM representative reportedly said that 300 soldiers had already expressed a wish to return to the DRC. The repatriation program concerned 1,500 former members of the FAZ and 2,500 members of the current DRC's army known as the *Forces armées congolaises* (FAC), Congolese Armed Forces, who fled fighting against rebels in the northwestern DRC province of Equateur.

A tripartite agreement to formalise this repatriation was signed on 13 September 2002 by the governments of the DRC and Congo, and the IOM. The repatriation was to be financed by the UN Development Program (UNDP). The agreement did not provide for the involvement of the UNHCR in the repatriation to ensure that any arising protection issues are handled by an organization with the mandate to do so. In December 2002 the IOM informed Amnesty International that an evaluation was under way to define the conditions for reintegration in the DRC of the prospective returnees and the establishment of a technical commission to supervise the repatriation, before the registration of the returnees and the actual repatriation could begin. No date was as yet set for the start of the repatriation.

Whereas it was appropriate for the officials to discuss modalities to assist the repatriation of refugees, Amnesty International is concerned that in this and other cases there does not appear to have been prior consultation and sharing of information with prospective returnees in order to ensure that any repatriation would be entirely voluntary. In February 2003 the UNHCR informed Amnesty International that the agency would not intervene in the planned repatriation of former DRC soldiers on the grounds that they are [former] armed elements. However, the refugee agency said that a few ex-FAZ had been "recognised as refugees in the Republic of Congo and are under UNHCR's mandate". Amnesty International is concerned that there was no role for the UNHCR in the repatriation or monitoring the safety of returnees on arrival in the DRC, especially in light of the grave human rights situation pertaining in the country.

2C.1 Reports of further attempts to abduct DRC asylum-seekers

One of the asylum-seekers who claimed to have survived an abduction attempt was **Lievin Ongala Kitenge Rwankuda**. He originates from Maniema province of eastern DRC. He was a member of the DRC security forces in Kinshasa when he was arrested in November 1999. He was accused of being a supporter of the armed opposition. He claimed to have been tortured while in custody at *Camp Tshatshi* military base in Kinshasa before his family paid US dollars 1,500 to secure his release and subsequent escape to Brazzaville in June 2000.

In early 2002 Rwankuda told Amnesty International delegates that on 10 November 2000 he was approached by men in a white Toyota vehicle at Avenue Marien Ngouabi who said they had a message for him from his sister at the DRC Embassy in Brazzaville. When he approached the vehicle the men bundled him into the vehicle and two of them blocked him on each side in the rear seat of the vehicle. As the vehicle sped off, the men asked him what he was doing in Brazzaville. They asked him about Colonel Georges Kibonge a former senior military official of the *Mouvement de libération du Congo* (MLC), Movement for the Liberation of Congo. He reportedly told his abductors that he had abandoned the rebellion.

At the Poto Poto roundabout, Rwakunda suddenly hit one of the men in the stomach and squeezed his testicles. Having temporarily disabled the man he jumped out of the car. As he landed on the road a police vehicle approached and his would-be abductors fled from the scene in their car. He reported the incident to the UNHCR who he said granted him temporary accommodation. Before the incident, men suspected to be DRC security agents had come to his residence, once in December 1999 and twice in September 2000.

In February 2003 the UNHCR informed Amnesty International that the agency had moved Rwankunda to a different address and was examining a possibility of resettling him to a third country.

Between 9 and 19 October 2002 Amnesty International received reports of actual and attempted abduction of several DRC refugee community leaders in Brazzaville. Sources from among the refugee community claimed that the victims were targeted after they gave interviews to a Voice of America journalist on 6 August 2002. During the interviews, the refugee leaders reportedly denounced sexual harassment of refugee women and corruption by officials responsible for their welfare. One of the victims, **Omer Kande** who was a human rights activist in the DRC before he fled at the end of the 1990s, was reportedly arrested on 9 October by eight armed men in military uniform and four men in civilian clothes. He was taken to a police station in Brazzaville where he was interrogated in connection with his involvement in denunciation of abuses against refugees, including sexual harassment of women. He was reportedly released nine hours later that day and warned to stop his activities. At the start of 2003 Omer Kande informed Amnesty International that he had chosen not to seek UNHCR protection because he did not trust that the agency's protection was effective. In February 2003 the UNHCR confirmed that Omer Kande was neither a refugee nor any asylum-seeker and therefore not of concern to the UNHCR.

Four others, **Maria Mati Nsamba, Jean-Bovet Kandol'Otatete, Serge Ekuntu Ozolem Gaye** and **Jean Salo Gboma** were reportedly seized on 10 October by armed men who forced them on to a truck and took them to a hut in the bush where they were held for nine days. One of the abductors reportedly attempted to rape Maria Mati Nsamba and injured her with a knife on a finger. The others were beaten while in custody. Before returning them to the Moukondo district of Brazzaville and releasing them in the night of 19 October, the abductors warned the refugees to stop their criticism of welfare workers whom they accused of corruption and sexual harassment. The victims informed Amnesty International that they could not report their abduction to the police because they believed those responsible for their abduction had connections with the security forces. For several months these refugees were in hiding fearing arrest and possible "disappearance".

In February 2003 the UNHCR told Amnesty International that Maria Mati Nsamba, Jean-Bovet Kandol'Otatete and Serge Ekuntu Ozolem Gaye were moving freely in Brazzaville. The agency said that it had requested the Congolese Procuracy to open a judicial inquiry into the alleged abduction. It claimed that Jean Salo Gboma had never been kidnapped.

2C.2 Plight of Rwandese Hutu refugees

About 12,000 Rwandese Hutu refugees who fled Rwanda in 1994 and the DRC in 1996 - 1997 remain in the Republic of Congo. Rwandese refugees told Amnesty International delegates that they had received no material assistance from the UNHCR since April 2000. They lacked medical care and relatives of those who died often found it difficult to pay mortuary fees. They claimed that even children were not assisted to get an education. They received no assistance for family reunification, unless they expressed an interest in returning to Rwanda. The refugees said that the Congolese authorities were prepared to give them land for relocation, particularly in the northwest of the country, but in April 2000 the UNHCR declined to assist them.

During meetings with members of the Rwandese Hutu refugee community and representatives of Congolese human rights groups in Brazzaville, Amnesty International learned that the refugees had no effective legal protection from either the government or the UNHCR. For example, when a 22-year-old Rwandese refugee was killed by fellow refugees in mid-January 2002, the police only briefly detained the suspects and took no further action.

Amnesty International is aware that some of the refugees in the Republic of Congo, as in other countries, may have been involved in the 1994 atrocities in Rwanda. It would therefore be appropriate to exclude them from refugee status and material assistance to those against whom there is proof of involvement in serious human rights abuses. On the assumption that a *prima-facie* case of participation in human rights abuses exists, the organization welcomes the arrest on 10 September 2002 by the Congolese police of **Jean Nsengiyumva**, a former Rwandese government official, and of **Ildephonse Hategekimana**, a former officer in the Rwandese armed forces, in February 2003, at the request of the International Criminal Tribunal for Rwanda (ICTR). Jean Nsengiyumva was subsequently transferred to the ICTR headquarters in Arusha, Tanzania, where he was detained. He is accused of having orchestrated massacres in the eastern Rwandese préfecture of Kibungo in 1994. Ildephonse Hategekimana was also expected to be transferred to the ICTR. However, Amnesty International urges the ICTR to ensure that the two suspects are promptly brought to trial and will not stay in custody for several years, as some other Rwandese Hutu suspects have, without trial.

In February 2003 the UNHCR told Amnesty International that it was providing as much legal protection to Rwandese refugees as it did to refugees from other countries. The agency clarified that based on its mandate, "legal assistance is a right for every refugee whereas material assistance is conditional". The UNHCR said that Rwandese refugees received medical care during 2002 and assistance was provided to bereaved families for funerals.

Regarding relocation, the UNHCR said that between December 1999 and June 2002 it had resettled 2,600 Rwandese refugees in Loukolela, northwestern Congo. However, according to the UNHCR, the Congolese government did not allow the integration of Rwandese with a military background. The agency added that this group of Rwandese nationals had failed to cooperate with the UNHCR in its efforts to “satisfy itself as to their non-excludability with regard to their military background”.

2C.3 Response of the Congolese authorities on the plight of refugees

The government agency responsible for refugee issues in the Republic of Congo is the *Comité national d'assistance aux réfugiés* (CNAR), National Refugee Assistance Committee, which is a department of the Ministry of Foreign Affairs. It is responsible for assessing asylum applications, granting refugee status and providing national identity and travel documents. In early 2002 CNAR officials informed Amnesty International delegates that the numbers of asylum-seekers and refugees at the end of 2001 stood at 120,000 from the DRC, 3,000 from the Central African Republic, 7,661 (mostly Hutu) from Rwanda and Burundi, 7,000 from Angola and 100 from other countries.

In a meeting with Amnesty International delegates, CNAR officials expressed concern about the safety of DRC refugees. They said that members of the DRC security services visited the office of the UNHCR in Brazzaville to monitor the activities of dissidents visiting the office. Some asylum-seekers had been threatened by DRC security agents outside UNHCR offices.

According to CNAR officials, the Rwandese Ministry of Foreign Affairs had told its Congolese counterpart that the situation in Rwanda was conducive for repatriation. When the Congolese Ministry of Foreign Affairs asked for CNAR advice, the latter opposed repatriation of Rwandese refugees who did not voluntarily request it. ‘*Putting them [Rwandese refugees] on a plane is a genocide*’⁹, a CNAR senior official told Amnesty International delegates. A CNAR senior official accused the UNHCR of complicity in involuntary repatriation. As an example, the official said that on 30 January 2002 the CNAR had received a UNHCR letter dated 29 January 2002 informing the CNAR of an imminent repatriation of five Rwandese refugees. The refugees were **Edouard Muberandinda, Venant Ndiyomuhozi, Joseph Ngendahimana, Olivier-Emmanuel Turimukiza and Vincent Mishaga**. The letter arrived at the CNAR at 11 am, the scheduled departure time of the plane that was supposed to take the refugees to

⁹ Les mettre sur un avion est un génocide

Rwanda. CNAR refused to authorise the repatriation, insisting that it needed 48 hours' notice to do so. In February 2003, the UNHCR informed Amnesty International that Edouard Muberandinda and Venant Ndiyomuhozi were unaccompanied minors who were reunited with their families in Rwanda in January 2002. Olivier-Emmanuel Turimukiza also returned to Rwanda but Joseph Ngendahimana remained in Congo. The UNHCR did not say what had happened to Vincent Mishaga and did not explain what circumstances led to Joseph Ngendahimana failing to return to Rwanda.

A number of Congolese government officials expressed concern that Rwandese refugees had been abandoned by the UNHCR. One official accused international humanitarian organizations of lacking compassion.

Generally, government and security officials of the Republic of Congo denied that DRC asylum-seekers and refugees were at risk of *refoulement* and other human rights violations. On the specific question of the 19 asylum-seekers who were handed over to the Kinshasa authorities in April 2001, a number of officials claimed that they considered the deportees to be spies of the DRC Government and were as such *persona non grata*. During meetings with Amnesty International delegates, several senior government and security officials claimed that it was against Congolese government policy to forcibly return any asylum-seeker or refugee to the DRC. They claimed that they were determined to prevent a repeat of a repatriation of armed opposition leader **Pierre Mulele** who in 1968 was returned to Kinshasa, only to be extrajudicially executed soon after his arrival, apparently on the orders of former President Mobutu. President Mobutu had given false safety guarantees to the Brazzaville authorities and to Pierre Mulele himself.

One senior government minister suggested that the deportations were an arrangement between the security services of the two countries, and that the government, including the ministries of Foreign Affairs and Justice, had not been specifically consulted or informed. The Minister and several government officials complained that the UNHCR were unable to work efficiently in Brazzaville because the agency's main office was in the southwestern town of Pointe-Noire and not the capital. The government also expressed concern, shared by many DRC asylum-seekers and refugees, as well as Amnesty International, that applications for protection were being handled in Kinshasa, their country of origin. Regarding granting of refugee status, Congolese authorities complained that the UNHCR were acting beyond their powers by recognizing refugees without the involvement of the government.

CNAR showed Amnesty International delegates two ministerial decrees (*arrêtés*) designed to harmonise asylum application and appeal procedures with internationally recognized practices. The first sessions of the two commissions reportedly took place in November 2002 and were scheduled to hold bi-monthly meetings during 2003.

Decree number 8041 of 28 December 2001¹⁰ creates and describes the functions of a refugee eligibility commission, under the CNAR. According to the decree, the commission's functions include judicial and administrative protection of refugees. It oversees the implementation of international and regional refugee treaties. It examines refugee status applications and decides on all urgent concerns affecting refugees and asylum-seekers. The commission gives an opinion on expulsion or extradition of a refugee or an asylum-seeker. It examines applications for resettlement to third countries and facilitates reception of refugees and asylum-seekers. The President of the commission is a representative of the Ministry of Foreign Affairs and the Vice-President is a representative of the Ministry of the Interior. Other members are representatives of the ministries of health, defence and justice, as well as representatives of the DGST security service and the UNHCR.

Decree 8041 states that a decision on refugee eligibility should be made within three months of an application which is made through the CNAR or the UNHCR. Its Article 20 states that at the end of the eligibility procedure a refugee is issued a free identity card, followed by a free travel document (*titre de voyage*). While many refugees and asylum-seekers alleged that these documents were sold expensively, even CNAR officials admitted that a small charge was levied in what appears to be a contravention of the decree.

The decree states that no asylum-seeker shall be detained solely on grounds of entering the Republic of Congo, a provision that was violated in respect of the 19 DRC asylum-seekers in January 2001. Article 25 which states that no refugee or asylum-seeker shall be expelled against their will to their country of origin or nationality which is under foreign occupation, foreign domination or an event that seriously disturbs public order was also violated. The decree's Article 26 states that in case of expulsion for security reasons, the affected person must be allowed to present their case before the eligibility or appeal commission. If the expulsion is upheld, the UNHCR must be given reasonable time to resettle the person in a third country. This provision too would have been violated in April 2001 when the 19 asylum-seekers were expelled.

Decree number 8040 of 28 December 2001¹¹ creates and establishes the functions of a refugee appeal commission. The President of this commission is a

¹⁰ *Arrêté no. 8041 du 28 décembre 2001 Portant création, organisation, attributions et fonctionnement de la commission d'éligibilité au statut de réfugié*

¹¹ *Arrêté no. 8040 du 28 décembre 2001, Portant création, attributions, organisation et fonctionnement de la commission des recours des réfugiés*

representative of the Ministry of Foreign Affairs and the Vice-President is a representative of the Ministry of Justice, who is also its Executive Secretary (rapporteur). Other members are the same as for the eligibility commission. Crucially no person can be a member of the two commissions.

The refugee appeal commission examines appeals against decisions by the refugee eligibility commission, including decisions regarding expulsion or extradition of a refugee or an asylum-seeker. Appeals, which are free of charge, must be lodged with the appeal commission within 30 days of a decision by the eligibility commission.

2C.4 Inadequate assistance to refugees and allegations of corruption

Many asylum-seekers and refugees, particularly those from the DRC but also including those from Rwanda and the Central African Republic, complained to Amnesty International delegates about lack of or inadequate assistance to them. A local non-governmental organization affiliated to the Roman Catholic church manages UNHCR assistance to asylum-seekers and refugees. The organization is known as the *Commission épiscopale pour les migrants et les réfugiés* (CEMIR), Episcopal Commission for Migrants and Refugees. The general practice is that asylum-seekers and refugees have food, medical and housing assistance for up to six months. Indeed, many refugees carried letters from the UNHCR which specified that there would be no assistance beyond six months of their initial contact with the UN agency. In addition to individuals and families that lived in destitution, without any possibility of earning a living in Brazzaville, it was apparent that single or even married women were at risk of engaging or were effectively engaged in practices, such as prostitution, in which they would be likely to be subjected to violence. This is the more poignant in a region where unprotected sex exposes them to a real possibility of contracting HIV and other sexually transmitted infections. Several women asylum-seekers and refugees complained that they had been victims of sexual harassment and blackmail by some local employees of the UNHCR and non-governmental organizations responsible for granting assistance, as well as by some members of the Congolese security forces.

Many asylum-seekers and refugees complained that despite their lack of any income, they were often required to pay for documents, such as identity cards and travel documents. Refugees claimed that some were asked to pay as much as 300,000 CFA Francs (equivalent to approximately US dollars 400) to UNHCR employees for travel documents issued by the refugee agency. They also claimed that they were required by government officials to pay as much as 15,000 CFA Francs (equivalent to approximately US dollars 20) for identity documents. They also claimed that a travel document issued by

the Congolese Government cost up to 45,000 CFA Francs (equivalent to approximately US dollars 60). UNHCR officials insisted that travel documents issued by the UNHCR were free of charge, although in early 2002 they could not specify to Amnesty International delegates the criteria used to grant the documents to some asylum-seekers or refugees and not others. Government officials said that identity cards were generally free of charge, but that in a few cases a small tax or other related expenses were levied. Government officials criticized the UNHCR for failing to let them handle the issuing of at least some travel documents in emergency situations. Allegations of corruption by junior UNHCR and CEMIR staff, which were denied by senior officials of the agency, were made by dozens of asylum-seekers and refugees.

Amnesty International welcomes a statement in late November 2002 that the UNHCR, in conjunction with the governments of the DRC and the Republic of Congo, had launched a scheme to issue identity cards to all refugees and asylum-seekers over the age of 14. The organization hopes that this will go a long way to provide protection and security to refugees and asylum-seekers, and to eliminate actual or suspicions of corruption. However, the issuing of identity cards had not started by mid-February 2003.

Many asylum-seekers and refugees in the Republic of Congo have expectations of resettlement in a third country, particularly in developed countries. This has exacerbated tensions and suspicions between UNHCR staff and the applicants, and on a number of occasions reportedly culminated in violence. Many of the asylum-seekers and refugees said they had been interviewed for resettlement but received no feedback for months or even years thereafter. During discussions with UNHCR staff Amnesty International delegates noted a lack of transparency with regard to criteria used by the agency to consider resettlement applications and indeed to be transferred to a third country. Amnesty International is concerned that there was lack of a clear resettlement process and a failure to investigate claims by a number of asylum-seekers and refugees that some UNHCR staff were bribed to facilitate resettlement.

In February 2003 the UNHCR informed Amnesty International that criteria for obtaining a travel document (Convention Travel Document) are the same for all refugees. These include valid reasons for travelling, formal agreement to pay related expenses for the trip abroad, presentation of an air ticket and an attestation for school registration if travel purpose is study. The UNHCR confirmed that material assistance to refugees is limited to six months, although the period may be renewed on a case by case basis, "taking into account ... the vulnerability of the refugee". The UNHCR added that before the end of the six month period, refugees have the opportunity to prepare themselves and manage an income generating activity that would render them self-sufficient. "The overall objective of this process is to avoid / limit the dependency syndrome", the UNHCR added.

3. PART II: UNLAWFUL DETENTIONS, TORTURE AND KILLINGS

3A. Arbitrary arrests, unlawful detentions and torture

During their stay in Brazzaville, Amnesty International received few reports of detainees in custody who appeared to be prisoners of conscience. This was a welcome development, compared to the practice in previous years. However, civil society was concerned about arbitrary arrests, unlawful detentions and widespread ill-treatment of criminal suspects, especially in police custody. This phenomenon appeared to have been significantly played down by political leaders because many of the victims were ordinary people with, in virtually all cases, no political connections.

One case of arbitrary arrest and unlawful detention is of **Dieudonné Ndjilambot**, a police officer. He was arrested in August 2001 in connection with an armed attack on the residence of the Minister of Defence. A source in Brazzaville told Amnesty International delegates that Dieudonné Ndjilambot was targeted for arrest because he had demanded promotion and a salary increase. When he demanded to be charged or released, the Procuracy claimed that as a senior police officer he had immunity from prosecution which could only be withdrawn by the Supreme Court. However, the authorities failed to explain why the immunity could not protect him from unlawful detention. There were reports that political authorities had instructed the judiciary to detain him indefinitely. He was held in solitary confinement at Brazzaville's central prison where he was rarely allowed to be visited by his wife. Amnesty International received reports that an attempt was made to poison him in custody. After the Minister of Defence was replaced following the formation of a new government in August 2002, Dieudonné Ndjilambot was given provisional release but had apparently not been charged with any offence. In late 2002 he reportedly travelled abroad to seek treatment for the effects of the attempted poisoning and the solitary confinement in a dark cell.

About 17 members of the security forces were arrested in October and November 1998 and detained till January 2000 when they were released without charge or trial. While in custody, many of them were reportedly tortured to extract confessions from them. They were reportedly arrested on suspicion of being supporters of exiled former President Pascal Lissouba and former Prime Minister Bernard Kolelas. The victims included Hidulphe Jacques Mbungu, Tite Bavedila, Anselme Laclé Batantou and Gabriel Louya. They were first held by the DGST at the railway and port police stations in Pointe-Noire before being transferred to the town's central police station, Gendarmerie and the airbase. At the start of 1999 they were moved to Impfondo in the northeast of the country where they stayed for 13 months.

While in custody, the detainees were poorly fed and between them shared one piece of soap per month and three litres of water per day. Hidulphe Jacques Mbungu was reportedly tied naked to a chair on which were placed burning candles. Anselme Laclé Batantou was locked up naked in a cell. He remained in a cell whose floor was covered in urine for one-and-a-half months, with his body covered in wounds. One of the detainees, Gabriel Louya, died in detention in Impfondo, apparently as a result of the harsh detention conditions. Although the surviving detainees and local human rights organizations complained to the authorities about the torture and ill-treatment endured by the detainees, by the start of 2003 the government had taken no action.

On 13 November 2000 13 people died in custody from suffocation at Tié-Tié police station. The victims were **Roland Madzoumou, Ipala Mboundou-Mboundou, Fidèle Owenze, Mabilia Matongo, Magloire Nsimba Kouta, Blaise Nkombo, Alain Ngoma, André Diamonangana, Jean-Didier Mouldo Mbota, Salabanzi, Augustin Mbola** and **Mamona Boukeba**. Following national and international protests at the deaths, the Congolese judiciary opened a case on 12 December 2000 against members of the security forces who were present at the time of the deaths and who had failed to save the lives of the victims. The local court applied to the Supreme court to remove the immunity of the security officials so the suspects could be prosecuted but the Supreme court did not respond. By the start of 2003, no further action had been taken to bring to justice those suspected of being responsible for the deaths or for failing to prevent them. It would appear that this group of police officers have enjoyed the impunity that virtually all their colleagues have enjoyed before and after these deaths.

Joseph Melloh Mindako, a Cameroonian conservation journalist, was arrested on 13 May 2002 and detained by the Congolese authorities for three months. At the time of his arrest by the DGST at Pokola near Ouesso, northern Congo, he was taking pictures about commercial timber extraction and hunting of endangered animal species in the forests. The DGST first detained him at Ouesso and accused him of filming without an official permit. In mid-June he was transferred to Brazzaville's central prison where he spent 48 days. He was subsequently accused of spying and reportedly charged with endangering the security of the state. He denied the charge and told the authorities that he was working for forest conservation, as he had done in other countries including Cameroon, Central African Republic, Gabon and Kenya. Human rights and conservation organizations appealed to the Congolese Government for Joseph Melloh Mindako's release. On 12 August the Brazzaville High Court¹² sentenced him to 45 days' imprisonment. Because he had already been held for longer than the period, the court ordered his release and expulsion from the country and issued an order prohibiting him

¹² *Tribunal de grande instance*

from returning to Congo for five years. He was clearly arrested and detained solely for carrying out his journalistic activities and investigating issues related to environmental conservation. Amnesty International considered him to be a prisoner of conscience.

3B. Violations of humanitarian law during 2002

Claiming that the government was seeking to arrest their leader, in late March 2002 combatants loyal to pastor Frederic Bitsangou (commonly known as *pasteur* Ntoumi) attacked positions held by Congolese government forces in the Pool region and subsequently in Brazzaville. Frederic Bitsangou's armed political group is known as the *Conseil national de résistance* (CNR), National Resistance Council. CNR's armed wing is known as the *Forces d'auto-défense et la résistance* (FADER), Self-Defence and Resistance Forces, commonly known as *Ninjas*. In early 2002 CNR representatives told Amnesty International delegates that fighting would resume if government forces did not stop attacks on FADER combatants and cease human rights violations against the civilian population. Previous major clashes between the FADER and government forces took place in late 1998 and early 1999. A peace accord between CNR and the government was signed in December 1999 but it remained largely unimplemented and the rebels and their leader remained in the forests of the Pool region. The fighting resumed in late March 2002, first in the Pool region and in June *Ninjas* attacked Brazzaville. Appeals by religious, civil society and opposition political leaders for a negotiated settlement were still unheeded by both parties to the armed conflict at the start of 2003.

In Brazzaville alone more than 170 people, some of them unarmed civilians, were killed in early 2003. Sporadic fighting between government and armed opposition forces was still being reported at the start of 2003, although it appeared that most of those targeted were unarmed civilians accused by each side of sympathizing with their opponents.

From late March 2002 dozens of unarmed civilians were killed, tens of thousands displaced and tens of thousands were denied humanitarian assistance in the context of armed clashes between government forces and *Ninja* combatants. The Congolese Government took virtually no action against members of its forces who committed human rights violations. *Ninja* leaders failed to denounce abuses by their combatants and generally denied that *Ninjas* had committed any abuses.

There were reports in April 2002 that reinforcements of Angolan government forces, which have supported President Denis Sassou Nguesso since mid-1997, arrived in Congo and were initially based at Goma Tsé-Tsé, 30 kilometres south of Brazzaville. Fighting in the capital lasted several days before the *Ninja* combatants withdrew.

The fighting caused large displacement of civilians, many of whom fled into the forests, in the southern regions of the Republic of Congo. The regions most affected were the Pool, Niari, Bouenza and Plateaux. For example, by mid-June 2002 nearly 19,000 people had fled to Brazzaville from Kinkala.

3B.1 Reports of human rights violations by government forces

In a meeting with Amnesty International delegates in February 2002, representatives of the CNR alleged that Congolese government forces continued to violate the human rights of unarmed civilians in the Pool region in violation of the December 1999 peace accord. The CNR alleged that government forces carried out extrajudicial executions and rape of women, including of a 70-year-old woman, with impunity. In September 2001 a man travelling on a train was reportedly shot dead by soldiers at Manzia in the Pool region after he refused to pay them money in order to be allowed to continue his journey. The soldiers reportedly threw the dead man's wife off the train through a window. On 5 November 2001, government forces reportedly killed a young boy in the Pool's Kimba district.

Human rights organization and other sources in Brazzaville reported in April 2002 that government forces had carried out widespread looting, especially in the districts of Bacongo and Makélékélé, in the course of an operation to seize illegally-held firearms. The looting was condemned by the mayor of Brazzaville and the head of a government agency known as the Comité de suivi de la Convention pour la paix et la reconstruction du Congo¹³. The operation followed an escape of former Ninjas from Makélékélé Sports Centre where they had been awaiting to be absorbed in the security forces as part of the implementation of the 1999 peace agreement between the government and the CNR. In a rare action, albeit inadequate, on 9 April the government announced that it had dismissed 12 soldiers for their involvement in the looting.

On 23 April about 30 young men were forcibly removed by government forces from a camp for internally displaced persons at Kinkala. Their fate remained unknown and the authorities did not reveal their identities, whereabouts or the reasons for their arrest. After the effective "disappearance" of the young men, some 3,500 IDPs fled from the camp into the forest.

In a 28 May 2002 press release, the UN High Commissioner for Human Rights (UNHCHR) expressed concern at the deteriorating situation in the context of fighting

¹³ Follow-up Committee for Peace and Reconstruction of Congo Convention

between government forces and rebels around Kinkala, Kindamba, Goma Tsé-Tsé and Vindza in the Pool region. The High Commissioner reported that many unarmed civilians had been killed by indiscriminate rocket and machinegun fire launched from helicopters by government forces. Houses and other property had been destroyed. Government forces are reported to have been using Russian-made MI-24 helicopters. On 3 June, Bill Paton, the UN Resident Humanitarian Coordinator in Brazzaville, expressed concern about reports of systematic use of helicopters to attack villages in the Pool region in what he called “wanton disregard for civilian lives”. Fidèle Mayala, a victim of the bombing from Zandu whose body had been lacerated by shrapnel said that he and other IDPs had been bombed after they fled to Motoumbou. He claimed that there were no *Ninjas* in the area at the time of the attack.

For several weeks the Congolese government denied humanitarian organizations access to the population displaced by the fighting in the Pool region. On 28 May a UN inter-agency team was finally allowed to visit Kindamba where it found some 2,000 IDPs and learned that as many as 14,000 others had fled into the forest. Government forces reportedly forced civilians to cut down trees in the area to deny *Ninjas* hiding places. Civilians were also reportedly forced to destroy homes and the military used iron roofing from the houses for their own shelter. There were also reports of dozens of women raped by men in uniform, generally believed to be members of the security forces. Many women were reportedly gang raped by soldiers.

In late November government forces reportedly extrajudicially executed nine people, including at least one 17-year-old child, from Moutampa in the Mbanza-Ndounga district of the Pool region. Prior to being shot dead, the men were reportedly severely tortured by the soldiers. The victims included 34-year-old **Armand Mvila**, **Albert Nsouna**, 17-year-old **Aymand Mayanda** and 29-year-old **Eric Boukouta**.

3B.2 Reports of abuses by Ninjas

The Congolese Government and the *Ninjas* accused each other of killing **André Loulendo**, a mathematics teacher and advisor to the Sous-Préfet of Kimba district, on 2 December 2001. Local government officials blamed the killing on *Ninjas* who they said tied him up and repeatedly stabbed him in the neck before leaving him in the forest. He died several days later from his injuries. *Ninja* representatives told Amnesty International delegates that André Loulendo was extrajudicially executed by government forces.

Father Jean Guy, a French Roman Catholic priest, died in August 2002 after more than four months in captivity following his abduction on 31 March 2002 by *Ninjas*

at Kindamba. The priest was reportedly injured in the leg at the time of his abduction when *Ninjas* reportedly severed a tendon. He reportedly died from hypertension aggravated by captivity and malaria. At the time of his abduction Father Guy was a priest at nearby Mayama parish. At the start of October Father Guy's body was reburied in Brazzaville after it had been exhumed from Kindamba where it had reportedly been interred by *Ninjas*, who denied responsibility for his death. He was reportedly abducted at the same time as former army General **Casimir Bouissa Matoko** and several other people. The general, who was reportedly still held by *Ninjas* by November 2002, had apparently been on a mission to convince Frédéric Bitsangou to end the rebellion and return to Brazzaville. In December, Amnesty International learned that Casimir Bouissa Matoko had, in unclear circumstances, crossed to the DRC where he was being detained by the authorities in Kinshasa. By the end of January 2003 the organization had not been able to establish the full facts about his reported detention.

Ninjas carried out attacks on transport facilities, such as trucks and trains, and unarmed civilians, killing many of them. For example, on 4 April *Ninjas* reportedly opened fire on a train in the Pool region, killing two passengers and wounding at least 14 others. On 27 September *Ninja* combatants reportedly killed one man during an attack on a truck carrying unarmed civilians at Ngouela, on the road between Brazzaville and Congo's second city, Pointe-Noire. The *Ninjas* reportedly beat up the other passengers and looted their property and goods on the truck.

Some of the 5,000 civilians fleeing in May 2002 from the Pool region to Brazzaville claimed to have been forced out of their homes by *Ninjas* in Mbanza-Ndouna, Goma Tsé-Tsé and Boko. The displaced reported that those who refused to leave were killed. The identities and numbers of those killed by *Ninjas* were not specified. In November 2002 the UN's Office for the Coordination of Humanitarian Affairs (OCHA) reported that it was assisting at least 8,000 displaced persons, many of them from the Pool region, outside Brazzaville.

On 30 September a landmine apparently laid by *Ninjas* killed at least 27 people and wounded about 30 others when it exploded under a goods train south of Brazzaville. *Ninjas* reportedly looted the train of food and other goods before setting it on fire. The *Ninjas* claimed to have attacked the train because it was carrying military weapons for government forces.

On 4 December 2002 seven armed men suspected to be *Ninjas* in the Bouenza region of southern Congo abducted two members of the International Committee of the Red Cross (ICRC). One of the victims was a French national, working as an emergency expert, and the other a Congolese sanitary engineer. The ICRC workers were on a mission

to assess the humanitarian needs of the civilian population in the region. They were freed in Bouenza, apparently unharmed, on 28 December 2002.

A military spokesperson announced on 17 December 2002 that armed bandits [*Ninjas*] had on the night of 15 to 16 December killed six civilians and injured several others in four villages north of Brazzaville. The military high command added in a statement that the bandits had also destroyed property in the villages on Massa, Ingolo and Nkouo.

4. Conclusion

Amnesty International believes that the human rights abuses highlighted in this report have been committed and persisted as a result of the impunity which past perpetrators have continued to enjoy. It is clear that those suspected to be responsible for the 1999 "disappearances" or killings, as well as the unlawful killings and other human rights abuses described in the report did not and still do not expect to be brought to justice.

Amnesty International is opposed to the "disappearance" of prisoners in all cases, irrespective of the reasons for their arrest and seeks an immediate end to all "disappearances". All people held in detention have the right to have their physical and mental integrity respected and protected, to be promptly informed of the charges against them, and to be granted prompt access to relatives, legal counsel and medical treatment. Whenever people are held in unacknowledged detention, the risk of their being ill-treated, tortured and extrajudicially killed is increased.

Amnesty International campaigns against "disappearances" in all cases. The organization believes that "disappearances" are not only acts of extreme cruelty; but they also violate international standards on human rights. Article 2 (1) of the UN Declaration on the Protection of All Persons from Enforced Disappearance states that "No state shall practise, permit or tolerate enforced disappearances". Article 13 of the Declaration calls for investigations to be carried out "as long as the fate of the victim of enforced disappearance remains unclarified".

Amnesty International opposes the forcible return of any person to a country where his or her life or freedom would be threatened or he or she might be at risk of serious human rights violations, including torture, imprisonment as a prisoner of conscience, extrajudicial execution and the death penalty. This principle, known as the principle of *non-refoulement*, is the underlying basis of the entire system of international refugee law. It is set out in Article 33 of the 1951 Convention relating to the Status of

Refugees and is reaffirmed in Article II (3) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which states:

No person shall be subjected... to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or to remain in a territory where his life, physical integrity or liberty would be threatened.

Consequently, the forcible return of persons to a country where they are at risk of serious human rights abuses constitutes a breach of international law, as does rejection of such persons at the frontier. The principles of both the 1951 and the 1969 Conventions apply to Congo being a party to these treaties. Of course, it is possible that, in some situations, refugees may choose to return voluntarily to their country of origin even though some degree of risk exists. This is a matter to be decided by the individual refugee, free from pressure of any kind and on the basis of objective information about the situation in the country of origin. Principles of international law dealing with the issue of voluntary return or voluntary repatriation emphasize the entirely voluntary nature of the decision to return. Article V (1) of the 1969 Convention states:

“The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”.

In addition, the Executive Committee of UNHCR has adopted a number of conclusions regarding voluntary repatriation. While these conclusions are not legally binding in the same strict sense as treaty law, they represent the views of the international community as to the international standards which should be observed. The most important of these is Conclusion 40(b) which provides that:

"The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected".

It is clear that, even in the event of a large repatriation program, the decision of the refugee to return to his/her home must always be a voluntary one. According to UNHCR Protection Guidelines, this involves "the ability to exercise one's free and unconstrained will in making a meaningful choice [to return]. The Guidelines also state that "this choice must be made without undue pressure, whether physical, psychological or material" and registration of the voluntary decision to return should take place "without any form of scrutiny or pressure by the parties" or "without any threat of phasing down basic refugee assistance programmes". Rwandese refugees and members of their families,

regardless of their ethnic origin or political affiliation, should be protected and assisted by the UNHCR and the Congolese Government, just like any other refugees should be.

In cases where asylum-seekers are being sought in connection with crimes they are accused of having committed in their country of origin, an independent and impartial court of law in the host country should be asked to examine the evidence and rule on whether extradition should take place. The authorities in the host country should obtain verifiable guarantees that the civil and political rights of the suspect, including rights not to be tortured, to fair trial and not to be deprived of the right to life, will be respected. The court should also obtain assurances that the suspect would be released if not found guilty.

Impunity has continued to be at the heart of violence and armed insurrection. For the Republic of Congo to turn a chapter of its history and start on a path of peace political and military leaders must understand that there is no durable tranquillity or social and economic progress without respect for human rights. Force alone, especially that which includes violations of human rights, will not end armed conflict and bring about stability to the Republic of Congo. On the contrary, violence is likely to breed more violence. The past will continue to haunt the future.

If ordinary Congolese and other people living in the Republic of Congo are to enjoy their fundamental human rights, including the right to life and physical integrity, the Congolese authorities have to take measures to end the seemingly endless cycle of violence, human rights abuses and impunity.

5. Recommendations

The government of the Republic of Congo, as well as leaders of armed political groups, are principally responsible for the promotion and protection of human rights in their country. However, they need the support, encouragement and cooperation of the international community, including foreign governments and inter-governmental organizations. Amnesty International is making a series of recommendations to the government and armed political group leaders, the UNHCR and to foreign governments with the hope that these recommendations will be given full consideration and implemented to prevent further human rights abuses and bring perpetrators of past abuses to justice.

5.1 To the government of the Republic of Congo

- 5.1.1 The government should unreservedly condemn all human rights abuses by its forces and by armed political groups, including extrajudicial and other unlawful killings, “disappearances” and abductions, torture (including rape), arbitrary arrests and unlawful detentions;
- 5.1.2 The government should urgently set up a thorough independent and impartial commission of inquiry, composed of individuals known for their competence and impartiality, to establish the truth about the 1999 and other “disappearances” of returning refugees, in accordance with Article 13 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. The government should make public the methods and findings of investigations relating to “disappearances”, as well as the unlawful killings, highlighted in this report and elsewhere. The commission should establish the identities of the victims and perpetrators and those accused of responsibility should be brought to justice in accordance with international standards of fair trial;
- 5.1.3 The government should undertake to implement the commission of inquiry’s recommendations, including paying adequate compensation to relatives of those who were “disappeared”, unlawfully killed or tortured, and to victims who survived;
- 5.1.4 Ensure, at all times, that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained;
- 5.1.5 Give accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, to relatives, lawyers and the courts;
- 5.1.6 Maintain up-to-date registers of all prisoners in every place of detention, and make such information available to the relatives, lawyers, judges and other official bodies;
- 5.1.7 Ensure that the prohibition of "disappearances" are reflected in the training of all officials involved in the arrest and custody of prisoners and in the instructions issued to them. They should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance". An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance";

- 5.1.8 Ratify and implement international treaties, including the UN Declaration on the Protection of All Persons from Enforced Disappearance, containing safeguards and remedies against "disappearances";
- 5.1.9 The government should publicly condemn any *refoulement* or unlawful deportation of asylum-seekers and refugees and institute measures, including implementing the decrees on refugee eligibility and appeals, to ensure that incidents such as the handing over to the DRC authorities of 19 asylum-seekers in April 2001 will never happen again. An independent and impartial investigation should be set up to establish responsibility for the 2001 deportations and bring those suspected of authorizing or implementing them to justice;
- 5.1.10 The government must issue clear public instructions to the commanders of the armed forces to suspend from their ranks any member of the security forces accused of having perpetrated extrajudicial executions, rape and other human rights violations and to bring the suspected perpetrators to justice. Suspected perpetrators should only be reinstated once they have been cleared of responsibility by the courts. Commanders accused of perpetrating, ordering or condoning human rights violations must themselves be suspended and brought to justice, and should only return to duty when the courts have found no or insufficient evidence of their involvement in human rights violations;
- 5.1.11 The Congolese Government must ensure that no one is arrested or continues to be detained solely for exercising their right to freedom of expression, association and to exercise their legitimate profession, such as journalism.

5.2 To armed political groups

- 5.2.1 Leaders of armed political groups, including pastor Frédéric Bitsangou, should unreservedly condemn all human rights abuses by their combatants, in addition to those committed by government forces, including unlawful killings and abductions;
- 5.2.2 Leaders of armed political groups should set up disciplinary bodies charged with investigating reports of human rights abuses by their combatants. While investigations are going on, combatants and commanders who are accused of human rights abuses should be removed from positions in which they could perpetrate further human rights abuses or interfered with investigations. Armed political groups should make public the conclusions of the investigations and any perpetrators identified should be removed from within their ranks;

- 5.2.3 Leaders of armed political groups must undertake to cooperate with an independent and impartial commission of inquiry, composed of individuals known for their competence and impartiality, to establish the truth about human rights abuses, especially “disappearances” or abductions and unlawful killings, highlighted in this report and elsewhere. The leaders should submit to an independent and impartial court of law those among their combatants who are identified as having committed human rights abuses, subject to guarantees that they will get a fair trial and will not be ill-treated, sentenced to death or executed;
- 5.2.4 Leaders of armed political groups must issue clear public instructions to their combatants and commanders that human rights abuses, such as unlawful killings, abductions and torture, including rape, will not be tolerated. Armed political group leaders must undertake to cooperate with courts of law to bring the suspected perpetrators to justice when guarantees for their safety have been secured;

5.3 To the UN High Commissioner for Refugees

5.3.1 The UN High Commissioner for Refugees should with respect to the repatriation of refugees to the Republic of Congo, notably from the Democratic Republic of Congo:

should, in accordance with its mandate, ensure that a comprehensive and independent assessment is made of conditions before concluding that conditions are conducive to the promotion of voluntary repatriation;

- (a) should set up independent mechanisms for the dissemination to refugees and asylum-seekers of reliable, objective and impartial information on the situation on the ground in the Republic of Congo, including but not limited to areas of prospective return;
- (a) should maintain pressure on states to ensure their commitment to keep the durable solutions of local integration and resettlement open;
- (a) should ensure that all possible measures are taken to identify appropriate durable solutions for refugees in other countries where effective protection in their country of asylum is not available;

- (a) should ensure that safety and dignity and full respect for human rights are monitored and maintained in the country of asylum, notably the Democratic Republic of Congo during any period of transit, and in the Republic of Congo.

5.3.2 With respect to refugees from other countries in the Republic of Congo, notably from the Democratic Republic of Congo and Rwanda:

- (a) The UNHCR should work together with the government of the Republic of Congo to ensure that the refugee eligibility and asylum appeal commissions are functional and fair. Until this is achieved, UNHCR must ensure that anyone who is arbitrarily denied international protection or who has specific protection needs is able to access other durable solutions, notably resettlement to third countries;
- (b) The UNHCR should ensure that allegations of corruption or abuse are properly investigated taking full account of the safety and security and human rights of victims and witnesses where such corruption or abuse may have resulted in the denial of protection or assistance;
- (c) The UNHCR should assist vulnerable refugees and asylum-seekers, especially women and child refugees, and ensure their protection from sexual and other forms of abuse or exploitation;
- (d) Uphold the nature of the institution of asylum and seek to ensure that any representatives, including security forces, of the governments of the refugees' countries of origin do not enter into contact with the refugees without prior consultation and voluntary consent of the refugees;
- (e) The UNHCR should take all necessary steps to ensure that it and its partners in the Republic of Congo are transparent in the criteria used to grant material assistance, assess eligibility for receiving travel documents and getting resettled in a third country.

5.4 To foreign governments and inter-governmental organizations

- 5.4.1 All human rights abuses in the Republic of Congo should be publicly condemned by foreign governments, regardless of the identity of the perpetrators or the victims of such abuses. The international community should continue to encourage the Republic of Congo to carry out prompt, independent, impartial and effective investigations of violations of human rights and to bring the perpetrators

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- to justice and, to that end, request the government to provide regular, up-to-date information on investigations and legal proceedings undertaken against suspected perpetrators of such acts;
- 5.4.2 Governments and inter-governmental organizations should urge the government of the Republic of Congo to ensure that any person suspected of being responsible for human rights abuses is identified and brought before a court of law in accordance with international standards regarding fair trials and without recourse to the death penalty;
- 5.4.3 The international community should urge the government of the Republic of Congo to release anyone who is being held unlawfully, if there is insufficient evidence to bring about a prosecution of a suspect;
- 5.4.4 Inter-governmental organizations such as the United Nations and the African Union must commit and declare themselves to be determined to put a stop to impunity in the Republic of Congo, so as to ensure sustained protection of the population against human rights abuses. The inter-governmental organizations must formulate recommendations on measures to be taken by the Congolese Government and the international community to deal with the question of the impunity enjoyed by the perpetrators of abuse in the past and prevent further violence in the Republic of Congo;
- 5.4.5 Countries in the region, including the Republic of Congo, that receive refugees must be provided with material and human resources and adequate logistic support. Every effort must be made to ensure that the rights of internally displaced persons, such as those set out in the Guiding Principles on Internal Displacement, are respected;
- 5.4.6 Governments and inter-governmental organizations must support and reinforce the UNHCR so that it has sufficient financial resources and political support to enable it to accomplish its mission effectively and independently and guarantee the protection of refugees;
- 5.4.7 Governments should give favourable and prompt consideration of requests for resettlement in a third country by refugees and asylum-seekers who cannot be protected by the Congolese Government or are at risk of forcible return to a country where they would risk human rights abuses, including arbitrary arrests, detention as prisoners of conscience, torture and other forms of ill-treatment, unfair trial, unlawful killing and the death penalty;
- 5.4.8 Immediately end all multilateral or bilateral agreements that allow Congolese asylum-seekers or refugees to be sent back to the Democratic Republic of Congo

or another country where he or she would be at risk of direct or indirect *refoulement* or serious human rights abuses.