

# Republic of Congo

## Political detainees in legal limbo

### 1. Introduction

At least 12 men arrested in early 2005 have now been held without trial for more than 18 months. Although they were reportedly told by a judicial official that they had no case to answer, they remain behind bars. A further 13 men were arrested at around the same time but have been released provisionally. All 25, many of them members or former members of the Congolese security forces, have been accused of seeking to overthrow the government. Some of the detainees were allegedly tortured or ill-treated. The arrest of this group contravened Congolese law, and their treatment constitutes a breach of both domestic law and international human rights treaties to which the Republic of Congo is a party. In addition, three asylum-seekers from the Democratic Republic of Congo (DRC) have been detained without charge or trial for nearly three years, and four men accused of arms trafficking have reportedly been tortured in custody. At a time when President Denis Sassou N'Guesso holds the Presidency of the African Union (AU), the treatment of political detainees in the Republic of Congo violates numerous provisions of the African Charter on Human and Peoples' Rights.

At least 25 members of the Congolese security forces and civilians were arrested in January and February 2005. The arrests took place in Brazzaville, the political capital, and Pointe-Noire, the economic capital. Some of those detained were accused of involvement in the theft of military weapons, and all of them were accused of plotting to overthrow President Denis Sassou N'Guesso's government. At least 13 of them had been granted provisional release by the start of 2006, while the rest remained in custody at the Brazzaville central prison at the end of November 2006. An army colonel who was being sought for arrest fled the country in February 2005 and is currently seeking asylum abroad. The detainees were held in custody for up to seven months without charge or trial. Around September 2005, some of the detainees were charged with endangering the security of the state while others were also charged with stealing weapons. In June 2006, Amnesty International learned that the prosecutor of the Brazzaville High Court had in March 2006 told the remaining detainees that an examining magistrate had concluded that they had no case to answer. However, by the end of November 2006, the authorities had not dropped charges against or released the detainees.

While in detention, some of the detainees were reportedly subjected to torture and other cruel, inhuman or degrading treatment. For up to four months the detainees were held in incommunicado detention, without access to members of their families or legal counsel. Virtually all the detainees were held in military detention centres in Brazzaville before being transferred in May 2005 to the main Brazzaville civilian prison. Some of the detainees are in poor health and require regular supervision by a doctor to ensure that they have access to adequate and appropriate food, and medication. More than 18 months after their arrest, at least 12 detainees continue to be held in custody unlawfully and without trial.

Amnesty International is concerned that the remaining detainees are being denied the right to challenge the basis for their arrest and long-term detention without trial, as well as the right to a prompt and fair trial. Those who have been granted provisional release have been denied the right to have the lawfulness of the charges against them determined by an independent and impartial court of law or withdrawn. Amnesty International is also concerned that the initial arrests and detentions of those individuals were carried out on the basis of orders by a commission of inquiry, in violation of the procedures for arrests and detentions under Congolese national law.

Amnesty International delegates visited the Republic of Congo in April 2005. The detainees had not been charged with any specific offence at the time. A request by the delegates to visit the detainees who were in military custody was not granted by the authorities. In March 2006, Amnesty International wrote a letter to the Minister of Justice expressing concern about the violation of the detainees' rights and urging the government to ensure that they were either afforded a prompt and fair trial or released and the charges against them withdrawn. The letter was copied to several other government ministers. Neither the Minister of Justice nor his colleagues had responded to the organization's letter by November 2006.

The Republic of Congo, as a member of the African Union and as the current chair of the AU Assembly of Heads of State and Government (the AU Assembly), has an obligation to act in accordance with the principles of the AU Constitutive Act, which specifically includes the protection and promotion of human rights in accordance with the African Charter on Human and Peoples' Rights (African Charter) and other relevant international human rights treaties.<sup>(1)</sup> Amnesty International urges the Republic of Congo to respect the right to freedom from torture, inhuman and degrading treatment or punishment, the right to freedom from arbitrary arrest and detention, and the right to a fair trial as guaranteed by international

human rights law and standards.

## 2. Background

In January 2005 Amnesty International received reports of arrests of an unspecified number of members of the security forces in connection with an alleged theft of as many as 40 firearms from a gendarmerie armoury at Bifouiti, south of the capital Brazzaville. Under Congolese law, the gendarmerie is a branch of the armed forces under the Ministry of Defence. At the time, it was unclear whether the government suspected that the arms had been stolen for financial gain or as part of a plot to overthrow the government.

Shortly afterwards, in mid-February 2005, the police and members of the state security service known as the Directorate of Territory Surveillance (Direction de la surveillance du territoire, DST) arrested members of the security forces and civilians in Pointe-Noire. The government did not reveal whether there was any connection between the arrests in Brazzaville and those in Pointe-Noire. However, by March 2005 some government officials reportedly claimed that there had been a plot hatched in Pointe-Noire to destabilize the government or even to overthrow it. In April, the Minister of Security and Public Order was reported by the local media to have claimed that an international arrest warrant had been issued for the arrest of a white man believed to be an accomplice of the people arrested in January and February 2005 in connection with a plot to overthrow the government. The identity and nationality of the white man was not specified.

An army colonel, **Simon-Pierre Moussounda**, who was being sought for arrest fled the country in February 2005 and has since been living in a foreign country. On 18 February 2005, members of the security forces reportedly searched his home for weapons but found none. They took away his mobile telephone and two photographs. The Congolese authorities subsequently said that they had issued an international arrest warrant against him. In September 2005, Amnesty International received reports that government officials had threatened to demolish his house.

In February and March 2005, local human rights groups expressed concern about the apparently arbitrary arrests and reports that the detainees had been ill-treated. The detainees – civilians and members of the security forces, including gendarmes and policemen – were arrested without a warrant or similar authorization by a judicial official. Most of them were first detained at the Pointe-Noire headquarters of the DST.

Amnesty International understands that without prior notification to the detainees or informing their relatives, the authorities transferred the detainees to Brazzaville. On arrival in Brazzaville, most of the detainees were transferred to the Central Directorate of Military Intelligence (Direction centrale des renseignements militaires, DCRM). Several others were detained at the Military Academy (Académie militaire), which is situated north of Brazzaville. For about two months after their arrival in Brazzaville, the detainees were held in incommunicado detention, without visits by their relatives or access to legal counsel. The detainees were reportedly receiving a single meal a day but no further information was known about their detention conditions. In May 2005, the detainees were transferred to Brazzaville central civilian prison. In October 2005 Amnesty International learned that in September - nine months after their arrest and detention - the detainees were formally charged by the procuracy with stealing weapons and endangering the internal security of the state. According to Articles 87 to 90 of the Congolese Penal Code, endangering the internal security of the state is punishable by up to five years' imprisonment. The examining magistrate reportedly continued investigations into the cases and was expected to submit the results of his investigations to the procuracy by the end of December 2005, but no date was set for their trial.

According to local human rights organizations, the prosecutor of the Brazzaville High Court visited the detainees still being held in March 2006. He reportedly told them that the examining magistrate had concluded that they had no case to answer. However, by the end of November 2006, the prosecutor had not ordered the release of the detainees – which he has the power to do – or to explain the reasons for their continued detention.

Virtually all those arrested come from the south and west of the Republic of Congo. Most of the opposition to the government led by President Denis Sassou N'Guesso(2) since he and his *cobra* militia overthrew the government of former President Pascal Lissouba in October 1997 has come from these parts of the country. President N'Guesso himself comes from the north of the country, from where he draws most of his support. Exiled former President Pascal Lissouba and former Prime Minister Bernard Kolelas, whose armed supporters took up arms against President N'Guesso's government after it came to power in October 1997, originate from western and southern Congo, respectively. An armed political group which took up arms against the government between 1998 and 2003 is based in the Pool region of southern Congo. The group known as the National Resistance Council (Conseil national de la résistance, CNR) remains armed with bases in the Pool region, despite peace accords with the

government in 1999 and 2003.

There have been sporadic armed clashes between government forces and CNR members and reports of looting and lawlessness by members of the CNR militia. In one incident in April 2005, UN agencies in Brazzaville reported that CNR fighters attacked a UN humanitarian delegation visiting the Pool region and stole the delegates' property. On 13 October 2005, three gendarmes, two policemen and a Chinese trader were killed during clashes between members of the security forces and the CNR in Brazzaville. The combatants were occupying a house allocated by the government to CNR leader Frédéric Bitsangou (commonly known as pasteur Ntoumi) as part of the 2003 peace accord. On 19 October 2005 government forces attacked the combatants and drove them out of Brazzaville. The government then announced that it had no plans to form a coalition government with the CNR. Members of the CNR are also known as Ninjas, a name they inherited from a rebel group previously led by former Prime Minister Bernard Kolelas. Bernard Kolelas who was sentenced to death in absentia in May 2000, returned to Congo in October 2005 to bury his wife who had died in France. In November 2005, the Congolese Parliament passed a law granting an amnesty to Bernard Kolelas.

Since President Denis Sassou N'Guesso came to power in October 1997, dozens of suspected or known supporters of former President Lissouba and former Prime Minister Kolelas have been detained for up to two years and released without charge or trial.<sup>(3)</sup> Several of those arrested died in custody. Some of those arrested and detained since February 2005 had been members of the CNR, although it is not clear whether any of them continue to support or belong to the group. Sources in the Republic of Congo have informed Amnesty International that the arrests reflect a concern by the government that CNR supporters and some disgruntled members of the security forces may seek to destabilize the government in the lead up to parliamentary elections scheduled for 2007 in the Pool region. Due to violence and inaccessibility of the Pool region, planned elections did not take place during the 2003 general elections and the region remains unrepresented in the National Assembly.

### 3. Arrests of members of the security forces and civilians

Allegedly, as a consequence of the theft of firearms at Bifouiti Gendarmerie, at least eight gendarmes and four civilians were arrested in January 2005 in Brazzaville. About a month later, several members of the security forces and more than 15 civilians were arrested in Pointe-Noire. It was unclear at the time whether there was a link between the two waves of arrests.

The arrests were reportedly carried out on the orders of a commission of inquiry set up by the government in January 2005. The commission was reportedly composed of members of the security forces, including the police, the DST, the gendarmerie and the army. There was no legal document setting up the commission of inquiry or specifying its membership. The scope and duration of its mandate also remained unclear. It appeared to be operating outside the law and without oversight by the judiciary. By November 2006, it was still unclear if or when the commission of inquiry had been dissolved. Amnesty International is not aware of the commission having published a report on its findings.

Those arrested in Brazzaville in January – apparently all in connection with the theft of weapons from Bifouiti Gendarmerie - include Second Lieutenant **Louis-Marie Mizigou**, head of the Intervention Unit (*Section d'intervention*) of the Gendarmerie at Bifouiti. Others are Adjudant-Chef **Alphonse Miyalou**, Sergeant **Nzassi**, Captain **Berthel Dibondo**, Captain **Pandi Ngouari**, gendarme **Nerré Osséré**, retired lieutenant **Séraphin Massengo Singouayi**, sergeant **Silvère Ntsoumou**, **Yves Makita**, sergeant **Jean-Bosco Binama**, sergeant **Francis Ngolo Ngampeni**, sergeant **Bardol Massala Gondo** and sergeant **Jean Rivé Niaty**. Some of the detainees were initially held at the DCRM while others were held at the Military Academy. They were transferred in mid-May 2005 to Brazzaville central prison.

The cases mentioned below are of people arrested in Pointe-Noire; virtually all of them in February 2005 and is based on testimonies collected by Amnesty International delegates. **Magloire Mboumba**, an employee of Pointe-Noire municipality, did not return home on the night of 14 February 2005. The following day, his wife and other relatives began a search for him around Pointe-Noire. Towards 4 pm, his wife received an anonymous telephone call informing her that he was being held by the DST. She went to the DST and was reportedly allowed to briefly see him. Thereafter, she was allowed to visit him regularly, until 12 March when he and other co-detainees were transferred to Brazzaville, where he was detained at the Military Academy. His relatives were informed by sources in the security forces that he was accused of transporting weapons. They were told that he denied the accusation. He is reported to have been charged in September 2005 with endangering the security of the state and granted provisional release at the end of the month.

**Magoud Beconith Cotody**, 51, who was working at the headquarters of Kouilou region local administration in Pointe-Noire, was arrested on 17 February 2005 at his place of work while his wife was ill at home. She was informed of his arrest at 7.30 pm. Members of the police and of the DST who

arrested him reportedly told him that he was suspected of involvement in the theft of arms at Bifouiti gendarmerie.

From 22 February 2005, Cotody's wife was allowed to visit and see him regularly. He had problems with his digestive system and had not been able to eat before she was allowed to see him and give him a suitable diet. She brought him food daily until 12 March when he was transferred to the Military Academy in Brazzaville. While he was being held at the Military Academy, his wife appointed a lawyer to represent him while in detention. However, the authorities at the Academy reportedly did not allow the lawyer to visit him. She travelled to Brazzaville but she was not allowed to visit him until he was transferred to the central prison in mid-May but, like many other relatives of his co-detainees, the flights between Pointe-Noire and Brazzaville became too expensive for her to visit her husband regularly. He was granted provisional release in September 2005, soon after he had been charged with endangering the security of the state. A condition of his provisional release was that he report to a local police station every two weeks.

Police sergeant **Anicet Rodrigue Poaty**, 40, was arrested on 17 February 2005 at the police station in Pointe-Noire where he worked. He is the son of former Prime Minister Alphonse Souchlaty Poaty. His wife, herself a police officer, told Amnesty International delegates that she was informed by her work colleague that he had been detained by the DST. At around 1 pm, Poaty was brought home aboard one of three vehicles with security officials. They searched their house and found firearms, which his wife said were issued to the couple in connection with their work. When she went to the DST later in the day she was informed that he was being held at Pointe-Noire's police headquarters.

While in custody, he was interrogated about his connection with several other people, including some of those who had been arrested. He reportedly denied that he had been involved in any plot to destabilize the government. His wife was informed by an official at the DCRM that he was in poor health, with asthmatic attacks, a toothache and scabies. She and a lawyer she appointed to represent him were not allowed to see him while he was in custody at the DCRM. After he was transferred to Brazzaville central prison, his lawyers applied and obtained his provisional release on 11 September 2005. By the end of November 2006, he and his co-defendants had not been notified of a date for their trial.

Former army colonel **Serge André Mpassi**, 62, was arrested at his home in Pointe-Noire on 18 February 2005. His wife told Amnesty International delegates that as many as 20 members of the security forces, reportedly wearing balaclavas, came to his home as he lay in his bed and demanded to see him. After he got out of bed, soldiers searched his home, including digging up parts of the compound. The soldiers did not tell Mpassi or his wife what they were looking for. After the search, the soldiers ordered Mpassi on to one of their vehicles and took him away. They also took his mobile telephone.

Later, his wife learned that he was being held at the DST regional headquarters where she visited him. At the time of the first visit she was told that he was being interrogated. The wife was able to visit him regularly in custody until he was transferred to Brazzaville on 12 March 2005. She travelled to Brazzaville on 20 March in the hope of visiting him but was not allowed to by the detaining authorities at the Military Academy. When Amnesty International delegates met her in early April 2005 she was gravely concerned about her husband's health as a result of an illness which required regular medication and a good diet. She was not sure whether the detaining authorities were allowing him to receive the medication which she handed over to officials at the Military Academy, without seeing or talking to him. He too was transferred to the Brazzaville central civilian prison in mid-May 2005 and was still being held there by the end of November 2006. He too is reported to have been charged with endangering the security of the state.

Others transferred from military custody to the Brazzaville central civilian prison include retired marine lieutenant **Jean-Romain Tsiba** and sergeant **Eric Nzambi** who were arrested in Pointe-Noire in February 2005. Others are **Jacques Boussoukou**, **Alain Moukala**, **Eric Lakibi** and army sergeant **Francis Ngolo Ngapene**. Army sergeant Ngapene was held at *camp des trois martyrs* (4) airbase in Pointe-Noire. He was reportedly tortured and sustained injuries, including a broken arm. The authorities are not known to have investigated reports that Ngapene was tortured or to have taken any action against those alleged to have been responsible for his ill-treatment. Sergeant Bardol **Ngondo Massala** was arrested on 18 February 2005 at the Tié-Tié police station in Pointe-Noire where he worked. He was subsequently moved to the DST and several months later to Brazzaville central prison, where he was still being held in November 2006.

**Ivel Nzinga**, 35, fled Pointe-Noire after the initial arrests in February 2005. Three months later on 23 May he was arrested by members of the Forces armée congolaise (FAC), Congolese Armed Forces, in Mouyondzi town of Bouenza province. He was first transferred to Nkayi in Bouenza, and then to Dolisie, the capital of Niari province, on 28 May 2005. He was later transferred to Brazzaville central prison, where he was still held in November 2006.

Between October 2005 and the start of 2006 Amnesty International learned that at least 13 detainees had been granted provisional release. They included Jean-Romain Tsiba who was released in October 2005. Others were Anicet Rodrigue Poaty, Nzassi, Nèrré Osséré, Yves Makita, Jean Rivé Niaty, Eric Nzambi, Jacques Boussoukou, Alain Moukala and Eric Lakibi. Amnesty International has been informed that those granted provisional release were each required to pay a bail fee of up to 300,000 CFA Francs (approximately US dollars 600). They were also expected to report at least once every fortnight to the head of security in their local area. They were not told when their cases would be heard in court or what procedures they would be required to follow in order to have the charges against them withdrawn.

Those who were still being held at Brazzaville's central prison were Serge André Passi, Ivel Nzinga, Louis-Marie Mizigou, Alphonse Miyalou, Berthel Dibondo, Pandi Ngouari, Séraphin Massengo Singouayi, Silvère Ntsoumou, Jean-Bosco Binama, Francis Ngolo Ngapene and Bardol Massala Ngondo. All these detainees are reported to have applied for provisional release. Their applications were rejected, apparently without being given the reasons for their continued detention. A common element between them is that they were active and retired members of the security forces, although some members of the security forces were granted provisional release.

#### 4. Detention without charge of asylum-seekers

Three former members of the security forces from the DRC seeking asylum in the Republic of Congo have been held for nearly three years without charge or trial at the headquarters of the DCRM military security service. They are former army majors **Germain Ndabamenya Etikilome** and **Médard Mabwaka Egbonde**, and former police captain **Bosch Ndala Umba**. Ndabamenya is a former military magistrate while Egbonde is a former army Kimbanguist(5) chaplain. They were arrested on 29 March 2004 by members of the DCRM in Brazzaville.

According to information received by Amnesty International, the three men were arrested after Ndabamenya gave an interview to the Republic of Congo national radio about shootings heard several days earlier in the DRC's capital, Kinshasa.(6) The three detainees had reportedly fled persecution in the DRC. Ndabamenya is reported to have fled to Brazzaville after he received threats for testifying to a DRC commission of inquiry into allegations of military and other offences allegedly committed by former military court prosecutor, army colonel Charles Alamba Mungako. Sources in Brazzaville have told Amnesty International that the three men were arrested at the request of the DRC government. However, in Brazzaville, the Congolese authorities are reported to have said that the men were arrested on account of spying for a foreign power (understood to be the DRC) and endangering the security of the state. Local human rights organizations informed Amnesty International that the three men were still being held without charge at the end of November 2006.

The UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers state the general principle that asylum-seekers should not be detained (Guideline 2), and that there should be a presumption against detention (Guideline 3). Detention may be resorted to only exceptionally, if shown to be necessary as provided by Guideline 3 (i)-(iv), and clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. Guideline 3(iv) provides for the exceptional ground of detention "to protect national security and public order". This exception can only apply if there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry. As these three men have neither been charged nor tried, any such evidence has not been adduced or tested before an independent and impartial tribunal established by law. Amnesty International urges that these three men be charged with a recognizable criminal offence or released, in accordance with international law and standards on the liberty and security of the person and on the right to a fair trial.

The detention of the three men is reminiscent of that of 19 former members of the DRC's security forces who were arrested in Brazzaville in January 2001. The 19 men had been seeking asylum in the Republic of Congo. The authorities in Brazzaville accused them of spying for the DRC Government. On 24 April 2001, the 19 were secretly deported to Kinshasa where they were detained and tortured by members of the DRC security services.(7) They and several dozen other political detainees were sentenced in January 2003 to life imprisonment following an unfair trial by the Military Order Court (Cour d'ordre militaire, COM). One of those deported from Brazzaville in January 2001 and serving a life prison sentence is **Césaire Muzima Mwenyezi**. He, **Fils Murhanzi** and at least 13 other prisoners are reported to have escaped on 24 October 2006 from the central prison known as the Centre pénitentiaire et de rééducation de Kinshasa (CPRK) in the DRC capital, Kinshasa. Césaire Muzima Mwenyezi and Fils Murhanzi fled to Brazzaville. The two escaped prisoners, together with Césaire Muzima Mwenyezi's wife, **Christine Mapitshi**, and his brother, **Hassan Alfani**, were promptly arrested by members of the Congolese security forces. Christine Mapitshi and Hassan Alfani had been asylum-seekers in Brazzaville. Césaire Muzima Mwenyezi, Fils Murhanzi and Hassan Alfani were deported to Kinshasa

where they were being held in November 2006. Césaire Muzima Mwenyezi and Fils Murhanzi were reportedly returned to the CPRK prison while Hassan Alfani was reportedly being held by the DRC's military security service. According to human rights activists in Brazzaville, the three men were not allowed an opportunity to challenge the legal basis for their arrest or deportation to Kinshasa. Christine Mapiitshi remained in Brazzaville with her baby, amidst reports that she was being repeatedly harassed by members of the security services.

In November 2006, Amnesty International contacted a senior official of the UNHCR in Brazzaville with a view to establishing whether the three DRC citizens detained in Brazzaville and the three others deported to Kinshasa were formally known to the refugee agency as asylum-seekers. The organization also sought to know whether Christine Mapiitshi had sought and, or obtained UNHCR protection. The UNHCR official replied to Amnesty International that information held by the agency about individuals was confidential and could therefore not be divulged to the organization. By the end of November, the organization had not been able to establish whether the six men and one woman had been allowed an opportunity to obtain protection as asylum-seekers or refugees.

## **5. Torture and ill-treatment of suspects**

Amnesty International has received reports of torture and ill-treatment in custody of four men accused of involvement in trafficking arms. They are **Aymar Mouity**, 26, **Médard Moukouabi**, 39, **Marius Nzihou**, 34 and former army sergeant **Ibombo**. They were arrested in May 2006. They were first held at the Dolisie branch of the police's Specialized Units Command (Commandement des unités spécialisées, COMUS). The detainees were later transferred to the Moukondo COMUS detention centre in Brazzaville. Local human rights organizations have informed Amnesty International that these detainees have not had access to legal counsel since their arrest in May. They are not known to have been formally charged with any specific offence or to have appeared before a magistrate for a ruling on the legality of their detention.

On arrival at Moukondo, the four detainees were reportedly held for three days without being fed. Since then, a relative of one of the detainees brings them food on a daily basis. Feeding by the detaining authorities reportedly consists of a single piece of bread per day. It is reported by local human rights organizations that the detainees are rarely allowed to bathe and are often denied drinking water. The deprivation of food, water and washing facilities constitutes a violation of the right to be treated with humanity and respect for the inherent dignity of the human person, which applies to all persons deprived of their liberty.<sup>(8)</sup>

The detainees are reportedly held in harsh conditions, amounting to cruel, inhuman and degrading treatment. They are held in a cramped and dark cell, without bedding. The darkness is reported to be damaging the detainees' eyesight. When on rare occasions they are allowed out of the cell, the detainees reportedly find it virtually impossible to keep their eyes open. They use plastic bags in the cell as toilets. Rule 10 of the Standard Minimum Rules on the Treatment of Prisoners sets specific standards for sanitation, natural and artificial light. The conditions in which the detainees are held not only violate these standards, but also constitute cruel, inhuman or degrading treatment, as prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the African Charter.

It has been alleged that these detainees are often beaten by members of COMUS responsible for their detention. It has been reported that in one incident Aymar Mouity was suspended by his feet from the ceiling. This torture and ill-treatment is unequivocally prohibited under international law. Aymar Mouity reportedly suffers from haemorrhoids, constipation and a kidney illness, for which he does not receive medical care. In addition to severe difficulties with his vision, Marius Nzihou was reported to be bleeding from the rectum. International standards clearly provide for detainees to access medical care: in the form of a medical examination as promptly as possible after the detainee's arrival in the place of detention, and the provision of medical care and treatment whenever necessary thereafter.<sup>(9)</sup>

Amnesty International is seriously concerned about the unlawful detention of the four men and the life-threatening conditions, torture and ill-treatment to which they have been subjected. The organization urges the authorities to ensure that these detainees are treated humanely according to Congolese law and international standards. The authorities should urgently order an independent and impartial investigation into reports that these detainees have been tortured and ill-treated. If there is sufficient evidence, those suspected of violating the detainees' rights should be brought to justice in proceedings that respect international fair trial standards, and victims should receive compensation and rehabilitation.

## **6. Detainees denied their basic rights**

During a visit to Brazzaville and Pointe-Noire in April 2005, Amnesty International delegates met relatives of some of the detainees and a lawyer representing some of them. The delegates gathered information about the circumstances of and the basis for the arrests of the detainees, as well as about

the current status of their detention and detention conditions. The delegates sought to meet the detainees but did not obtain authorization from the authorities.

The detainees' relatives and their lawyer were concerned that they had been denied access to the detainees, both at the DCRM and at the Military Academy in Brazzaville, from March to mid-May 2005. The lawyer wrote a letter to the Procurator General expressing concern about failure by the authorities to respect detainees' rights but received no reply. When the lawyer gave an interview to the Paris-based *Radio France International*, he was reportedly warned by the authorities not to make any further public comments about the government's failure to respect the detainees' rights.

Despite several attempts, Amnesty International's delegates could not secure a meeting with the Minister of Justice or other officials in the ministry to discuss the situation of the detainees and other human rights concerns. The delegates held a meeting with the director of the DCRM, where most of the detainees were being held. The director informed the delegates that members of the security forces held by the DCRM were subject to a military detention regime and as such did not require oversight by the judiciary. He added that there was no need for them to have legal counsel. The director insisted that this equally applied to civilians accused of involvement in offences committed by members of the security forces. He claimed that the detainees did not have to be charged with any offence for them to remain in custody. Despite several attempts, Amnesty International's delegates were not given the necessary authorization by the Ministry of Defence to visit the detainees. The DCRM director told the delegates that within two weeks from the time of their visit, the detainees would have access to visits by their relatives. The relatives continued to be denied visits until the detainees were transferred in mid-May 2005 to Brazzaville's civilian central prison.

In a letter to the Congolese Minister of Justice in March 2006, Amnesty International urged the Congolese authorities to respect Congo's own laws and comply with the international human rights treaties Congo has ratified. The organization called on the Congolese authorities to ensure that all detainees' fair trial rights are fully protected, including the right to be informed promptly of any charges, to be brought promptly before a judge and the right to trial within a reasonable time or release from detention. Amnesty International reminded the authorities that any trial of the detainees should be carried out in accordance with international law and standards on fair trials.

Amnesty International urged the Congolese authorities and the judiciary in particular to:

- (a) Ensure that the detainees are promptly brought to trial on recognizable criminal charges or are released pending trial;
- (b) Ensure that detainees are allowed to take proceedings before an independent court to challenge the lawfulness of their detention. Courts examining the lawfulness of the detention should be empowered to order the release of the detainees if their detention is deemed unlawful.
- (c) Ensure that the lawfulness and the necessity of the pre-trial detention is periodically reviewed by the competent judicial authorities.

By November 2006, Amnesty International had not yet received a reply from the minister or any other government officials. It remained unclear if or when the detainees who continued to be held would be brought to trial or released.

The detainees mentioned in this report were arrested in violation of Congolese legal procedures and international human rights instruments to which Congo is party. Some of them have been subjected to torture or other cruel, inhuman or degrading treatment. The accused must be afforded all guarantees of the right to a fair trial as set out in international law and standards.

### **Right not to be subjected to arbitrary arrest or detention**

The right to liberty and the prohibition of arbitrary or unlawful arrest or detention are enshrined in the International Covenant on Civil and Political Rights (ICCPR) and in the African Charter on Human and Peoples' Rights (African Charter), to which Congo is a state party.

Article 9, paragraph 1 of the ICCPR states that:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Article 6 of the African Charter similarly prohibits arbitrary or unlawful arrest or detention.

Under Article 48 of the Congolese Code of Penal Procedure, unless caught in the act (*en flagrant délit*), a person suspected of committing an offence should be arrested on the basis of an arrest warrant issued by a procurator (*procureur de la République*) or an examining magistrate (*juge d'instruction*).

### **Right to be informed immediately of the reasons of arrest or detention and of any charges**

Article 9 (2) of the ICCPR states:

"Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

Article 14(3)(a) of the ICCPR also provides:

'In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;...'

The African Commission on Human and Peoples' Rights (African Commission) adopted in May 2003 the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, outlining safeguards that governments should put in place to ensure the right to a fair trial. Principle M(2)(a) provides that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her."

### **Right to be brought before a judge or other judicial officer to challenge the lawfulness of detention**

Article 9(4) of the ICCPR states:

'Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if that detention is not lawful.'

This provision is also reflected in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Principle M(4)).

According to the Congolese Code of Penal Procedure, in an urban area where a high court (Tribunal de grande instance) exists, a suspect should be referred within 72 hours after arrest to a procurator or an examining magistrate who should authorise whether a suspect should be released or remanded in the custody of the arresting authority for a further 48 hours. In areas where a high court does not exist, an arresting authority may detain a suspect for 48 hours after the initial 72 hours without the authorization of a judicial official.

Article 108 of the Code of Penal Procedure says that anyone detained beyond 72 hours without appearing before a judicial official is considered to be arbitrarily detained.

### **Right to legal counsel before trial**

Article 14 (3)(b) of the ICCPR provides that everyone charged with a criminal offence shall be entitled, as a minimum guarantee:

'To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;'

Article 14 (3)(d) provides for those charged to be informed of their right to legal assistance, and to have that legal assistance appointed where the interests of justice so require, and free of charge where the person charged lacks the means to pay for it.

Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) states:

"A detained person shall be entitled to have the assistance of legal counsel. He shall be informed of his right by the competent authority after arrest and shall be provided with reasonable facilities for exercising it."

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provides that



anyone who is arrested shall be informed upon arrest of the right to legal representation (Principle M(2)(b) and shall have prompt access to a lawyer (Principle M(2)(f)). Further the right to legal counsel expressly applies "during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, trial and appeal proceedings" (Principle N(2)).

Under Article 97, paragraph 2, of the Congolese Code of Penal Procedure, a magistrate must inform a defendant of his / her right to choose legal counsel.

### **The right of detainees to have access to their family and to doctors**

Individuals held in pre-trial have the right to be given all reasonable facilities to communicate with family and friend and to receive visits from them, according to Principle 19 of the Body of Principles as well as Principle M(2)(g) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

Detained persons have also the right to be examined by a doctor as promptly as possible after detention and thereafter medical care and treatment shall be provided whenever necessary (Principle 24 of the Body of Principles).

### **Right to trial within a reasonable time or to release from detention**

Article 121, paragraph 1, of the Congolese Code of Penal Procedure states that pre-trial detention (*détention préventive*) must not exceed four months after the initial 72 hours after arrest. It can only be prolonged by the order of an examining magistrate for no longer than four months (Article 121, paragraph 3).

Article 123 of the Code of Penal Procedure states that provisional release can be demanded at any time from the examining magistrate by a defendant or legal counsel. The examining magistrate must respond within five days of the application for provisional release.

Article 9, paragraph 3 of the ICCPR states:

"Anyone arrested or detained [...] shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment"

Article 7 of the African Charter on Human and Peoples' Rights recognizes, *inter alia*, the right "to be tried within a reasonable time by an impartial court or tribunal." (See Article 7(1)(d)).

The detainees arrested in connection with the alleged plot against the Congolese Government are expected to be tried by the Criminal Court, if the charges are not dropped. According to Article 217 of the Congolese Code of Penal Procedure, the Criminal Court sits every three months, but its President can order it to sit more frequently. Up to 18 months after their arrest, the defendants arrested in January and February 2005 had not been produced before the Criminal Court by the end of November 2006.

## **7. Conclusion**

The Congolese government has violated its domestic law and its obligations under international human rights law by arbitrarily arresting individuals and detaining them for more than seven months without charge and, for some, more than 18 months without trial. Amnesty International is concerned that for at least four of the detainees, they are reported to have been subjected to torture and cruel, inhuman and degrading treatment. Detainees have suffered violations of their fair trial rights: to be informed immediately of the reasons for their arrest or detention and of any charges against them; to be brought before a judge; to be informed of their right to legal assistance upon arrest; and to have prompt access to their lawyer. Under international human rights law, all detainees have the right to challenge the lawfulness of their detention. If they are not charged with a recognizable criminal offence and brought to trial within a reasonable time, they should be released.

Amnesty International urges the Congolese authorities to respect its own laws and abide by international human rights standards Congo has ratified. It should ensure that the right to fair trial of detainees are fully protected, including the right to be informed promptly of any charges, to be brought promptly before a judge and the right to trial within a reasonable time or release from detention. The organization urges that any trial of detainees be carried out in accordance with international and regional fair trial standards.

## **8. Recommendations**

**To the Republic of Congo:**

- (a) Ensure that all individuals still detained without charge are charged promptly with a recognizable criminal offence or released;
- (b) Ensure that all detainees have immediate access to legal counsel, professional medical care and adequate food, and provide facilities to ensure that their spouses and other close relatives can visit them regularly;
- (c) Ensure that detainees are tried within a reasonable time or are released pending trial;
- (d) Ensure that detainees are allowed to take proceedings before an independent court to challenge the lawfulness of their detention. Courts examining the lawfulness of the detention should be empowered to order the release of the detainees if their detention is deemed unlawful;
- e) Ensure that the lawfulness and the necessity of the pre-trial detention is periodically reviewed by the competent judicial authorities;
- (f) Investigate all allegations of torture or other ill-treatment of detainees, and where sufficient admissible evidence exists, bring those suspected of involvement to justice in proceedings that respect international fair trial standards;
- (g) Ensure that victims of torture or ill-treatment, and arbitrary arrest or detention obtain redress and have an enforceable right to reparation, including fair and adequate compensation and full rehabilitation.

**GLOSSARY OF ACRONYMS**

AU: African Union

CNR: Conseil national de résistance (National Resistance Council)

COM: Cour d'ordre militaire (Military Order Court)

COMUS: Commandement des unités spécialisées (Specialized Units Command)

CPRK: Centre pénitentiaire et de rééducation de Kinshasa (Kinshasa Penitentiary and Re-education Centre)

DCRM: Direction centrale des renseignements militaires (Central Directorate of Military Intelligence)

DRC: Democratic Republic of Congo

DST: Direction de la surveillance du territoire (Directorate of Territory Surveillance)

FAC: Forces armées congolaises (Congolese Armed Forces)

ICCPR: International Covenant on Civil and Political Rights

UNHCR: United Nations High Commissioner for Refugees

**AMNESTY INTERNATIONAL'S REQUEST TO YOU**

After reading the concerns around the cases highlighted in this report, Amnesty International requests you to participate in its action to ensure that the government of the Republic of Congo respects the rights of its citizens and others on its territory, and takes concrete measures to promote and protect human rights. The organization's success on behalf of victims of human rights abuses around the world over more than 40 years and in more than 100 countries is based on individual actions like yours, as well as collective ones. The following is what you can do to alleviate the plight of the victims of human rights violations mentioned in this report.

**Letter-writing**

Write a polite letter (or a petition if more than one person), preferably in French, but also in English or your own language, to the Republic of Congo authorities listed below. In the letter (or petition):

- Say that you have read Amnesty International's report on the situation of more than 25 people

arrested in January and February 2005, who were accused of involvement in the stealing of military weapons and plotting to overthrow President Denis Sassou N'Guesso's government. Give brief details of the cases, including names of some of the detainees;

- Express concern that the detainees were arbitrarily arrested and unlawfully detained for up to seven months without charge and, for some, more than 18 months without trial;
- Express concern that the initial arrests and detentions of these individuals were carried out on the basis of orders by a commission of inquiry that operates outside the law and without oversight by the judiciary, in violation of the procedures for arrests and detentions under the Congolese national law;
- Condemn the unlawful detention of at least 12 detainees who continued to be held even after the prosecutor of the Brazzaville High Court told them that an examining magistrate had concluded that they had no case to answer in March 2006;
- Call on the government to ensure that the three asylum-seekers from the DRC (naming them) who have been detained for several years without charge or trial are either charged with recognizable criminal offences and promptly given a fair trial or are released without further delay;
- Urge the government to ensure that detainees are tried without further delay or are released pending trial, if the charges are not dropped;
- Request that the detainees be given access to legal counsel, professional medical care, adequate food and visits from family members;
- Urge the government to ensure that any members of the security forces accused or suspected of carrying out, ordering or tolerating torture and other forms of ill-treatment of detainees – particularly of the alleged arms traffickers - are brought to justice and victims compensated in accordance with Republic of Congo laws and international standards.
- Request the government to publicly undertake to promote and protect human rights and make it clear that judicial and administrative action will be taken against any government or security officials involved in human rights violations.

**SEND APPEALS TO:**

**President**

His Excellency  
Denis SASSOU N'GUESSO  
Président de la République  
Présidence de la République  
B.P. 2006, Brazzaville, République du Congo  
**Salutation: Your Excellency / Monsieur le Président de la République**

**Prime Minister**

Monsieur Isidore MVOUBA  
Premier Ministre  
Presidence de la République  
BP 2006  
Brazzaville, République du Congo  
Fax : +242 2 813348  
**Salutation: Dear Prime Minister / Monsieur le Premier Ministre**

**Minister of Justice**

Monsieur Gabriel Entcha EBIA  
Ministre de la Justice, Garde des Sceaux  
et des Droits Humains  
Ministère de la Justice  
BP 2497  
Brazzaville, République du Congo  
Fax : +242 2 814167  
**Salutation: Dear Minister/Monsieur le Ministre**

**Minister of Foreign Affairs**

Monsieur Rodolphe ADADA  
Ministre des Affaires étrangères, de la  
Coopération et de la Francophonie

BP 2070,  
Brazzaville, République du Congo  
Fax: +242 2 814161

**Salutation: Dear Minister/Monsieur le Ministre**

**Minister for Security**

Le Général Paul MBOT  
Ministre de la Sécurité et de l'Ordre public  
Ministère de la Sécurité  
BP 2474  
Brazzaville, République du Congo  
Fax : +242 2 815756

**Salutation : Dear Minister / Monsieur le Ministre**

**Lobbying**

- Individually or in a group, ask to meet or write a letter to the diplomatic representative of the Republic of Congo to your country. Give a copy of this report to the representative and highlight Amnesty International's concerns and seek assurances that the recommendations will be considered for implementation.
- In a meeting or a letter bring the concerns and recommendations in this report to the attention of your country's Ministry of Foreign Affairs. Ask that your government uses its good offices to urge the Republic of Congo Government to abide by its own laws and international treaties and standards.

**Media work**

Avail a copy of this report to the media (newspapers, radios, television, etc) in your country. Request news and feature editors of these media to give coverage to the concerns and recommendations in this report. The media may also interview the Republic of Congo diplomatic representative accredited to your country about the human rights situation in the Republic of Congo.

Thank you for taking part in this action on behalf of victims of human rights violations in the Republic of Congo.

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(1) Constitutive Act of the African Union, Article 3(h).

(2) Denis Sassou N'Guesso first became President of the Republic of Congo in February 1979. He left power after losing elections to Pascal Lissouba in 1992. He returned to power in October 1997 after overthrowing President Lissouba.

(3) See Amnesty International reports on the Republic of Congo entitled, An old generation of leaders in new carnage (AI Index: AFR 22/001/99) and A past that haunts the future (AI Index: AFR 22/001/2003).

(4) Three martyrs barracks

(5) Kimbanguism is a religious sect founded in the DRC by Simon Kimbangu at the start of the early 20th century. Most of its members are found in the neighbouring countries of the DRC, Republic of Congo and Angola.

(6) Kinshasa and Brazzaville are situated on opposite banks of the River Congo.

(7) See Amnesty International's report entitled, Republic of Congo: A past that haunts the future (AI Index: AFR 22/001/2003), published on 9 April 2003.

(8) ICCPR, Article 10

(9) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24.