

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

I. BACKGROUND

(Godfrey Byaruhanga; comments by Sanda Kimbimbi - UNHCR)

I.1. Historical and political background

The Congo had, in fact, been the property of the King of Belgium since 1876. His mismanagement of the country led the Belgian government to take over the administration of the territory and it became a Belgian colony in 1908. It is known as one of the most brutal colonial regimes, responsible for horrendous human rights violations. When a mutiny of the African soldiers in the colonial army in order to fight for equal rights and equal pay and against ill-treatment coincided with increasingly violent demonstrations for self-determination, Belgium decided to work out an accelerated arrangement for granting independence. By frenziedly securing the riches that would be lost to them once the huge country gained independence the Belgians left the Congo virtually bankrupt. The Congolese politicians themselves had not yet reached a consensus about how to govern the country. Three politicians were fighting for control: the first president of the Congo, Joseph Kasavubu rivalled with prime minister Patrice Lumumba who felt he was the elected leader of the Congolese people. Moise Tshombé from Katanga wanted his province to secede from the rest of the country. The political fight that ensued coincided with a difficult time in the East-West relations; the Congo's transition to independence was marked by the interests of foreign powers entrenched in their Cold War positions. Patrice Lumumba was generally considered to represent a communist ideology and to be supported by the Soviet Union. Lumumba's secretary for defence, Colonel Joseph Désiré Mobutu, is believed by many to have been paid by the CIA. A number of multinational companies and the Belgian government had a particular interest in the mineral-rich province of Katanga and supported Thsombé's claims to independence. Mobutu for his part proposed a nationalist agenda in order to unify the country.

When the Congo risked being torn apart by the different alliances, the UN decided to deploy its first peace-keeping force. The success of the mission was seriously jeopardised when prime minister Lumumba was arrested, disappeared and was subsequently murdered, probably with the help of US or other Western agents. Many people in the DRC have never forgiven neither the UN nor Western powers for the failure of the peace-keeping operation, a failure which ultimately put an end to any hope for democracy for the thirty years that were to follow. After winning the civil war in 1965 Mobutu established himself as president and moved very quickly to eliminate his most dangerous opponents and to sign on others whom he thought he could buy off. Many people were grateful that Mobutu had brought peace to the country and also hoped for democratisation.

Instead, Mobutu established a one-party state: in 1967, he formed the *Mouvement populaire de la révolution* (MPR) which was to become the sole legitimate body to articulate political interests.

The following years bred a culture of corruption and kleptocracy as well as an unrivalled system of patronage. The famous case of Nguz Karl i Bond illustrates this very well: the most serious opposition in those days came from student movements and dissatisfied soldiers as well as from the Katanga region where two secession wars were led in the 1970s. Several armed groups, one of them led by current President Laurent-Désiré Kabila, tried to overthrow Mobutu. They failed because he had the support of Western powers. Any protest was severely punished; many people were killed, either extrajudicially executed or sentenced to death by military tribunals. Karl i Bond was a very high government official when he was suspected of being involved in the 1977 Katanga rebellion. He got arrested and was very severely tortured. After he managed to leave the country, he went to Belgium where he wrote a book entitled "Le mal zairois" ("The Zairian Evil"). Nevertheless, Karl-i-Bond later was appointed and accepted the post of Congolese ambassador in Washington. When he was brought back to Kinshasa, he became Mobutu's prime minister.

In the 1980s the political system began to collapse. Etienne Thisekedi decided to defect from the MPR and founded his own political party, known as the UDPS (*Union pour la démocratie et le progrès social*). Although some politicians led by Thisekedi got arrested, imprisoned and tortured they did not give up and gave people the hope that things could change. The wind of change from the East, heralded by the collapse of the Soviet Union, also affected the political environment of Zaire. The US could not justify supporting a leader who had nothing to offer but his formal opposition to a communist system that no longer existed. The United States had used Zaire to support the Angolan rebel leader Jonas Savimbi in another proxy war of the Cold War period. With the end of the Cold War, Mobutu lost international support. He was under serious pressure to look respectable and thus launched political reforms in 1990. In April 1990, a multi-party political system was introduced. During the seven-year long period of transition that followed an estimated as many as 400 parties were formed. But Mobutu succeeded once more in manipulating his potential opponents by offering money to everybody who seemed susceptible to putting his private interest first. Political infighting, continuing corruption and insecurity hampered the democratisation process.

Zaire is surrounded by countries that are very unstable and undemocratically ruled. This also contributed to the current war. Those countries tried to transfer their internal problems to the territory of Zaire at several points in the past ten years: When the Tutsi exiles - refugees from Rwanda since the early 1950s - decided to launch a war against the Hutu-dominated government of President Juvénal Habyarimana on October 1, 1990, Mobutu sent a few thousand troops across the border with Rwanda to help his friend Habyarimana. The Rwandan Patriotic Front (RPF) would

never forgive Mobutu for siding against them. In July 1994, the RPF took power after the massacre of as many as one million people, most of them Tutsi but also including many Hutu in Rwanda. Most of the victims were killed by Hutu-dominated former government forces (ex-FAR) and Interahamwe militia, although thousands were reportedly killed by the RPF. In the aftermath of the killings, one million Hutu refugees crossed the border into Zaire. Many of them were armed and made plans for an insurgency into Northern Rwanda from Zairian territory. The refugee camps located at the border were a serious threat to the new Rwandese government. In late September 1996, an alliance led by Rwandese and Ugandan governments supported Zairian Tutsi and Kabila against Mobutu. Uganda and Burundi also joined in because insurgents were using the Zairian territory as a base for attacks into their countries; Angola got involved because of Mobutu's support for Savimbi.¹ Zimbabwe's interest in the war was mainly due to economic reasons as it opened a market for its arms industry; in exchange for its support for Kabila, Zimbabwe received a management contract for Gécamines, the state-owned mining company in Katanga.² Belgian and French mercenaries hired by Mobutu completed the armed forces battling on Zairian ground.

I.2. Recent developments

In May 1997, the alliance led by Laurent-Désiré Kabila came to power. Despite of the change in leadership, killings, arbitrary arrests and other human rights abuses continued. Tens of thousands of unarmed Rwandese and Burundian Hutu refugees, as well as many Congolese civilians got killed under the pretence of fighting armed rebels. Political parties were effectively banned. Many cases of torture, rape and "disappearances" - mostly of Mobutu supporters and opponents of the new government - occurred. In opposition to the presence of Rwandese and Tutsi forces, armed groups built up in Eastern DRC. Kabila became extremely unpopular as he was considered to be the stooge of foreign governments, particularly the Tutsi-led Rwandese government. On July 27, 1998, Kabila decided to expel all foreign forces. Rwanda and Uganda, together with a few key Congolese politicians and defected commanders of the new Congolese army led by Major Jean-Pierre Ondekane (ex-FAZ commander of the 10th brigade), and Rwandese Colonel James Kabarebe whom Kabila had sacked from his post as Congolese army Chief of Staff) decided to overthrow Kabila, not anticipating the support of Angola, Zimbabwe and Namibia for Kabila. On August 2, 1998 a military alliance led by Jean Pierre Ondekane, which was subsequently called the RCD (*Rassemblement congolais pour la démocratie*) captured Goma and Bukavu in the East and attempted to take over Kinshasa. Their forces were brought by air to Kitona, a major military base,

¹With the involvement of the Angolan government in supporting Kabila the position of the FLEC, the Cabindan Liberation Movement, has changed. Cabinda is an Angolan enclave west of Kinshasa. Many members of the FLEC are in exile in the DR Congo. They are having it quite rough. Six of them have been in detention in Kinshasa. There are a few cases of asylum, but the issue has not been raised for quite a while.

² United States Institute for Peace Special Report: Reconstructing Peace in the Congo, 31 August 1999 [Internet] <<http://www.usip.org>> (PDF)

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where they tried to convince members of the new army to mutiny. They captured the biggest power station of the country, the Inga dam, and cut off the power supply for the capital. Advancing northwards to Kinshasa, they met with the unexpected resistance of Angolan and Zimbabwean forces. Many of the rebels, including Rwandese soldiers led by Col. Kabarebe, were killed, but others withdrew to the East from where they continued the war. Ugandan forces crossed into DRC and went towards Kisangani which they and allied forces seized on 23 August 1998. After establishing themselves in Goma and Kisangani the RCD and Rwandese forces, assisted by Burundian government forces, went southwards. In November they took over Kalemie, from where they moved on further to the South. Since then, the military situation has largely stagnated with neither side making significant gains, with the exception of the Equateur province where the MLC captured nearly half the territory from government forces during 1999. Neither side has been strong enough to overwhelm the other.

Overview of the armed forces

At present, the Congolese army (*Forces armées congolaises*-FAC) is structured in three groups: high officers and junior officers make up about 600 soldiers. The rest of the army consists of common soldiers. Former soldier of the *Forces armées zairoises* (FAZ), Mobutu's army are exclusively represented in the third group and do not hold higher ranks.

In May 1999, the RCD split into a Rwandese-supported faction, headed by Emile Ilunga with its stronghold in Goma, and a faction backed by Uganda and led by former RCD leader Ernest Wamba dia Wamba which had its base in Kisangani. This split also caused the serious fighting between Uganda and Rwanda in Kisangani that took place in mid-August. As part of a deal between Rwanda and Uganda to reduce tensions between their troops, the Wamba faction nominally moved its headquarters to Bunia, near the Ugandan border, while the two countries replaced their senior commanders, including Col. Kabarebe who was appointed Rwanda's deputy army chief of staff in February 2000.

Uganda also supports the MLC (*Mouvement pour la libération du Congo*) and its leader Jean-Pierre Bemba who is the son of Saolana Bemba, Kabila's Minister for Economy. The stronghold of the MLC is Bemba's home province of Equateur.

The armed opposition, together with the Rwandese, Ugandan and Burundian forces claim to control the territory in the Eastern DRC. In fact, they mainly exert control over the towns but they fail to control the countryside. For example, parts of South-Kivu such as Shabunda are controlled by local armed groups that attack the occupying forces very frequently. If they appear to support the central government, it is because of their opposition to Rwandese and Ugandan forces. They

claim Kabila has abandoned them in their fight against the occupation and act quite independently of the government. In September 1999, Kabila appointed several leaders of those armed opposition groups as army leaders, but has little control over their activities.

The best-known of the armed opposition groups that are vaguely supportive of Kabila are the various Mai-Mai militias, which operate in both Kivu provinces and are strongly anti-Tutsi. Their members are mainly recruited from the Babembe, Batembo, Bafulero and Bahunde ethnic groups.

On July 11, 1999 a ceasefire-agreement was signed in Lusaka by Zimbabwe, Angola, Namibia, Rwanda, Uganda and Burundi. The two factions of the RCD and the MLC led by Jean-Pierre Bemba were slower in agreeing to the plan but eventually signed in August 1999.

Despite the deployment of 79 military liaison officers by the UN who are supposed to monitor the implementation of the Lusaka accord the ceasefire agreement has been regularly violated; fighting has been particularly intense in the Equateur province between government troops and the MLC as well as in South Kivu. A new violent conflict has arisen between the Hema and Lendu ethnic groups in Oriental province; Ugandan forces are reportedly intervening in favour of the Hema, thereby contributing to the escalation of the quarrel about land rights.³

At the end of January, President Kabila and various other Central African leaders went to New York to make a plea for the deployment of a UN peace-keeping mission in the DRC. The Secretary-General's proposal of sending 500 cease-fire observers, with 5,000 troops to back them up, was approved by the Security Council in February 2000.

1.3. Political, economic and security situation

Right now, Kabila has obviously two major concerns: the war and the economic situation. In Kinshasa these two aspects reinforce each other and create a situation that is very reminiscent of the political culture of the sixties and the seventies: the cult of personality is pervasive - pictures of Kabila are displayed everywhere. The propaganda campaign for the war makes constant calls to the public to resist the aggressors. It is undeniable that the DRC is moving towards authoritarianism, towards a new dictatorship.

³For a background to the conflict see ASADHO: *Rapport de l'Asadho sur le conflit inter-ethnique Hema-Lendu en territoire de Djugu dans la Province Orientale*, December 1999 [Internet <<http://www.congonline.com/Asadho/.htm>> accessed 08/01/00] as well as the IRIN (Integrated Regional Information Network) focus on the Hema-Lendu conflict published on 15 November 1999 [Internet] <<http://www.reliefweb.int/IRIN>>

A very worrying trend could be noticed in the last two months of 1999. The politico-military alliance known as the *Alliance des forces démocratiques pour la libération du Congo* (AFDL) which brought Kabila to power has been replaced by the *Comités du pouvoir populaire* (CPP). They are set up in the structure familiar from neighbourhood committees - representatives are elected who constantly watch over the behaviour of the inhabitants and eventually might exert so much control over the population that nobody dares to speak out anymore. There were discussions about turning the CPP into self-defense cells (*cellules d'autodéfense*); the big question remains whether these self-defence cells ought to be armed. Arming a group of young people who are told they have to protect their motherland will hardly contribute to increasing the security for the civilian population.⁴ Another extremely worrying factor was the way the curfew in Kinshasa had been enforced. It had been lifted for a short period in 1997, but was soon re-established when fighting intensified again. The curfew - which has been lifted again at the end of December - lasted from 10 p.m. to 5 a.m. (sometimes also from 9 p.m. to 6 a.m.). One has also to keep in mind that there is no functioning transportation system and it could be extremely difficult to get home in time for the curfew. Many incidents were reported where soldiers, alleging a violation of the curfew, would victimise civilians on the streets, but also in their homes. The curfew was used as a pretence for blatant abuses as this widely reported incident at the beginning of December shows: a man who was at home tending to his sick child turned on the light at 1 o'clock in the morning. Soldiers patrolling the streets saw the light, shot through the window and killed the man.

Responding to a question from the audience on whether it is illegal to have guns, both experts stated that civilians are not supposed to keep guns. Given the current state of affairs one is better not found with a gun in the house. Very likely, there is no procedure of legally obtaining a gun. There are some people who keep hunting rifles, but even in that case it would look very bad if a person were found with any kind of gun.

The economy is in shambles. In an attempt to collect as much foreign currency as possible, a presidential decree in January 1999 prohibited transactions in foreign currencies. The DRC, however, is a country where people are used to dealing with foreign currencies. Officially, it is allowed to obtain dollars at authorised banks but there are simply not enough dollars in the banks. The prohibition is not enforced by civilian courts but by the *Cour d'ordre militaire*. Transactions in foreign currency are considered to be an attempt to sabotage the war effort. This leads to absurd situations where an old woman trying to change dollars in the market can be sentenced to up to ten years of imprisonment. Several of these cases were acquitted by the military court, others were sentenced to death. In January 2000, BBC reported the conviction to death of two Lebanese

⁴ A press release by the Congolese human rights organisation ASADHO points out that members of the CPP were reported to regularly harass merchants in Kinshasa. (ASADHO, *Communiqué de presse N° 002/2000*, 23 January, 2000. [Internet] <www.congonline.com/Asadho> [accessed 26/01/00])

nationals who tried to illegally change money with rebel forces.⁵ It was later reported that the sentences were commuted. In addition, the monetary reforms have further aggravated the already critical food shortage. Many imported products have become unavailable as they have to be paid for in foreign currency.⁶

With regard to democratisation, the patronage system that is so well known from Mobutu's regime continued unfettered under Kabila. Kabila is originally from the Katanga province (known as Shaba region during Mobutu's regime), and so are many government members and army recruits appointed by Kabila. One should also point out that the civil service is very demoralised, they have not received any salary, the government from time to time dismisses civil servants out of the blue (last year 315 judicial officials were dismissed without prior notice). Many of the Congolese embassies are in a dilapidated state, too.

Despite the widespread belief in the Northern countries that Kabila enjoys popularity with the Congolese citizens, this has to be refuted in favour of a more differentiated view. If many Congolese seem to support Kabila this is because they consider him to be their only chance of getting rid of the foreign forces who could not win the hearts and minds of the inhabitants of the territory they are occupying. The economic situation is very dire, most people cannot afford to eat, they have no job, many companies have collapsed. Most of the money is generated through the war economy and spent on the military and weapons.⁷ In the East, the economy is characterised by the looting of natural resources by the foreign troops, officials and business interests. The popularity Kabila enjoys is thus a negative one. He has certainly done nothing to honour his pledge to rebuild the economy and to improve the human rights situation in the DRC.

⁵ "Congo death sentence on two Lebanese" BBC Monday, 10 January, 2000 [Internet] <www.news.bbc.co.uk/> [accessed 10/01/00]

⁶ Médecins sans frontières: *MSF Report January 2000: MSF in the Democratic Republic of Congo*, webplaced January 25, 2000 [Internet] <www.msf.org> [accessed 27/01/00]; UNSC: *Report of the Secretary-General on the UN Mission of DR Congo, S/2000/30*, 17 January 2000 Internet <www.reliefweb.int>, [accessed 21/01/00], para 25

⁷ For an analysis of the measures taken by Kabila in the field of economy and the economic situation especially in Kinshasa see the report by International Crisis Group, *Kinshasa sous Kabila à la veille du dialogue nationale*, 21 September 1999 and the recent report by MSF, 25 January, 2000

I.4. Human rights situation

Human rights in the government-controlled territory

The human rights situation in the territory controlled by the government remains very serious. Extrajudicial executions of civilians occur especially in areas with a large deployment of government soldiers. There is a high rate of "disappearances" - this affects ex-FAZ soldiers as well as anybody who comes under suspicion of supporting rebel groups. In the military detention centres, torture is endemic. Many people are beaten up at the time of their arrest and tortured in custody; many women are raped. The government army is known to conduct indiscriminate bombings of certain areas in which civilians live, notably the rebel strongholds of Kisangani and Goma, as well as in Equateur province. There is severe repression of freedom of expression and assembly. Journalists are regularly sentenced to prison terms of up to four years for offences ranging from libel to "endangering the security of the state", and they are very often tortured while in custody. Human rights defenders and people critical of Kabila's activities run the same risk of persecution.

The use of the death penalty is of particular concern to amnesty international. For nearly a decade - from 1987 until 1997 - no executions had been carried out in then Zaire. Since Kabila came to power in 1997, more than 200 people are known to have been executed. In August 1997, a special military court, known as the *Cour d'ordre militaire*, was established. Initially, its purpose was ostensibly to punish indiscipline in the armed forces. No appeal can be brought against a sentence by the *Cour d'ordre militaire*. Now the court and its branches in other parts of the country have turned into an instrument to persecute peaceful political opponents, including those accused of supporting Rwanda.⁸ On December 10, 1999 the Congolese government declared a moratorium on death sentences pronounced by the *Cour d'ordre militaire*.⁹ Recent reports on the execution of at least 19 soldiers in January and February 2000, and a further 61 facing imminent execution, charged with sedition and banditry, cast doubts on the willingness to implement this moratorium.¹⁰

⁸See amnesty international: *DRC. Government terrorises critics* (AFR 62/01/00), 10 January, 2000; In Annex X of his report of February 8, 1999, the UN Special Rapporteur for the situation of human rights in the DRC lists instances where people were sentenced by the Military Court either for political crimes not covered by the presidential decree on the jurisdiction of the court or civilians were sentenced for ordinary criminal offences. Commission on Human Rights: *Report on the situation of human rights in the Democratic Republic of the Congo*, E/CN.4/1999/31, 8 February, 1999

⁹ SC, S/2000/30, para 32

¹⁰"Soldiers executed in DR Congo", BBC News Online, 4 February, 2000 [Internet] <<http://www.news.bbc.co.uk>> [accessed 04/02/00]

Human rights situation in the rebel-controlled territory:

Like the central government, the rebel forces and the Rwandese, Ugandan and Burundian troops have been responsible for many human rights violations. These forces have killed thousands of unarmed civilians since August 1998. Massacres of the civilian population happen on a common scale in the Eastern part of the DRC. During the fighting in August 1998, the armed opposition killed hundreds of people in various single incidents. People belonging to non-Tutsi ethnic groups "disappeared". There are many reports of torture in custody and rape of women is reported to be widespread. People have also been locked up in truck containers where some suffocated or starved to death.

Freedom of expression and assembly is suppressed. Before 1998, a number of local human rights and development NGOs were working in the Eastern DRC. Many of their members have now fled. Some of them were hunted down by rebel and Rwandese forces. Persons of non-Tutsi ethnic origin and people who dared to protest against ill-treatment experienced by the armed groups are victimised and very likely to be persecuted.

II. SPECIFIC GROUPS AT RISK**(Sanda Kimbimbi - UNHCR; comments by Godfrey Byaruhanga)****II.1 Patterns of displacement**

Many people had to leave their homes since August 1998: presently, about 700.000 to 800.000 persons are internally displaced. Another 100.000 Congolese can be found in refugee camps in Tanzania; 30.000 are in Zambia, another 20.000 are scattered in other countries. Recent reports indicate that the number of internally displaced persons has risen sharply from 830.000 in October 1999 to 960.000 in January.¹¹

Given the horrendous human rights violations and the high numbers of displaced persons, it might seem surprising that there are not many more asylum applicants from the DRC in Western countries. This does not mean, though, that there are no valid and asylum-relevant reasons to leave the DRC. One has to keep in mind, however, that it is extremely difficult to leave the country if you are not in Kinshasa. Responding to a question from the audience the experts explained that both airports (Kinshasa and Brazzaville) are open and frequented by international airlines. People can cross the Congo river by boat from the port in Kinshasa (called the "beach"), or use a small canoe. There, Congolese nationals would not have to produce a passport, a laissez-passer from

¹¹ Médecins sans frontières: *MSF Report January 2000: MSF in the Democratic Republic of Congo*, webplaced 25 January, 2000 [Internet] <www.msf.org> [accessed 27/01/00]; SC, S/2000/30, para 24

the migration office would be sufficient. In order to leave the country via the airport, they need a passport and an exit visa which is issued by the migration office. The exit visa requirement existed under Mobutu. It was abolished after the national conference in 1991 and has been reinstated in 1997. It is not too difficult to get the appropriate documents. For people living in the interior of the country, it is almost impossible to flee abroad.

Safe neighbouring countries

The DRC is surrounded by countries that cannot be called safe by any standards. It is difficult to go to Angola, since there is a war in Angola. In Sudan and in Congo-Brazzaville there is a war. Congo-Brazzaville presents a particular problem for certain persons seeking protection. Most of the refugees are former soldiers who joined the government forces in Congo-Brazzaville. People who are quite prominent would not be safe in Congo-Brazzaville as it is easy for security forces from the DRC to cross over the Congo river. Depending on their profile, UNHCR would look for a place of resettlement for them. Rwanda, Burundi and Uganda are implicated in the war in the DRC. Tanzania remains thus the only place where they could go; because of the travel distances, this is an option open only to people living in the South. If they manage to cross Congo-Brazzaville territory, refugees from the DRC can find protection in Gabon (contrary to refugees from Congo-Brazzaville).

Internal flight alternative

As for the internal flight alternative, one has to repeat that this is not an option in the DRC. This is not only because of the lack of financial resources to move and set up a living somewhere else. Due to the war situation, whoever appears in an area where he or she is not known becomes immediately suspicious. Given that Kabila could only take Kinshasa by infiltrating it with his own supporters who were able to undermine resistance before his troops entered the capital, the current regime is particularly suspicious of any newcomers to a town. They would immediately be reported and interrogated. People from the rebel-controlled territories who have fled to Kinshasa are suspected by the government of being spies and infiltrators. In January 1999, e.g, members of the Bukavu based human rights organization Cojeski based in Bukavu who had fled to Kinshasa were arrested and taken to Kokolo camp where they were held for a week. As many as 25 Tutsi civilians were arrested together with the human rights defenders, under the pretext of "protecting them from the fury of the population". In September 1999, another activist of Cojeski was reportedly tortured in the prison of the Groupe spéciale de sécurité présidentielle (GSSP).¹²

¹²FIDH: L'observatoire: Rapport annuel 1999, p. 51

II.2 Specific groups at risk

The situation in the DRC touches on a very vivid discussion within UNHCR: how can you come to terms with war and war-related violence and their relationship to individual persecution? Of course, many people flee the war and the abominable conditions created by the war. Not all of them are refugees but one should look very carefully at the individual reasons for flight as they are presented. A case-by-case analysis should be conducted with an open mind, taking into consideration that in a place like the DRC anything can happen. People will be victims of arbitrary acts by the authorities or those who claim to be in a position of authority. These acts need not necessarily have been ordered but they might very well lead to persecution. Arbitrariness is a key element in this context.

Ethnic groups

Ethnopolitical context

Banyarwanda: A population of Tutsi and Hutu (known as Banyarwanda) became Congolese after the "Berlin Conference", when colonial borders were demarkated. There were successive waves of immigration of both Tutsi and Hutu from Rwanda since the early 1900s. Many Banyarwanda refugees, mostly Tutsi, fled to Congo in the late 1950s and 1960s. Mobutu's right hand man in the seventies was from Rwanda: in 1972 a change in the nationality law gave all of them citizenship. The citizenship law of 1981 abrogated their citizenship again. People could make individual applications for citizenship but in reality this provision was not applied. Now there is a tendency to say that everybody who is or originally came from Rwanda is not a Congolese national.

Banyamulenge: A majority of the Banyarwanda lives in North Kivu, whereas the Banyamulenge of Tutsi origin, mostly live in South Kivu and have a legitimate claim to Congolese nationality. Most of them have been living on the territory of the DR Congo since before the drawing of the colonial borders in 1890.

As many as one million Hutu fled to Zaire in the aftermath of the 1994 genocide in Rwanda. Some of them merely fled Rwanda in fear of retaliation for the mass murder of the Tutsi population, but many had actively participated in the genocide (the so-called Interahamwe) and were arming the refugees in the camps along the Congolese/Rwandese border and organizing insurgencies into northwestern Rwanda. Among the refugees were also unarmed civilians, including women, children and the elderly, fearing that they would be subjected to killings and other human rights abuses by rebel forces which later formed the backbone of the new Rwandese Government. Many of these refugees returned to Rwanda from late 1996 after their camps were attacked by Rwandese and other forces. These violent activities have given Rwanda a pretext to come to the aid of the Tutsi population in the Kivus and to maintain presence on DRC territory.

Baluba: Members of the Baluba ethnic group in Katanga province who originated from the Kasai provinces have been victims of severe discrimination in the beginning of the nineties, after Etienne Tshisekedi, himself a Luba from Kasai, had been appointed Prime Minister in 1992 by a multi-party National Conference which had charted a political transition under President Mobutu. Mobutu and his supporters used violence to ensure he did not lose political power to his opponents. Katangans and members of the Balunda ethnic group, incited by Tshisekedi's political rivals in Katanga, particularly Karl-i-Bond and Gabriel Kyungu wa Kumwanza, retaliated against the Baluba and forced about 200.000 of them to flee from Katanga to Kasai. Kabila is a Luba from Shaba (Katanga) province, which has enormous mineral wealth in the DR Congo and historically prone to secessionist tendencies. Etienne Tshisekedi is said to be his biggest political opponent and to have enormous popularity in his home province as well as in Kinshasa. Kasai is home to the biggest diamond fields in the DRC, Mbuji-Mayi, and thus the center of fierce battles. So far, Kabila has succeeded in maintaining control of Mbuji-Mayi.

Persecution on ethnic grounds

Tutsi: Is there any ethnic group as such that can lay claims to be victimised? In government controlled territory, Congolese Tutsi, the so-called Banyamulenge will be persecuted. Hundreds of members of these ethnic groups were killed or detained until the second half of 1999 before being deported "for their own protection" to Rwanda, Benin and Cameroon on the way to the US where they received temporary asylum. In the rebel-controlled areas, anti-Tutsi sentiments have escalated among other sections of the population which are opposed to what is perceived as domination by Rwanda and the military support it gives to Tutsi-dominated and other Congolese armed groups. Sections of the civil society consider all Tutsi to be foreigners. However, other members of the civil society, particularly human rights defenders, who denounce atrocities as well as the occupation and exploitation of the DRC by Rwandese and other foreign forces, are also often accused by the armed groups and their foreign backers seeking to overthrow President Kabila of being anti-Tutsi.

Ngbandi: Apart from this group there are two other ethnic groups of particular concern. The Ngbandi are the main ethnic group in the Equateur province. Under Mobutu, members of this group played a significant role. Mobutu himself was a Ngbandi from Equateur. Very prominent members of the security forces, the head of the Division spéciale présidentielle and the head of the Civil Guard were from Equateur. Belonging to this group might still constitute a problem. The commander of one of the rebel factions, Jean-Pierre Ondekane, as well as the leader of the MLC, Jean-Pierre Bemba are from Equateur. What matters in these cases is what is imputed to the person because of his or her Ngbandi ethnicity.

Baluba: The second group are the Baluba from Kasai. Many of them are members of the UDPS, the leading opposition party. In 1992/93 there was severe persecution of Baluba from Kasai in the adjacent Katanga province where many of them had migrated to in order to work in the mines. Although this particular conflict is over, persecution of the Baluba who are known or suspected of supporting Tshisekedi continues. This persecution is characterized by discrimination, harassment and detention by state agents.

Mai Mai: In the Eastern DRC, members of ethnic groups that traditionally support the Mai-Mai militia are persecuted by the armed opposition. These are the Bembe, Bafulero and Bahunde in South Kivu, but also the Batembo in North-Kivu. In his report to the Security Council dated 1 January 2000, the United Nations Secretary-General mentions reports that a group of 15 women suspected of supporting the Mai-Mai were buried alive in Mwenga, South Kivu province. Another massacre of alleged accomplices of the Mai-Mai militia was reported to have taken place in Kalima, a town north-east of Kindu.¹³

Political parties¹⁴

Political parties themselves are not officially prohibited, but their activities were banned in 1997. On January 29, 1999 a presidential decree allowed for the registration of political parties under very strict conditions. All political parties have to re-register. The requirements are such that most of the existing parties would not be able to meet them: they have to have at least 100 founding members, with a limit set for the number of members coming from each province. The financial requirements are very high, too, and many parties refused to participate in the re-registration process on the principal that they were recognized even before Kabila came to power.

The mere ability to produce a membership card should not be sufficient to warrant refugee status. A person has to be politically active in order to come to the attention of the government authorities. If a person has written or distributed political pamphlets or if he or she has participated in a political meeting where security forces intervened, persecution may very well follow. It is forbidden to publish material with political content as it is forbidden to hold political meetings. Any overt (or covert, for that matter), political activity is not allowed. Nominal members of political opposition parties who do not engage in political activities or voice criticism of the government are not likely to be persecuted.

¹³UNSC: Report of the Secretary-General on the UN Mission of DR Congo, S/2000/30, 17 January 2000 Internet <www.reliefweb.int>, [accessed 21/01/00]

¹⁴ For a recent report on political repression see amnesty international: DRC. Government terrorises critics (AFR 62/01/00), 10 January, 2000. See also Amnesty International news release: DRC: Massacres of civilians continue unabated in the east (AI Index: AFR 62/04/00), 17 January, 2000.

The Parti lumumbist unifié (PALU) and the Mouvement national congolais-Lumumba (MNC-L)

The PALU and the MNC-L both claim the political heritage of the first prime minister of the Congo, Patrice Lumumba. The leader of the PALU is Antoine Gizenga, the leader of the MNC-L is one of Lumumba's sons. In the past members of the PALU were subject to arbitrary arrest and house searches without a warrant. In July 1999, 49 members of the PALU were arrested merely because they wanted to raise their party banner and put their party insignia onto the local PALU offices. The leader of the MNC-L, Francois Emery Lumumba, was arrested in April 2000 in his home during a meeting with party colleagues; he was released after twelve days in detention, reportedly without having been given a reason for his arrest.¹⁵

Union pour la démocratie et le progrès social (UDPS)

The UDPS is usually reputed to be the most important opposition party. Many members have deserted the party, and it has split into various factions. One of these factions is led by Frédéric Kibasa Maliba from Katanga province who is an ally of Kabila and currently in charge of the very important Ministry of Mines.

The faction led by UDPS founder Etienne Thisekedi is indeed politically very active. His followers are likely to be persecuted. They get arrested when they hold meetings or distribute pamphlets. A number of them have suffered arbitrary detention. They are likely to be tracked down by the security forces, arrested, beaten up and tortured.

Although the PALU and the UDPS might be best known, one should not forget that there are many other political parties whose members are in the same situation.

At the end of 1999, Kabila pronounced an amnesty for 156 political prisoners. The UN Secretary-General reported that the majority of them were members of the PALU and the UDPS and had been held without trial for months.¹⁶

¹⁵ "Lumumba's son arrested" BBC 24 April 2000 [Internet] <www.news.bbc.co.uk> [accessed 25/04/00]; UN OCHA Integrated Regional Information Network for Central and Eastern Africa (IRIN-CEA) IRIN Update 916 for the Great Lakes, 4 May 2000 [Internet] <www.reliefweb.int> [accessed 04/05/00]

¹⁶ SC, S/2000/30, para 31

Political activity in exile

It is difficult to make a decision concerning people who are politically active in their countries of exile. There are cases of people who maneuver themselves into refugee status. If a demonstration is taking place e.g. in front of the Congolese embassy in Brussels, of course, the participants could be photographed and come to the attention of the authorities. The crucial issue is whether there is a genuine expression of political views entailed in the political activity abroad.

Former members of the Mobutu administration

Government members

One cannot use membership in the Mobutu administration as a decisive indicator for refugee status determination. One has to pay attention to a lot of nuances with regard to former supporters of Mobutu. 26 of them were detained in Makala prison (now known as the Centre pénitentiaire et de rééducation de Kinshasa - CPRK) and investigated for financial irregularities and embezzlement. One of them, Saolona Bemba, is now Minister for Economy and Industry in the Kabila government. A lot of former ministers lead a quite undisturbed life in Kinshasa. A person claiming refugee status on grounds of his or her having been a member of the Mobutu government would have to explain why his or her case is different from this group of people.

High-ranking civil servants

Kabila replaced most of the top civil servants of the Mobutu administration with other, less experienced people who had returned from exile after Kabila came to power. During the first year he appointed many people who were originally from Rwanda. The army Chief of Staff was a Rwandan national. At the lower level, there have not been that many changes. The state-owned companies experienced a change in leadership, too. Their director-generals were interrogated, some of their property was seized. An *Office des biens malacquis* (Office of ill-gotten gains) had been established in an attempt to root out corruption; it was, however, not very successful. Its head and deputy were dismissed in February 1998 under suspicion of concealing assets themselves. A great majority of the people investigated for embezzlement and enrichment are now free again and generally have not been otherwise victimised.

Ambassadors appointed by Mobutu

It is obvious that when Kabila came to power whoever of the Mobutu administration could afford to flee would leave the country. The ambassadors stopped acting as ambassadors; their deputies started acting as chargé d'affaires. The ambassadors were told to return to the DRC; they were promised to receive financial assistance to come back, mostly because they were supposed to pay

back the large bills they had accumulated abroad. With the exception of Paris, Brussels, and Washington, most of the embassies did not receive any funds during Mobutu's administration and had to make do with various strategies such as selling visas at a very high price. Money was never made available to them, so they stayed in the countries they were accredited to. Kabila's first foreign minister Bizima Karaha became a member of the rebel force RCD in August 1998. There are rumours that he diverted funds intended for assisting the embassies to the rebel forces. The ambassadors' status is not always clear. In some instances, though, that they are clearly no longer representing the DR Congo.

With the exception of a very few diplomats who were very close to Mobutu (e.g. the ambassadors in Brussels and Paris) and who would certainly run into problems, most of them would probably not suffer persecution upon return. Career diplomats would not run a great risk, just as the civil servants in Kinshasa do not experience problems; nobody blames them for having at some point worked for a regime that stayed in power for over thirty years, from 1965 to 1997.

Human rights activists

In a press conference in November 1999, UN Special Rapporteur for the DR Congo, Mr. Roberto Garretón called the situation for human rights activities very serious. Human rights activists "ran huge risks. Their liberty, their freedom and their lives were at risk."¹⁷

Human rights organisations in the DR Congo are extremely courageous and extremely ingenious: when the human rights organisation AZADHO was banned in March 1998, its members changed the name to ASADHO and started working clandestinely a few weeks later. Another organisation to be mentioned is the *La Voix des sans voix* (The Voice for the Voiceless). These organisations operate in an environment where there is no judicial system to protect the individual. Anything can happen. Whoever is in a position of authority can decide that you should be locked up. If you know somebody of influence you might be able to bribe your way out. Detention without charges for a short period of time is quite possible. These are not measures based on anything like a court decision. It can last for 48 hours, but it can also last for one month. The crucial feature in these cases is uncertainty. One can never know. The slightest incident that does not please the authorities can lead to arrest. People active in trade unions run the same risk as members of human rights organisations.

¹⁷ UN Department of Public Information (UNDPI): Press Briefing by Special Rapporteur on Human Rights, Democratic Republic of the Congo, 5 November 1999 [Internet] <www.reliefweb.net/> [accessed 20/01/00]

An overview of human rights activists who have been arrested in 1999 can be found in the Fédération internationale des ligues et association des droits de l'homme's (FIDH) annual report. [Internet] <www.fidh.org> See also amnesty international: DRC. Government terrorises critics (AFR 62/01/00), 10 January, 2000

With regard to the east of the country, the high degree of violence has already been mentioned. The armed opposition and the Rwandese, Burundian and Ugandan forces, as well as the Congolese armed groups they support, are not popular at all and any criticism of the human rights violations committed by the armed opposition can lead to arrest, imprisonment, torture and, in some cases, even death.¹⁸ Dozens of human rights defenders have fled from eastern DRC since the first phase of the war in the DRC started in late 1996. Many more fled after August 1998. A few who have remained continue to be harassed, arrested and threatened by Congolese and foreign forces opposed to the DRC government. There were a number of human rights activists in the East who expressed their views or passed on information about human rights abuses to UN Special Rapporteur for the DRC, Roberto Garretón, during his visit end of August 1999. This was sufficient to put them in jeopardy and they received threats. They have recently reached Kenya via Uganda and Burundi in order to be processed for resettlement in the US.

Journalists

Journalists are another very vulnerable group. The *Committee to Protect Journalists* reported that in the period between May 1997 and the end of 1999, "more than 60 cases of journalists who were imprisoned, often without trial or sentence, and dozens more cases of harassment, threats, attacks (including brutal flogging) and censorship. In many cases the authorities have used "national security" as an excuse to crack down on the press.¹⁹ The recent report by amnesty international on human rights violations in the government controlled territory of the DRC mentions several examples of journalists who were arrested, tortured and intimidated by the Congolese government.²⁰ A private radio station which refused to abide by directives from the RCD was closed down in July 1999 and several members of its staff were detained.

¹⁸ Human Rights Watch recently published a press release on the persecution of civil society activists in Eastern Congo. Human Rights Watch, Crackdown on Civil Society Activists in Eastern Congo. Activists Routinely Detained, Threatened and Whipped by Rebels Controlling Eastern Congo, 2 February, 2000. [Internet] <<http://www.hrw.org>> [accessed 04/02/00]

¹⁹ Committee to protect journalists: Democratic Republic of the Congo: Systemic repression of media documented, 20 January, 2000 [Internet] <<http://www.cpj.org>> [accessed 26/01/00]

²⁰ amnesty international: DRC. Government terrorises critics (AFR 62/01/00), 10 January, 2000

II.3 General remarks

It is worth adding that one can pay to have one's name mentioned in a newspaper as a victim of persecution. It is a certain risk to have your name appear in the newspaper, thus it is preferable not to have the article be published. To avoid that risk some people have a particular article printed on a single page and made look as if it were a genuine press clip. Producing such documents should not be conclusive as to whether a refugee claim is genuine or not.

People who visit foreign embassies often, for example, will be suspected of passing on information or criticizing the regime. Generally speaking, people keep very quiet and try to avoid trouble. As a conclusion, one might say that anything that draws the attention of the authorities to a particular person might constitute a serious problem.