



**International Protection Considerations
Regarding Asylum Seekers and Refugees from the
Democratic Republic of the Congo**

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List of Acronyms

ADF	Allied Democratic Forces/Front
AFDL	Alliance des Forces Démocratiques de Libération
ALIR	Armée pour la Libération du Rwanda
ALIR II	Armée pour la Libération du Rwanda II
ANR	Agence Nationale des Renseignements / National Intelligence Agency
APC	Armée Populaire Congolaise / Congolese Popular Army [armed wing of the RCD-ML]
CODEP	Collectif de l'Opposition Démocratique Plurielle
CPP	Comités de Pouvoir Populaire / Committees of Popular Power
CSE	Conseil de Sécurité de l'Etat / National Security Council
DEMIAP	Détection Militaire des Activités Anti-Patrie / Military Detection of Unpatriotic Activities
DRC	Democratic Republic of Congo
DSIR	Direction Spéciale des Investigations et Recherches
FAC	Forces Armées Congolaises / Congolese Armed Forces of the DRC Government
FAP	Forces d'Autodéfense Populaire / People's Self Defense Forces
FAPC	Forces Armées Populaire du Congo / People's Armed Forces of Congo
FIPI	Front pour l'Intégration et la Paix en Ituri / Front for Integration and Peace in Ituri
FLC	Front de Libération du Congo / Front for the Liberation of Congo
FNI	Front Nationaliste et Intégrationniste / Front for National Integration
FONUS	Forces Novatrices pour l'Union et la Solidarité
FPDC	Force Populaire pour la Démocratie du Congo / Popular Force for Democracy in Congo
FRF	Forces Républicaines Fédéralistes
FRPI	Force de Résistance Patriotique d'Ituri / Patriotic Force of Resistance in Ituri
GSSP	Groupe Spécial de Sécurité Présidentielle [also referred to as Groupe de sécurité présidentielle (GSP)]
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IEMF	Interim Emergency Multinational Force
IPC	Ituri Pacification Commission
LRA	Lords Resistance Army
MLAZ/FURNAC	Mouvement de Lutte contre l'Agression au Zaïre / Forces Unies de Résistance Nationale contre l'Agression de la République Démocratique du Congo
MLC	Mouvement pour la Libération du Congo / Movement for the Liberation of Congo
MNC-Lumumba	Mouvement National du Congo-Lumumba
MONUC	United Nations Organization Mission in the Democratic Republic of Congo



MPR	Mouvement Populaire de la Révolution Libération du Congo / Popular Movement of the Revolution
MSF	Médecins Sans Frontières / Doctors Without Borders
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PDSC	Parti Démocrate et Social Chrétien / Democratic Social Christian Party
PALU	Parti Lumumbiste Unifié / Unified Lumumbast Party
PIR	Police d'Intervention Rapide / Rapid Intervention Police
PM	Police Militaire/Military Police
PNC	Police National Congolaise / Congolese National Police
PRA	People's Redemption Army
PSR	Police Spéciale de Roulage
PUSIC	Party for Unity and Safeguarding of the Integrity of Congo
RCD-GOMA	Congolese Rally for Democracy-Goma (Rassemblement Congolais pour la Démocratie-Goma)
RCD-Kisangani	Rassemblement Congolais pour la Démocratie
RCD-ML	Rassemblement Congolais pour la Démocratie – Mouvement de Libération / Congolese Rally for Democracy – Liberation Movement
RCD-National	Rassemblement Congolais pour la Démocratie-National / Congolese Rally for Democracy-National
RPA	Rwandan Patriotic Army
UDPS	Union pour la Démocratie et le Progrès Social / Union for Democracy and Social Progress
UPDF	Ugandan People's Defense Forces
UFERI	Union des Fédéralistes et Républicains Indépendants / Union of Federalists. Two factions: UFERI (Lokambo Omokoko) and UFERI/OR (Adolph Kishwe Maya)
UNITA	Union Nacional por la Independencia Total de Angola / National Union for the Total Independence of Angola
UPC	Union of Congolese Patriots / Union des Patriotes Congolais
UPDF	Ugandan People's Defence Forces
USOR	Union Sacrée de l'Opposition Radicale
VSV	Voix des Sans Voix / Voice of the Voiceless
WFP	World Food Programme

I. Introduction¹

1. The Democratic Republic of Congo (DRC) has been in the grips of a complex, multi-party conflict involving scores of different armed groups and foreign actors since 1998. The civil war has drawn in military forces from neighbouring states, with Uganda and Rwanda supporting the rebel movements that continue to occupy much of the eastern portion of the state. Tutsi, Hutu, Lendu, Hema and other conflicting ethnic groups, political rebels, and various government forces continue fighting in Great Lakes region, transcending the boundaries of Burundi, the DRC, Rwanda, Uganda and the Republic of Congo. The heads of the Great Lakes states have pledged to end the conflict, but despite UN peacekeeping efforts, the violence continues.
2. In this context, the installation in July 2003 of the transitional government to rule the DRC for a two-year period leading to elections has been greeted as a major achievement. A result of a series of peace accords since the beginning of 2002 between the government of the DRC and its various opponents, it symbolises the winding down of the six-year-long war in the DRC and outlines a workable peace. These deals include the inter-Congolese dialogue concluded with domestic opponents in Sun City, South Africa, in April 2002, and the deals reached with Rwanda in August and with Uganda in September 2002. It culminated in an agreement on the main points for a final settlement and a transition period leading to elections, following talks in Pretoria in December 2002. These agreements and the transitional government, however flawed, arguably provide a basis for peace, although the difficulties ahead should not be underestimated, and progress is likely to be halting. Nonetheless, the progress made is already substantial, and the various parties involved have made significant concessions.
3. Despite the notable progress, the situation in the DRC's eastern provinces remains chaotic, heavily influenced by neighbouring Rwanda and Uganda. Their roles remain controversial, as their presence has exacerbated local conflicts and produced widespread human rights abuses, much of it stemming from vested interests in the DRC's plentiful natural resources (gold, and recently, oil has been discovered around Ituri). Officially, both countries have now withdrawn their forces, even if there is doubt about the extent, but they retain influence through local proxies.
4. The implementation of these Peace Agreements is facing a difficult period, with the resumption in summer 2003 of fighting in the northeast part of the DRC, resulting in a new influx of Congolese asylum-seekers into the neighbouring countries. The security situation is still a matter of concern to the local and the international community, and for many Congolese, the situation actually worsened: hundreds of

¹ This paper elaborates and updates the ACCORD/UNHCR Final Report on the Democratic Republic of the Congo, from the eighth European Country of Origin Seminar, Vienna (28-29 June 2002), November 2002, and the Centre for Documentation and Research's "Background Paper on Refugees and Asylum Seekers from the Democratic Republic of the Congo," UNHCR, Geneva, May 2000. These papers, as well as all UNHCR and United Nations documents and the majority of documents cited in this paper may be found on the "Refworld 2003" CD-Roms (Issue 11) and online at www.unhcr.ch/refworld/, as well as at their respective websites, as indicated in the bibliography.

people were killed, and hundreds of thousands displaced.² Furthermore, the suspicious attitude towards persons originating from the former rebel-held territories prevails. While Kinshasa, Lubumbashi and the Provinces of Bas-Congo, Bandundu and Kasai in the Western part of the DRC are generally calm, the former rebel-held territories in the Provinces of Equateur Orientale, North and South Kivus in the Northern and Eastern part of the DRC remain extremely volatile.

II. Background

A. General Information on the DRC

5. The Democratic Republic of the Congo (DRC), formerly Zaire, covers an area of 2,345,409 square kilometres and is bordered by the Republic of the Congo to the North-West, the Central African Republic and Sudan to the North, Uganda, Rwanda, Burundi and Tanzania to the East, and Zambia and Angola to the South. It has a short Atlantic coastline between Angola and the Angolan enclave of Cabinda.
6. The DRC's climate is tropical. Straddling the equator, the DRC is dominated by a vast central basin covered with dense tropical rain forest, with mountains in the east. A narrow strip of land controls the lower Congo River and is the only outlet to the South Atlantic Ocean. The DRC is rich in natural resources, mainly cobalt, copper, cadmium, petroleum, industrial and gem diamonds, gold, silver, zinc, manganese, tin, germanium, uranium, radium, bauxite, iron ore, coal, hydropower and timber.
7. The population is estimated, as of 1 August 2003, at 56,625,039.³ The DRC's population includes over 200 ethnic groups, some crossing international boundaries. The Kongo people are divided between the DRC, the Republic of the Congo, and Angola; the Zande between the DRC and Sudan; the Chokwe between the DRC and Angola; the Bemba between the DRC and Zambia; and the Alur between the DRC and Uganda. The majority are Bantu. The four largest tribes – Mongo, Luba, Kongo (all Bantu-speaking) and the Mangbetu-Azande comprise 45% of the population.
8. French is the official language. The majority of the population speaks one or more of the Bantu languages, of which there is a great diversity: Lingala, Kiswahili (Swahili), Tshiluba, Kikongo are the most widespread. In the North of the DRC Sudanese dialects are spoken. Almost 66% of the population is literate (men 76.2%). Roman Catholicism is practiced by 50% of the population, followed by the Protestant religion (20%), Kimbanguist (10%), and Muslim (10%).⁴
9. Although the DRC is a nation endowed with vast potential wealth, its economy has declined drastically since the mid-1980s. The war has dramatically reduced national output and government revenue, increased external debt, and resulted in

² Norwegian Refugee Council, *Advocating for IDP Protection in the Democratic Republic of Congo*, Global IDP Project, April-September 2003, p. 8.

³ Central Intelligence Agency (CIA), *Congo, Democratic Republic of the*, The World Factbook, (last updated 1 August 2003), www.cia.gov/cia/publications/Factbook/geos/cg/html.

⁴ *Ibid.*

the deaths from war, famine, and disease of an estimated 3.5 million people.⁵ Foreign businesses have curtailed operations due to uncertainty about the outcome of the conflict, lack of infrastructure, and the difficult operating environment. The war has intensified the impact of such basic problems as an uncertain legal framework, corruption, inflation, and lack of openness in government economic policy and financial operations. President Joseph Kabila has begun implementing reforms, but a significant amount of economic activity remains outside the official GDP data.

B. Institutions of State and Government

10. The Democratic Republic of the Congo gained its independence from Belgium 30 June 1960. Its first constitution was ratified 24 June 1967, and amended several times. In November 1999, a draft constitution was approved by former President Laurent Kabila but not ratified by national referendum. One outcome of the ongoing inter-Congolese dialogue is a new constitution, after the protagonists reached a partial agreement on the draft transitional constitution. The legal system is based both on the Belgian civil law system and on tribal law. The DRC has not accepted compulsory International Court of Justice jurisdiction.
11. The DRC is divided into 10 provinces and one city: Bandundu, Bas-Congo, Equateur, Kasai-Occidental, Kasai-Oriental, Katanga, Kinshasa (capital city), Maniema, Nord-Kivu, Orientale, and Sud-Kivu.
12. The DRC is a republic with a President as the head of state. The President exercises legislative power by decree following consultation with the Cabinet. The President is the chief of the executive and of the armed forces and has the authority to issue currency. The President also has the power to appoint and dismiss members of the Government, the National Executive Council (the cabinet), ambassadors, provincial governors, senior army officers, senior civil servants, and magistrates.⁶
13. Following the assassination of his father, Laurent-Désiré Kabila, on 16 January 2001, Joseph Kabila succeeded to the presidency, and has been in office since 26 January 2001. The President is both the chief of state and head of government. Before Laurent-Désiré Kabila seized power on 16 May 1997, the President was elected by popular vote for a seven-year term. Elections were last held 29 July 1984.
14. Marshal Mobutu Sese Seko Kuku Ngbendu wa Za Banga was President from 24 November 1965 until he was forced into exile on 16 May 1997, when his government was overthrown militarily by Laurent-Désiré Kabila. Kabila immediately assumed governing authority and pledged to hold elections by April 1999, but in December 1998, announced the postponement of until all foreign military forces attempting to topple the government had withdrawn from the country.

⁵ CIA, *The World Factbook*.

⁶ ACCORD/UNHCR, p. 71.

15. For information on the newly-established legislature, see the section on "Major Political Developments in the DRC Since 1998".

C. Significant Actors⁷

1. Political Parties and Their Leaders

- **AFDL** – Alliance des Forces Démocratiques de Libération; ruling party of President Kabila on coming to power. Mainly Tutsi, comprising four political parties: PRP (Popular Revolution Party) founded by Laurent Kabila in 1967, PDA (Peoples Democratic Alliance) led by AFDL Secretary-General, General Bugera, RMLZ (Revolutionary Movement for the Liberalisation of Zaire) led by Masusu Nindaga, and NCRD (National Council for Resistance for Democracy) led by the late Andre Kisase Ngandu;
- **CODEP** – Collectif de l'Opposition Démocratique Plurielle; pro-government, led by Raymond Tshibanda;
- **CPP** – Comités de Pouvoir Populaire / Committees of Popular Power; introduced by Laurent-Désiré Kabila in 1999; supposed to be elected by local residents and exercise local government powers, but in practice they monitor the activities of the Congolese;
- **FIPI** – Front for Integration and Peace in Ituri (platform of three ethnic-based parties), currently led by a coalition of three leaders of PUSIC, FNI and FPDC. Created in December 2002 with Ugandan support, the three ethnically-based political parties shared the objective of getting rid of the UPC. Otherwise, FIPI has no apparent programme. The group includes Hema dissatisfied with the UPC, Lendu, and Alur, each with its own political party (see below). After the UPC was forced from Bunia, the parties began squabbling and the coalition appears to have collapsed;⁸
- **FNI** – Front for National Integration (Lendu political party). Current Leader: Floribert Njabu Ngabu Lendu intellectuals and traditional chiefs established FNI but the party claims broad support by the Lendu community in its effort to oppose the UPC. Lendu militias are reportedly being organised under the military wing of this party, which some equate with the FRPI (see below). Supported by Uganda as part of the FIPI coalition, it joined the Ugandan army in driving the UPC from Bunia on March 6, 2003, for which some of its members were publicly thanked by Brigadier Kayihura in April. FNI has also benefited from military training and support from the RCD-ML and, through it, from Kinshasa.⁹
- **FONUS** – Forces Novatrices pour l'Union et la Solidarité, based in Kinshasa. Advocates political pluralism. President: Joseph Olenghankoy. Secretary General: John Kwet;
- **FPDC** – Popular Force for Democracy in Congo (Alur and Lugbara political party). Current Leader: Thomas Unen Chen, a former member of the Zairian parliament FPDC was created in late 2002 mostly by Alur and Lugbara from the Aru and Mahagi area, north Ituri, to counter the UPC. Recently it started to recruit and train its own militias. Although professedly interested in dialogue, it is

⁷ ACCORD/UNHCR, p. 73; CIA, The World Factbook.

⁸ Human Rights Watch (HRW), *Chaos in Eastern Congo: Ituri: Covered In Blood – Ethnically Targeted Violence in North-Eastern DR Congo*, HRW Briefing Paper, July 2003, p. 15.

⁹ *Ibidem*, p. 16.

prepared to fight if dialogue fails. It has been supported by Uganda as part of the FIPI coalition and appears to have close ties with former Ugandan army Col. Peter Karim, an Alur from Uganda;¹⁰

- **Independent Republicans** – Based in Kinshasa. Formed in 1990. Seeks autonomy for the Shaba (Katanga) province. Dominant party in the USOR. Leader: Kouyoumba Muchuli Mulembe;
- **MNC-Lumumba** – Mouvement National du Congo-Lumumba, Based in Kinshasa. Formed in 1994. Coalition of seven parties, including PALU. Led by Antoine Gizenga; supports the aims of the late Patrice Lumumba;
- **MPR** – Mouvement Populaire de la Revolution Liberation du Congo/Popular Liberation Movement of the Revolution: Formed in 1966 by Mobutu. Sole legal political party until 1990. Advocates national unity and opposes tribalism. Today there are three factions: MPR-Fait Prive (Leader: Catherine Nzugi Wa Mbombo); MPR/Vunduwawe (Felix Vunduwawe); MPR/Mananga (Mananga Dintoka Mpholo);
- **PALU** – Parti Lumumbiste Unifié/ Unified Lumumbast Party. Formed in 1964 by Antoine Gizenga (minister in Lumumba's government);
- **PDSC** – Parti Democrate et Social Chrétien/Democratic Social Christian Party Formed in 1990. President: Andre Bo-Boliko. Secretary General: Tuyaba Lewula;
- **PUSIC** – Party for Unity and Safeguarding of the Integrity of Congo (Hema dissatisfied with the UPC). Current Leader: Chief Kahwa Mandro, Former UPC member Chief Kahwa created PUSIC in early February 2003. Most members appear to be Hema from the south. Uganda supports the party as part of the FIPI coalition. The Rwandans backed Chief Kahwa briefly when he was in the UPC, but claims that PUSIC currently has no such support and is more interested in working with Kinshasa. PUSIC may have allied with the UPC against the Lendu in Bunia in May 2003; if so, this alliance of convenience would be tenuous and probably short-lived. PUSIC appears to have continued close links with Ugandan authorities;¹¹
- **UDPS** Union pour la Démocratie et le Progrès Social / Union for Democracy and Social Progress; based in Kinshasa. Formed in 1982. Leader: Etienne Tshisekedi. Secretary General: Dr Adrien Phongo Kunda;
- **UFERI** – Union des Fédéralistes et Républicains Indépendants / Union of Federalists. Two factions: UFERI (Lokambo Omokoko) and UFERI/OR (Adolph Kishwe Maya);
- **UPC** – Union of Congolese Patriots (predominately Hema/Gegere party). Current Leader: Thomas Lubanga. Purportedly launched to promote reconciliation, the UPC quickly became a predominately Gegere-led political party to promote the interests of the Hema and related Gegere. It came to power in Bunia in August 2002 with the help of the Ugandans and used Hema militia as part of its armed forces. It turned to Rwanda for support and formed an alliance with the Rwandan-backed RCD-Goma after being excluded by the RCD-ML and the MLC from the Mambasa ceasefire talks in December 2002. Having turned from Uganda politically, the UPC was ousted from Bunia by the Ugandan army in March 2003 but fought its way back into town in May;¹²
- **USOR** – Union Sacrée de l'Opposition Radicale. Based in Kinshasa. Formed in 1991. Comprised of 130 movements and factions opposed to Mobutu in which the

¹⁰ HRW, Ituri: Covered In Blood, p. 15.

¹¹ *Ibid.*

¹² *Ibid.*

UDPS was the dominant party. A radical internal faction, known as the Union Sacrée de l'Opposition Radicale et ses Allies (USORAL) emerged in 1994. President – Frederic Kibassa Malaba;

2. Police

- **DSIR** – Direction Spéciale des Investigations et Recherches;
- **PIR** – Police d'Intervention Rapide/Rapid Intervention Police;
- **PM** – Police Militaire/Military Police;
- **PNC** – Police Nationale Congolaise/Congolese National Police;
- **PSR** – Police Spéciale de Roulage.
- **Service Spéciaux** – Special Services;

3. Security Forces

- **ANR** – Agence Nationale des Renseignements/National Intelligence Agency;
- **CSE** – Conseil de Sécurité de l'Etat/National Security Council;
- **DEMIAP** – Détection Militaire des Activités Anti-Patrie/Military Detection of Unpatriotic Activities;
- **FAC** – Forces Armées Congolaises/Congolese Armed Forces of the DRC Government.
- **FAP** – Forces d'Autodéfense Populaire/People's Self Defense Forces;
- **GSSP** – Groupe Spécial de Sécurité Présidentielle [also referred to as Groupe de Sécurité Présidentielle (GSP)];

4. Armed Groups Operating in the DR Congo

- **FAC** – Forces Armées Congolaises; government army;
- **FAPC** – People's Armed Forces of Congo (mixed). Current Leader: Commander Jerome Kakawave Bakonde, based in Aru and Mahagi, established FAPC in March 2003. Commander Jerome has changed allegiances several times, moving from the RCD-ML, to the RCD-N, to the UPC and to the Ugandans but he has more or less stayed in the area of Aru. His group recently obtained support from the Ugandans who attempted to put Commander Jerome in charge of a mixed security apparatus in Bunia just prior to the start of their withdrawal. Other parties objected and Commander Jerome returned to his home at Aru. A mutiny occurred in his ranks in May 2003 that was allegedly put down with Ugandan support. Jerome is reportedly a Banyarwanda from North Kivu;¹³
- **FRF** – Forces Républicaines Fédéralistes; composed mainly of Banyamulenge dissidents of RCD-Goma. Political leader: Muller Ruhimbika; military leader: Commander Patrick Masunzu;
- **FRPI** – Patriotic Force of Resistance in Ituri (Ngiti political party). Current Leader: Dr Adirodo. Launched in November 2002 the Ngiti party FRPI is said to be closely linked to the Lendu FNI. It is meant to bring together Ngiti militias with traditional leaders in a single force against the UPC. Based in Beni and said to number 9,000 combatants, the FRPI has close ties to the RCD-ML from which it receives both military training and arms. It claims to have a large fighting force and many see it

¹³ HRW, Ituri: Covered In Blood, p. 16.

as the army of the FNI. It joined the Ugandans in driving the UPC from Bunia in March 2003 and together with the FNI briefly controlled Bunia in May 2003;¹⁴

- **Mayi-Mayi** – (also Mai Mai); community-based fighters who come together to defend their local territory, including from foreign invaders and their allies; their military capacity and political orientation varies considerably, and can change rapidly. A high proportion of Mayi-Mayi militia are reported to be child soldiers. Strength: 20,000-30,000 (in the Kivus). Support: Some groups reportedly receive military and logistic support from the central government.
- **MLC** – Mouvement pour la Libération du Congo; based in Gbadolité, former President Mobutu's adopted home town. Led by Jean-Pierre Bemba, the MLC has been backed by Uganda since the start of the war in 1998, despite occasional differences. The MLC has been a rival of Mbusa's RCD-ML, and has fought alongside the UPC;
- **RCD-Goma** – Goma-based Rassemblement Congolais pour la Démocratie; supported by Rwanda. Current leader Adolphe Onosumba; formed in August 1998; split into two groups in 1999; another breakaway faction of RCD-Goma is led by Patrick Masunzu and active in Northern Katanga;
- **RCD-Kisangani** – Rassemblement Congolais pour la Démocratie, formerly based in Kisangani. Splinter group of RCD-Goma; current leader Wamba dia Wamba;
- **RCD-ML** – Rassemblement Congolais pour la Démocratie – Mouvement de Libération. Current leader Mbusa Nyamwisi. He effectively ousted Wamba dia Wamba in late 2000. The RCD-ML's military wing is the Congolese Popular Army (APC). The RCD-ML entered into the Sun City agreement of April 2002. The APC is now being trained and armed by Kinshasa;
- **RCD-National** – Rassemblement Congolais pour la Démocratie-National; formed after the disintegration of RCD-Kisangani / ML; current leader Roger Lumbala. Founded as a front organisation for Uganda, and supported the MLC in their battles with RCD-ML for resource-rich land;

Subgroups:

- Col. Ruaruba Zabuloni;
- Group of Dunia;
- Group of Padiri;
- **MLAZ/FURNAC** – Mouvement de Lutte contre l'Agression au Zaïre / Forces Unies de Résistance Nationale contre l'Agression de la République Démocratique du Congo ;
- **Mudundu 40/FRKI Front de Défense du Kivu** – allied with RCD-Goma/RPA (June 2002).

5. Foreign Groups (Past and/or Present)

- **ADF** – Allied Democratic Forces/Front; Ugandan armed group; between 200 and 300 fighters, believed to be only lightly armed; Links with Lord's Resistance Army (LRA) and National Army for the Liberation of Uganda (NALU); location: West and north of Lake Edward, Butembo, Mount Varunga, Beni, Kanyabayonga, south of Semliki River, Ruwenzori Mountains, Buhira, Isale, area above Rugetzi;

¹⁴ HRW, Ituri: Covered In Blood, p. 16.

- **ALIR I** – Armée pour la Libération du Rwanda I; Rwandan armed group; between 4,000 and 6,000 troops; believed to be supported from the Government of the DR Congo, but this support may have stopped; location: Masisi, Walikale, Shabunda, Fizi, Kabambare;
- **ALIR II** – Armée pour la Libération du Rwanda II; Rwandan armed group; estimates of the group's size vary between 4,000 and 6,000 and between 13,000 and 15,000; fighters recruited in Tanzania; better equipped than ALIR; believed to be supported from the Government of the DR Congo; location: Lubumbashi, Nyunzu, Kabalo, along the southern end of Lake Tanganyika.
- **FDD** – Forces pour la Défense de la Démocratie; Burundian armed group; two wings led by Pierre Nkurunziza and Jean-Bosco Ndayikengurukiye; between 3,000 and 4,000 fighters; joint operations with Mayi-Mayi; believed to receive outside support from variety of sources including the Government of the DR Congo; location: Moliro, Mwenge, Moba, Fizi, along Lake Tanganyika, Kampini, north of Pweto, Kinsense River, Kamamba, Kilewa, Kilinga;
- **UDPF/UPDF** – Ugandan People's Defense Forces; committed numerous human rights violations in Ituri, including unlawful killings of unarmed civilians. UPDF personnel have reportedly sold arms to warring ethnic groups and have trained militias, including child soldiers. Repeated shifts in Ugandan political backing to the rival armed political groups in Ituri have also deepened and prolonged the crisis.
- **UNITA** – no recent reliable reports of UNITA activities in DR Congo; groups or individuals without coherent command, believed to be assimilated into other armed groups;

D. Major Political Developments in the DRC Since 1998

1. Commencement of Hostilities

16. On 2 August 1998, the Democratic Republic of Congo plunged into a war staged by rebels backed mainly by Rwanda and Uganda, two of its eastern neighbours. Under the pretext that armed forces in the DRC constituted a threat to their nations' security, Rwanda, already present since 1996, and Uganda launched campaigns to attack and occupy parts of the massive country. The punitive expedition, they argued, targeted the Rwandese Hutu militia, called Interahamwe, and the former Rwandese Armed Forces (ex-FAR), as well as rebel groups opposed to the Uganda Patriotic Defense Forces (UPDF). However, as revealed by the United Nations report on the illegal exploitation of natural resources of the DRC, its mineral wealth in fact underlies their motives and has indeed become a dominant factor for the military presence of the foreign countries on Congolese territory.¹⁵

¹⁵ A United Nations appointed panel investigating the plundering of resources in the Democratic Republic of Congo (DRC) urged the UN Security Council on 17 April 2001 to immediately declare an embargo on the import or export of diamonds, gold, timber, and minerals from or to Burundi, Rwanda, and Uganda. According to the five-member panel of experts who prepared the report, five key minerals – coltan, diamonds, copper, cobalt and gold – are being exploited by top military commanders in Burundi, Rwanda and Uganda to systematically exploit Congo's resources along with a number of private companies, individuals and international criminal cartels. The illegal exploitation includes confiscation, extraction, forced monopoly, and price-fixing. According to the experts, the theft of Congo's natural riches is fuelling the civil war and has turned into a lucrative business venture for all the combatants. "All the belligerents in one way or another are benefiting from the conflict," panel chairman Safiatou Ba-N'Daw, a former Ivory

17. In response, the DRC Government turned south to its Angolan, Namibian, and Zimbabwean neighbours, whose military intervention balanced and stabilized the frontline to some extent. On 10 July and 30 August 1999, a cease-fire agreement was signed in Lusaka by the DRC Government, the Rwanda-backed rebel group Goma-based Rassemblement Congolais pour la Démocratie (RCD-Goma), and by Uganda-backed RCD/Kisangani, as well as by the Mouvement de Libération du Congo (MLC). The United Nations Security Council deployed a peacekeeping operation for the Congo (Mission de l'Organisation des Nations Unies au Congo, MONUC) that same year.¹⁶ Consistent with its mandate during this period, MONUC deployed observers on the frontline in phase one of its mission and in the second phase deployed troops in the DRC.

2. After the Assassination of Président Kabila

18. Following the death of President Laurent-Désiré Kabila in January 2001, the DRC under the leadership of Joseph Kabila embarked on a peace process within the framework of the Lusaka Peace Accord signed by the DRC Government and the rebel groups RCD/Goma (Rassemblement Congolais pour la Démocratie), RCD/Kisangani, and MLC (Mouvement de Libération du Congo) in July and August 1999. MONUC, deployed in the wake of the Lusaka Peace Accord, set about disarming, demobilising, repatriating and reintegrating in their countries of origin members of foreign armed forces currently in the DRC, along with their families, although their presence on the ground was limited until the second half of 2003.¹⁷ In July 2002, the DRC and Rwanda signed the Pretoria Peace Agreement, whereby the former agreed to support the disarming, demilitarisation, and

Coast energy minister is quoted by the Associated Press as stating at a news conference. "The only losers are the Congolese people." The report also notes that the Rwandan and Ugandan presidents know about the exploitation and have failed to stop it. However, the panel said it would make no specific allegations about the presidents' involvement until further investigation. See Security Council, Report on the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, S/2001/357, 12 April 2001, and Security Council, Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, S/2001/1072, 13 November 2001.

¹⁶ S/RES/1234, 9 April 1999; S/RES/1258, 6 August 1999; S/RES 1273, 5 November 1999; S/RES/1279, 30 November 1999; S/RES/1291, 24 February 2000; S/RES/1304, 16 June 2000; S/RES/1316, 23 August 2000; S/RES/1323, 13 October 2000; S/RES/1332, 14 December 2000; S/RES/1341, 22 February 2001; S/RES/1355, 15 June 2001; S/RES/1376, 9 November 2001; S/RES/1399, 19 March 2002; S/RES/1417, 14 June 2002; S/RES/1445, 4 December 2002; S/RES/1457, 24 January 2003; S/RES/1468, 20 March 2003; S/RES/1484, 30 May 2003; S/RES/1489, 26 June 2003; S/RES/1493, 28 July 2003; and S/RES/1501, 26 August 2003. S/RES/1493 extended the mandate of MONUC until 30 July 2004, increased military strength to 10,800 and authorised MONUC to use all necessary means to fulfill its mandate in Ituri and North and South Kivu. S/RES/1501 authorises the States members of the Interim Emergency Multinational Force to provide assistance to the MONUC contingent deployed in Bunia and its immediate surroundings, if MONUC requests them to do so and if exceptional circumstances demand it.

¹⁷ Yulu Kabamba, Briefing Note 14 - New mandate will help MONUC effectively support Transition in DRC, MONUC Information Technology Section and Public Information Office, 30 July 2003. Their mandate was broadened in July 2003: The mandate authorizes the use of force both in Ituri and the Kivus with a view to protecting civilians and providing a humanitarian corridor to help humanitarian agencies, donors and NGOs to bring humanitarian assistance to the needy population. Under the new mandate, MONUC will be able to effectively take over from the Artémis Multinational Force operating in Bunia, as from 1 September. The bulk of 3,800 troops took over from the Multinational Force provided in Ituri on 1 September 2003. MONUC also intensified the deployment of its troops in the East of the country.

repatriation of Rwandese rebel forces, and the latter undertook to withdraw its troops from the Eastern portion of the country. In October 2002, the DRC and Uganda signed a similar peace agreement in Luanda.

19. Meanwhile, rounds of negotiations between the various Congolese factions commenced in August 2001 in Gaborone, forming the basis of the Inter-Congolese Dialogue, which culminated in the signing of an agreement amongst the various parties in December 2002 in Pretoria. Under a complex power-sharing deal, the creation of a "one plus four" structure for the transitional government was agreed, with President Joseph Kabila staying on as President and joined by four Vice Presidents for the two-year period leading up to national elections. The Vice Presidents respectively represent the Government, the two main rebel groups – the Congolese Rally for Democracy (RCD) and the Congolese Liberation Movement (MLC) – and opposition as well as civil society representatives.

3. After Pretoria

a) New Government

20. In conformity with the Pretoria Agreement, the belligerents, namely the Government of the DRC, the Congolese Rally for Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the Congolese Rally for Democracy/Liberation Movement (RCD/ML), the Congolese Rally for Democracy/National (RCD/N) and the Mai-Mai, undertook to end the war, as well as to ensure the reconciliation, reunification, pacification and reconstruction of the country, the formation of a national army, the organization of free elections within two years, and the establishment of a democratic constitutional regime.
21. The four vice-Presidents to serve in the transitional government of the DRC were sworn in on 17 July 2003.¹⁸ The follow-up committee of the inter-Congolese dialogue set a new calendar for the inauguration of the transitional national government, with a first meeting held on 19 July 2003.
22. A global power-sharing accord signed in December 2002 kept Joseph Kabila in his position as President, with four vice-Presidents: Bemba (MLC) and Ruberwa (RCD), from the major armed rebel movements; one from Kabila's government, former Foreign Minister Abdoulaye Yerodia Ndombasi; and one from the unarmed political opposition, Arthur Z'ahidi Ngoma.
23. Parties to the negotiations also named representatives to five institutions charged with supporting the transition to democracy: a national and independent committee for elections; a national human rights observatory; a high authority for media; a truth and reconciliation commission; and an anti-corruption commission.
24. The highly cumbersome nature of the transitional government – there are four vice-Presidents, 500 parliamentary seats divided between a National Assembly and the Senate, and over 35 ministers – together with the fact that it is composed of five different rebel groups and fragmented political opposition and civil society groups,

¹⁸ IRIN News, Vice Presidents to be Sworn in on 17 July, Kinshasa, 9 July 2003.

as well as the former government, suggests that the possibilities for conflict and political posturing will be numerous and frequent. Nevertheless, there seems to be a consensus among the participants that their interests are better served from inside rather than outside the process, and this makes it less likely that the peace agreement and the transition will fall apart.¹⁹

25. There is much uncertainty about how the new government will work in practice. Many of the newly-appointed officials lack experience in their areas of responsibility and essentially see the transition as an opportunity to access state resources. This does not bode well for good governance, and corruption is expected to remain endemic in key ministries such as mines, energy, and transportation.²⁰ The transitional government's many different and competing elites ruling together for two years before dissolving will likely vie for top positions in the next government.
26. As expected, the President in the last government, Joseph Kabila, heads the transitional government. His position, and that of the members of his last government, is now stronger and the chances of carrying off the transition have improved: indeed, those in the Presidential coalition would not have come this far if they did not believe that they could guarantee their core interests in the transition.²¹ According to some observers, the most likely scenario is that Mr Kabila's government will continue to wield the most power, although many of the other participants in the transition will seek, and be allowed, to protect their own interests.

b) New Parliament

27. On 22 August 2003, the newly-formed parliament held its first extraordinary session to inaugurate the National Assembly and the Senate. Olivier Kamitatu, the former secretary-general of the MLC, was sworn in as President of the National Assembly, and Monseigneur Marini Bodho, a member of the civil society, was sworn in as the President of the Senate. The DRC's parliament has historically been a much derided, and largely irrelevant, transitional assembly based in Lubumbashi, Katanga province, composed of hand-picked delegates selected by the late President, Laurent Kabila. The newly-established National Assembly is composed of 500 delegates, all of whom are appointed, making it one of the largest parliaments in the world. The five main groups are the previous government of Mr Joseph Kabila, the MLC, the RCD, the unarmed opposition, and the civil society. Each is accorded 94 seats, with the balance allocated to other groups. The new Senate, installed at the same time, has 120 seats with the five main groups each allocated 22 seats. According to the transitional constitution, delegates to the National Assembly and the Senate are nominated to serve for the duration of the transition.²²

¹⁹ Economist Intelligence Unit, Country Report – Democratic Republic of Congo, September 2003, p. 7.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

c) Opposition Response & Demobilisation

28. The main armed opposition forces, the Rassemblement congolais pour la démocratie-Goma (RCD-Goma) and the Mouvement pour la libération du Congo (MLC), according to observers,²³ appear committed to the current peace process, not least because they have been severely weakened and are aware of the isolation and vulnerability that would follow should they fail to conclude a deal securing them access to power in the transition. However, reports as of September 2003 indicate that this commitment is still weak.²⁴ Their main priorities now would be to conclude alliances with other groups and individuals that will bolster their influence and legitimacy in preparation for the next government. In the meantime, these and the other armed groups are now nominally obliged to give way to the central government, although it is expected that they will maintain territorial control for some time to come.²⁵

d) Reunification of the DRC?

29. By Autumn 2003, the reunification of more DRC territory to the control of the central government edged towards becoming a reality. Commercial flights between government-held zones and areas controlled by various different rebel groups began operating in early August 2003. For the first time since the war broke out in August 1998, there are again regular commercial flights between Kinshasa and most major cities in the country. River traffic between Kinshasa and Kisangani has also resumed, reopening a crucial trade route and paving the way for the start of economic recovery. The first commercial convoy left Kinshasa in early July and arrived in Kisangani several weeks later.²⁶
30. However, the authority of the central government in Kinshasa still remains extremely weak in most parts of the country and it is not yet possible to speak of a unified administration for the country.²⁷ In areas held by the former rebels, their own appointed administration remains in place with the capacity to ignore directives from the centre. In most rebel territories administration from the centre is still attempting to establish or negotiate its authority with the local powers that be.²⁸

4. Summary of Recent Events (Through September 2003)

31. The main events concern on the one hand the further consolidation of the new government in Kinshasa, and on the other the continued violence and fighting in the Eastern DRC.
32. As the reunification of more DRC territory to the control of the central government edged towards becoming a reality, albeit with frequent setbacks, commercial flights between former government-held zones and areas controlled by various different rebel groups began operating in early August 2003, and for the first time since the

²³ EIU, September 2003, p. 7.

²⁴ Reuters, Special Rapporteur on Human Rights in DRC condemns recent incidents in Bunia, Geneva, 22 September 2003.

²⁵ EIU, September 2003, pp. 16-17.

²⁶ *Ibidem*, p. 17.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 17.

war broke out in August 1998, there are again regular commercial flights between Kinshasa and most major cities in the country.²⁹

33. However, the authority of the central government in Kinshasa remains extremely weak in most parts of the country and it is not yet possible to speak of a unified administration for the country.³⁰ In areas held by the rebels, their own appointed administration remains in place with the capacity to ignore directives from the centre. A case in point is the recent suspension of the director of the Radio et Télévision Nationale Congolaise (RTNC) in Kisangani, for having taken RCD political programmes off the air locally. In Kinshasa, the new Minister of Information, Vital Kamerhe, denounced the move but later apparently acquiesced in the director's suspension, claiming that he had not followed procedures correctly.³¹
34. The Commission Internationale d'Aide à la Transition (CIAT), the international body set up to help the establishment of the new government resulting from the Sun City Peace Agreement, challenged some of the Rassemblement Congolais pour la Démocratie-Goma (RCD-Goma) military nominees, saying that some of these men were guilty of war crimes and therefore should not be members of the new integrated Congolese Army. The same point was made by several human rights organizations who named Gabriel Amisi (a.k.a. "Tango Four") and Laurent Nkunda as responsible for having directed the massacre of 103 civilians and 60 police officers in Kisangani after the failed 14-16 May 2002 RCD-Goma mutiny. Disregarding the point about murdering unarmed non-combatants, RCD-Goma's Moise Nyarugabo only remarked: "Of all the officers named for the Joint Command there is not one who has not killed. Otherwise what was the war all about?"³²
35. The new integrated parliament held its first session 22 August 2003, after which all the new government appointees declared their private wealth, by placing a declaration in a sealed envelope. The information will not be made public except in case of suspicious enrichment on the part of one or another of the new ministers. Appointments to the new government, which had begun on 30 June, were finally completed on 8 September, when President Joseph Kabila made three minor cabinet appointments.
36. Political progress has not yet translated into any real improvement of the humanitarian situation. During the negotiations in South Africa and Kinshasa, fighting continued in the eastern DRC. In Ituri, clashes between Lendu and Hema militias followed after the withdrawal of Ugandan troops in April 2003, leading to hundreds of deaths and hundreds of thousands of displaced.³³ There was considerable tension in Bunia, Ituri province, as the stopgap French occupation ended. On 16 August 2003, MONUC forces (Bangladeshi, Nepalese and Pakistani soldiers, supplementing the remaining Uruguayan force which had been there

²⁹ EIU, September 2003, p. 17.

³⁰ *Ibid.*

³¹ *Ibid.*

³² Hot Spot Brief, DR Congo, WriteNet, 25 September 2003.

³³ Global IDP Project, p. 8.

before the arrival of the French, i.e. about 1,600 soldiers in all) began to replace the French forces. Even as the process was underway, a firefight developed, during which French soldiers shot dead a militiaman at a roadblock on the outskirts of Bunia. The local humanitarian situation remained extremely poor and over 20,000 IDPs were still under the care of the World Food Programme (WFP) in Bunia town itself. On 1 September 2003, it was decided that the French contingent would stay an extra two weeks in order to help the MONUC deployment. On 6 September 2003, part of Bunia was looted as the French started to withdraw. MONUC troops did not stop the looters because they were not "armed and dangerous" and therefore did not fall under their mission mandate. However, on 16 September when the same troops tried to disarm the locally dominant Union des Patriotes Congolais (UPC) militia by carrying out a house-to-house search for hidden weapons, there were strong reactions and at least six people were killed. Over 100 people were arrested; several of them top UPC cadres.

37. The outlying areas were an unknown quantity since the mandate of the French contingent had been limited to Bunia proper and many of the clashes had occurred outside that perimeter. One of the worst such incidents occurred in the small town of Fataki, where MONUC helicopters found a scene of desolation on 30 August when they over flew the place. Later landings brought help to a mostly Hema population which had been decimated by repeated Lendu raids, said to have killed over 200 people during August, while a further 137 had been abducted into slavery.
38. Meanwhile in other parts of the East there were other difficulties. On 1 September, RCD-Goma troops mutinied in Kisangani for unknown reasons. The clashes were limited and while there were casualties, there were no fatalities. On 10 September, the French NGO Médecins Sans Frontières (MSF) asked the international community to consider the alarming situation of North and East Katanga, where previous fighting has left civilian populations extremely exposed to food insecurity. Finally, the BBC reported on 7 October 2003 that MONUC troops found the bodies of 23 massacred civilians – mostly children, pregnant women and older people – in the village of Kachele, 100 km northeast of Bunia. Villagers told them that another 32 bodies had already been buried, but the UN had not yet confirmed this.³⁴

III. Security and Human Rights Situation

A. Introduction

39. The situation in the Congo, although moving in a positive direction, remains volatile. The difficulties implementing the provisions of the Sun City Peace Agreement were predictable and are actually less than what was feared. The main problem has been described by the Association Africaine des Droits de l'Homme (ASADHO).³⁵ A basic problem is power-sharing among a number of rebel movements (four in all) with various foreign connections with the previous government and elements of the unarmed political opposition and other elected representatives, without those rebels giving up their military control over large

³⁴ BBC, UN Finds DR Congo Massacre, 7 October 2003.

³⁵ International Federation for Human Rights (FIDH), www.fidh.org/afriq/lettre/2003/asadho0901.htm.

tracts of the country. Furthermore, it seems that several rebel groups, such as the Rassemblement Congolais pour la Démocratie-Kisangani – Mouvement de Libération (RCD-K-ML) of Mbusa Nyamwisi, loosely allied with Kinshasa, and the RCD-Goma, supported by Rwanda, are actually rearming, recruiting and training new troops. In several locations, these movements have re-abducted demobilized child soldiers.³⁶

40. In addition, reportedly both Uganda and Rwanda (or at least elements of their governments, with or without official approval) are actively assisting several tribal militias. Elements of the Ugandan Army are helping both Hema militias such as Parti pour l'Unité et la Sauvegarde de l'Intégrité du Congo (PUSIC) and a sub-fraction of the UPC, and Lendu militias such as the Forces Armées Populaires du Congo (FAPC), and Forces Nationales Intégrationnistes (FNI). Thomas Lubanga, head of the formerly dominant fraction of UPC, is now in Kinshasa, trying to reconcile with the new government as his authority and forces are being eroded both by his rivals and by the MONUC disarmament exercise.
41. Meanwhile, elements of the Rwandan Patriotic Army (RPA), with or without the knowledge of their government, are actively developing new militias in North and South Kivu. In South Kivu they use the RCD-Goma nominated "Governor" Xavier Ciribanya and in North Kivu his counterpart Eugène Serufuli. Both men have received large financial donations and are actively recruiting troops with logistical support from the RPA. These recruitments are occurring outside of and in parallel to the RCD-Goma structure, which is now embedded in the Kinshasa transitional government. Several Mayi Mayi groups, particularly Mudundu 40, have also been drawn into the service of these new militia groupings.³⁷
42. RCD-Goma has remained silent about these recruitments, worrying in several respects. First, these militias are made up of very young boys who are difficult to control. Second, as they are not RCD-Goma – although they operate in RCD-Goma territory – the transitional government's "official" RCD-Goma can stay silent about them. Third, as Mbusa Nyamwisi is engaged in similar activities on behalf of the old Kinshasa government in the Beni-Butembo area, there are serious dangers of clashes in the future between ex-rebel and ex-government forces. Moreover, several of the tribal militia chiefs, re-armed by the Ugandans, state that while they are weary of the violence, and they would like to stop it, they cannot afford to disarm and demobilise their fighters for fear of being killed by their own men who do not want to give up their guns in the absence of any viable alternative. The spectre now looming in the East is one of continued violence outside the control and jurisdiction of the transitional government.
43. Therefore, despite some undeniably positive developments at the national level, the human rights situation in the Democratic Republic of the Congo remains grave, particularly so in the eastern part of the country. The previous and present Special Rapporteurs on the situation of human rights in the DRC have both expressed their serious concerns about the deteriorating human rights situation in all parts of the

³⁶ Amnesty International (AI), *Children at War in the DRC*, 21 October 2003.

³⁷ *Ibid.*

- country.³⁸ Numerous reports describe egregious human rights violations committed by the Government of the DRC as well as by armed Congolese rebels and foreign opposition troops. In the government-controlled areas, these include arbitrary arrest and detention, torture and unfair trials, harsh prison conditions, restricted freedom of expression and assembly and the restriction of other civil and political rights. There is no clear and fair judicial system in place, and the military tribunal of the DRC reportedly continues to try a number of civilians despite its military jurisdiction.³⁹ The security services are reported to run illegal detention centres where the ill-treatment of detainees is widespread. The targets of such acts are mainly those perceived to be government opponents, regardless of the form of their opposition. These include human rights defenders, members of several political parties and their family members (UDPS, MPR, former members of FAZ, family members of Mobutu officials), as well as journalists, students protesting against the government and persons suspected of being involved in illegal trade with diamonds.
44. In the opposition-held territories of east DRC, government forces from Burundi, Rwanda and Uganda have reportedly been involved in grave human rights abuses such as the robbery and killing of unarmed civilians, arbitrary arrest and detention, torture, rape and sexual mutilation of women and in some cases their being buried alive. The forced recruitment of child soldiers remains endemic to the region.⁴⁰
45. The armed conflicts are continuing, in breach of the 1999 Lusaka Agreement, the Kampala Disengagement Plan and the Harare Sub-plans, Security Council resolutions, and the recent Global and All-Inclusive Agreement signed in Pretoria. Given their magnitude, the violations of human rights and humanitarian law, notably as regards the protection of civilians, the phenomenon of child soldiers and the sexual violence against women and children, may be characterized as crimes against humanity and war crimes. The atrocities committed in the east of the country have reached unprecedented levels.
46. Human rights defenders in eastern DRC are considered by the authorities to be political extremists and are subjected to constant repression. All the members of political parties interviewed in Kinshasa stated that they are denied the right to organize demonstrations and marches throughout the country, but above all that they are unable to organize local branches in the east of the country, where freedom of association is extremely limited.⁴¹

³⁸ UN General Assembly: Interim Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo, A/57/437, 26 September 2002.

³⁹ Special Rapporteur, A/57/437, 26 September 2002, para. 39.

⁴⁰ For details, see i.e., Amnesty International Report 2002, Congo (Democratic Republic of the Congo), www.amnesty.org, U.S. Department of State, Democratic Republic of Congo, Country Report on Human Rights Practices, 2002, ACCORD/UNHCR: *DR Congo, Country Report*, presented at the 8th European Country of Origin Information Seminar, Vienna, 28-29 June 2002, Commission on Human Rights, Question of the Violation of Human rights and Fundamental Freedoms in Any Part of the World: Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Ms. Iulia Motoc, in accordance with Commission on Human Rights resolution 2002/14, United Nations, E/CN.4/2003/43, 15 April 2003.

⁴¹ Special Rapporteur, E/CN.4/2003/43, 15 April 2003.

47. It is apparent from the investigations conducted in December 2002 by MONUC that arbitrary executions, rape, torture and disappearance have been perpetrated by MLC, RCD/N and certain elements of the Union of Congolese Patriots (UPC) in the town of Mambasa and in villages between Mambasa and Mangina and between Mambasa and Erengeti.⁴²

B. Security

1. Reorganisation of the Armed Forces

48. The command structure of the new national army, which includes both the government and rebel armies, was a major obstacle in moving the peace process forward. Still unresolved when the parties agreed to the formation of the transitional government, it remains a contentious issue. Although the special mediator, Moustapha Niasse, hammered out an agreement on the eve of the adoption of the peace agreement in April 2003, it was only signed by the RCD-Goma. The agreement gave the post of the head of the army to the government, while the RCD-Goma was to take the post of the head of land forces.⁴³
49. In addition, there remained the question of the control of the 11 military regions, four of which were to be selected from President Kabila's movement, three of which were to be controlled respectively by the RCD-Goma and the MLC, and one of which was to be controlled jointly by the Rassemblement Congolais pour la Démocratie, Kisangani (RCD-K) and the Rassemblement Congolais pour la Démocratie – Mouvement de Libération (ML). By mid-June 2003, this issue had still not been resolved and the Kinshasa government proposed that it would have control of the land forces and the RCD would get the post of chief of the armed forces. RCD-Goma accepted the proposal but, confusingly, the government then backtracked, returning to the original scenario that the other parties ultimately accepted in July.⁴⁴
50. The question of control over military zones remains. While discussions on the matter were taking place in the Comité de Suivi, the RCD-Goma unilaterally declared that it had created three new military zones in the areas under its control. This was immediately condemned by the government and by the Comité International d'Accompagnement à la Transition (CIAT), the international body composed of representatives from 15 countries including France, the United Kingdom, the United States and Belgium, which was put in place to assist in the implementation of the Pretoria peace accord. Under intense international pressure, the RCD-Goma ultimately gave in, although the question of the command of the 11 military zones had still not been resolved. After weeks of talks, the question was finally resolved when all the parties accepted a compromise in which 12 deputy commanders were designated and the military zones repartitioned. However, with this hurdle overcome, new dispute arose over the appointments of senior military officers.⁴⁵

⁴² Special Rapporteur, E/CN.4/2003/43, 15 April 2003.

⁴³ EIU, September 2003, pp. 14-15.

⁴⁴ *Ibid.*

⁴⁵ *Ibidem*, pp. 15-16.

2. Armed Conflict

a) Civilian Populations At Risk

51. In the east of the country, the lives of the civilian populations are under constant threat: armed groups target civilians, and especially women and children.
52. Massive violations of international humanitarian law, particularly in the Ituri district, have been documented by human rights organisations, and have been reported on several occasions, both by the former Special Rapporteur⁴⁶ and by the current Special Rapporteur in her interim report⁴⁷ to the General Assembly. The High Commissioner for Human Rights submitted a report to the Security Council on 13 February 2003⁴⁸ and in March 2003 Amnesty International published a report entitled "DRC on the precipice: The deepening human rights and humanitarian crisis in Ituri." According to the Office for the Coordination of Humanitarian Affairs (OCHA), 50,000 people have died because of the conflicts in the Ituri area and 500,000 have been displaced since 1999.
53. Despite several requests by the Security Council,⁴⁹ humanitarian organizations are unable to reach Ituri: the armed group's refusal to facilitate the dispatch of humanitarian aid into conflict zones constitutes a serious violation of human rights and international humanitarian law.
54. Based on interviews conducted in Beni, Butembo, Mangina, Oicha, and Erengeti, the MONUC reports⁵⁰ mention 136 summary executions, 71 rapes, including rape of children, 100 forced disappearances and 96 missing children. Some of the summary executions were followed by mutilation and cannibalism. This was a planned operation, under the name of "*Effacer le tableau*" ("A clean slate"), and those responsible for the killings targeted Mambasa's Nande community and the Twa (pygmies).
55. According to the first investigations conducted by a joint team from MONUC and the OHCHR office in Bogoro, on 24 February 2003, 153 cases of summary executions, mainly of Hema, were reported. According to evidence from the four UPC child soldiers interviewed by the joint mission, the assailants were armed groups of Lendu from the north, Ngiti from the south, Armée du Peuple Congolais (APC) troops, and some 40 UPDF troops. The report of the joint MONUC-OHCHR mission concluded that civilian populations had been massacred in Bogoro and Mandro. There would appear to be an ethnic dimension to these murderous assaults.
56. In North and South Kivu, the most basic rights of the civilian population are constantly violated because of clashes between armed groups that appear to be

⁴⁶ E/CN.4/1999/31 and E/CN.4/2001/40 and Add.1.

⁴⁷ Secretary General, Situation of human rights in the Democratic Republic of the Congo, A/57/437, 26 September 2002.

⁴⁸ Security Council Resolution 1468 (2003), S/2003/216, 20 March 2003.

⁴⁹ Security Council Resolution 1445 (2002), S/RES/1445 (2002), 4 December 2002.

⁵⁰ Special Rapporteur, E/CN.4/2003/43, 15 April 2003.

proliferating. South Kivu province is the scene of violent clashes between the RCD/Goma army, the Banyamulenge forces of Commander Masanzu, and the numerous Mayi-Mayi groups.

57. The Special Rapporteur to the UN Commission on Human Rights provides several examples of violations of the rights of civilians provided for in the fourth Geneva Convention. In January 2003, troops of the Armée Nationale Congolaise (ANC), led by Commander Utchumbe, alias Makofi, summarily executed dozens of civilians suspected of links with the Mai-Mai. On 14 February 2003, Mudundu 40⁵¹ soldiers, a militia group originally set up and armed by Rwanda, burned down 30 houses in Kabalo, in the community of Burhinyi, in Mwenga territory. The Special Rapporteur was also informed that a large number of civilians were killed when Pinga was taken, in January 2003. Many of these massacres are carried out using machetes, knives or rifles, and houses are burned down at the same time.⁵²

b) Conflict in the Ituri Region

58. The Ituri district continues to be the scene of armed clashes, which give rise to extreme insecurity, population displacement and restricted humanitarian access. In August 2002, troops of the Union des Patriotes Congolais (UPC), a Hema ethnic militia led by Thomas Lubanga, and the Ugandan forces took control of the town of Bunia (driving out the RCD-K (Kisangani)/ML) and killed Lendus and members of the Bira, and Nande communities. The Lendu militias and the RCD-K/ML attacked the Hema villages in retaliation. At a peace conference in August 2002, Mr. Ntumba Louaba, Minister for Human Rights, was taken hostage in Bunia, together with his delegation, and released after three days. Since August 2002, there has been a succession of bloody inter-ethnic reprisals between the Hema and Lendu ethnic communities and their respective allies.
59. According to the report of the Secretary-General,⁵³ RCD-K/ML troops and Lendu combatants retook Irumu and Komanda at the end of November 2002 and subsequently strengthened their positions at Mahagi (north of Bunia) and Rethy (south of Mahagi). The military situation stabilized towards the end of December 2002, when the Ugandan troops returned. Following deterioration in relations between UPC and the Uganda People's Defence Forces (UPDF), UPC entered into a new alliance with RCD/Goma. MONUC has neither confirmed nor ruled out the presence of Rwandan troops in Ituri; it plans to deploy more observers as soon as the security situation permits. The Special Representative of the Secretary-General has undertaken to establish the Ituri Pacification Commission (CPI), as envisaged in the Luanda Accord of 6 September 2002.

⁵¹ Mudundu 40 is comprised mostly of Bashi fighters from around Ngweshe under the command of Commandant Odilon Zihalirwa, who was one of the Bashi who joined Kagame's RPF movement in 1990. As a Mai Mai, he initially accepted a lieutenant's position under Padiri. However, tensions between *Interahamwe* and Mudundu 40 erupted into fighting. Mudundu 40 distanced itself from Padiri and agreed to cooperate militarily with the Rwandan army on the basis of "the enemy of my enemy is my friend" and "on the understanding that as soon as the *Interahamwe* were defeated the Rwandans would withdraw." See International Crisis Group (ICG), 24 January 2003, p. 12.

⁵² Special Rapporteur, E/CN.4/2003/43, 15 April 2003, para. 31.

⁵³ Security Council, Thirteenth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, S/2003/211, 21 February 2003, paras. 9-13.

60. The uncontrolled presence of armed militias has resulted in massive human rights violations, summary executions, forced disappearances, abduction, torture, and obstruction of humanitarian aid. A new wave of violence began on 6 March 2003 with the retaking of the town of Bunia by Ugandan troops.
61. In its resolution 1468, of 20 March 2003, the Security Council expressed its deep concern over the situation in Ituri and stressed that all parties must cooperate with MONUC to set up the Ituri Pacification Commission, as envisaged in the Luanda Accord. It also expressed its deep concern at the rising tensions between Rwanda and Uganda and their proxies on the territory of the Democratic Republic of the Congo, and reiterated that all foreign troops must be withdrawn from the territory of the Democratic Republic of the Congo.⁵⁴
62. The Special Rapporteur on 22 September 2003 condemned incidents in Bunia, Ituri, during which fighters of the Union of Congolese Patriots (UPC) fired shots at military observers of MONUC who were carrying out a disarmament operation in the area. The Special Rapporteur once again called on the armed militias and the ethnic communities in Ituri to end the fighting that has caused thousands of civilian victims, especially women and children, and to cooperate fully with the United Nations. She reiterated that there would be no impunity for those who are found guilty of the massive violations of human rights that were committed in Ituri. Ms. Motoc congratulated MONUC for using all necessary means to accomplish its mandate, which includes the disarmament and demobilization of armed groups. The Special Rapporteur asked the Government of the Democratic Republic of the Congo to accelerate the implementation of measures to restore the judicial system in Ituri. According to the Special Rapporteur, "the absence of a court of justice and of appropriate detention areas does not facilitate the return of peace and security in Ituri."⁵⁵

3. Response of International Community: MONUC and European Union Intervention

63. The situation in the troubled town of Bunia, in the DRC's eastern province of Ituri, has somewhat improved following the deployment of a French-led multinational peacekeeping force ("Operation Artemis") in early June 2003. The force, which is officially authorised as a mission of the European Union (EU) and is separate from MONUC, reached full strength of 1,500 in late July with contributions from various countries, although France accounted for over half of troop strength. The EU mission was replaced by a MONUC force under the command of Bangladesh that officially took over control of the mission on 1 September 2003. According to William Lacy Swing, the Secretary-General's Special Representative for the Democratic Republic of the Congo, in Ituri, he expected there would be about 4,800 troops by November 2003, roughly four times the strength of Operation Artemis, the French-led European Union force, which he noted was very successful in stabilizing the situation in Bunia. However, he said, unlike Artemis, MONUC

⁵⁴ Special Rapporteur, E/CN.4/2003/43, 15 April 2003, paras. 20-23.

⁵⁵ Reuters, Special Rapporteur on Human Rights in DRC condemns recent incidents in Bunia, Geneva, 22 September 2003.

forces would have responsibility beyond Bunia, and would be deployed throughout the entire Ituri district, roughly the size of Sierra Leone.⁵⁶

64. In early June 2003, the 15 ambassadors to the Security Council travelled to countries in the region on a mission in support of the peace process. In Kinshasa, they had talks with Mr Joseph Kabila and representatives of the various other parties to the DRC conflict. After stopping briefly in Bunia, they travelled to Rwanda, Burundi, and Uganda before returning home. France's UN ambassador, Jean de la Sablière, urged all the parties to put an end to the fighting and to respect the peace accords signed in December 2002.⁵⁷
65. While the Security Council was in the region, heavy fighting broke out between the RCD-Goma and the RCD-ML south of the town of Lubero. Each side accused the other of starting the fighting, which continued for several days. In addition, the RCD-Goma condemned the Kinshasa government's deployment in previous months of government troops to the area (the RCD-ML and the Kinshasa government have been allies since the partial signing of the Sun City peace accord in May 2002). MONUC attempted to organise a meeting of the belligerents in Bujumbura on the sidelines of the Security Council visit.⁵⁸
66. However, Burundi's government had not been officially informed of this meeting and initially did not allow it to take place. When talks did finally take place, the RCD-Goma declared a unilateral ceasefire. However, a new round of fighting immediately began in which the RCD-Goma captured Lubero, which had previously been under the control of the RCD-ML. While talks continued in Bujumbura, the RCD-Goma continued to advance north along the Lubero-Butembo road, creating panic in Butembo and the nearby city of Beni, before stopping 30 km south of Lubero. A ceasefire agreement was then signed with the RCD-ML and the government, which calls for the RCD-Goma to return to the positions it occupied prior to the offensive and for MONUC to verify the retreat. Intermittent fighting continued for several weeks, but by late June, the RCD-Goma had retreated. Nonetheless, tensions in the area remain high between the RCD-Goma and the RCD-ML.⁵⁹
67. In late July 2003, the UN Security Council adopted Resolution 1493, extending MONUC's mandate until July 30th 2004. The resolution also upgraded MONUC's mandate to Chapter Seven status for its forces in Ituri as well as in North and South Kivu provinces, where fighting between the Mai-Mai, Interahamwe and the RCD's troops continues. The Chapter Seven mandate means that MONUC is engaged in peace enforcement, allowing it to take offensive action in situations in which civilian lives are threatened. This is a significant improvement, as previously, MONUC's capability and credibility had been severely hindered as it was forced to stand by while fighting and/or human rights abuses had escalated in areas under its control. The Security Council resolution also calls on all states involved in the

⁵⁶ Relief Web, DRC: Press Briefing MONUC chief William Swing, UN OCHA Integrated Regional Information Network, 1 October 2003.

⁵⁷ EIU, September 2003, p. 16.

⁵⁸ *Ibidem*, p. 17.

⁵⁹ *Ibidem*, pp. 15-20.

conflict in the DRC to take action to prevent their own territories from being used to provide, directly or indirectly, arms, supplies and other assistance to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri and to groups not party to the DRC's peace agreement. This provision will be reviewed again after 12 months.⁶⁰

68. Through September 2003, MONUC focused on the application of its mandate in Ituri in order to prepare for the departure of the multinational force. Resolution 1493 authorises the deployment of a tactical brigade-sized force. This force, which is to be known as Task Force Two and which will be composed of Bangladeshi troops, began arriving in the city in early August 2003. Ultimately, MONUC troop strength in Ituri is planned to reach 4,800 by November 2003.⁶¹ Overall, the latest resolution authorises MONUC to increase its force strength from 8,700 to 10,800. However, there are no plans to increase troop deployments in North and South Kivu. In addition to changing MONUC's mandate for these areas, Resolution 1493 also calls for MONUC forces to be deployed throughout the Ituri region.⁶² This is a key element of the resolution, as the situation outside of Bunia remains highly volatile, with armed groups continuing attacks and other abuses against civilian populations in what are believed to be the worst human rights atrocities anywhere in the world at present.⁶³
69. The UN has replaced its special representative of the secretary-general in the DRC, Amos Namanga Ngongi, of Cameroon, who had served for over two years and is widely blamed for the weak performance in upholding the UN's authority there. His replacement is William Swing, who had previously served as the United States ambassador to the DRC from 1998 to 2001. Mr Swing, who speaks Lingala (the dominant local language) fluently, is considered by many to be well qualified for his new role.⁶⁴ Nevertheless, his appointment is somewhat controversial, as he was in office at the time of the assassination of the late President, Laurent Kabila, and is accused by some members of the Kabila government, fairly or not, of complicity in his death. Mr Swing has pledged his and MONUC's support to the transitional government. He will also gain the added authority of coordinating all UN system agencies in the DRC.
70. In mid-August, the leaders of the six armed groups operating in Ituri travelled to Kinshasa to hold talks with MONUC and the transitional government.⁶⁵ The talks aimed mainly at reinforcing the Dar es Salaam peace agreement, which all the parties signed in May 2003. The various groups reiterated their commitment to the

⁶⁰ Security Council, Resolution 1493 (2003), Adopted by the Security Council at its 4797th meeting, S/Res/1493, 28 July 2003.

⁶¹ Relief Web, DRC: Press Briefing MONUC chief William Swing, UN OCHA Integrated Regional Information Network, 1 October 2003.

⁶² Security Council, Resolution 1493 (2003), S/Res/1493, 28 July 2003.

⁶³ EIU, September 2003, p. 17.

⁶⁴ Swing, a veteran United States diplomat, most recently served as the UN Secretary General's Special Representative to Western Sahara. Prior to that, he served as U.S. ambassador to the DRC. He has also served as U.S. ambassador to neighbouring Republic of Congo, as well as to Haiti, Liberia, Nigeria and South Africa.

⁶⁵ Kabamba, Yulu, Briefing Note – MONUC will back up Verification Missions by Ituri Armed groups, MONUC, 18 August 2003.

accord and agreed to the deployment of the Congolese police and military to ensure security in the region. The Minister of the Interior, Théophile Mbemba, also cautioned them against pursuing further armed conflict in the eastern region, noting, "somewhat lamely",⁶⁶ that the new transition constitution forbids armed groups from operating in the country. According to the EIU:

Whether the conflict will now wind down depends largely on whether MONUC can deploy sufficient forces throughout to act as a deterrent. A greater incentive for the belligerents to put down arms is that many of their leaders are seeking high-level posts in the government and have been made offers by the various parties. However, the existence of large quantities of arms and lucrative natural resources in the region, as well as the capacity for continued division and subdivision – numerous new armed groups have hived off from existing ones in the past year – ensure that Ituri will remain a volatile area for some time to come.⁶⁷

71. Militias in Ituri District of north-eastern DRC agreed on 9 October 2003 to the cantonment of their forces, a promise they have made on previous occasions. The announcement followed the fifth meeting of a consultation committee of armed groups in the region, known as the Comité de Concertation des Groupes Armés, which was held under the aegis of MONUC. In a statement, MONUC said on 3 October that the militias agreed to provide within 10 days technical information regarding their numbers and locations, with a view to their cantonment. MONUC said the cantonment would take place in tandem with the deployment of its Ituri Brigade from Bunia, the main town of Ituri, to locations throughout the district. MONUC said that all armed groups of the region – namely, the Union des Patriotes Congolais, the Front des Nationalistes Intégrationnistes, the Forces Armées Populaires du Congo, the Parti pour l'Unité et la Sauvegarde de l'Intégrité du Congo and the Forces Populaires pour la Démocratie au Congo – participated in the meeting. For its part, MONUC recalled that militias were still actively engaged in armed activities, and demanded that they commit themselves to the peace process.⁶⁸

C. Human Rights

1. Human Rights Violations by the DRC Government

72. A law passed in January 1999⁶⁹ effectively amounting to a ban on opposition parties, resulted in the imprisonment of prisoners of conscience and the repression of political activity. Successive Presidential amnesties during 2000 and in early 2001 for political prisoners led to the release of hundreds of detainees. However, these amnesties and an announcement in May 2001 by President Joseph Kabila to liberalise political activity, as well as the inconclusive inter-Congolese dialogue, have not prevented further repression against peaceful government opponents. Even after President Joseph Kabila came to power on 26 January 2001, there have been numerous cases of unlawful detention, arbitrary arrest, torture and killings ordered by the military court (Cour d'Ordre Militaire – COM). The UN Special Rapporteur

⁶⁶ EIU, September 2003, p. 17.

⁶⁷ *Ibid.*

⁶⁸ IRIN, DRC: Ituri Militias Again Agree to Cantonment, 10 October 2003.

⁶⁹ Décret-loi no. 194 relatif aux partis et regroupements politiques; available on Refworld.

for the DRC noted in her September 2002 report that the Cour d'Ordre Militaire continued to try civilians despite its purely military jurisdiction.⁷⁰

a) Detention and Unfair Trials of Alleged Coup Plotters

73. Arbitrary arrests and unlawful detentions for opposing the government or based on a suspicion of plotting to overthrow the government have taken place in areas controlled by the government. Since late October 2000, the government has arrested soldiers and civilians from the eastern provinces of North-Kivu, South-Kivu, and Maniema, after uncovering an alleged coup plot to overthrow the government of President Laurent-Désiré Kabila. After President Laurent-Désiré Kabila was assassinated on 16 January 2001 and replaced by his son Joseph Kabila 10 days later, many other soldiers and civilians, most of them from the provinces of Equateur and Orientale, accused of involvement in the assassination or in a plot to overthrow the new President, were also arrested and detained. Many of the detainees are former members of the Forces Armées Zairoises (FAZ) suspected of allegiance to former President Mobutu's generals, who are opposed to the DRC Government.
74. On 15 March 2002, a trial by the COM of some 135 people accused of involvement in the January 2001 assassination of former President Laurent-Désiré Kabila started in Kinshasa. The defendants include a group of 19 former members of the DRC Government security forces from Kivu region linked to Masasu Nindaga who had fled to the neighbouring Republic of Congo-Brazzaville in late 2000 and early 2001. After they were registered with the UNHCR as asylum-seekers and supposedly protected, they were arrested by the authorities in Brazzaville and unlawfully handed over to the DRC Government in April 2001. There are reports that they may have been exchanged for Congo-Brazzaville dissidents. Some of these men left behind their wives and in some cases children in Congo-Brazzaville, who are currently under the protection of UNHCR in Congo-Brazzaville. One of the defendants, Antoine Ngalamulume, had already been sentenced to 20 years' imprisonment in November 2000 and was in custody at the time of President Kabila's death. Defendants and their legal counsel had not been given an opportunity to prepare their defence. Those convicted would be at risk of being sentenced to death and possibly executed.
75. Several of them were reportedly tortured during the initial period of their detention at an unofficial security service detention centre in Kinshasa. They were arrested around April 2001 and charged with plotting to overthrow the government of President Joseph Kabila. Thirteen of these defendants were sentenced to death, five of them in absentia, on 13 September 2001 after a patently unfair trial. They were convicted by the COM in Likasi, Katanga province. Almost all were reportedly tortured to force them to implicate themselves or their co-defendants.⁷¹ They were denied access to lawyers before their trial. Eighteen others were sentenced to between five and twenty years' imprisonment.

⁷⁰ Special Rapporteur, A/57/437, 26 September 2002, para. 39.

⁷¹ Amnesty International, Democratic Republic of Congo: From Assassination to State Murder?, 12 December 2002.

76. Some of the defendants are effectively in custody in place of their relatives accused of criminal offences. They include Anne-Marie Masumbuko Mwali and Kamwanya Beya, who after being arrested three times in March 2001 and interrogated about the alleged role of her husband, former army major Janvier Bora Kamwanya, in the murder of President Kabila, was reportedly beaten with belts and a piece of wood at the Groupe litho moboti (GLM) detention centre. Women in custody because of the activities of their husbands or in their place include Fono Onokoko, wife of Rachidi Munzele (she gave birth in custody), and Atondjo, wife of Lieutenant Fraterne Tchibunga.⁷²
77. The arrest of family members because of their relative's alleged link to the assassination has also occurred in the case of Eddie Kapend's family. The role of Eddie Kapend is still unclear, it is very difficult to understand exactly what happened and who was involved. On the afternoon the 16 January 2001, after Kabila was shot, Eddie Kapend appeared to be in charge. Another soldier in the same room where Kabila was shot reportedly killed the assassin, Rachidi Munzele, on the spot. Whether he died there or not will be long to be investigated. Subsequently, however, suspicions were raised that maybe Eddie Kapend was involved in the coup: He was arrested subsequently by the Joseph Kabila government and accused of involvement in the assassination of Laurent-Désiré Kabila. The link between Eddie Kapend and many other people who were not associated with the government and in some cases were even linked to Masasu, remains unclear. The man who shot Kabila supposedly had been closer to Masasu than to Eddie Kapend. Kapend himself was known as a close confidant and aide-de-camp of Laurent-Désiré Kabila.⁷³ On 7 January 2003, the Military Court sentenced the persons suspected of being involved in the assassination of Laurent-Désiré Kabila. Thirty of the accused were sentenced to death, including Eddy Kapend. Twenty of those sentenced to death are in prison, while others, tried *in absentia*, are outside the country. Twenty-seven others were sentenced to life imprisonment, forty one were acquitted while the remainder received sentences ranging from two to twenty years of imprisonment.

b) Death Penalty

78. In the first known executions since December 2000, fifteen people were reportedly executed in secret earlier this week in the capital Kinshasa at the beginning of January 2003. Dozens of death row prisoners throughout the DRC, including those recently convicted of involvement in the assassination of President Laurent-Désiré Kabila, also face execution. President Kabila had personally committed himself to respecting a moratorium on executions in an address to the UN Human Rights Commission in Geneva in March 2001. These are the first known executions to have taken place since the unexplained lifting of that moratorium on 23 September 2002.⁷⁴
79. The 15 individuals had been on death row at Kinshasa's main prison, the Centre Pénitentiaire et de Rééducation de Kinshasa (CPRK – Kinshasa Penitentiary and

⁷² AI, Democratic Republic of Congo: From Assassination to State Murder?, 12 December 2002.

⁷³ *Ibid.*

⁷⁴ AI, Fear of Imminent Execution, 10 January 2003.

Re-education Centre). They were taken from their cells during the night of 5 to 6 January to a military camp close to Kinshasa's Ndjili airport on the outskirts of the city. The executions took place, by firing squad, on the morning of 7 January and the bodies were buried in a common grave nearby.

80. The executions took place just hours before 30 people were sentenced to death (10 in absentia) by a military tribunal known as Cour d'Ordre Militaire (COM), Military Order Court, for their alleged role in the assassination of Laurent-Désiré Kabila in January 2001. It is understood that some, if not all, of them were also sentenced to death by the COM.
81. Since its creation in 1997, the COM, which according to Amnesty International has consistently failed to meet standards of fairness set out by international law, has been responsible for the execution of some 200 individuals. The 15 people executed did not have the right to appeal against their death sentences and would have been entirely reliant on President Joseph Kabila exercising his prerogative to commute their sentences. It is not known if any formal petition for clemency was submitted to, or considered by, the President, as is required under Congolese law. According to Amnesty International, Some 60 people remain on death row at the CPRK. Many dozens of others are thought to be on death row in other prisons throughout the country.⁷⁵

c) Torture and Harsh Prison Conditions

82. Torture and ill-treatment continue to be widespread in unofficial detention centres run by the security services: the Agence Nationale des Renseignements (ANR), the military security service DEMIAP, and the Garde Spéciale de Sécurité Présidentielle (GSSP), which is also supposed to be the personal bodyguard corps of the President. Despite an order by President Joseph Kabila in March 2001 to close all unofficial detention centres used by the security services not under judicial supervision, the security services continue to arrest and detain people in their unofficial detention centres without any judicial control.⁷⁶
83. Detainees were almost invariably held incommunicado, and routinely denied medical care. Beatings, including whippings administered with cordelettes (military belts), are particularly common. Psychological torture is also frequent, with many detainees being threatened with death and some subjected to mock executions. There have also been numerous reports of women in custody who were raped by members of the security services.
84. Some detainees have died because of torture. Pierre Ngbutene died on the night of 13/14 April 2001 in military security service custody of the Détection Militaire des Activités Anti-Patrie (DEMIAP – Military Detection of Unpatriotic Activities), in Kinshasa, reportedly as a result of torture. On 9 September 2001, Koyese Swako, who was being held in connection with the assassination of former President Laurent-Désiré Kabila, died of septicaemia, apparently caused by a lung infection contracted through repeated blows to the chest during torture while in custody of

⁷⁵ AI, *Fear of Imminent Execution*, 10 January 2003.

⁷⁶ ACCORD/UNHCR, p. 92-93.

the DEMIAP. The two men had been implicated in an attempt to overthrow President Joseph Kabila.

85. Conditions in many detention centres are appalling and constitute cruel, inhuman, and degrading treatment. In mid-June 2002 the human rights group La Voix des Sans Voix (VSV) reported that at least 46 prisoners died between March and June 2002 at Kinshasa's main prison, the Centre Pénitentiaire et de Rééducation de Kinshasa (CPRK), previously known as Makala Prison.⁷⁷ Conditions there have progressively deteriorated over the last two to three years, a sign of the bad economic situation or of simple neglect by the government. According to VSV, the detainees died because of ill-treatment, lack of medical care and the effects of starvation or malnutrition. In general, relatives must in many cases continue to feed the detainees, pay for their medical care and get medication for them. Otherwise, they face a serious risk of dying from malnutrition or from treatable diseases.⁷⁸
86. Evidence that the illegal detention centres are still in operation came to light when 4 out of 16 pilot officer cadets held since 19 September 2003 in an illegal jail at the Ndolo Military Base in Kinshasa, capital of the Democratic Republic of the Congo, were released, the World Organisation Against Torture (OMCT) reported on 8 October. A human rights NGO, the Association Africaine de Défense des Droits de l'Homme (ASADHO), reported on 3 October that the 16 cadets refused to be transferred to the Kamina Military Base in Katanga Province because they were not informed about what they would be doing there. "They denounced the fact that groups of students who had been transferred to Kamina before them were no longer training to be pilots," Amigo Ngonde Funsu, ASADHO's President, said. They were, therefore, arrested and imprisoned in "inhumane" conditions – in cells about 1.5 metres wide – without their families having been informed of their status, ASADHO said. OMCT said the remaining 12 officer cadets were still being held, along with some 40 other individuals. It also said that the fate of another officer cadet, Otamba Ngandu, remained unknown, and called for the disclosure of his whereabouts.⁷⁹

(1) Leaving Detention

87. Bribery, inside contacts and escape are three practically available ways to leave detention, and sometimes even military custody. Resort to bribery is more readily available for low category prisoners.⁸⁰ For high category prisoners it may be more difficult, especially in the case of CPRK in Kinshasa, guarded by Zimbabwean soldiers. In this case, one would need to bribe both the Congolese and the Zimbabwean soldiers, and the latter are better paid. Moreover, they are Anglophones, and may not speak French or Lingala. It is also possible to escape from a military detention centre like the GLM in Kinshasa, e.g. after a riot or a

⁷⁷ A report commissioned by the Refugee Documentation Centre and published in June 2002 is available on www.ecoi.net: Refugee Documentation Centre/Congolese-Irish Partnership: "Prison Conditions in the Democratic Republic of Congo. Part I. Voix des Sans Voix. Part II CPDH (Centre pour la promotion des droits de l'homme)": www.ecoi.net/pub/sb47/rdc-cod-prison0502.pdf.

⁷⁸ ACCORD/UNHCR, pp. 92-93.

⁷⁹ IRIN, 4 of 16 pilot officer cadets released, Nairobi, 9 October 2003.

⁸⁰ ACCORD/UNHCR, p. 93.

fight with the guards. Another path to freedom would be through highly-placed friends within the ministry.⁸¹

88. One high profile prisoner who successfully escaped twice is Army major Jean-Pierre Bora Kamwanya, who was arrested by the Kabila regime and escaped to Nigeria, likely with assistance. In Nigeria, he decided that he was going to try and cross over to Nairobi. However, what he either failed to take into consideration the fact that the flight had a stopover in Kinshasa. Upon arrival at Kinshasa airport, the security services put him back into custody. Nevertheless, he again managed to re-escape and flee the country. As punishment for escaping twice, the government and the security services arrested his wives. At least one of them was put on trial in the place of her husband.⁸²
89. Such proxy detention is not uncommon, and it has been a practice in the country for many years, stemming from the Mobutu regime. Already in the early 1980s, it was very common for soldiers searching for someone to arrest a father or an uncle as a means of putting pressure on the suspect to hand himself over to the authorities.⁸³

(2) Ekafela Prison

90. The Ekafela prison in Equateur was formerly a military prison used for a number of years to detain opponents of former President Mobutu, especially during the 1970s and 80s. Presently, however, no political prisoners are reportedly held there, although information is not sufficient to categorically exclude this possibility. As the province of Equateur is controlled by three different groups – the government, MLC, and RCD-Goma – reliable information is difficult to gather. Many of the political prisoners tend to be detained in either Kasapa prison in Lubumbashi or in Buluo or Likasi prisons. While high category prisoners are less likely to be transferred, those who are locally arrested are likely to be detained locally. Nevertheless, those arrested in the Katanga province in particular tend to be first detained in Lubumbashi and then transferred to Kinshasa.⁸⁴

d) Abuse of Power by Presidential Family

91. Individuals related to President Joseph Kabila are reportedly using their family connections to order members of the security forces to commit human rights violations, particularly in Lubumbashi, the capital of his home province, Katanga. For example, on the night of 8 to 9 June 2002 a woman called Pétronie Kabila reportedly ordered her bodyguards from the Garde Spéciale de Sécurité Présidentielle (GSSP) and the government militia known as the Forces d'Autodéfense Populaires (FAP) to torture Kabeya Kitenge Shaba, who died as a result on 10 June 2002. The victim had been accused of stealing maize from Pétronie Kabila's farm.
92. On 15 June 2002, Jules-Dassin Ngandu Mwana Muyombi, an official of the Lubumbashi Court of Appeal, was arrested and tortured by soldiers on the orders of President Kabila's cousin known as Dieudonné, alias Dydo, son of former

⁸¹ ACCORD/UNHCR, pp. 92-93.

⁸² *Ibidem*, pp. 93-94.

⁸³ *Ibidem*, p. 94.

⁸⁴ *Ibid.*

President Laurent-Désiré Kabila's younger sister. The victim was tortured after the soldiers failed to find his son, Alain Ngandu, accused of involvement in the theft of money belonging to Kabila's sister Jeanne. Alain Ngandu's fiancée, Sylvie, and at least one other relative were also arrested, tortured, and detained at Jeanne's residence. In February 2001, Rachel Chakupewa and her niece, Marie Muzingwa, were reportedly beaten by members of the security forces at the Hotel Okapi in Kinshasa, where the funeral ceremony of a relative of President Kabila was taking place. They were accused of attempting to poison relatives of President Kabila, and detained for several days by the GSSP, at the Presidential residence and subsequently at the GLM detention centre. During the night of 6-7 February, Rachel Chakupewa was reportedly whipped for several hours by five soldiers and beaten with a metal tube until she was bleeding and unconscious.

93. These incidents highlight the trend by Kabila family members to use their position to torture and in some cases even kill their personal enemies or personal rivals, people who have not committed any serious offence or, if they have, certainly not a political offence. Enjoying impunity, they do not expect that they can be brought to justice by any form of authority.⁸⁵

e) Targeting Human Rights Defenders and Journalists

94. The DRC's government security forces have harassed, threatened, and detained Human rights defenders investigating human rights violations to intimidate and prevent them from carrying out their work. For example, Golden Misabiko Baholelwa, President of the Lubumbashi branch of the Association Africaine de Défense des Droits de l'Homme (ASADHO), African Association for the Defence of Human Rights, was tortured while detained without charges from February to September 2001, first in Lubumbashi and subsequently in Kinshasa. He was questioned in particular about an ASADHO communiqué denouncing the executions of Anselme Masasu Nindaga and seven other alleged coup conspirators in November 2000. In March 2002, he was forced to flee the country after he learned that the security forces were seeking him.
95. N'sii Luanda Shandwe, President of the Comité des Observateurs des Droits de l'Homme (CODHO – Committee of Human Rights Observers), was detained from early June to September 2001 when he was released without charges. He was accused of involvement in the plot to overthrow President Joseph Kabila apparently because he campaigned for the rights of detainees held in connection with the alleged plot by carrying out investigations into these arrests. He was rearrested on 19 April 2002 and held in the CPRK (Makala penitentiary) without charge, possibly again in connection with his human rights activities and criticism of the government. He fell seriously ill while held in Kinshasa's main prison, the Centre Pénitentiaire et de Rééducation de Kinshasa (CPRK). On top of typhoid and acute malaria, he suffered severe stomach pains for which prison doctors recommended he receive an operation and specialist treatment. Prison authorities failed to heed this recommendation for several weeks until finally he was transferred in late

⁸⁵ ACCORD/UNHCR, p. 95.

September to a clinic, where doctors removed his appendix. N'sii Luanda Shandwe was freed on 26 January 2003, on order of the President of the DRC.⁸⁶

96. Press freedom remains under threat. More than 60 journalists have been arrested since President Joseph Kabila came to power in January 2001; many of them simply because they have written or published articles that appeared to be critical of the government or its policies. Although indeed journalists have attempted in numerous cases to ride against the tide and publish articles and newspapers, nevertheless the government has sustained pressure on journalists to stop criticising it or its policies.
97. According to Reporters Without Borders, in 2002
- Press freedom was still not respected in either the government zone or the areas controlled by rebel movements. Some 40 journalists were deprived of their freedom during 2002.⁸⁷
98. According to their 2003 Annual Report, nine journalists were imprisoned in 2002 and two remained in prison by the end of 2002. Two other journalists were physically attacked, and two threatened by the government.⁸⁸
99. One example is Kadima Mukombe, journalist and presenter on *Radio Kilimandjaro*. He was arrested by military personnel in the south-western town of Tshikapa on 31 December 2002 on an accusation of "insulting the army." He was taken to the local headquarters of the DEMIAP (Military Detection of Unpatriotic Activities) where he was allegedly given 50 lashes during interrogation. During his broadcast the previous day, Mukombe accused local military officers of becoming diamond dealers and accused their troops of taking advantage of the neglect to rob the population. Workers in the local diamond mines interviewed by Mukombe had complained of harassment by military personnel. Mukombe had been briefly detained by members of the National Intelligence Agency (ANR) on 23 December for decrying the poverty of Tshikapa's population while thousands of carats of diamonds were extracted every day from the town's mines. He was released the same day after signing an undertaking not to "stir up the population against the authorities."⁸⁹
100. On 3 April 2002, José Feruzi Samwegele of the government radio and television company was detained by the DEMIAP on suspicion of complicity to broadcast a statement issued by the UDPS during the Inter-Congolese Dialogue. He was released seven days later without official explanation.⁹⁰
101. Some journalists are targeted because their reporting is perceived as sympathetic to government opponents. One such journalist is Dieudonné Karl Nawezi, a sports reporter of the government-owned Radio Télévision Nationale Congolaise (RTNC).

⁸⁶ AI, Holiday Card Action, N'sii Luanda Shandwe, 13 October 2003.

⁸⁷ Reporters Without Borders, DR Congo: Annual Report 2003, www.rsf.org/.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

He was held by the ANR in Lubumbashi from 7-11 May 2002 because television footage showed Congolese football fans in South Africa wearing T-shirts with a photograph of government opponent Katebe Katoto.

102. Lucien Kahozi, the Voice of America (VOA) correspondent in the south-eastern city of Lubumbashi (Katanga province), was threatened by local military authorities and went into hiding on 20 November 2002 after arranging for VOA headquarters in the United States to interview Abbot François Muyila Mbweni. The abbot had described acts of violence by units of the Congolese Armed Forces (FAC) against the local population. According to human rights groups, FAC units attacked and set fire to a thousand homes in Ankoro (north of Lubumbashi), leaving many dead. The government had acknowledged the incident but played down the extent of the damage.⁹¹

f) Repression of Government Opponents

103. Government security agents continue to arrest, beat and detain dozens of opposition supporters seeking to hold public meetings in support of the opposition or talks to end the on-going armed conflict.

(1) UDPS

104. Members of the Union pour la Démocratie et le Progrès Social (UDPS – Union for Democracy and Social Progress), one of the DRC's main political parties, were once among the most seriously targeted political opposition activists, although recent political developments suggest that government repression is waning. On or around 5 December 2001, five UDPS members were arrested after a meeting which was reportedly held to plan a demonstration through the streets of the capital Kinshasa. The demonstration, which was apparently due to take place on 14 December, never took place. The five – Modeste Sadiki, Jean-Baptiste Bomanza, Roger Kankonge, Kadima Kadima, and Jean-Baptiste Mwampata – were held at the CPRK. Although they were questioned about the planned march and other UDPS activities, they were not formally charged. Repression against members of the UDPS seems to be on the increase since the party took the side of RCD-Goma and Rwanda during the Inter-Congolese Dialogue. On 9, 11 and 12 April 2002, members of the security forces used violence to prevent demonstrations by UDPS members in Kinshasa. The demonstrators were in each case detained and released after several hours. On 18 April 2002 Désiré Mzinga Birhanze, UDPS national secretary, was arrested by the police in Kinshasa who interrogated him about the party's armed wing. He was released without charge on the night of 20 April. On 12 May 2002 Etienne Tshisekedi's economic adviser, Jean-Baptiste Mulumba, was arrested by the ANR in Lubumbashi. He was apparently accused of organizing the UDPS's armed wing and colluding with RCD-Goma and Rwanda. On 16 May, he was transferred to the ANR detention centre in Kinshasa. Members of the security services harassed members of his family and seized their property, including his wife's car and several thousand U.S. dollars, during several days after his arrest.
105. On 25 May 2002 UDPS members meeting at the home of Joseph Tshibwabwa at Kingasani, Kimbanseke commune, in Kinshasa, were violently dispersed by the

⁹¹ Reporters Without Borders, Annual Report 2003.

- police. Six of them were held for several hours. Police reportedly stole personal property of the militants. The UN Special Rapporteur reports the following additional incidents involving members of the UDPS: On 4 June 2002, a peaceful march organized by the UDPS was broken up by the national police and several participants were arrested and reportedly ill-treated in cachots in Kinshasa. Six other UDPS members were detained on 28 June 2002 and reportedly ill-treated.⁹²
106. On 27 September 2002, OMCT reported the arrest and alleged ill-treatment of a number of UDPS activists who participated in a march organized together with Parlement-Débout to celebrate the 9th anniversary of UDPS and support the candidature of Etienne Tshisekedi as Supreme Public Prosecutor. One member of Parlement-Débout was believed to have died of the injuries inflicted by the security forces.⁹³ Harassment of UDPS members also seems to be on the increase in President Kabila's home province of Katanga, particularly in the capital Lubumbashi where they are being targeted for organising meetings in support for Tshisekedi. Many of them, including Jean-Félix Tabu Kalala Mwin Dilemb, leader of UDPS in Katanga, and his deputy, Léon-Gilbert Masoswa Kyungu, have gone into hiding since April 2002. They are accused of holding such illegal meetings. Arrests of members of the UDPS have also been reported in Mbuji-Mayi.
 107. The UDPS's apparent alliance with RCD-Goma and Rwanda is expected to heighten tensions between the DRC Government and the political party and to lead to many more arrests and ill-treatment. The situation has been exacerbated by reports at the time of the Inter-Congolese Dialogue in March to April 2002 that the UDPS threatened to establish an armed wing to fight the government and supported the granting of Congolese citizenship to all Banyarwanda who want it. These alleged positions have further reduced sympathy for the UDPS in the DRC.
 108. Government response to the return of veteran opposition politician Etienne Tshisekedi on 28 September 2003, ending two years of self-imposed exile in South Africa, is a key indicator regarding its tolerance of the opposition. Tshisekedi led the opposition to former President Mobutu Sese Seko and participated in the dialogue that took place in South Africa last year and resulted in the formation of the current transitional government. Tshisekedi, who was greeted at Kinshasa airport by tens of thousands of supporters, stated that he had returned to build on the work that his party – the Union for Democracy and Social Progress (UDPS) – had carried out in his absence. The UDPS has the potential to play a vital role in organising civilian opposition to President Laurent Kabila in elections in 2005.⁹⁴
- (2) Mobutu and MPR Affiliates*
109. With regard to people linked to former President Mobutu and the MPR (called *Fait-Privé* to distinguish it from the state party), persecution may result from either having held a very senior visible position in the party, the government or the security forces, or from overt opposition to the current government. However,

⁹² Special Rapporteur, A/57/437, 26 September 2002, para. 32.

⁹³ OMCT Appeals Case COD 270902: Democratic Republic of Congo: demonstrators attacked and arrested, resulting in one death and several injured persons, 27 September 2002.

⁹⁴ Opposition Regroups, Oxford Analytica, 29 September 2003.

before April 1990 everyone in Zaire was by law a member of the MPR. The question is whether people remained members of the MPR or sympathetic to it⁹⁵ and have been overtly opposed to the new government after April 1990, or whether they decided to leave the MPR. The risk of persecution is difficult to assess, but most likely, it will depend on their position in the former government. When former Prime Minister Likulia Bolongo, a former general, returned, apparently with the agreement of the government, he was nevertheless arrested shortly afterwards by the security forces, but then subsequently released. He does not seem to have any problem with the government at the moment, but it is uncertain what might happen in the future.

110. Members of the security forces act without necessarily being ordered by the government, the President, or the ministers. The current leader of the MPR Madame Nzuzi Wa Mbombo was detained for several weeks in 1999-2000 when the MPR refused to sign a law that would have required them to register formally as a political party under a number of conditions. Not only MPR *Fait-Privé*, but also a number of other political parties refused to register under these conditions: a registration fee, an obligation to have party representatives from virtually all of the provinces or – one of the most ridiculed conditions – that one must not be disabled.
111. However, since then few arrests have been reported, reportedly because many have put their heads down and have tried not to confront the government.⁹⁶ Indeed, in some cases members of the MPR have joined the government. In many cases, former members of the MPR joined the armed opposition, such as the MLC. For example, Alexis Tambwe, who was previously a leading member of RCD-Goma, subsequently joined the MLC. Before 1997, he was a key official of the Mobutu government. If such a person returned to Kinshasa without a clear arrangement between the government, the MLC, and himself, there is a real possibility that he could be arrested and detained.

(3) Former Members of the Forces Armées Zairoises (FAZ)

112. Some former Mobutu soldiers have been persecuted since President Kabila came to power in May 1997. Some were taken to Kitona military base, ostensibly for ideological and military training. Many are feared to have lost their lives there or have been accused of being in alliance with Rwanda or with the armed opposition, and indeed many of them have been targeted. As some have joined the new army, not all Mobutu soldiers are targeted by the government, but indeed some have been. Another element that creates a potential problem for members of MPR and former Mobutu soldiers is the aforementioned perception that some former members of the Mobutu government are plotting to launch an attack on Kinshasa from Brazzaville. Some of the FAZ soldiers, particularly the members of the *Division Spéciale Présidentielle* (DSP), which was the bodyguard corps of President Mobutu, also fought in the wars in Brazzaville and joined the Congo-Brazzaville army. Many remain.

⁹⁵ OMCT Appeals Case COD 270902: Democratic Republic of Congo: demonstrators attacked and arrested, resulting in one death and several injured persons, 27 September 2002, www.omct.org/.

⁹⁶ ACCORD/UNHCR, p. 99.

113. Since 1999, there have been reports and fears on the part of the DRC Government that some of these people are organising and regrouping with an intention of returning by force to Kinshasa and recapturing state power. Therefore, they will remain at risk, regardless of whether they are directly involved in plots against the DRC Government. There have been attempts by the two governments to create an understanding by actual agreements not to attack each other, but mistrust remains, and at least the Kinshasa regime fears an attack from Brazzaville.
114. Another significant factor is that many ex-FAZ joined the MLC armed political group, and fighting against the Kinshasa government. Now that some form of power-sharing agreement has been signed, if it is implemented, these former soldiers may end up in the national army. Largely the risk of persecution will depend on the specific circumstances of the particular individual. As to the importance of military rank, in some of these armies rank may not always mean what it does in better-established armies. Particularly in the DRC, a low-ranking soldier may politically have more power than a top general. There have been cases where a sergeant would have such power over a major that he could strike him with impunity, because he happens to come from the ethnic group that is closer to power.

(4) MPR Members in Exile

115. In the case of a person linked to the former regime, having been living abroad and conducting activities on behalf of MPR, if there is sufficient evidence for the government that this person has been carrying out political activities against the current government, or has shown some form of sympathy for the armed opposition or given support for the enemy, Rwanda or Uganda, then there is good reason to believe that this person could be at risk upon return.

(5) Family Members of MPR officials

116. As for family members of MPR officials, in most cases it depends on whether they have a close association with the person or their activities. Some family members have remained behind and have not necessarily been targeted. Yet, if the person is a prominent opponent of the government, there is a possibility that the family members could be at risk, as well. In the case of Major Jean-Pierre Kamwanya, having escaped from custody twice, the authorities decided to arrest his wife⁹⁷ and girlfriends. These women were taken into custody and put on trial, effectively in his place.
117. The government seems to have no interest in non-organised return of former leaders of MPR or ex-FAZ to the DRC. For individual refugees who wish to return voluntarily to Kinshasa, the Congolese authorities request that a tracing be conducted by UNHCR prior to their arrival in order to determine that family members or friends will be ready to receive and assist them. For prominent officials of the former regime and former combatants, UNHCR refers the case to the Ministry of Interior so that relevant clearances are collected to ensure the safety of the returnee.

⁹⁷ AI, Stamp Out Torture, 29 June 2001.

(6) MLC

118. The MLC was founded in late 1998 when a prominent businessman, Jean-Pierre Bemba, visited President Museveni in Kampala, either offering his help or asking for help to overthrow the Kabila government. The Ugandan government decided to support a new rebel group, largely because Uganda and Rwanda had failed to agree on their support for RCD-Goma. After undergoing training in Uganda, Jean-Pierre Bemba entered the DRC with an army that initially consisted almost entirely of Ugandan troops. In due course, he recruited more and more people. After Jean-Pierre Bemba formed this group, Laurent-Désiré Kabila appointed Saolona Bemba, the father of Jean-Pierre Bemba, Minister for Economy in Kinshasa. Kabila thus had the son running a rebel group and the father in the government in Kinshasa.⁹⁸
119. The importance of Saolona Bemba lies in the fact that he was and probably still is one of the richest men in former Zaire and the current DRC. He made virtually all his money during Mobutu's regime, not least because the Bembas come from the same region as Mobutu. Given his wealth and influence, it was perhaps not surprising that President Kabila appointed him Minister for Economy. An equally important consideration is that after Jean-Pierre Bemba formed the MLC, many former politicians and former generals of the Mobutu regime knew they now had someone inside the DRC who was close to Mobutu. A number of generals, such as Baramoto, offered their services and joined the MLC.
120. With regard to people associated with the former President Kasavubu, it should be noted that President Kabila is trying to rebuild the image of former Presidents, including Kasavubu.

g) Arrests and Ill-Treatment of Students

121. Students demonstrating against the government or its policies have been subject to arrest and ill-treatment. The victims include many students of the University of Kinshasa (UNIKIN) who were arrested by the police on 14 December 2001 following a student demonstration.⁹⁹ Tensions had first mounted at UNIKIN on 12 December 2001 when police clashed with students demonstrating to demand a lowering of tuition fees. More than 400 students were reportedly detained at the police headquarters, known as the Inspection de police de Kinshasa (IPK). Many were subjected to beatings and whippings with military belts (*cordelettes*) and forced to use earth and sand as toothpaste until their gums bled. They were also made to walk around the paved courtyard of the IPK on their knees. Almost all the students were released the following day. Eight students who were accused of being ringleaders of the demonstration remained in custody.
122. In a separate demonstration by students at the University of Lubumbashi (UNILU), the police injured as many as seven students, at least one of whom was shot. The students were protesting against newly introduced or increased accommodation and tuition fees. The police in Lubumbashi arrested Frank Buruani Kitenge, a student at UNILU originating from Kivu, on 16 April 2002. He was subsequently handed over to the ANR on 12 May and transferred to Kinshasa, where he was held by the

⁹⁸ ACCORD/UNHCR, pp. 101-102.

⁹⁹ AI, Alarming increase in arbitrary arrest and detentions, 8 January 2002.

security service. He was accused of being a spy for RCD-Goma and Rwanda because of his Kivu origins.¹⁰⁰

h) Human Rights Violations linked to Economic Activities

123. A number of independent reports, including those by a United Nations Panel of Experts and by international non-governmental organizations,¹⁰¹ have documented the link between the conflict in the DRC and the exploitation of natural resources.
124. The link between the plundering of natural resources and human rights violations – and its role in starting the war – was illustrated in the October 2002 publication of the final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146), endorsed by Security Council resolution 1457 (2003). The illegal exploitation of natural resources is in itself a violation of human rights and the norms of international law applicable *erga omnes*.
125. The Panel of Experts refers to numerous human rights violations resulting from the illegal exploitation of natural resources, for example, the large numbers of displaced persons, malnutrition, mortality, sexual violence against women and children, and the existence of child soldiers. It also notes that military units recruit children and force them to work, and especially to extract natural resources. NGOs in South Kivu informed the Special Rapporteur of children being recruited by armed groups to work in mines. The exploitation of natural resources has resulted in numerous accidents and the deaths of illicit operators, e.g., the deaths of certain illicit operators at the Mbuji Mayi diamond mine in February 2003.
126. The Special Rapporteur notes that the Congolese Government has, for the time being, suspended the persons cited in the report of the Panel of Experts, and that the Procurator-General has started legal proceedings. The approval of the certification system to strengthen controls on “blood diamonds” and the Kimberley Process instituted by the representatives of the mining and diamond companies at Interlaken could help to curb illegal exploitation.¹⁰²
127. During a visit to Mbuji-Mayi in Kasai province in October 2001, Amnesty International delegates learned from credible local sources that throughout 2001, dozens of civilians suspected of illegal mining of diamonds in and around a mining area belonging to the state-owned Société Minière de Bakwanga (MIBA – Bakwanga Mining Company), the mining company in the town, were shot dead and scores wounded by soldiers and police guarding the mines. One of the surviving victims, 18-year-old Mukeba Muchuba, was reportedly shot in the head by a MIBA guard on 16 September 2001; his speech was severely impaired because of his injury. The mine is also guarded by Zimbabwean forces, several of whom threatened to shoot Amnesty International delegates who were visiting the MIBA mining headquarters. Zimbabwean government forces are also reported to have

¹⁰⁰ AI, Alarming increase in arbitrary arrest and detentions, 8 January 2002.

¹⁰¹ E.g., AI, Democratic Republic of the Congo: Our Brothers Who Help Kill Us – Economic Exploitation and Human Rights Abuses in the East, 1 April 2003; HRW, Chaos in Eastern Congo, July 2003.

¹⁰² Special Rapporteur, E/CN.4/2003/43, 15 April 2003, paras. 58-62.

extrajudicially executed suspected illegal diamond miners. Amnesty International also expressed concern that there does not appear to have been any investigation to establish the responsibility for the shootings and bring the perpetrators to justice.¹⁰³

128. Luis Moreno Ocampo, chief prosecutor of the International Criminal Court (ICC), announced 23 September 2003 that the ICC would investigate the sale of diamonds from the Democratic Republic of Congo. Ocampo will collect evidence from national prosecutors in the United States, Canada and other countries in order to ascertain whether purchases were made in the knowledge that the proceeds would be used by groups and individuals who committed war crimes.¹⁰⁴
129. The discovery of oil in the Semliki Valley, an area straddling the border between Uganda and Ituri, ensures that competition over Ituri will increase. Heritage Oil, to which the DRC Government has conceded exploration rights in Ituri, announced on 31 March 2003 that it had struck oil in Uganda and that the area had the potential of being a new excellent oil basin.¹⁰⁵ In 2002 agents of the company started to make contact with local chiefs in Ituri, including several in Burasi as well as Chief Kahwa of Mandro.¹⁰⁶ Ominously portending the future of Ituri, Chief Kahwa said, "I have been contacted by the Canadian Oil people who came to see me. I told them they could only start work in Ituri once I had taken Bunia from the UPC."¹⁰⁷ As UPC Foreign Minister Dhetchuvi claimed, "in Ituri we are in an oil war."¹⁰⁸

i) The Situation in Kinshasa

130. Human rights violations are also taking place in and around Kinshasa, mainly targeting opponents of the government, whether perceived or real opponents. As highlighted above, the main groups are former soldiers or members of security forces accused of plotting to overthrow the government or of involvement in the assassination of President Joseph Kabila in January 2001. People reportedly recruited by Commander Masasu from 1996 onwards could be targeted and at risk. Some are accused of being "in intelligence" with Rwanda, RCD-Goma or other armed political groups. Human rights activists are targeted for investigating and exposing human rights violations by the government; journalists and members of some political parties who are openly opposed to either the government or its policies are also facing risks. The security situation in Kinshasa has seemingly improved for other people who are not targeted, but a number of groups remain at risk of persecution by the government and its forces.

¹⁰³ AI Press Release, Democratic Republic of Congo: Government Should Investigate Human Rights Violations in the Mbuji Mayi Diamond Fields, 22 October 2002; AI, Democratic Republic of Congo, Making a killing: The diamond trade in government-controlled DRC, 22 October 2002.

¹⁰⁴ Oxford Analytica, Diamonds Probe, 24 September 2003.

¹⁰⁵ Heritage Oil Press Release, Heritage Confirms Uganda Oil Potential and Outlines Further Investment Plans, March 31, 2003.

¹⁰⁶ HRW, Chaos in Eastern Congo, July 2003 p. 13.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

2. Human Rights Situation in Areas Controlled by the Armed Opposition

131. In areas of eastern DRC controlled by armed political groups and foreign government forces, particularly from Burundi, Rwanda and Uganda, human rights abuses, particularly unlawful killing of unarmed civilians, arbitrary arrest, unlawful detention and torture, including rape, have been widespread, as stated in a number of reports on the DRC, most recently by Human Rights Watch in July 2003.¹⁰⁹

Based on information gathered by its researchers and on other reports, Human Rights Watch estimates that at least 5,000 civilians died from direct violence in Ituri between July 2002 and March 2003. These victims are in addition to the 50,000 civilians that the United Nations estimates died there since 1999. These losses are just part of an estimated 3.3 million civilians dead throughout the Congo, a toll that makes this war more deadly to civilians than any other since World War II.¹¹⁰

132. From 10 February to 26 April 2002, 521 assassinations, 118 rape cases, several cases of abductions, destruction of villages by fire and looting were reported in the eastern region of Congo under RCD-Goma occupation, according to the Réseau d'Organisation des Droits Humains et d'Education Civique d'Inspiration Chrétienne en RDC (RODHECIC), a Christian human rights network organization in the DRC.¹¹¹
133. Such abuses have often been committed in response to attacks by armed groups opposed to RCD-Goma, which include Burundian and Rwandese Hutu-dominated armed political groups, such as the ALIR, and Congolese armed political groups known as the Mayi-Mayi. All of these groups have been responsible for grave human rights abuses. According to media reports, human rights activists are deported to Rwanda if not summarily executed by the RCD-Goma. Many unlawful killings and other abuses have been committed by forces of foreign governments and armed political groups seeking to control and exploit areas rich in natural resources such as gold, diamonds, and coltan (colombium-tantalite). Abuses have also been committed by Interahamwe and ex-FAR who were involved in the genocide in Rwanda.¹¹²
134. The atrocities committed in the Ituri region are almost unspeakable. Allegations of cannibalism and corpse mutilation abound, and sexual violence is rampant.¹¹³ These egregious human rights abuses have led to large-scale dislocations:

More than 500,000 people have been forced to flee from their homes in Ituri often encountering further violence in their flight. Members of armed groups

¹⁰⁹ HRW, *Chaos in Eastern Congo*, July 2003.

¹¹⁰ *Ibidem*, p. 1.

¹¹¹ RODHECIC, *Violation Massive des Droits de l'Homme Dans les Territoires de l'Est*, www.mail-archive.com/africa@peacelink.it/msg00024.html

¹¹² HRW, *Chaos in Eastern Congo*, July 2003.

¹¹³ *Ibid*; Amnesty International, *On the precipice: the deepening human rights and humanitarian crisis in Ituri*, March 2003; ICG, *The Kivus: the Forgotten Crucible of the Congo Conflict*, Africa Report No. 56, Nairobi/Brussels, 24 January 2003.

have looted many of these homes and have sometimes burned down entire villages, destroying them to discourage any return.¹¹⁴

135. The work of humanitarian agencies has been blocked:

Armed political groups and their outside backers have violated international humanitarian law by deliberately preventing humanitarian agencies from delivering assistance to people whom they have defined as their enemies. In the last year, there have been more than thirty cases where humanitarian workers have been detained, threatened, beaten, or expelled from Ituri. The most serious attack was the murder of six staff of the International Committee of the Red Cross in April 2001. (...) ¹¹⁵

136. From 14 to 15 May 2002, RCD-Goma troops used excessive, indiscriminate lethal force against civilians in Kisangani in reprisal for an aborted mutiny attempt by their dissidents. RCD-Goma loyalist troops put down the mutiny and then killed more than 150 civilians and numerous RCD-Goma members suspected of being mutineers or sympathizers.
137. In 2002, RCD-Goma and RDF, Mayi-Mayi and Interahamwes forces kidnapped numerous women and girls during raids on rural areas and forced them to provide labour or sexual services. Many of the victims were forced to stay with the troops from several days to several months and were subjected to gang rape or acts of sexual torture. Once released, many of the victims were ostracized by family members or their local communities, faced unwanted pregnancies or had contracted the HIV/AIDS virus from soldiers who abused them.
138. From 24 to 29 October 2002, in Mabassa and Mangina in the Ituri region, RCD-N and MLC troops systematically killed, abducted, raped, torture and looted the civilian population, some of whom were forced to commit cannibalistic acts. In some cases, victims were killed in front of their families, who were forced to eat their body parts. Thousands of persons fled, including numerous pygmies, who the rebels reportedly targeted for cannibalism.
139. Lendu militia also carried out deliberate mutilations and acts of cannibalism against their victims, mainly targeting the Hema. This often involved a ritual in which the flesh of the victim was distributed to Lendu combatants. Some Hema combatants of the UPC have carried out similar acts.
140. Nevertheless, there are small signs that the situation is improving. Two rival militias in Bunia, the main town of Ituri District in north-eastern DRC, have agreed to allow the free circulation of people and goods in the region, even as one of the militias accused the other of cutting the throat of one of its members.¹¹⁶

¹¹⁴ HRW, *Chaos in Eastern Congo*, July 2003, p. 1.

¹¹⁵ *Ibid.*

¹¹⁶ IRIN, DRC: Two militias promise free circulation of people, goods in Ituri, IRINnews.org., 23 September 2003.

141. In short, despite the notable progress achieved at the national level and more positive rhetoric at the local level, the humanitarian situation in Ituri remains critical, and serious human rights abuses by the various warring factions continue, virtually unabated.

a) Massacres of Unarmed Civilians

142. Although the Hema are pastoralists and the Lendu agriculturalists, until recent events, there was a high degree of co-existence between the two groups and intermarriage was common. Belgian colonial rule accentuated ethnic divisions between the two communities, however, by trying to reorganize traditional chieftaincies into more homogeneous groups and by favouring the Hema over the Lendu. Even after independence in 1960, the Hema continued as the administrative, landowning, and business elite. When the territory of Kibali-Ituri was created in 1962, for example, no Lendu obtained key positions in the administration. President Mobutu confirmed the Hema in management positions in the farming, mining, and local administrative sectors as part of his "Zairianisation" policy. Hema and Lendu fought small battles over land and fishing rights on several occasions after independence, but in general, customary arbitration, backed by the state, contained the incidents.¹¹⁷
143. Since 1998, various domestic and international actors and factions have played upon and exacerbated ethnic tensions. While the Inter-Congolese Dialogue was going on in Sun City, South Africa, fighting escalated in parts of eastern and north-eastern DRC, resulting in hundreds of deaths of unarmed civilians. Some of the fighting over control of territory in Orientale province has taken place between on one side combatants of the MLC and the Rassemblement Congolais pour la Démocratie-National (RCD-National), Congolese Rally for Democracy-National, and those of the RCD-ML on the other. These three rival armed groups are supported by Uganda.¹¹⁸
144. Deliberate and arbitrary killings of unarmed civilians in the armed conflict between Hema and Lendu ethnic groups, also involving the Uganda Peoples Defence Forces (UPDF), continue in the Ugandan-created Kibali-Ituri province, which previously was part of Orientale province. As many as 50,000 people, most of them unarmed civilians, are reported to have been killed, some of them reportedly buried alive, in the violence which started in June 1999. Tens of thousands of Lendu have fled from their homes to surrounding forests, where many have died from starvation, disease, and exposure.
145. The July 2003 Human Rights Watch report goes into great detail in describing the numerous UPC attacks in Ituri: the UPC attack on Bunia, August 2002; the UPC attack at Mabanga, 28 August 2002; the UPC massacre at Songolo, 31 August 2002; the RCD-ML and Lendu militia massacre at Mongbwalu, mid-June, 2002; and UPC Abuses of Lendu and Others seen as political opponents, from 2002. Massacres and other abuses by APC and Lendu and Ngiti armed groups, from late

¹¹⁷ HRW, *Chaos in Eastern Congo*, July 2003, pp. 18-19.

¹¹⁸ For a recent and extensive account of the Ituri massacres, see HRW, *Chaos in Eastern Congo*, July 2003.

2002, include the Nyakunde massacre, 5 September 2002; and the Lendu and Ngiti Summary Executions, Autumn 2002. Abuses by the MLC and the RCD-N include the summary executions and looting at Mambasa in August 2002.¹¹⁹

b) Kisangani Massacres

146. In June 2000, some 1,200 people were killed in the city of Kisangani, north-eastern DRC, when Ugandan and Rwandese forces and their Congolese allies confronted each other in the town, with the fighting lasting six days. Originally, Rwanda and Uganda are supposed to have invaded the DRC in their own common interests. What has since transpired, however, is that the common interests have become disparate, and as a result, their troops have fought each other inside the DRC on several occasions.
147. Approximately 23 months after the killing in June 2000, in mid-May 2002 between 60 and 180 persons were killed in Kisangani. The May 2002 abuses, which include summary executions of civilians and combatants, rape and pillaging, are reported to have been carried out by members of the RPA and combatants loyal to the RCD-Goma. The deliberate and arbitrary killings occurred for hours and days after a group of mutinous RCD-Goma combatants occupied the armed political group's Kisangani radio station on 14 May and called on the population to use all means to end the occupation of eastern DRC by Rwanda. Hundreds of civilians reportedly came out on the streets in response to the call and killed several RPA soldiers and civilians suspected of being Rwandese. The mutiny was conducted by soldiers opposed to RCD-Goma's refusal to become party to the Sun City agreement between the DRC Government and the MLC.¹²⁰
148. RCD-Goma has claimed that only 41 people died in the aftermath of the mutiny. According to RCD-Goma, those killed included four Rwandese who were lynched and four police officers or soldiers who sympathised with the rebels. Seventeen civilians were killed by stray bullets and 11 mutineers drowned while trying to flee by canoe. Sources in Kisangani claim that most of the more than 200 victims were summarily executed by RPA and RCD-Goma. The sources have reported that a few days after the mutiny several dozen bodies, many of them in bags, were seen floating in nearby Tshopo river.
149. Some of the bodies, with arms tied behind the back, were reported to have been decapitated. It is unclear whether the heads were severed before or after the victims, many of them thought to be RCD-Goma police officers and soldiers were killed. Sources in Kisangani have also reported that many of the mutilated bodies recovered from the river had been disembowelled and their stomachs filled with stones in an apparent effort by their killers to prevent them from floating.¹²¹ Following the Kisangani massacre, RCD-Goma declared the head of the UN Observation Mission *persona non grata* on territory under its control, as the office of the UN Special Representative reported. Three other high-ranking MONUC

¹¹⁹ HRW, *Chaos in Eastern Congo*, July 2003, pp. 19-39.

¹²⁰ MONUC, *Preliminary Report on Kisangani events*, 29 May 2002.

¹²¹ HRW, *War Crimes in Kisangani: The Response of Rwandan-backed Rebels to the May 2002 Mutiny*, August 20, 2002, p. 19.

human rights officers were expelled from Kisangani and Goma. MONUC observers witnessed several atrocities during and after the massacre.

150. The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahangir, visited the DRC to gather information on extrajudicial killings alleged to have occurred in the massacre on 14 May 2002 and immediately thereafter. From the capital, Kinshasa, where she met government officials and UN representatives, Ms. Jahangir traveled to the eastern city of Goma to meet representatives of the Rwandese-backed *Rassemblement Congolais pour la Démocratie* (RCD-Goma), the *de facto* authority in Kisangani. Her mission ended on 22 June with a visit to Kisangani where she met local authorities, international agencies, witnesses, and victims of alleged human rights violations. According to a report presented by the UN High Commissioner for Human Rights to the UN Security Council, the Special Rapporteur concluded "...103 civilians and 60 police and military persons have been identified as reportedly summarily executed in connection with the events of 14 May. In addition, 20 corpses were spotted floating in the Tshopo river. It was pointed out that a number of bodies thrown into the river may never have surfaced or been discovered. These figures are only indicative of the potential scale of summary executions."¹²²
151. The UN called on the RCD-Goma to ensure that the perpetrators were brought to justice. RCD-Goma denied that its supporters had carried out any unlawful killings.

c) Targeting Human Rights Defenders, Journalists and Critics

152. Human rights activists are routinely threatened by RCD-Goma, in part for investigating and continuing to express concern about the human rights violations and destruction of property during and after the 1999, 2000 and 2002 battles in Kisangani. RCD-Goma blamed protests against the May 2002 killings and other abuses on human rights defenders in Kisangani. Xavier Zabalo, a Roman Catholic missionary priest, was briefly detained and interrogated about his links to a local human rights group. His colleague, Guy Verhaegen, required medical treatment after he was assaulted with a rifle butt. Fearing for their safety, human rights defenders in Kisangani went into hiding for about two weeks.¹²³
153. People, including human rights defenders, investigating human rights abuses by armed opposition groups and their foreign backers are targeted. For example, Jules Nteba Mbakumba, of the Elimu Association, fled from Uvira, South-Kivu, controlled by RCD-Goma and its Rwandese and Burundian allies, to neighbouring Burundi in August 2001 after colleagues were detained by RCD-Goma and accused of distributing leaflets for the *Mayi Mayi*. In October, he was arrested by the Burundian authorities, returned to RCD-Goma in the DRC, and detained at a Rwandese military camp at Kavimvira near Uvira, where he was reportedly bound and severely beaten. He was subsequently transferred to a detention centre in Goma, where he is still held. Juma Pili Rumanya, a member of *Héritiers de la Justice*, was shot dead on 29 November 2001 by men in military uniform in Uvira,

¹²² UN Security Council: High Commissioner for Human Rights, Report on the 14-15 May Events in Kisangani-Democratic Republic of the Congo (S/2002/764), 16 July 2002.

¹²³ AI, Kisangani killings – victims need justice now, 12 June 2002.

South-Kivu. It is suspected that he was targeted because of a call by his group for the release of Jules Nteba.¹²⁴

154. On 3 September 2002 Honoré Musoko, a lawyer and a leading member of the Justice Plus human rights organization, was arrested in the town of Aru, some 260 kilometres north of Bunia, by soldiers of the Rassemblement Congolais pour la Démocratie – Mouvement de Libération (RCD-ML – Congolese Rally for Democracy – Liberation Movement), a Ugandan-directed armed political group. He had been returning from a trip to Uganda, and had been about to board a connecting flight from Aru to Bunia at the time of his arrest. He was subsequently transferred to the RCD-ML “Mont Hawa” military camp in Aru territory. Honoré Musoko was reportedly arrested on the orders of the Aru RCD-ML military commander and the RCD-ML Administrator of Aru territory. He was accused of making hostile statements about the RCD-ML and of collaborating with opponents of the RCDML. The true motive for his arrest, however, appears to be related to an interview he gave on “Voice of America” radio regarding the dire human rights and political situation in the Ituri region. Following appeals by Amnesty International and other human rights organizations to RCD-ML and Ugandan authorities Honoré Musoko was released on 7 September 2002.¹²⁵
155. At the end of 2001, Amnesty International sent a team to the eastern DRC to investigate the human rights situation there. They planned to visit Bunia, the capital of Kibali-Ituri, but were advised by all international and national NGOs in the region not to go there. The reason was that when the local groups learned that Amnesty International was at least about to visit the area a plot was being hatched to attack the Amnesty International staff. Therefore, they abruptly had to cancel that trip. Indeed many local people have lost their lives and as for international staff, one may remember the case of staff from the International Committee of the Red Cross (ICRC) murdered near Bunia in April 2001.¹²⁶
156. Journalists, too, have been targeted by rebel forces. According to Reporters Without Borders, in 2002 seven journalists were imprisoned, six arrested, and two others threatened in rebel controlled areas.¹²⁷
157. For example, Norbert Kisanga, a journalist, was beaten during six days of detention in October 2001 by the DSR. His newspaper, *Les Coulisses*, had reported that RCD-Goma officials were involved in importing counterfeit textiles.¹²⁸ As in government-held areas, critics of RCD-Goma and foreign troops in eastern DRC are detained, tortured, and raped. On 9 August 2001, Pastor Claude Olenga Sumaili, of the Roman Catholic Church’s Justice and Peace Commission in Kisangani, was stripped and beaten for several hours by members of the DSR. He had reportedly voiced support in a radio broadcast for the demilitarization of

¹²⁴ AI, Annual Report 2001, June 2001.

¹²⁵ AI, Urgent Action, Democratic Republic Honoré Musoko (M) – Lawyer and Human Rights Defender of Congo/Uganda, 5 September 2002.

¹²⁶ AI, Democratic Republic of Congo, On the precipice: the deepening human rights and humanitarian crisis in Ituri, 20 March 2003.

¹²⁷ Reporters Without Borders, Annual Report 2003.

¹²⁸ AI, Annual Report 2002, May 2002.

Kisangani, which RCD-Goma has refused to effect in defiance of UN Security Council Resolution 1304.¹²⁹ Le Messenger du Peuple editor Charles Nasibu Bilali was forced to flee the eastern town of Uvira on 23 October 2002 and take refuge in nearby Bujumbura, in Burundi. In an interview for an international radio station two days earlier, he had confirmed that Rwandan soldiers fought alongside the RCD-Goma in an attack that enabled them to retake control of Uvira.¹³⁰ Another editor for the paper, Mutere Kifara, was arrested in Uvira on 4 October 2002 for reporting on alleged embezzlement by the local government and certain RCD leaders. He was released the next day.

158. Concerning those perceived as criticising the rebel groups, recently members of the Banyamulenge Tutsi group have been detained in Uvira, Kivu, and accused of assisting an armed group that supports Commander Patrick Masunzu, who has defected from RCD-Goma. In August 2002 eight refugees, six of them Banyamulenge, from the DRC were arrested in Burundi and forcibly returned to eastern DRC. The Banyamulenge are Boniface Rukumbuzi, Jean-Paul Rubyagiza, Felix Shikiro, John Ruganza, Venant Bagabo, and Nyabohuka. On arrival in the DRC, the men were detained by RCD-Goma. A number of them were reportedly ill-treated in detention by RCD-Goma officials. Amnesty International believes that all the men were genuine refugees who were at risk of human rights abuses in the DRC and who were therefore entitled to international protection in Burundi.¹³¹
159. While in Burundi, the Banyamulenge were reportedly perceived by the Burundian authorities as leading spokespersons of the Banyamulenge refugee community in Burundi. They were reportedly accused by RCD-Goma of supporting or sympathizing with Patrick Masunzu's armed group. In mid-September 2002 they were being held at the Direction Provinciale de Migration (DGM), Provincial Directorate for Migration, in Goma, North-Kivu province, and all were reported to have been beaten in RCD-Goma custody.¹³²
160. Mateso Senenda and Kilongo Fariala are not members of the Banyamulenge ethnic group, but were also forcibly returned to eastern DRC on 1 August 2002. It is believed their forcible return may be related to a strongly-worded letter Mateso Senenda wrote complaining about the arrest of Congolese refugees, the corruption within the Burundian government, and the Burundian presence in eastern DRC. Mateso Senenda was reportedly been badly beaten on the head, and as a result has lost hearing in his left ear and suffered intense headaches. Kilongo Fariala suffered stomach aches. Both men were held at the DGM in Goma.¹³³

d) Detentions and Ill-Treatment by the Rwandese Security Forces

161. Many of the arrests and detentions in eastern DRC are carried out by or on the orders of the RPA. For example, in the early hours of 27 May 2002, RPA soldiers at a house they shared in Goma arrested three men, Zélote Farini Luendo Shandwe,

¹²⁹ AI, Annual Report 2002.

¹³⁰ Reporters Without Borders, Annual Report 2003.

¹³¹ AI, Urgent Action, 9 September 2002.

¹³² *Ibid.*

¹³³ *Ibid.*

his cousin Kikandu Shandwe and Bernard Bifulwa Baranga. The men were tied up and blindfolded by the soldiers before being driven off in a red 4x4 vehicle. Zélote Farini Luendo Shandwe is a member of a local children's organization, Centre de Réhabilitation et d'Encadrement des Enfants Orphelins (CERAO – Centre for the Rehabilitation and Training of Orphan Children). He also worked as a driver for the Groupe d'Etudes et d'Actions pour un Développement Bien Défini (GEAD – Study and Action Group for a Well-Defined Development).¹³⁴

162. The three men were held in a private house in Goma occupied by RPA officers. They were kept blindfolded and their arms tightly bound behind their backs throughout their detention, causing them excruciating pain. They were also made to sleep in the open, outside the house at night. On 31 May, the detainees were presented at a "press conference" organized by RCD-Goma. At the conference, Zélote Farini made statements incriminating himself in a March 2002 grenade attack in Goma. Local sources believe he may have made these statements under duress. Kikandi Shandwe and Bernard Bifulwa were released after the press conference.¹³⁵
163. On 28 May 2002, another GEAD worker, Delphine Itongwa, was detained for several hours before being released. Her house, and the offices of GEAD and an associated NGO, Bureau d'Etudes pour le Développement (BED – Development Study Bureau), were searched by RPA soldiers, and documents and computer equipment were seized.¹³⁶
164. On the same day, a prominent human rights lawyer in Goma, Maître Joseph Dunia Ruyenzi, was detained after he made inquiries to Rwandese military authorities about Zélote Farini Luendo Shandwe and his co-detainees. He was released unharmed after several hours. Djento Mahungu, a chargé de relations publiques (spokesperson) for Goma civil society, was arrested on 30 May 2002. His arrest is believed to have been prompted by an interview he gave to international radio networks on the tense situation and a series of arrests in Goma. He was detained at the G2, a division of the RCD-Goma military headquarters.¹³⁷ Local human rights activists were refused permission to see him.
165. RPA soldiers arrested Simon Salumu, a trader from Sake, near Goma, on 29 May 2002. He was accused of being involved with the Mayi Mayi. Witnesses report that he was badly beaten at the time of his arrest, including by being thrashed with cordelettes (military belts). A relative who was able to see him in detention at the Direction générale de sécurité (DGS), General Directorate for Security, in Goma reported that he was in a poor state of health.¹³⁸
166. Many detainees accused of supporting the DRC Government or its allies have also been arrested, detained and even tortured, particularly in Kisangani, Goma, and Bukavu, and have only been released after payment. In September 2001 two sons

¹³⁴ AI, Annual Report 2003.

¹³⁵ AI, Urgent Action, UA/159/02, 30 May 2002.

¹³⁶ HRW, *Kabila Should Prove Commitment to Human Rights*, 12 September 2002.

¹³⁷ AI, Urgent Action, UA/159/02, 30 May 2002.

¹³⁸ AI, Urgent Action, AFR 62/010/2002, 13 June 2002.

of businessman Bakana Meso, aged about 17 and 30, were accused of links with the DRC Government and detained overnight in Bukavu by the Département de la Sécurité et de Renseignements (DSR – Department of Security and Intelligence), until their father paid USD 500.¹³⁹

e) Torture and Inhumane Detention Conditions

167. RCD-Goma, RPA, and other forces in eastern DRC routinely use pits, freight containers, and private houses as detention centres. For example, detainees are held in appalling conditions at Ndosho, near Goma, where a freight container is used as a detention centre by RCD-Goma. On 17 April 2002 Weteshe Mahindule, a 60-year-old detainee held there, died from the effects of very harsh conditions, including severe beatings, in the detention centre.¹⁴⁰ Other detainees, including 15-year-old Muhombo Mirimo, continue to be held there. They were arrested on 24 February 2002 after they were accused of collaborating with Mayi-Mayi in the Masisi territory of North Kivu province. Characteristics of container detention places include insufficient air, food and drink, unhygienic conditions with no toilet facilities, no access to medical care, and extreme cold or heat depending on outside temperatures.¹⁴¹
168. Pits in the ground are also used as detention centres. When it rains they fill with water and people have to stay in that water without being released. Some manage to get out after paying a bribe. Due to the prevailing poverty, many people simply cannot be released because they do not have the money to pay the people responsible for their detention.¹⁴²

f) Abuses Linked to the Economic Situation

169. In eastern DRC, hundreds of civilians have been forced by combatants of armed political groups and their foreign backers to work in mines, including in the Masisi territory, North-Kivu. Miners and mineral dealers have been frequently subjected to detentions, beatings and other forms of ill-treatment, sometimes in order to force them to work harder or to extort money, diamonds, gold, and coltan. In some areas, members of the armed opposition have used violence, including torture and other forms of ill-treatment, to force civilians out of their homes or their land that was then seized for mining activities. This displacement results in lack of shelter and lack of access to medical care and humanitarian aid.¹⁴³
170. Many people have also been arrested and tortured because they refused to sell their gold, diamonds, etc., that they had either bought or mined to members of RCD-Goma or to Rwandese forces. This situation still prevails as has been concluded by the UN Panel of Civilians. The Special Rapporteurs of the UN Commission on Human Rights in the DRC have been underlining the deterioration of the human rights situation both in territories under government and rebel control. However,

¹³⁹ AI, Annual Report 2002.

¹⁴⁰ U.S. State Department, 2002 Report on Human Rights, March 31, 2003.

¹⁴¹ Akpovo, M., Presentation to the Arria Formula Briefing of the Security Council on the DRC, Amnesty International, 25 April 2002.

¹⁴² ACCORD/UNHCR, p. 110.

¹⁴³ AI Annual Report 2002.

humanitarian organizations claim that the situation is most serious in the Eastern part of the country held by RCD-Goma and the Rwandese Patriotic Army (APR), the MLC and RCD/ML. Human Rights Watch, Amnesty International and other human rights defence groups frequently denounce rapes, tortures, abductions and assassinations in the North, in South-Kivu and in Ituri.¹⁴⁴ Soldiers are accused of barging into houses in pretended searches of Interahamwe Hutu militiamen, using the occasion to loot and mistreat the population.

171. UNHCR believes that civilians as a whole are at risk and that any civilian from that area could make a valid claim for asylum.

3. Freedom of Expression

172. The Special Rapporteur, in her 15 April 2003 report, concluded that there is a total lack of freedom of expression in the east of the country.¹⁴⁵ There are few newspapers, and reporters are often threatened and arrested. In September 2002, a reporter working for the Okapi radio station (run by MONUC) was arrested for having broadcast defamatory information on the question of the child soldiers. A Congolese reporter working for the same station was arrested by RCD/Goma for having filed a report on RCD soldiers who had left Manono with their families; he was charged with espionage and imprisoned.
173. By a departmental decision of 8 December 2002, in Bukavu Radio Maendeleo's broadcasting license was cancelled: the station was accused of having exceeded its remit. RCD security personnel closed down the station's facilities; the director and four other persons were arrested and held in the Directorate-General for Security (DGS) prison for several days.¹⁴⁶
174. In South-Kivu's capital, Bukavu, RCD-Goma, and RPA used violence in April 2002 to break up demonstrations in support of the Inter-Congolese Dialogue and an end to the occupation of eastern DRC by Rwanda. In the wake of the apparently failed Inter-Congolese Dialogue, Amnesty International fears that many more people may be arrested, detained, tortured, and even unlawfully killed for exercising their right to freedom of expression and association.¹⁴⁷

4. Freedom of Association

175. All the members of political parties interviewed by the Special Rapporteur in Kinshasa, the Union for Democracy and Social Progress (UDPS), the Unified Lumumbist Party (PALU), Force Novatrice pour l'Union et la Solidarité (FONUS), and the Democracy and Development Movement (MDD) stated that they are denied the right to organize demonstrations and marches throughout the country, but above all that they are unable to organize local branches in the east, where there is no freedom of association. No political party is allowed to operate in Kisangani, and Mr. Mokeni's "Political and civil society leaders' group" has been reportedly forbidden to hold any meetings.¹⁴⁸ The organization of free elections within two

¹⁴⁴ HRW, *Chaos in Eastern Congo*, July 2003.

¹⁴⁵ Special Rapporteur, E/CN.4/2003/43, 15 April 2003, paras. 15-16.

¹⁴⁶ *Ibid.*

¹⁴⁷ Akpovo, 25 April 2002.

¹⁴⁸ Special Rapporteur, E/CN.4/2003/43, 15 April 2003, paras. 17-18.

years, as provided in the Global and All-Inclusive Agreement, concluded in Pretoria, requires that political parties be guaranteed freedom of association.

5. Justice System

176. The Special Rapporteur of the UN Commission on Human Rights highlighted the lamentable state of Congolese justice, especially in the east of the country.¹⁴⁹ The material conditions are lacking to administer justice properly. The Commission, in its resolution 2002/14, requested the Special Rapporteur to report on the possibilities for the international community to assist with local capacity-building. Overhauling Congolese justice is certainly a priority.
177. The Special Rapporteur visited the prison and police cells in Kisangani, where she was able to see the poor conditions of detention resulting from overcrowding, lack of medical care and food shortages, and the particularly serious conditions for women detained with their children. She heard reports from various sources of the existence of illegal places of detention in government-controlled territory, despite the government's decision to close down all places of detention not subordinate to the courts.
178. The Commission on Human Rights' Special Rapporteur on extra-judicial, arbitrary and summary executions and the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo have both expressed serious concerns about recent death sentences handed down by a military tribunal against 30 persons suspected of being involved in the assassination of former President Laurent Kabila, and about the alleged execution of 15 others convicted of theft of arms. According to the Special Rapporteur, the defendants were denied their rights to appeal and to a fair trial.¹⁵⁰
179. The operation of military justice is a subject of particular concern. In government-controlled territory, the Military Court has sentenced 30 people to death in the trial of the assassins of former President Kabila.¹⁵¹ The DRC Government took the decision to abolish the Military Court. On 18 March 2003, the President of the Republic signed Decrees Nos. 032/2003 and 033/2003, which set 25 March 2003 as the date for the entry into force of Acts Nos. 023/2002 and 024/2002 concerning the Code of Military Justice and the Military Penal Code respectively. The Government has not yet reversed its decision to suspend the moratorium on the death penalty.
180. In the east of the country, the RCD-Goma and MLC authorities, after being questioned by the international community following the massacres committed by their armies, have instituted show trials.
181. In Kisangani, six of the nine defendants at first instance were acquitted of involvement in the massacres of 14 May 2002; two escaped and only one defendant

¹⁴⁹ *Ibidem*, paras. 48-57.

¹⁵⁰ United Nations Press Release, Special Rapporteurs Express Concern Over Death Sentences, Executions in Democratic Republic of Congo.

¹⁵¹ AI, Fear of Imminent Execution, 10 January 2003.

is still in prison. The military judicial authorities who handled the inquiry seem to have deliberately overlooked the reprisals that their army took against the civilian population. Those chiefly responsible for the events of 14 May 2002 have been promoted within the military hierarchy.

182. The military judicial authorities leading the inquiry into the massacres of 14 May 2002 in Kisangani have admitted to the Special Rapporteur that they have not heeded the demands of the international community, for example those contained in the report of the High Commissioner¹⁵² or the statements by the President of the Security Council. They further stated that they were unable to investigate the senior military officers cited in international documents and NGO reports. During her visit to Kisangani, the Special Rapporteur spoke with the families of victims of the massacres in Mangobo, who told her that they could be subjected to reprisals at any time.
183. In Gbadolite, MLC hastily organized the trial of the presumed perpetrators of the massive human rights violations committed between October and December 2002. The War Council handed down 19 sentences on 18 February 2003; the charges failed to reflect the seriousness of the crimes committed.
184. A number of United Nations bodies active in the sphere of human rights, for example the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, and the Sub-commission on the Promotion and Protection of Human Rights, following the recent expert study by Mr. Louis Joinet,¹⁵³ have recommended that the competence of military courts to try the perpetrators of serious human rights violations should be ceded to the ordinary courts. Countries affected by massive violations perpetrated by military personnel should enact laws establishing the competence of the civilian courts to try such cases. The recent trials organized by RCD/Goma and MLC once again illustrate the need to ensure that military courts do not try cases involving serious human rights violations.¹⁵⁴

D. Humanitarian Situation

185. The situation in the DRC has been described as one of the world's worst humanitarian crises. According to the Special Rapporteur, the humanitarian situation is "catastrophic."¹⁵⁵ OCHA stated that in 2002, there were 20,120,000 vulnerable persons in the Democratic Republic of the Congo, of a total population of nearly 57 million. During 2002, the number of displaced persons increased in the provinces of Kivu and Maniema and in Eastern Province, particularly in Ituri. Up to 2.7 million of the estimated 50 million Congolese citizens are now displaced,¹⁵⁶ and over 300,000 people have fled into neighbouring countries, and approximately 16 million (33%) of the remaining population in the DRC are vulnerable. According to

¹⁵² S/2002/764.

¹⁵³ UN Commission on Human Rights, Issue of the administration of justice through military tribunals, Report submitted by Mr. Louis Joinet pursuant to Sub-Commission decision 2001/103, E/CN.4/Sub.2/2002/4, 9 July 2002.

¹⁵⁴ Special Rapporteur, E/CN.4/2003/43, 15 April 2003, paras. 48-57.

¹⁵⁵ *Ibidem*, p. 3.

¹⁵⁶ Global IDP Database of the Norwegian Refugee Council, 20 May 2003, p. 8.

a recent OCHA report, government spending on health and education has dropped to less than 1% of the government expenditure, leaving nearly a third of the children malnourished with 10% severely so. Only 40% of the children are able to attend school and approximately 30% of the population has access to primary health care. OCHA also states that the eastern area of the DRC remains an area of prime concern where a lack of humanitarian access is still a major obstacle to effective assistance from the international community. The DRC is ranked 152nd on the UNDP Human Development index of 174 countries: a fall of 12 places since 1992 which is quite shocking given the country's considerable wealth of natural resources of diamonds, minerals, and timber.¹⁵⁷

186. The overall humanitarian situation in the DRC continues to be of concern, mainly due to human rights violations, epidemic outbreaks, major nutritional and health problems and restrictions on humanitarian access that are exacerbated by the ongoing hostilities. As warring factions struggle to gain power in a new political landscape, the Congolese people already suffering severe poverty, are further subjected to the hardships of war and its dire consequences on stability and development.¹⁵⁸ Over 500,000 people were displaced in 2002 alone, mainly due to intensified violence and renewed fighting. Almost a million of them have not received any aid because of the unstable security situation, especially in the eastern provinces of the DRC.¹⁵⁹ The disastrous humanitarian situation and the renewed outbreak of fighting result in the denial of basic social and economic rights to the majority of the Congolese population. Over one-third of the population reportedly is in a critical situation regarding nutrition. The majority of the population has no access to public health facilities and even where hospitals exist they often lack proper equipment and medicines, and treatment is expensive. Apart from Goma, Bukavu, Kisangani, Kinshasa, and Lumbashi, there is no clean drinking water available. The situation of children is especially dire. Many have been recruited as soldiers and thousands have taken to living on the streets of big cities. Access to education is considered a privilege and is beyond the means of many.¹⁶⁰
187. Oriental Province remains landlocked and essential supplies other than food staples can only be transported by air, which results in a high price for basic products far above the purchasing power of the local population. The urban nature of Kisangani and its cash-based economy has made it particularly susceptible to the collapse of market activity. The shrinkage of economic activity, the disruption to production of food and access to markets, has resulted in a crisis of malnutrition. Economic decline and insecurity has also reduced the purchasing power of the population and thus their access to health services under the cost recovery system. Kisangani has been particularly hard-hit because of its urbanized population who has seen their livelihoods disappear with the severing of the river traffic. Despite the fact that there are adequately trained health staff, and sufficient medical supplies and drugs

¹⁵⁷ ACT Appeal DRC: Emergency Relief & Rehabilitation for War Victims AFDC-22 Rev. 1, 8 April 2003.

¹⁵⁸ ACCORD/UNHCR, p. 82.

¹⁵⁹ Norwegian Refugee Council, Global IDP Database, Democratic Republic of the Congo, Half a Million Displaced in Latest DR Congo Violence, December 2002, www.db.idpproject.org.

¹⁶⁰ For details, see Office of the Coordination of Humanitarian Affairs (OCHA), Humanitarian Briefing Pack: Democratic Republic of the Congo (DRC), May 2002.

in some centres in town, the vast majority of the population has no effective access to health care due to the cost involved. To make matters worse, the Nyiragongo volcano erupted in Goma in January 2002, causing the destruction of the town and leaving nearly 100,000 persons homeless and destitute.

1. Mortality Rate

188. The war in the Democratic Republic of Congo has taken more lives than any other since World War II and is the deadliest documented conflict in African history, says the International Rescue Committee. A mortality study released 8 April 2003 by the IRC¹⁶¹ estimates that since August 1998, when the war erupted, through November 2002 when the survey was completed, at least 3.3 million people died in excess of what would normally be expected during this time.
189. According to the IRC's findings, an estimated 30,000 excess deaths have occurred every month in this ongoing-conflict. The vast majority, some 85%, have been from easily treatable diseases and malnutrition, linked to displacement and the collapse of much of the country's health system and economy. With poor or no access to basic health care, the smallest children have died at disproportionately high rates. In three of the ten health zones IRC teams visited in the east, more than half the children were dead before the age of two.
190. The IRC drew up the following conclusions about the mortality rate in the DRC:
- The DRC mortality rate is higher than the United Nations reports for any country. The crude mortality rate among people surveyed in the eastern part of the country was 3.5/1000/month; the figure was 2.0/1000/month in the west, indicating a national mortality rate of 2.4/1000/month. This rate is twice the African average and almost twice the 1.3/1000/month UNICEF reported for the DRC in 1997, the year before the war began;
 - Health conditions in the east are far worse than in the west. Aside from a higher crude mortality, the under-5-year-olds in the east die at twice the rate of those in the west: 9.0/1000/month versus 4.4/1000/month. Likewise, population growth in the east is non-existent, and is 1.6% per year in the west. The west has a higher birth rate, one-third the rate of lost pregnancies, and lower death rates from disease. In three of ten health zones in the east, more than half the children die before the age of 2.
 - The rate of death from violence in the east has decreased dramatically. Compared to previous IRC surveys, in 2002 people in the east reported less than one-tenth the previous reported rate of death from violence. In past surveys, violent death rates were consistently correlated with overall crude mortality. Probably not by chance, the only surveyed health zone with a large recorded outbreak of violence, Kisangani Ville, was the one place where the mortality rate increased from previous surveys.
 - Mortality in eastern DRC decreased in 2002 compared to past years. The mortality rate of 3.5/1000/month recorded in the east during the 2002 surveys contrasts with the IRC's previous mortality rate estimate of

¹⁶¹ International Rescue Committee (IRC), Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey, April 2003.

5.4/1000/month for the period August 1998 to April 2001. In four of five locations previously surveyed during this war and revisited as part of this survey, the mortality rate dramatically decreased. The lower rates of early and violent death, and an increase in areas accessible to survey teams, indicate overall improvement of conditions in the eastern provinces.

- Based on past and current IRC data, an estimated 3.3 million people have died because of this war. While this estimate could vary from 3 million to 4.7 million depending on assumptions about populations excluded from the survey, the conclusion remains the same: This is the most deadly war ever documented in Africa, indeed the highest war death toll documented in the world since World War II.¹⁶²

191. Nevertheless, the IRC's research found some cause for hope. While people continued to die at an extraordinary rate, death from violence in the east dropped by 90% compared to the previous three years of the war, and overall mortality declined significantly. The IRC believes a number of positive developments have contributed to greater stability and the decline in excess mortality. Peace talks in South Africa have led to the withdrawal of most foreign forces, as well as a framework for implementing a peace accord and developing a government of reconciliation. Moreover, some 5,500 UN observers have taken up positions in the country. This environment of improved security enabled humanitarian aid organizations like the IRC to expand emergency health services and infrastructure support programmes, particularly in previously inaccessible areas.¹⁶³

2. Critical Food Situation

192. Although the DRC is agriculturally rich, one-third of the population (17 million people) is considered to have critical food needs. A recent survey in South Kivu found more malnourished adults than children, which is feared to mean that most malnourished children have already died.¹⁶⁴ Oxfam confirms that in some areas as many as one child in four under the age of five has already died.¹⁶⁵
193. A recent Food and Agriculture Organisation (FAO) survey confirmed that 10 to 30% of the population in east Congo suffers from acute malnutrition, stemming from the massive displacement caused by the continued fighting in the region.¹⁶⁶ The WFP estimates that more than 50% of infant mortality is associated with malnutrition, which adversely affects education and socio-economic development.¹⁶⁷
194. In June 2003, the WFP launched an emergency appeal for USD 38 million to feed nearly half a million war-affected people in eastern DRC. The 46,000 tonnes of

¹⁶² IRC, *The IRC in the Democratic Republic of the Congo, Summary*, April 2003, www.theirc.org/DRCongo/index.cfm.

¹⁶³ IRC, *Summary*, April 2003.

¹⁶⁴ From epidemiological and demographic projections published in a 2001 report of the International Rescue Committee in New York.

¹⁶⁵ Oxfam International, *The War in the Democratic Republic of Congo is at a Critical Juncture: Submission to the UN Security Council*, 25 April 2002.

¹⁶⁶ IRIN, *DRC: High rates of malnutrition in the east*, 6 November 2002.

¹⁶⁷ World Food Programme, *World Hunger – East & Central Africa*, 2003.

food required for the six-month period is targeted at 483,000 beneficiaries, who are the most vulnerable of those caught up in the violence.¹⁶⁸

At least 64% of the population in eastern DRC is estimated to suffer from food shortages, according to a recent survey by the UN Food and Agriculture Organization. Other surveys indicate that the levels of global malnutrition among children under the age of five vary between 15 and 30% – levels well above what is considered an emergency. WFP staff visiting a local hospital in Walungu, South Kivu, found children showing all the symptoms of severe malnutrition. “We saw wards filled with emaciated babies and young children with distended stomachs, stick-like limbs and whose hair had turned yellow,” said WFP’s Country Director in the DRC, Felix Bamezon. “These children are slowly dying of starvation. We cannot simply stand by and let it happen.”¹⁶⁹

195. According to WFP, the humanitarian crisis was further aggravated in May and June 2003 by fresh outbreaks of fighting between rival militia groups in the town of Bunia, giving rise to a new surge of people fleeing their homes. Up to 300,000 people are reported to have been displaced by these latest clashes. Some 60,000 have arrived in and around Beni, about 400 km south of Bunia.
196. Violence against women – which has been particularly brutal throughout this conflict – has also had a critical impact on food production. Women, constituting the majority of the workforce in the agricultural sector, now fear going to the fields to tend their crops. Moreover, where they have managed to harvest, their crops have frequently been looted. Agricultural production in this area of the country is estimated at just ten percent of pre-war levels.¹⁷⁰
197. The UN estimates that 20 to 22% of the population is infected with HIV/AIDS,¹⁷¹ with a devastating effect on family structures and their ability to cope with deprivation and to produce food. Children or grandparents head many families. According to WFP, sexual attacks on women as a tool of war have exacerbated the problem.
198. Thousands of people who had been cut-off from all humanitarian aid for many months because of inter-ethnic combat have been able to receive help in mid-September 2003 following the deployment of United Nations peacekeeping troops in Bunia in the DRC.¹⁷²

3. Public Health

199. Access to health care is a nationwide problem in the DRC. Even if people overcome the limited transportation and poor roads to reach a health structure, they would discover that many of the health centres and hospitals are not functioning.

¹⁶⁸ World Food Programme, Press release, WFP Launches Emergency Appeal for Victims of Civil Violence in Eastern DRC, 18 June 2003.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² UN News Service, DR Congo: Thousands receive food aid following deployment of UN troops in Bunia, 12 September 2003.

The National Health budget decreased from 2.4% in 1972 to 0.7% in 1990.¹⁷³ The country's infrastructure has effectively collapsed, and there is a complete lack of medicines and trained health staff.¹⁷⁴

200. Prior to the conflict that started in 1998, available health data showed that the existing infrastructure was already failing to deliver quality, affordable medical care to the majority of the country's population. The conflict has made this situation even worse. Hospitals, clinics, and health posts have been destroyed, medication cannot be delivered, and routine vaccination programmes have been disrupted. Many struggle to pay for health services and some cannot pay at all. One of the main problems with the health system is its infrastructure. The lack of investment has resulted in hospitals, clinics, and health posts falling into an increasingly dilapidated state. Many lack essential medical equipment, sanitation, and even clean water. This is the case in the major towns as well as in the more remote rural areas. The hospitals and health centres are often places where disease is spread.¹⁷⁵
201. In the west of the country, state salaries, when paid, for the few well-qualified medical practitioners are so low (4,700 Congolese Francs or USD 14 per month) that they charge their patients for treatment. To earn extra income, many doctors also work in unregulated private health institutions alongside their jobs in the state health service. The increase in poverty has meant that a large percentage of people cannot afford basic medication. Many people have resorted to treating themselves.¹⁷⁶
202. South Kivu and North Kivu have a population of 3.5 million and 4.5 million people, respectively. The DRC national adult HIV prevalence is estimated to be 4.9% (UNAIDS "Barcelona Report" 2002).¹⁷⁷ Recent studies report figures for the east up to 24.3%. According to an epidemiological report by UNAIDS in 2000, 1,300,000 children between ages 0 and 14 and adults from 15 to 49 live with HIV in the DRC. The number of children orphaned by AIDS is now estimated at 900,000. Rape used as a weapon of war increases the prevalence of HIV/AIDS, as does widespread displacement. In general, there is no medical treatment or care available in hospitals and clinics for people suffering from AIDS in the DRC. There are no specialised hospitals or centres for the treatment of AIDS but some hospitals in Kinshasa admit AIDS sufferers for the treatment of secondary infections.
203. There have been cases of patients treated and detained in hospitals because they have failed to pay. One may therefore not get into hospital until one has the money to pay the doctors. The money paid will not go to the government, but into the

¹⁷³ UNAIDS, Democratic Republic of Congo, www.unaids.org/en/geographical+area/by+country/democratic+republic+of+congo.asp

¹⁷⁴ MSF, News Update: DR Congo: In the Heart of Chaos, June 3, 2003.

¹⁷⁵ Oxfam GB, Save the Children UK and Christian Aid, No End in Sight – the Human Tragedy of the Conflict in the Democratic Republic of Congo, August 2001.

¹⁷⁶ *Ibid.*

¹⁷⁷ See Clark, S. and Ngom, P., Adult Mortality in the Era of HIV/AIDS: Sub-Saharan Africa, UN/POP/MORT/2003/3, 18 August 2003.

pockets of the doctor or the nurse, given that the salaries are not being paid in the public service.¹⁷⁸

4. Access to Clean Drinking Water

204. The DRC has enormous water reserves, and the Congo River has the potential to produce enough hydroelectric power to supply the whole of southern Africa.¹⁷⁹ Yet the majority of its own population lack access to clean drinking water. Water-related disease, in addition to poor hygiene and sanitation, is one of the main causes of illness in the DRC. In 1999, UNICEF estimated that in the DRC as a whole, only 45% of the population had access to safe drinking water.¹⁸⁰ In rural areas, the percentage was thought to be as low as 26%. These percentages are expected to be substantially lower today. Oxfam GB's research in rural areas of the country, prior to undertaking water and sanitation work, supports these estimates.¹⁸¹
205. In urban areas, access to safe water has reduced as substantially over the past decade. In many provinces, the production plants belonging to the quasi-state entity responsible for water production and distribution (REGIDESO) have not been functioning for years, as capacity has been outstripped by the growth in urban populations. The primary problem, according to the Oxfam report, is access to diesel to power the turbines, compounded by the lack of chemicals, spare parts, and dilapidation of the networks.
206. Of the five water production plants in Kasai Oriental, four were not operational in 2001. Only Mbuji Mayi was still working at 30% capacity, providing water sporadically to 20% of its two million inhabitants. Of the 1.6 million people with no access to the city's water supply, most have to buy water from MIBA¹⁸² employees, who are supplied free of charge by the company. Many walk six or seven kilometres to collect unclean water from springs. In the rainy season, women have been seen collecting stagnant water from puddles on paths and from potholes in the road.
207. The situation in other provinces is the same or much worse. Of the six production plants in Kasai Occidental, only Kananga was working at ten percent capacity in 2001, providing water to five percent of the population. In Kikwit, there is no production at all, and in Bas Congo, hydro-electricity rather than diesel powers the only two functioning plants. In the east of the country, the towns of Goma and Bukavu have partial coverage, but towns such as Kindu in Maniema have not had an operational water system since early 1999.
208. In Kinshasa, the REGIDESO supplies the central communes, but the more recent communes are only partly covered. The inner-city infrastructure is so old and badly maintained that 53% of its water is lost through leakage before reaching the user. Pressure is so low that the outlying parts of the city receive no water at all. While approximately 65% of people have a water connection, only half receive water

¹⁷⁸ ACCORD/UNHCR, pp. 85-86.

¹⁷⁹ EIU, Country Report, September 2003.

¹⁸⁰ The World Bank Data profile for 2000 estimates the percentage of people with access to clean water was only 27%.

¹⁸¹ Oxfam GB, August 2001.

¹⁸² La Société Minière de Bakwanga, cited in Oxfam GB.

regularly. Fifteen percent of people receive water for only a few hours twice a week. More than two million people have no access to the city's water supply, relying exclusively on wells and springs, of which reportedly over 60% are contaminated.¹⁸³

209. Poor access to water of sufficient quality and in sufficient quantity has serious health consequences. In Kinshasa, 30% of all diseases registered by the health authorities in 1998 were water-related. In rural areas, the percentage is even higher. Among groups of people who are living in particularly unsanitary conditions, such as the displaced, the lack of access to sufficient water, in addition to their inability to buy soap, has led to severe outbreaks of scabies. Cholera epidemics have been notified in many parts of the country and continue through today.
210. In addition to health problems, the time required to walk to a water source or to queue at a busy water point has a significant impact on women and children, particularly girls, who are responsible for collecting water for the household's daily needs. Time spent performing this task takes women away from caring for the family or carrying out income-generating activities, and takes girls away from school. In Kisenso, a poor area of Kinshasa, urban families spend two and a half hours each day collecting water. Furthermore, the amount that they collect is insufficient to maintain adequate hygiene standards in addition to that needed for drinking and cooking.

5. Access to Food¹⁸⁴

211. Many in the DRC still spend the majority of their days searching for their next meal. During the past six years, the ability to grow and/or purchase food of sufficient quantity and quality to lead healthy lives has been substantially reduced. In November 2000, the World Food Programme (WFP) estimated that 16 million people (33% of the population) had critical food needs because of prolonged displacement, isolation, lack of market outlets, severed food supply lines, price increases, and declining purchasing power.
212. In eastern DRC, the conflict reduced the poorest sections of the population, both displaced and host/local communities, to a marginal existence. Conflict continues between the various armed groups and insecurity has worsened, particularly in rural areas. The devaluation of the currency and rise in the cost of essential imported goods such as kerosene and salt has weakened purchasing power. In isolated areas of rebel-held territories, such as Shabunda, Kindu, and East Kasai, reachable only by air, the cost of such basic staples such as salt, oil, soap, and even clothes has become prohibitive.¹⁸⁵
213. Agricultural production has dropped across the east of the country, meaning that some formerly surplus producing areas no longer grow enough to feed their populations. Insecurity, limited access to markets, cassava blight,¹⁸⁶ and difficulties

¹⁸³ Oxfam GB, August 2001.

¹⁸⁴ See generally Oxfam GB, August 2001, pp. 24-27.

¹⁸⁵ *Ibidem*, p. 25.

¹⁸⁶ Cassava is the staple for 70% of the Congolese population. Over the past 7 years, cassava crops across the country have suffered from viral and bacterial diseases that have totally wiped out production in some

in making enough money from the sale of crops, all discourage people from cultivating. In mineral-rich areas such as Walikale, Punia, and Kalima, the short-term benefits of mining have also encouraged some farmers to abandon agriculture. As pointed out in the Oxfam GB report, instead of working in their fields, they prefer to dig for coltan, gold, or diamonds. This will have long-term implications for communities' access to food.

Loss of purchasing power among the poorest people in rural areas means that they struggle to eat a nutritionally-balanced diet. This has led to an increase in the incidence of kwashiorkor,¹⁸⁷ a condition that has always been endemic in areas of the Kivus, but has now become much more widespread across the Eastern Provinces. The poorest people in towns such as Bukavu are also living in a precarious situation, since they cannot find as much work as in the past. Insecurity has meant that landowners are no longer farming land in rural areas and therefore do not hire casual labour. A reduction in trade has also reduced work opportunities. Buying sufficient staple foods to ensure that the family does not go hungry means having less to spend on health, school fees, and basic items such as soap and salt. Any disruption, such as displacement or illness, pushes people over the brink into a situation of malnutrition.¹⁸⁸

214. Reports from North Kivu (Masisi and Rutshuru) paint a similar picture. The poorest groups are forced to buy food of increasingly low nutritional value, such as beer bananas, in addition to consuming some wild plants. In certain areas of South and North Kivu there is the additional problem posed by armed groups from all sides, who sustain themselves by stealing food and crops from communities which are already struggling to survive.¹⁸⁹

Most of the estimated one million displaced people in eastern DRC are particularly vulnerable, although those living with host families are often no worse off than their hosts. Many of those still close to their fields continue to harvest, or even cultivate in the short term, despite the risk of meeting armed groups. Those who no longer have access to their fields place a greater strain on the families with whom they live, stretching their own resources to provide support. This often results in both groups having too little to eat. Among the large number of people displaced to the forests in areas of South Kivu and Rethy in Ituri, their diet consists almost exclusively of cassava and cassava leaves. Purchasing oil and salt is virtually impossible. This, combined with a lack of access to health care, and the rigours of living in the forest, accounts for the poor nutritional state of these groups when they emerge.¹⁹⁰

215. The Oxfam GB report goes on to point out that

(...) in other areas of the country, the war has made the chronic economic crisis even more acute. Rural communities are affected, as are the populations of the urban areas they traditionally supply. Despite significant agricultural potential, production is continuously falling, as farmers cannot purchase seeds and tools and

areas such as Bandundu. The war has hindered the application of measures to control the diseases and provide healthy disease-resistant varieties to farmers. Oxfam GB, p. 25.

¹⁸⁷ A type of malnutrition associated with diets that are poor in animal protein and other micro-nutrients.

¹⁸⁸ Oxfam GB, p. 25.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

have great difficulty in taking their produce to market. Traditional supply routes have been cut and as a result, large cities such as Kinshasa and Kisangani face constant food deficits.¹⁹¹

216. For example, in 2000, Kinshasa alone had a food deficit of one million tonnes. The capital used to be supplied by areas all over the DRC, but the effective partition of the country has forced Kinshasa to buy most of its food from areas such as Bandundu and Bas Congo. The poor condition of the roads, problems with food supply, and reliance on agricultural cycles in fewer regions, has meant that food prices are no longer stable throughout the year, but subject to large fluctuations. The Oxfam GB report illustrates the problem: "While a teacher's monthly salary in September 2000 could feed a family of seven for a week, by January 2001 it could only feed them for 3.1 days."¹⁹²
217. According to the same report, the situation in other parts of the country is no different. In Demba (Kasai Occidental), 94% of households eat barely one meal a day. IDPs eat only one proper meal once every three or four days. In Bandundu, a province which was seriously affected by the 1996-97 conflict, the local population can no longer afford to buy locally produced food. By using river access, traders purchasing goods for urban areas are able to set prices that exclude local buyers. Equateur, which in the past had a substantial agricultural industry, has reverted to traditional subsistence agriculture. The populations living in areas near the frontline, which have often been displaced, are reported to have reached alarming levels of poverty.¹⁹³

Malnutrition

218. Between 10% and 30% of the population are suffering from acute malnutrition in many areas of eastern DRC, says the United Nations Food and Agriculture Organisation (FAO). Those most affected are women and children. The hardest-hit areas are Kiambi, Nyunzu, Manono, Pweto, Pepa, Kalemie and Malemba-Nkulu in Katanga Province; Bunia, Mahagi, Mambasa and surrounding villages in Orientale Province; Shabunda, Walungu, Ngweshe, Bunyakiri and the plain of Ruzizi in South Kivu; and Beni, Butembo, Rutshuru and Masisi in North Kivu Province. The high rates of malnutrition were attributable to massive displacement resulting from ongoing fighting in the region, according to Mr. Ad Spijkers, the FAO's representative in the DRC. Forced to flee at a moment's notice, people had been unable to carry away food, seeds, or tools with them. Moreover, the displaced people had also become a huge burden on the areas to which they had fled.¹⁹⁴
219. While chronic malnutrition has been a problem in parts of the DRC since before the war, the situation has become much worse during the past three years. In many parts of the country, it is now critical. It is difficult to obtain an overview of the severity of the problem in different parts of the country, because agencies have been able to carry out few surveys.

¹⁹¹ Oxfam GB, p. 25.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ IRIN, DRC, High Rates of Malnutrition in the East, 6 November 2002.

220. In rebel-held areas, the rates of global malnutrition among children under five reported in 2001 have reached 41%,¹⁹⁵ with severe malnutrition rates of up to 25.79%.¹⁹⁶ These figures were recorded at the point at which the humanitarian community gained access to previously isolated communities. Consequently, it is reasonable to expect that in areas of the east, which continue to be too insecure to allow any form of assistance to be delivered, the situation is at least as bad, and possibly worse.¹⁹⁷ Displaced populations inaccessible in the forests are in a particularly bad nutritional state, as illustrated by WFP's figures for South Kivu, which show that 75% of malnourished children currently registered in feeding centres belong to families that have just emerged from the forests.
221. Although displaced people are the most vulnerable, many host communities have suffered from the additional strain imposed by providing for the displaced. Other factors affecting the malnutrition rate have been the high incidence of diseases such as measles and malaria.
222. Nor have parts of the government-held territories been spared. Global malnutrition rates reported over the past eight months range from 4.6% in Bas Congo to 30% in the Kasais and border areas. Kinshasa shows worrying levels, both in the overcrowded central areas such as the Commune of Selembao, and in the semi-rural peripheral areas such as the Commune of Kimbanseke. These urban populations are living an extremely precarious existence, and cannot withstand sudden changes in circumstance such as illness or loss of employment. A survey conducted by Save the Children UK in the poorest parts of the Commune Kimbanseke in April 2001 found that 42% of children are chronically malnourished, and that global malnutrition rates had reached 18.3%.¹⁹⁸ The severe malnutrition rate in these areas was also found to have tripled between September 1999 and January 2001.¹⁹⁹

6. Education

223. The state of education in the DRC can only be described as disastrous,²⁰⁰ and at the moment the prospects improvement are minimal. While the government dedicated 26.4% of its budget to the education sector in 1972, the share of the national budget is now less than one percent. The assistance currently being provided is a mere fraction of the support required. As a result, generations of Congolese children are being denied their basic right to education, leaving the country with an unskilled and introspective workforce, ill-equipped to compete in the global economy.

¹⁹⁵ Oxfam GB, p. 26.

¹⁹⁶ Rapport de l'enquête nutritionnelle dans la ville de Kiambi, Nuova Frontiera, March 2001; Oxfam GB, p. 26.

¹⁹⁷ Oxfam GB, p. 26.

¹⁹⁸ Save the Children UK, Nutrition Survey in Tshimungu, Mapela, Kimbanseke and Lobiko Aires de Santé, 28 April 2001.

¹⁹⁹ Kinshasa, Enquêtes Nutritionnelles, Communes de Kimbanseke, Selembao, Bumbu et Kisenso, ACF-USA/Ceplanut, 31 January – 23 February 2001.

²⁰⁰ Oxfam GB, p. 30.

224. The conflict in the DRC has had a terrible impact on an education system that was already failing.²⁰¹ In 1998, the Ministry of Education reported that 40% of children of primary school age were not attending school. The situation for girls was even worse. Nationally, half of all girls were not in school; in North Kivu, the figure was 69%.²⁰² The investment that was made in the Congolese education system in the 1970s and 1980s has been squandered. School enrolment rates plummeted from 94% in 1978 to an estimated 60% in 2001. Adult literacy rates fell from 74% in 1992 to 58.9% in 1998. There are no reliable figures for 2000/2001, although UNICEF estimates that there are currently between 3 and 3.5 million children aged between 6 and 11 who are not receiving any formal education. This figure exceeds the total population of the neighbouring Republic of the Congo. Of these children, approximately two million are girls.²⁰³ In the eastern DRC, insecurity, poverty and the frequent closure or destruction of schools will have reduced attendance to a fraction of the 1998 figures. Many parents can no longer afford to send their children to school.
225. Displaced children in particular have little or no chance to continue with their education. Of the two million or more displaced people, approximately 400,000 are thought to be children of primary school age. These children have no access to any form of basic education, reducing their opportunities later in life, and increasing their risk of enlistment into armed forces in search of a better situation.
226. In government-held areas, the poor economic situation also has a negative effect on children's education. In the outskirts of Kinshasa, up to half of the children do not attend primary school at all, because their parents cannot afford the fees of USD 2.5-USD 3 per term. Classrooms are overcrowded at the beginning of term, but the numbers soon fall, often by more than 50% as the academic year progresses. Children who are indebted by the second and third terms are forced to drop out, or are not awarded their exam results, and therefore the right to graduate into the next class, until their debts are settled.²⁰⁴ In one school in Kisenso, children denied entry hang about on the school premises in the hope of being able to sneak into the classroom when the teacher is not looking. Even when children do attend school, school buildings are often so dilapidated that they present a health hazard. They offer little or no protection against the sun, and during the rains, pupils are often sent home. Desks and benches are old, insufficient, or totally lacking, forcing children to sit on the floor or on large stones. Many children have no exercise books or pens, and teachers struggle to purchase chalk. A recent mission to Boende in Equateur reported that the teachers had resorted to writing on blackboards with cassava root. Many schools do not have access to books, for either the staff or students. In May 2001, a UNICEF staff member who visited a school near Mbuji Mayi reported that a student in the final year of primary saw his first textbook ever during the visit.²⁰⁵

²⁰¹ *Ibidem*, p. 29.

²⁰² As cited in Oxfam GB, p. 29; Education pour tous, Bilan à l'An 2000, Ministère de l'Éducation Nationale, November 1999. Figures also supported by UNICEF, State of the World's Children 2001.

²⁰³ Oxfam GB, p. 29.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibidem*, pp. 29-30.

227. Teachers' salaries, when paid, are inadequate to meet basic living costs. This causes many teachers, particularly women, to leave the profession. According to Oxfam GB, in Ituri, teachers last received a regular salary in 1992, except for the five months before the war started in 1998. Despite this, a proportion of the teaching staff who are in reality too old to be teaching are forced to continue, due to the state's inability to pay pensions to those who retire, and the lack of new people joining the profession. In some refugee areas, UNHCR is helping defer a small portion of the cost of teacher salaries. UNHCR is also supporting the teaching of refugee children by other refugees.²⁰⁶
228. Another aspect of education, whether of poor or good quality, is that education, particularly in the east, can become a form of resistance to the occupation. Much of the pressure can come from teachers in schools. Some of the demonstrations in places such as Bukavu are organised through local colleges etc., so that people promote these institutions as a form of resistance against the occupation, be it by the armed political groups, by the Congolese or foreign forces. This resistance is at the heart of repeated closures of schools and repression of demonstrations or student strikes by the RCD-Goma. Many teachers have been detained on suspicion of anti-RCD-Goma/RPA activities. In one case, a Bukavu university teacher, Alphonse Byamungu Nakahazi, was shot dead 20 July 2002 by men in uniform, thought by some in town to be members of RCD-Goma/RPA.²⁰⁷

7. Lack of Access to Vulnerable Populations

229. Lack of access to vulnerable populations in many parts of the country, due to insecurity or lack of infrastructure, remains the paramount concern of the humanitarian community. Roads and airways are very often inexistent. Where there are roads, access to refugee camps or areas of displacement is controlled by rebels, and obtaining access is difficult. Even when granted, access is often limited and not permanent. For example, there are times when Bukavu and Goma were off-limits zones because rebels denied access to the airstrips of the two towns.
230. Difficulties resulting from access problems are further complicated by the country's huge size and the sudden numerous evacuations of humanitarian actors. Seven evacuations of international humanitarian teams were organized within a month between mid-March and mid-April 2002 in South Kivu (Mwenga, Shabunda) and Katanga (Pweto, Kikondja).
231. Despite persistent efforts, the impact of the humanitarian community in meeting the needs of Ituri has been very limited since August 2002. Poor security, difficulties in delivering cargo by air to Bunia, and the harassment of aid agencies has left Ituri with the services of a handful of international NGOs that are largely confined to base. The UPC expelled the only UN aid official permanently based in Bunia in November 2002. Local NGOs, churches, and missions have carried a large proportion of the burden of supporting the needy in the region. "Humanitarian agencies in Ituri, more or less confined to their bases in Bunia and Mahagi, are at present almost entirely unable to assist these [conflict-affected] people, or even to

²⁰⁶ Oxfam GB, p. 30.

²⁰⁷ ACCORD/UNHCR, p. 87.

assess their condition," an observer told the OCHA inter-agency mission. Locally recruited NGO staff has to be cautious in their movements as there are no-go areas even within Bunia for people of certain ethnic groups. A collective of Ituri NGOs in a recent report said "psychosis and paranoia" prevailed in the region.²⁰⁸ "The population is either misinformed or under-informed, which has led to the intoxication of people with false information aimed at pitting certain communities against others," said the local NGO collective. "Moderate leaders have been sidelined on both sides [and] there are not many ways to communicate with the people," a humanitarian official told IRIN.²⁰⁹

232. The UPC has for several months denied humanitarian agencies permission to land air cargo freely in Bunia, although relief supplies could be delivered by air from Beni or Uganda. Air cargo is seen as a revenue opportunity, and the UPC has tried to impose the exclusive use of its own airline, Mbao Pax, for the transport of humanitarian relief.²¹⁰ Reaching displaced people in Ituri by road from Beni is frequently impossible or impracticable due to insecurity and poor roads. A weekly passenger service to Bunia is operated by the EC's Humanitarian Aid Office (ECHO), which continues to be the primary donor for humanitarian relief efforts in Ituri.
233. Humanitarians targeted Ituri was "one of the worst areas in the world to work in," a senior humanitarian official told IRIN. Humanitarian workers have been targeted directly and are routinely accused of bias. Supplies and equipment are confiscated or commandeered. Any progress in improving understanding between aid agencies and local authorities, and the promotion of humanitarian principles is further complicated by the regular changes of personnel and factional fragmentation. In the worst single incident in the region, six ICRC personnel were ambushed and murdered on the road from Fataki to Djugu in April 2001.
234. According to a Security Council report of 24 February 2003,
- The already worrying humanitarian situation is deteriorating in view of the difficulties humanitarian groups face in reaching populations in need, many of whom have been forcibly displaced from their homes and are seeking refuge in the inhospitable forests of the eastern region. These are rebel-controlled areas. The belligerents prevent the humanitarian workers from crossing their respective zones of control. Ensuring safe access for humanitarian workers is especially crucial given the large number of internally displaced persons.²¹¹
235. During a recent UN and donor mission led by Namanga Ngongi, then the UN secretary-general's special representative in the DRC, Lubanga gave his assurances that humanitarian actors would be allowed to continue their work in full security in territory controlled by his rebel UPC. NGO personnel had recently been temporarily detained and an official of the UN's Office for the Coordination of

²⁰⁸ OCHA, Inter-Agency Mission on Internal Displacement in the Democratic Republic of Congo (DRC), March 2003.

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ UN Security Council, 24 February 2003.

Humanitarian Affairs (OCHA) expelled. However, in a less positive development, once the joint mission departed, forces of the UPC confiscated communication equipment belonging to international NGOs in another round of harassment.²¹²

8. Security

236. The litany of attacks on humanitarian workers is substantial. Here is a list of some of the recorded incidents:

- In April 2001, six ICRC workers were killed in Ituri province;
- MONUC: Several attacks against MONUC in August-September 2001, killing of military observer in May 2002; break-in into MONUC office in Kisangani in June 2002, and UN staff – including MONUC – expelled from Goma by RCD-Goma authorities; assault of four MONUC staff in December 2002;
- In October 2001, four World Vision International staff were kidnapped on the road Beni-Bunia in the north-east of the country (North Kivu-Orientale Province);
- Ambush of MERLIN vehicle in January 2002 on the road Kalima-Kindu in Maniema Province;
- Shots fired at UN/NGO mission in Shabunda (South Kivu) in June 2002;
- Tearfund national staff based in Uvira (South Kivu) was kidnapped for one day in mid-November 2002;
- ICRC vehicle is ambushed in January 2003 near Uvira, killing one passenger and wounding five.²¹³

237. Many humanitarian agencies have been forced to reduce or shut down their operations for significant periods due to the lack of security, particularly in the eastern part of the country:

In most tense areas of the DRC, like in previous years, the following, almost insurmountable constraints were faced by humanitarian actors: a) Impossibility to reach and deliver relief to civilians in areas where de facto established authorities (RCD-Goma, UPC, RCD-ML) do not actually control the terrain and therefore consider any civilian located in those areas as potential accomplices to hostile forces; b) Due to misconceptions on the humanitarian community's mandate, aid workers often operate in a very unstable and insecure environment.²¹⁴

238. As stated in the October 2002 Security Council Report:

Humanitarian affairs officers have witnessed an increase in recent months in the harassment of relief workers and the looting of their assets. Humanitarian staff in Bunia and Dungu experienced threats of physical violence and looting, which in Bunia resulted in the loss of nearly 14 tons of food destined for vulnerable populations. Several humanitarian teams were evacuated, most notably from Shabunda and Nyankunde. In many areas where there is widespread insecurity, health conditions are reported to have deteriorated alarmingly, and there is

²¹² OCHA, March 2003.

²¹³ Global IDP Database of the Norwegian Refugee Council, 20 May 2003, p. 108.

²¹⁴ OCHA, 19 November 2002, p. 36, as cited in Global IDP Database of the Norwegian Refugee Council, 20 May 2003, p. 108.

evidence of very high malnutrition rates among the populations. Access to war-affected areas remains critical for humanitarian partners.²¹⁵

239. The provinces of Bandundu, Kinshasa, and Bas-Congo are by far the most secure in terms of operations and presence of UN staff. Kinshasa province is the only one declared Phase I under UN security regulations. Most agencies are located in Kinshasa, and apart from UNICEF, WFP and UNHCR, there are no UN agencies outside the capital. The ongoing campaign for immunisation is an ad hoc activity, manned by local staff in both the rebels and the government held territories. The international staff is confined to Kinshasa, in Goma and in Bukavu.
240. Access to almost every small town is almost exclusively by air. Even travel from Kinshasa to Matadi is made difficult because of the state of the road; it is easier, even cheaper in some cases, to travel by air. Humanitarian organisations have established and maintained a significant number of smaller airstrips. UNHCR, OCHA, UNDP, and others continue to maintain these airstrips where at least some small planes can land. However, even air travel is strictly regulated, and permits are needed for every flight.
241. As for other communications, there are three major train connections: Kinshasa-Lubumbashi, Kinshasa-Matadi, Lubumbashi-Kindu-Ubundu, along the shores of the River Congo. These long train connections are in a very poor state, but still exist. However, the Lubumbashi-Kindu-Ubundu connection is now obstructed because sections are under the control of hostile forces, so it is no longer possible to travel by train along the whole section.

9. Travel Restrictions and Freedom of Movement

242. Serious restrictions used to be imposed by the government and armed political groups on travel between the eastern parts of the DRC and the government controlled areas. Many organisations working in both east and west had urged their staff to carry two passports, one for travelling to the west and one for travelling to the east. This also applied to local people. Amnesty International knew of many cases where people who have fled from persecution by the RCD, Rwandese or other forces in the east and have thought that it would be safer for them to go to Kinshasa, and have been subsequently arrested and detained in Kinshasa on suspicion of being in alliance with the armed opposition in the east. For this reason, many people dare not to go to the other side.²¹⁶
243. With the constitution of the transitional government and the official reunification of the entire country, such travel restrictions have been officially lifted for nationals. Congolese nationals can now travel to any part of the country, provided transportation and road infrastructures are available. Travel to mine areas is still subjected to prior authorisation from the Minister of the Interior except for humanitarian personnel and missionaries.

²¹⁵ UN Security Council, 18 October 2002, para. 61, as cited in Global IDP Database of the Norwegian Refugee Council, 20 May 2003, p. 108.

²¹⁶ ACCORD/UNHCR, p. 88.

244. Refugee movements are still greatly limited. Refugees indeed who wish temporarily leave their settlement need to obtain a specific authorisation from immigration services (DGM). These authorisations are officially free of charge. In practise however, as the immigration agents are usually not paid, payment of a few Congolese francs is inevitable.

IV. Groups at Risk

245. Against this background of violence, human rights abuses, poverty and insecurity, several groups of persons are at risk. The following are some of the most exposed. However, the existence of categories of persons who are particularly at risk does not imply that individuals falling outside these categories would necessarily be safe if returned to the DRC against their will. Each case should be examined individually and decisions made on the merits.

A. Civilians

251. The Special Rapporteurs of the UN Commission on Human Rights in the DRC have been emphasising the deterioration of the human rights situation throughout the country. However, humanitarian organizations claim that the situation is most serious in the Northern and Eastern part of the country held by RCD-Goma and the Rwandese Patriotic Army (APR – left the country), the MLC and RCD/ML. Human rights defence groups frequently denounce rapes, tortures, abductions and assassinations in the North and South-Kivu and in Ituri. Soldiers are accused of breaking into houses pretexting the search for Interahamwe or Hutu militiamen to loot and mistreat the population. In March 2002, the African Association for the Defense of Human Rights reported atrocities committed and the presence of five mass graves where the bodies of civilians were deposited in Ubundu territory, 125 kms away from Kisangani. These atrocities were the results of the fighting between RCD-Goma and the Mayi-Mayi. Further information on this situation is scarce, due to difficulties in accessing the area. However, reports from churches confirmed that massive human rights violations are occurring.
252. MONUC has, since August 2003, been receiving reports from NGOs and other sources about the deteriorating security situation in Malemba Nkulu. On of the reports indicated that the Mayi-Mayi had carried out large-scale atrocities in the area which included massacres, burning of villages, looting and arson. The humanitarian personnel reported also allegations of massive human rights violations on 6 September 2003. For example, in the last week of August 2003, the Mayi-Mayi reportedly burnt village Kitchili (40 km south of Malemba) and 50 persons were massacred. In another incident, the village Tshimbo (25 Km South of Malemba) was also burnt and its inhabitants fled to surrounding areas. The Police chief indicated that due to the constant fear of Mayi-Mayi, a large movement of population was recorded from Tshimbo, Shimba and other villages moving towards Kabumbulu (30 Km North of Malemba Nkulu).
253. UNHCR believes that civilians as a whole may be at risk in Province orientale, North and South Kivus, Maniema and the North of Katangat.

B. Women

254. Women and girls have always been considered as second-class citizens in the DRC. They constitute the majority of primary agricultural labourers and small-scale traders and are almost exclusively responsible for child rearing. In the non-traditional sector, women commonly receive less pay for comparable work. Women also tend to receive less education than men. National laws and social norms describe women and girls as being the men's subordinates. Article 444 of the Congolese Family Code provides that women have to obey to their husbands who are the heads of the households. Women are required by law to obtain their spouse's permission before engaging in routine legal transactions such as selling real estate, opening a bank account, accepting employment or applying for a passport. Even where the law provides for certain rights for women, they are often denied by traditional use and customs. Inheritance is an obvious example, where the widow is allowed by law to inherit her husband's property but is commonly stripped of all possessions as well as their dependent children by the deceased husband's family.
255. In the East, women pay the heaviest price for the invasion of foreign armies on Congolese soil. Sexually mutilated, repeatedly raped and even buried alive, these women bear the brunt of an ugly war. In a recent press release, Human Rights Watch documented brutal acts of violence against women and girls "engaged in the usual activities necessary to the livelihoods of their families: cultivating their fields, collecting firewood, or going to market."²¹⁷ The report cites soldiers of the Rwandese army and its Congolese ally RCD-Goma as well as its foes, rebel Mayi-Mayi and armed Burundian and Rwandese groups, among the major perpetrators. These groups often abduct women and girls that they use as sex slaves and domestic labour. The bondage period could last as long as one year, according to the report. Rape and other sexual crimes are committed not only by armed factions but also more and more frequently by the police and other persons in position of authority and power and by numerous bandits who take advantage of the situation of general impunity and of violence against women and girls. Male heads of families usually settle rape cases between themselves instead of going to the court. Numerous cases have been "settled" through payment received from the perpetrator or his family or through forced marriage.
256. Socially, the rape victims are ostracized in their communities and the stigma of AIDS attached to rape confine them to isolation from family and friends. Another harsh consequence of war these women face is the lack of access to the food delivered by humanitarian agencies.
257. According to various sources, a large number of women and girls were raped following the capture of the town of Uvira by the Mayi-Mayi in October 2002. Many rapes were reportedly committed by the Interahamwe and elements of the former Rwandan Armed Forces (ex-FAR) in the vicinity of Katombo and North of Lake Tanganyika. In November 2002, RCD/Goma soldiers raped women and girls

²¹⁷ HRW: The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo, 20 June 2002.

at Katana. In government-controlled territory, rapes took place after the Mweka mutiny in Western Kasai province.

258. The level of brutality and sexual violence in the Kivu is particularly horrific. NGOs informed the Special Rapporteur of women who had been raped and have their mouth mutilated and their legs amputated. Instances of sexual violence followed by mutilation appear to be on the increase. The victims are unable to testify. Many of the victims treated in the hospitals of Goma, Bukavu, Kabiza and Nyangazwe are between 10 and 14 years old. Some 40 per cent of them are seropositive.²¹⁸
259. Girls are enlisted into armed groups, either as child soldiers or as sex-slaves. Certain cases brought to the Special Rapporteur's attention amount to slavery in light of the treatment inflicted to these women who become the private property of the soldiers.²¹⁹
260. Article 7, paragraph 1 (g), of the Statute of the International Criminal Court states that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity are considered crimes against humanity when the elements of the "crime" have been established.
261. The Special Rapporteur interviewed victims of sexual violence in a rehabilitation centre of a parish in Kisangani. These women reported to have been raped, most of them since their childhood. Rejected by their families and left with no means to support themselves and their children, they have sought refuge in this centre. However, it is worth noting that victims of sexual abuse are becoming increasingly aware of their rights and of the possibility to obtain assistance.²²⁰
262. In other situations, due to the aggravation of the socio-economic situation in the DRC, women and girls may be forced to exchange sex against food, shelter or money in order to survive.

C. Children

263. The DRC has the record of being among the countries in the world with the largest number of child soldiers. Fuelled by the revenue generated by the plundering of Ituri's great natural resources and motivated with the need for more, the various militias on the ground access to arms very easily. However, as stated by Amnesty International in its September 2003 report, possessing arms is not sufficient in itself:

The armed groups also need the soldiers to use them. Recruitment drives are almost continuous and forcible conscription has been prevalent throughout the DRC since 1996, although voluntary enlistment is widespread too. To ensure that they have the requisite numbers, all the belligerents (meaning armed political groups and governments) in the DRC have turned without

²¹⁸ Special Rapporteur, E/CN.4/2003/43, 15 April 2003.

²¹⁹ Slavery in the form of forced marriage was condemned by the International Criminal Tribunal for the former Yugoslavia (ICTY), in the V. Kunarac case, as a crime against humanity.

²²⁰ Special Rapporteur, E/CN.4/2003/43, 15 April 2003, paras. 63-71.

compunction to the recruitment of children. In the context of the war and the destruction of most economic and social infrastructure, children who are left without protectors or are displaced by the conflict are often more susceptible to being recruited. Children may join the armed forces 'voluntarily' as a means of survival after the collapse of family, social, and economic structures. They can also be more receptive to the propaganda of the recruiters than adults and less aware of the realities of war which lie in store for them. Many are in any case given no choice and are simply conscripted against their will. Militia commanders often find children more malleable to their will, more obedient and easier to indoctrinate than adults. The massive flow of small arms into the DRC has also made the use of child soldiers more viable, since boys and girls who are below 10 years of age can easily carry these comparatively light weapons.

In general, the belligerents operating in the DRC lack military professionalism and the training or the means to implement sophisticated military strategies. Many battles are fought, and won, based on simple numerical supremacy, and so the more children that a militia can recruit, the better it considers its chances of military victory. The more direct way of expressing this is that the children they recruit are often used by the militia as cannon fodder. Once recruited, children are usually sent to training camps along with adult recruits to undergo military training and indoctrination. On the frontline, child soldiers are repeatedly obliged to commit abuses, including murder and rape, against civilians and enemy soldiers. The feeling of loss and the traumas of the actions they have witnessed or committed have a devastating effect on their physical and mental integrity.²²¹

264. The Amnesty report goes into detail on the subject, and brings to light a truly incomprehensible chasm of despair and violence:

It is only by going beyond the statistics and listening to ordinary people as they recount the ruin of their personal lives that the sheer tragedy of the DRC's recent past begins to come into focus. Even when listening to the woman who was gang-raped by militia in front of her husband and children; or to the man who watched his wife and children die at his feet in a hail of militia bullets; or when trying to understand the adolescent who explains with tears in his eyes how he witnessed his father being hacked to death in the family home; or listening to the child soldier explaining how he was forced at gunpoint to fire a rocket-launcher into a building full of civilian abductees; or hearing the story of the orphan girl abducted into an armed group and used as a sexual object by a dozen soldiers each night. Even then, the full extent and longer-term implication of the suffering are difficult to comprehend.²²²

265. In its conclusion, Amnesty International states that the problem has not gone away with the recent political developments:

Despite the vast set of legal standards ratified by the DRC government and foreign governments involved in the conflict, child soldiers continue to be used and sent to the frontlines in the DRC. In complete disregard of their own public commitments to the international community that they will demobilise child

²²¹ AI, Democratic Republic of Congo: Children at War, 9 September 2003.

²²² AI, Democratic Republic of Congo: Children at War, Conclusion, 9 September 2003.

soldiers, most armed forces in fact continue to recruit children and to re-recruit those they have just released from their ranks.

The new transitional government established in Kinshasa in July 2003 is tasked with leading the country into national democratic elections within two years, with drafting a new constitution and with forming a new national army into which all sides have agreed to reintegrate their former combatants. However, even as this long process gets underway, children continue to be illegally recruited and used by the very forces represented in the peace process. As a first step, the transitional government must ensure that no children under the age of 18 are included in the new national army.²²³

266. Amnesty is of course not alone in reporting on recent instances of child soldier recruitment. On 19 September 2003, two local NGOs denounced troop movements and recruitment of child soldiers in eastern DRC, despite the recent inauguration of a unified national army²²⁴. For its part, the NGO "La Voix des Sans Voix" (VSV) reported "significant population movements [particularly] from Masisi, Walikale, Nyirango and Busumba," to the West of Goma, Eastern DRC. VSV added that guns were distributed to civilians in North Kivu Province, Eastern DRC. Quoting military sources who requested to remain anonymous, the NGO "Heritiers de la Justice" reported that military leaders were having meeting to discuss the reinforcement of their troops and weapons stock. According to "Heritiers de la Justice", the Rassemblement congolais pour la démocratie (former rebel movement RCD-Goma) – now party to the DRC's two-year national transitional government – would be tracing the child soldiers who deserted its ranks in order to prepare a rebellion in the East. Col. Georges Mirindi, interim commander of the Bukavu military region, would have recently ordered the soldiers under his command to actively find all the "Kadogos" [child soldiers] who deserted the RCD ranks.
267. This phenomenon has also been extensively reported by the UN Special Rapporteurs. According to the report on children and armed conflict, there is little demobilization happening and mass recruitment continue to take place in the East of the country; according to UNICEF and some NGOs, there are more than 30,000 child soldiers in the Democratic Republic of the Congo. The report of the Secretary-General on children and armed conflict²²⁵ also shows that children demobilized through the efforts of MONUC and local NGOs are recruited again by other armed groups.
268. It is difficult to reintegrate child soldiers in government-controlled territory, as the great majority of them come from the East of the country. In addition, given the overall situation of the education system in the Democratic Republic of the Congo, as mentioned by the Special Rapporteur in her interim report,²²⁶ and in particular

²²³ AI, *Children at War*, Conclusion, 9 September 2003.

²²⁴ IRIN, *DRC: NGOs denounce military movements; recruitment of child soldiers in South Kivu*, 19 September 2003.

²²⁵ Security Council, *Report of the Secretary-General on children and armed conflict*, S/2002/1299, 26 November 2002.

²²⁶ General Assembly, *Situation of human rights in the Democratic Republic of the Congo*, A/57/437, 26 September 2002.

parents' inability to pay teachers' fees, it is difficult to get demobilized children into school.

269. Another form of exploitation reported in the DRC is child labour. While it is difficult to establish exact numbers, these children are active as beggars in the streets, domestics in households and traders in the market place²²⁷. The child labourers and child soldiers are found in the hands of warlords, working day and night. The profit made out of child labour is extremely important, particularly in the exploitation of mineral resources.
270. In the Eastern part of the country, boys and girls have also been arrested and imprisoned by the RCD-Goma forces on the grounds of alleged collaboration with the Kinshasa government. Such cases have been documented by the UN High Commission for Human Rights, who intervened and eventually succeeded in obtaining their release.
271. On the social front, it is noted that the number of street children in Kinshasa, Lubumbashi, Goma, Bukavu, and even in Kisangani, is growing. The extent of poverty is such that some destitute families, unable to cope with the cost of caring for their children, would accuse their children of witchcraft, forcing them out of their house to the streets²²⁸. Witch children, also called 'chegues', have organised themselves in military-ruled groups where each one of them is given a grade and is assigned specific tasks. They find refuge against their suffering in drugs and alcohol. There is no governmental structure in place to address this issue. Some NGOs and churches do provide some assistance but it is limited as they lack resources to implement programmes for the social reinsertion of the street children.

D. Human Rights Activists

272. The situation of human rights defenders, who are important protagonists of the democratization process, remains difficult, particularly in the East of the country.
273. In the territory previously controlled by the Congolese Government, numerous domestic and international human rights NGOs continue to investigate and publish their findings on human rights abuses. The Government's Human Rights Ministry has attempted to stop abuses against NGO workers, but the security services continue to harass some of them. The human rights defenders who are participating in efforts to identify and denounce abuses in the political trials instituted by the Military Court have for example been the targets of such violations. This has been the case of Floribert Chebeya Bahizire, President of VSV, who was forced to go into hiding and leave the country. It should be noted that, following several requests for urgent action made to the government, notably those made by the Special Rapporteur, and following the efforts made by the Minister for Human Rights, the two human rights defenders who were mentioned in the Special

²²⁷ ACCORD/UNHCR, p. 112.

²²⁸ *Ibidem*, p. 113. There are cases of children who are being tortured and even killed because they have been accused of witchcraft, in Kinshasa and in many other places. People are apparently trying to blame their suffering and misery on supernatural forces, and in some cases have accused children of being possessed by spirits, putting the responsibility for their situation on the weakest persons.

Rapporteur's interim report as having faced such abuses, Mr. Sii Luanda and Mr. W. Wenga, were released. Their situation nevertheless remains precarious.²²⁹

274. In the East of the country, human rights defenders are considered by the authorities to be political extremists and are subjected to constant repression. Members of political parties interviewed in Kinshasa stated that they were denied the right to organize demonstrations and marches throughout the country, but above all that they are unable to organize local branches in the East of the country, where there is no freedom of association.²³⁰
275. Human rights advocates are a target group for both the government and former rebels. Reference is made of the case of Golden Misabiko, prominent member of the Katanga branch of the African Human Rights Association (ASADHO), who was arrested in December 2000 and transferred to Kinshasa. He was the first person to publicly reveal the assassination of a former military advisor of deceased President Kabila, Mr. Anselme Masasu, near Pweto in the Katanga Province. Other examples of intimidation of human rights activists and their organizations abound in the media and in UN reports. The Office of the UN High Commissioner on Human Rights noted in its March 2002 report that one of the provincial sections of ASADHO received threats from the National Intelligence Agency which suspected its leaders in Katanga to be involved in fomenting a new rebellion against the Kinshasa government.
276. Persons belonging to such group may therefore well be at risk of persecution in their country of origin.

E. Congolese Soldiers and Police

277. Soldiers and policemen may find themselves in a paradoxical situation, as both sides, the government and the opposition, are suspicious of their behaviour. Indeed, they may either be seen by the government as supporting the opposition or, within the previously so-called occupied territories, they may be perceived as reporting to and fighting for the Government. Soldiers and policemen who defect their movements may suffer human rights abuses at the hands of RCD-Goma in the territories under its control. Sixty of the 163 victims of the summary executions carried out in Kisangani in May 2002 were reported by the UN Human Rights Commissioner to have been policemen and soldiers. UN observers witnessed some 20 bodies floating in the river, allegedly dumped from the Tshopo Bridge. MONUC personnel also witnessed RCD-Goma soldiers concealing with sand the traces of blood on the bridge.²³¹

1. Deserters

278. While simple desertion in non-war time can be punished by 2 months to 10 years imprisonment, the Congolese law provides that deserters in war time, whether in

²²⁹ Commission on Human Rights, Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Ms. Iulia Motoc, in accordance with Commission on Human Rights resolution 2002/14, E/CN.4/2003/43, 15 April 2003, para. 12-14.

²³⁰ *Ibid.*

²³¹ ACCORD/UNHCR, p. 114.

the DRC or abroad, will be sentenced to life-long imprisonment or, in some cases, to death.

279. A large number of former Forces Armées Zaïroises (FAZ) soldiers fled to Brazzaville, Republic of Congo, in May 1997 following the fall of the Mobutu regime. Another group of soldiers who refused to join the newly-formed Forces Armées Congolais (FAC) of the former President Laurent Kabila joined them in the Republic of Congo in August 1998. Another wave of soldiers fleeing the country to Congo Brazzaville was registered in November 2000, following a failed internal uprising in the FAC forces. Lastly, following the assassination of Laurent-Désiré Kabila in January 2001, more soldiers deserted their fighting positions in North-Western Equateur Province and sought refuge in the Northern Republic of the Congo (Impfondo region).
280. With regard to former FAZ soldiers, their security situation in the DRC has improved since Joseph Kabila became President²³². A large number of former FAZ soldiers are now serving in the current Congolese army. In 2002, an estimated 20,000 to 25,000 former FAZ soldiers were living in Kinshasa. Former FAZ soldiers who continue to live abroad and are not suspected by the security forces of collaboration with the dissident forces may therefore not be at risk of persecution and may therefore return to the DRC.
281. The DRC Government has created a committee to oversee the repatriation of over 4,000 soldiers from FAZ, FAC and their families who were in exile in the neighbouring Republic of the Congo. IOM announced in September 2002 its support in the return of small groups of ex-FAZ/FAC soldiers.

F. Embassy Employees

282. Due to financial difficulties, diplomats and embassy staff are often not paid. This phenomenon, which started under the Mobutu regime, reached a stage where in certain cases the government does not have the means to repatriate its own diplomats. To date, UNHCR received a limited number of requests for asylum emanating from this group and, as per UNHCR general approach in such situations, each case is considered on its own merits. However, due consideration will be given to the frequent changes of alliance described above and their implications.²³³
283. Governments may be using diplomats as security agents abroad, either to spy the activities of the foreign country or the activities of opponents to the regime. In situation of forced changes of government or coup, these diplomats might be seen as associated to the ousted regime and therefore become at risk of persecution. However, there have also been cases where certain diplomats shifted alliances while on post.²³⁴

²³² DRC Country Assessment, April 2003, Country Information and Policy Unit, Immigration and Nationality Directorate, Home Office, UK, para. 5.69.

²³³ ACCORD/UNHCR, p. 114.

²³⁴ *Ibid.* A case in point is Justine Kasavubu. She was a member of the UDPS, later appointed by Kabila senior as ambassador to Brussels. Then she left the embassy in Brussels and became a member of the opposition. Now she is back in Kinshasa. Between 1997 and 2002, she shifted alliances at least four times. In

G. Managers of Public Enterprises (Under Mobutu)

284. The only information available to UNHCR regarding this group is that those who were detained were set free. Considering the influence money plays in the shifting of alliances, particularly in the mineral resources business, persons who were for example managing the mining area of Bunia would be in a good position to return to their positions. However, the restricted access to the mines areas limit the availability of more information on the subject.

H. Civil Society Leaders

285. Leaders of the civil society could play an important role in mobilising the population, either against the government or against the rebel movements. Following the Sun City agreement, a number of demonstrations took place in Kinshasa, Goma, and Bukavu. The campaigning against the war would have put these leaders at risk of persecution. Immediately after the Kisangani massacre in May 2002, MONUC expressed concern over the security of the civil society leaders in its June 2002 report to the UN Secretary General, referring to "accusations" made by RCD-Goma against them. Considered by RCD-Goma's leadership as Kinshasa's spies, the civil society leaders are frequently harassed by the rebel's security forces and by the soldiers of the Rwandese army. The civil society leaders would reportedly be either hunted, deported to Rwanda or their activities would be restricted. Some of them would, according to media and local reports, be imprisoned in the RCD-Goma prisons without any trial.

I. Homosexuals

286. Homosexuality is a taboo subject in the DRC, and it is disapproved in the Congolese society. Although it is not illegal, homosexuals may be arrested by the police if they act against the public morals – this also applies to heterosexuals. Male homosexuals are not treated any differently than female homosexuals. Homosexuality in the DRC has traditionally been regarded as a crime against nature. Homosexuals may therefore be punished according to local traditions and face ostracism or segregation. In the practice, however, there is no evidence to indicate that homosexuals are at risk of persecution by the security forces or the civilian population. In addition, it is tolerated if practised in a private and discreet manner.

J. Clergy Members

287. Clergy members are said to be present everywhere in the DRC and are perceived to have established a network, reporting to the international community on the situation in the country. One of the major component of this network is the MISNA news agency which is based in Rome, thus rather close to the Vatican. They report on human rights abuses committed by RCD-Goma and Rwanda. Consequently, Catholic clergy are targeted for protecting opponents of either the government or the rebel movements. MONUC obtained the release of two priests detained by RCD-Goma soldiers in Kisangani. An elderly European priest who was detained on the grounds that he had supported the mutineers on 14 May 2002 spent several days

in an RCD-Goma prison before the international pressure brought about his release. The priest, Father Verhaegen, was reportedly mistreated during his detention, and another priest, a local cleric from Goma, was assassinated in March 2002.

288. Eastern Congo is certainly a region where members of the clergy live under the threat of persecution due to their views or because they have witnessed massive human rights violations.

K. Victims of Ethnic Intolerance

289. There is no ethnic conflict as such in the Democratic Republic of the Congo, although ethnic groups do oppose each other at times. Yet, over 200 ethnic groups live in the DRC and the politicians are using this diversity of the population for their own benefit. Societal discrimination based on the ethnicity is widely practised by members of virtually all ethnic groups, and is evident in private hiring and buying patterns and in patterns of de facto ethnic segregation in some cities. In large cities, however, intermarriage across ethnic and regional divides is common.

1. The Ituri Conflict – Hema and Lendu

290. The main ongoing ethnic confrontation in DRC is in the Ituri region, Northeast of the country, where the mainly pastoralist Hema and the mainly peasant Lendu are engaged in hostilities. This confrontation would be exacerbated by Ugandan military and political officials who support the Hema in a divide-and-conquer strategy of a territory that they seek to control. The two tribes are encouraged to hate and fight each other by political leaders. As a result of this turf war, the Bunia region in Ituri is closed to all road traffic, impeding further the delivery of humanitarian assistance which can consequently only be transported by air.
291. The conflict began in June 1999 when a small number of Hema attempted allegedly to bribe the local authorities into modifying the land ownership registers in their favour, in the area of Walendu Pitsu, which is part of the Djugu district of Ituri. They reportedly used false documents to evict Lendu inhabitants of their land, or that is what the local Lendu believed. The Lendu decided therefore to retaliate. In the absence of a strong local authority, the incident turned rapidly into a full-fledged confrontation between the two communities. By 2003, the confrontation generalised in the region. Groups like the Nande, Bira and Alur, who were previously not associated with either the Hema or the Lendu were forced to take sides.
292. Despite the presence of MONUC troops on the ground, that replaced the French-led interim emergency force deployed on 30 May 2003, UNHCR is of the opinion that the Ituri population is in need of international protection not only for reasons of events seriously disturbing public order in the district but also for reasons of nationality and/or membership to a particular social group.

2. The Banyamulenge

293. It is well known that members of the "Banyamulenge" ethnic group (Tutsi ethnic origin), or the Kinyarwanda group (both of Tutsi and Hutu ethnic origin who speak Kinyarwanda) may be at risk of individual persecution in the DRC. This situation

became particularly acute in 1998, following the intervention of the Uganda, Rwanda and Burundi armies in the DRC to overthrow the regime of the late President Kabila. Consequently, members of these ethnic groups became collectively at risk of arbitrary detention, ill-treatment and in certain instances they were tracked down and killed by angry mobs, notably in Kinshasa. UNHCR, the ICRC and the international community, principally the United States and Belgium, were requested to evacuate members of the Banyamulenge group to third countries since the authorities in Kinshasa could not guarantee their security or protection.

294. Until recently, the Banyamulenge were deemed safe in the East, as they were seen as objective allies of RCD-Goma and Rwanda, not least since Rwanda and Uganda claimed to have taken part in the conflict to protect the Banyamulenge from persecution by the Kinshasa government. However, following a shift of alliances, the Banyamulenge are now also persecuted by Rwandese troops because of their perceived or actual opposition to the Rwandese occupation in Eastern DRC. Those suspected of allegiance to the FRF, group opposed to the Rwandese government, the FRF, will also be at risk of persecution by RCD-Goma. For example, a local Banyamulenge commander, Patrick Masunzu, has shifted his alliance to now fight against the Rwandan troops in the East, near the city of Baraka in South-Kivu.
295. These ethnic tensions, i.e. intolerance and inter-communal violence, have been flamed by the elites in both the DRC and Rwanda. The term Banyarwanda is the collective name for the Hutu and Tutsi in the region. The first major conflict involving the Banyarwanda in the DRC occurred in North-Kivu in June 1993. In this conflict, the Banyarwanda, i.e. the Tutsi and Hutu on one side, fought against other ethnic groups, such as the Nyanga. The war which raged in 1994 in Rwanda made this situation even more complex: some Tutsi-Banyarwanda in the DRC were recruited by the RPF in Rwanda to fight against the Rwandese government, which was dominated by the Hutu. This caused the split between the Hutu and the Tutsi inside the DRC, and hostilities broke out between the two groups. This situation led as well to a new dynamic in the region: Rwandese Hutu fled into the DRC in 1994, the Banyamulenge-Tutsi were expelled from South-Kivu back into Rwanda, the outbreak of the war again in 1996, and the current apparent split between the Banyamulenge and Tutsi from Rwanda. These fragile alliances shift according to circumstances, the political climate and the change in military and economic ambitions.
296. Caution is therefore required in considering the return of a Tutsi to the DRC. Though the authorities may try to protect him, the person may not be accepted by the population or the government may be unable to offer effective protection against popular hatred.

3. The Twa

297. Twas or pygmies are settled in the forest of the Great Lakes region. They were long ago deprived of their ancestral land properties through deforestation and the arrival of agricultural groups. Because of their primitive way of living and traditions, Twas are not well considered by the other ethnic groups. During the latest conflicts in the Kivus and in Province Orientale, Twas have shifted alliance to various factions according to their own interests. Serious human rights abuses were perpetrated

against them, the latest ones being the acts of cannibalism reported in Province Orientale which were broadcasted all over the international media.

4. Mixed Marriages

298. Members of the Hema, Lendu and Banyamulenge ethnic groups who have married outside their own tribe may fall victim of ethnic intolerance and be rejected by their neighbours. Persons belonging to a family of such mixed ethnicity should therefore be considered at risk as they have lost the trust of both communities.

5. Ethnic Minorities in the Forces Armées Congolaises (FAC)

299. The Congolese army is composed of numerous ethnic groups but since the end of 1998, it has become very difficult for Banyarwanda to serve in the DRC. Persons belonging to the Tutsi ethnic group are perceived as allies to Rwanda. With regard to Rwandese Hutu, they have fought along the Congolese army and against RCD-Goma, Rwanda and Uganda. In 2001, a group of nearly 3,000 former Rwandese combatants who had fought along the Government forces were demobilised at Kamina, a military base South of DRC. In summary, as mentioned above, Banyarwanda of Tutsi origin may face persecution by allies of the Congolese government.

6. Evacuation of Vulnerable Groups

300. Regarding the evacuation of vulnerable groups to other countries, there have been some successes, but also many failures. Relative successes include the case of the Tutsi in the DRC after August 1998. Many of them found themselves in prisons in Katanga, Kinshasa and other places. As there was so much hostility both in the government and within the civilian population against the Tutsi in areas controlled by the government, it was decided that it was safer to transfer these Tutsi to other countries. The DRC Government argued that it was not persecuting these Tutsi, but it found it difficult to release them, as if the civilian population turned against them the government could be blamed. Claiming that prison was the only place where these people could be kept safely, they were kept in ICRC facilities for long periods. Human rights and humanitarian organisations argued that this was not an acceptable solution, but the reality was such that the government could not protect them: Tutsis were being burnt alive in Kinshasa. UNHCR agreed to assist in relocating those affected Tutsis, and they were taken to Rwanda, where some of them still are, to Cameroon, Benin, and to the USA.

L. Journalists, Students and Political Party Members

301. Students and members of the political parties affiliated with the Alliance for the Safeguard of the Inter-Congolese dialogue are subject to persecution, arbitrary detention and torture. The DRC also has a record of intimidation of the media including through the arbitrary arrests of journalists and mistreatment in the hands of the police. Kinshasa does not tolerate criticism of its actions. Likewise, RCD-Goma often imprisons journalists considered biased against their cause. One of the incidents involved students who demonstrated against RCD-Goma's stance on the Sun City agreement. The rebel movement repressed the demonstration in which 6 students lost their lives, while several others were jailed for their presumed role in

organizing the demonstration and then released. There, too, their release was negotiated by the UN through its office for Human Rights.

302. Incidents of harassment, intimidation and detention of journalists continue to occur but violations of press freedom were less common in 2002 than in previous years. During 2002, security forces arrested or detained illegally nine journalists compared with 25 in 2001. Other journalists were reportedly harassed and in some cases, beaten or tortured by members of the security services. Despite government restrictions and harassment of some journalists, a large number of private newspapers operate freely and publish criticism of the government without interference.
303. The Transitional Constitution, in its articles 27, 28 and 29, guarantees the freedom of press, the right to inform and to be informed, the media pluralism and the freedom of opinion. A national legislation is currently being elaborated that will regulate the media. How this legislation will incorporate the provision of the Constitution and how it will be implemented still needs to be followed.
304. In the meantime, the JED (Journalistes En Danger – Journalists in Danger) has reported 21 arbitrary arrests or detentions of journalists throughout the Congolese territory since the beginning of the year 2003. Journalists from Rehema radio and Maria radio in South Kivu were among those arrested. On 16 September 2003, Racou (Radio Communautaire Ushirika/Ushirika Community Radio) was ordered to cease operations.
305. On the other hand, there are some positive signs showing a decrease of repressive actions. The RCD in July 2003 authorised Radio Maendelo to operate once again, after the radio was shut down in December 2002. In addition, on 11 August 2003, the Ministry of Justice sent an information note to the General Attorney against the preventive detention and arrest of journalists targeted because of the content of their press clippings. JED reported that three journalists were temporarily detained for defamation.
306. The repression of political parties continues. After his accession to power in January 2001, Joseph Kabila ordered mass arrests of his supposed opponents. The largest numbers of people were arrested in March and April 2001 for conspiracy to overthrow the President. Subsequently, another group was arrested a month later in connection with the assassination of the President's father, including Eddy Kapend and General Nawej. Some remain in detention and have been sentenced to life imprisonment or death. Overall, there have been more than a hundred arrests in connection with Kabila's assassination.
307. Regarding UDPS's current situation, party members are not able to organise their meetings because of a clear split between the UDPS and the government, as the UDPS has chosen to ally itself with RCD-Goma. While their movements in terms of meetings and marches are strictly controlled by the government, the degree of persecution of UDPS leaders in Kinshasa is no more severe than in previous years. Its leader, Tshisekedi, returned to Kinshasa at the end of September 2003, and the UDPS is present throughout the DRC, and even in Kinshasa. Given the general insecurity in the country, militants may be at risk from time to time. One must also

bear in mind that only those cases where people have been taken to jail and which have been reported to the UN are known to the human rights organisations.

308. The MPR, like the UDPS, faces some restrictions. While they are able to pursue their campaign for democratic change, they are not allowed to demonstrate in the streets in Kinshasa. However, they are not banned, and have applied for recognition under the decree on political parties of May 2001. There is now an internal wing of MPR called MPR Fait-Privé, privatised MPR, as opposed to MPR Parti-Etat, the State Party. Still, active membership in an opposition party, even if it has been recognised, may lead to difficulties with the authorities.
309. Before Mobutu liberalised the political situation in April 1990, the MPR was the state party and by law every Zairian (presently the DRC) was a member of the MPR. A membership card was a guarantee of safe passage throughout the country, and constituted an identity card, giving testimony that the bearer is a supporter of Mobutu, rather than an opponent. Today, however, possession of an MPR card would not have much significance in terms of safety.
310. According to universal human rights standards, the fact that a group is not recognized by the government does not discredit that group as long as its members are peacefully exercising their right to freedom of expression and association and respecting the rights of others to do likewise. They retain their rights of freedom of association and expression, and if denied by the government, they would still have the right to call themselves a party, even if not formally recognized. This also applies to parties in exile.
311. Finally, the risk of persecution remains with respect to persons originating from rebel controlled territory, in particular those from North and South Kivu, Maniema, Orientale Province and Equateur, although it needs to be assessed on an individual basis. During individual case assessment, factors such as status (military/civilian), profession and political affiliation should be considered.
312. A number of people are returning from either the Equateur province, Gbadolite (the base of the MLC movement), from the neighbouring Congo-Brazzaville or even from distant countries of refuge or exile, mainly France and Belgium. Recent returnees include former Prime Minister Lunda Bululu, one of the negotiators involved in the Matadi power-sharing talks between the government and the MLC.
313. Former rebel movements in the DRC are now part of the government of national unity and are authorised to function as political parties pending the adoption of laws regulating their functioning and activities. This also concerns all parties and former political-military movements that are signatories to the December 2002 global and inclusive accord, political parties registered at the sovereign national conference in 1990, as well as those recognised in 1999 by Laurent-Désiré Kabila (243) and in 2001 by Joseph Kabila (more than 400).

1. Opposition in Exile

314. For those active in political parties like the UDPS, PALU or other well-known organisations during their European exile, the risk they face upon return would

depend on their personal background. If someone was writing against the government or was known publicly to carry out activities against the government, he/she would definitely be questioned upon return. In this situation, the risk would depend on who is questioning him/her. The authorities in the government-held or the rebel-held areas may abuse their power at any time; a returnee's safety would depend on his or her family's ability to protect him/her through ties established with the authorities.

2. Persons Closely Associated With the Mobutu Regime

315. After Laurent-Désiré Kabila took power from Mobutu in May 1997, many high-ranking officials of the former Mobutu regime were arrested and imprisoned in Kinshasa's CPRK prison. Many managed to avoid arrest by leaving the country. A special government department – the office for ill-gotten gains (OBMA/Office des Biens Mal Acquis) – was set up with the aim of redistributing the confiscated wealth, the bulk of which went to OBMA officials. Since Joseph Kabila came to power, the security situation of persons closely associated with the Mobutu regime has improved. A large number of them have returned to the DRC since the signature of the Sun City Peace Accord in April 2002.
316. Distant relatives of Mobutu living in Kinshasa have not encountered any problems stemming from their association with Mobutu. While the majority of close relatives remain in exile, they could return to the DRC. Mobutu's son Nzanga returned to Kinshasa in August 2003, participating in the celebrations marking the anniversary of his father's death at the main stadium. He declined the President's offered position of Minister of Culture and Arts.
317. If not suspected of collaboration with dissident forces by the security forces, persons closely associated with the Mobutu regime are not at risk of persecution and can safely return to the country.

M. Exclusion Clauses

1. Members of Security Forces Under Mobutu

a) Forces Armées Zaïroises (FAZ)

318. By the early 1990s, the Zairian Armed Forces' enlisted ranks represented much of society. However, members of Mobutu's own Ngbandi ethnic group were disproportionately represented in the military and security forces, particularly at the highest levels. The Ngbandi overwhelmingly dominated the elite DSP. Mobutu had excluded certain areas of the country from recruitment in the military. The army thus reportedly was dominated by soldiers from the Equateur province, Mobutu's home region.
319. The FAZ were highly visible in most areas of the country, but was not an institution that the population identified or in which they had any pride or confidence. The FAZ retained an aura of separateness and, like the colonial force, was perceived, justifiably, as an instrument of repression. As such, the majority of the population saw the army as their enemy.

320. Low and irregular pay was the primary cause for depredations by the FAZ. Only the highest-ranking officers and the DSP received pay sufficient to provide a basic level of subsistence. Most officers and other ranks received wages that were inadequate to feed and clothe their families, and they often went unpaid for months. As a result, FAZ members often preyed on the local community in an effort to make ends meet and to enrich themselves. In September 1991, unpaid paratroopers went on a rampage in Kinshasa and widespread looting ensued. Another wave of military-led pillaging and looting occurred in early 1993 following the introduction of a new Z 5 million note that many merchants had refused to accept from the military personnel who had been paid with it. Lower-level, routine looting subsequently continued; people who would interfere or protest were often shot on the spot.

b) Division Spéciale Présidentielle (DSP)

321. Created in 1970, the BSP (Brigade Spéciale Présidentielle) was replaced by the DSP (Division Spéciale Présidentielle) in early 80's, under the leadership of General Nzimbi, Mobutu's nephew. The aim of the DSP was to ensure the protection and security of the services of the presidency of the Republic, mainly to prevent any coup attempt. As such, it reported directly to the Head of State and was composed of elite units well trained in anti-terrorism and urban guerrilla warfare. Recruitment was, at the beginning, according to competence, but rapidly gathered individuals belonging to the Ngbandi tribe. Ten divisions were stationed at the DSP headquarters while seven brigades could be found in the field. All reported directly to the General, the most famous being the Dragon Battalion, also called death squad, and the commando brigade.
322. The DSP was characterized by harsh repression of any sort of demonstrations, extortion and intimidation. Rather than protecting the institutions of the Republic, the DSP became a protection corps for the high dignitaries of the regime. Disappearances and kidnapping were frequently committed by the agents of the DSP, upon the simple request of a high ranking politician or a close collaborator of Mobutu. The DSP's violent attack on students in Lubumbashi in May 1990 is a vivid manifestation of its support of Mobutu. The DSP was also used to suppress both the September 1991 and the February 1993 incidences of military-looting – although in 1993 the DSP is widely reported to have engaged in considerable vandalism before quelling the unrest. Its suppression of the violence reportedly included summarily executing hundreds of military looters.
323. DSP reportedly took an active part in the ethnic cleansing operation in Katanga in 1992 against the Kasaians with the aim to obliging them to leave their homes and return to their region of origin. It is well known that the army kept a very passive role during the events, while Katangan militias were controlling the fighting. During the national conference of September 1992, testimonies collected by the investigation mission indicated that militaries were seen trying to erase any trace of the displaced camps located close to train stations in Katanga, where Kasaians would wait for their deportation back to Kasai. In Kolwezi, the General Sumahili himself lighted the fire that burned down the entire camp; unfortunately for him, the scene was filmed by an amateur.

324. The DSP is also reported to have been actively involved in the Rwandan refugee camps in eastern Zaire, with the task to reorganize the ex-FAR and prevent voluntary repatriation to Rwanda; another mission was also to prevent the work of the international investigation on the Rwandan genocide.
325. In addition, the DSP is reputed to have ransacked the offices and blown up the presses of "Elima", the leading opposition newspaper, in October 1991; to have put down a "coup attempt" after some military personnel took over the state-run television station in February 1992; to have interrupted numerous public demonstrations, shooting unarmed demonstrators randomly; and to have been deployed to North-Kivu in mid-1993 to stop ethnic violence widely believed to have been instigated by government and security officials in the first place. In all of its dealing with the populace, the DSP has been accused of using undue violence and torture. Its fearsomeness was demonstrated graphically in February 1993 when its members went on a punitive rampage after civilians killed one of its members.

c) The Hiboux

326. The "Hiboux" (the Owls) is a secret special operation force established within the security services to carry out abductions and other types of intimidation against political dissidents, terrorism and killings. Its agents were specifically trained within DSP to terrorize political opponents, repress any popular insurrection against the Mobutu regime and organise politico-military disturbances as was the case for the pillages of 23 to 24 September 1991 and 28 to 29 January 1993. Certain sources indicate that the "Hiboux" were placed under the leadership of General Nzimbi.

d) Garde Civile (GAC)

327. In part as an effort to improve the state's performance of the police function, and in part as a redistribution of power and influence, in 1984 Mobutu once again decentralized police powers and created a national civilian police organization known as the Civil Guard, to perform normal civilian police duties as well as customs and border control. The guard initially appeared as if it might provide more effective and rational law enforcement than that which had been provided by the gendarmerie. Nevertheless, in the early 1990s, the Civil Guard was regarded as loyal to Mobutu. In conjunction with the DSP, it was deployed to harass the opposition and the transitional government on Mobutu's behalf and was generally paid more – or at least paid more regularly – than ordinary military and security units. Initially headed by Mandungu Bula Nyati, the Civil Guard was subsequently placed under the leadership of Baramoto and the general Vungbo.
328. The Civil Guard is accused of having financed the ethnic cleansing operation in Katanga in 1992. It also reportedly was being the terrorist attacks led against certain houses or properties in Kinshasa, as was the case of the house of the UDPS President Kibassa. In border areas, GACI elements illustrated themselves by extortions of other's goods and properties, ransoming, threats and violence.

e) Service d'Action et de Renseignements Militaires (SARM)

329. Formally known under the name G2, the SERMA (Service des Renseignements Militaires et d'Action), was created in 1985 in order to respond to criticism directed against General Bolozi, head of the former G2, mainly referring to the barbarism that characterized the service, whose members did not hesitate to kill or kidnap in the exercise of their functions. In 1985, General Bosange was designated as the head of the SERMA. The service reported directly to the Ministry of National Defense. In 1986, accusations were made against most existing security forces. Extortion, crimes, abuse of power, burglary and other violations of human rights were conducted by elements of the FAZ, among them that of SERMA, other security services and dignitaries of the single political party.
330. The 1987 Presidential restructuring led to the creation of the Service d'Action et de Renseignements Militaires (SARM), directed by General Mahele. The primary idea when creating the SARM was to constitute an elite corps composed of members of the different forces of FAZ in order to control irregular movements and stop abuses committed by FAZ elements. Its main purpose was to collect internal and external military information in order to prevent, dissuade or destroy plans for the destabilization of the institutions of the Republic or the disturbance of the public order.
331. Initially composed of commandos already trained for such tasks, the mounting demonstrations against the Mobutu regime led to the designation of commanders and heads of units originating from the Equateur region and belonging to the Ngbandi ethnic group, that of Marechal Mobutu. General Mahele was thus replaced in 1991 by General Bolozi, Mobutu's brother-in-law. Promotions within the SARM were then decided on a subjective tribal basis rather than according to each one's competencies.
332. SARM units rapidly became famous for arbitrary arrests and detentions, summary executions and disappearances. Torture was widely used during interrogation in order to collect genuine or false information. Harassment of civilians and foreigners was also practiced, including the threat of false reports through the extortion of money. The SARM on numerous occasions substituted itself for the judiciary system by pronouncing verdicts against civilians and summary execution.

f) Service National d'Intelligence et de Protection (SNIP)

333. The Sûreté Nationale, a small, special-purpose police and investigative unit originally established by the Belgian colonial administration, continued after independence and was responsible for several diverse functions in the national security field. Prior to independence, the Sûreté's mission was to protect state security by controlling immigration, supervising resident aliens and protecting key government leaders. Shortly after independence, the Sûreté came under the Ministry of Interior, but by mid-1961, the first director, Victor Nendeka, had turned it into a semi-autonomous organization under his personal control. President Mobutu soon took steps to eliminate Nendeka as a power broker.
334. In 1969, the Sûreté became the National Documentation Centre (CND/Centre National de Documentation). During the early 1970's, the CND was reorganized

into internal and external sections, and its agents reportedly had wide latitude in arresting, interrogating and detaining people they considered a threat. In the early 80's, the service gained the new title of National Documentation Agency (AND – Agence Nationale de Documentation). The national security service was renamed the National Service for Intelligence and Protection (SNIP) in August 1990.

335. The SNIP had separate branches for internal and external intelligence functions, with the internal role receiving a substantially higher priority, and reported directly to the President until 1996, when it was reattached to the Ministry of Interior. Its agents did not report to the local or regional administrators, nor were they subject to their authority.
336. In addition to gathering intelligence and conducting surveillance, the SNIP exercised almost unchecked powers of arrest, imprisonment and interrogation. It used these powers to intimidate individuals or groups posing a real or imagined challenge to the regime's authority. In order to collect any information, torture was widely practiced, including electrocution, beating, cigarette burnt, starvation, detention in appalling conditions, and rape). In the 80's and 90's, it played an important role in repressing political activists. It had foreign agents operating in Europe to infiltrate anti-Mobutu exile groups. Abuses were widespread and personal aggrandizement a primary motivator. SNIP was engaged in extensive looting and plundering in the early 90's.
337. Recruitment modalities were not very clear. Responsible posts were, however, held by individuals chosen according to their regional geographic origins (broader than the purely tribal criterion).

g) The Party Security Apparatus

338. Any discussions of the country's civil security apparatus would be incomplete without considering the Youth of the Popular Movement of the Revolution (Jeunesse du Mouvement Populaire de la Révolution/JMPR) and its disciplinary arm, the Corps of Activists for the Defense of the Revolution (Corps des Activistes pour la Défense de la Révolution/CADR). Although the JMPR was a spin-off of Zaire's single ruling political party (until the legalisation of multiple parties in the early 1990's), it played a role in state security, limited, however, by the poor quality of its personnel, who were typically unemployed youths. The JMPR's main tasks were maintaining party discipline and vigilance and providing information to the state. JMPR directors had arrest powers, which CADR members also exercised from time to time. CADR members could act alone or in support of local operations by the gendarmerie or civil guard. Municipal administrators sometimes called on CADR elements to perform in place of the often unresponsive gendarmes who were part of the FAZ. At the same time, the usually unpaid and untrained young men of the CADR frequently used their positions to extract money and other resources from the local citizenry.

2. Members of Security Forces Under the Current Regime

339. Security services operating under the Mobutu regime have continued to operate since 1997, however under new names:

- The FAZ became the Congolese Armed Forces (FAC/Forces Armées Congolaises)
 - The DSP became the Presidential Security Special Guard (GSSP/Garde Spéciale de Sécurité Présidentielle)
 - The SARM took the name of Military Detection Force for Unpatriotic Activities (DEMIAP/Détection Militaire des Activités Anti-Patrie)
 - The SNIP became the National Information Agency (ANR/Agence Nationale des Renseignements).
341. In addition to these, the following services have been operational since 1997: the National Security Council (Conseil National de Sécurité/CNS), later on called State Security Committee (Comité de Sécurité d'Etat/CSE), the Rapid Reaction Police (Police d'Intervention Rapide/PIR), the Migration General Direction (Direction Générale des Migrations/DGM) and the Investigation and National Security Directorate (Direction des Enquêtes et de la Sécurité Nationale/DESN)
342. Associations for the defence of human rights all report about the total absence of legal limits to the powers of the ANR, DEMIAP, CNS or the DESN. Agents of these services thus hold broad powers of arrest, detention and investigation not limited by any law or controlled by any judicial authority. Assessing the situation of journalists detained in the DRC since the AFDL came to power, Reporters Without Borders noted that "the biggest threat hanging over the media comes from the nine security services, which act ruthlessly, throwing journalists in jail with impunity and in a completely arbitrary fashion."²³⁵ According to this source, these security services are the ANR, the DEMIAP, the GSSP, the PIR, the CSE, the Police Special Services, the Prosecutor's Office Police, the Airport Security Agency and the Kinshasa Provincial Inspectorate.
343. Each of these services possesses its own non-official detention centre where conditions remain harsh, unsanitary, and life-threatening. Prisoners are reportedly beaten to death, tortured, deprived of food and water and die of starvation. Prisoners cannot be visited by their family members, lawyers, or doctors.
344. Judiciary authorities do not have any control over these informal detention centres. Torture is widely used in these detention centres. Among the method used, one can find flagellation, isolation in dark and closed cells, severe beating, simulation of sexual acts, humiliation, and rape. Located in Kintambo Commune, the prisons of DEMIAP consists of two jails, called Ouagadougou and Memling. While detention conditions at the Memling jail are close to average, that at Ouagadougou are appalling. Inmates sleep on the ground in narrow, overcrowded cells, which are not ventilated or lit. Visits are prohibited. Family members remain without news of their relatives held in detention in the prison throughout the term of their imprisonment. A medical centre is available, however, with no medication. Torture and other cruel, degrading treatment are reportedly used by DEMIAP in order to coerce confessions out of their detainees. Iron bars, batons, thin cords, metal chains, cattle prods, mechanical clips and other slicing and cutting instruments are

²³⁵ Reporters Without Borders, Disappointed hopes mark first anniversary of Joseph Kabila's appointment, 24 January 2002.

reportedly used as objects of torture. Cases of death by torture have also been reported.

345. Although the head of state announced on 8 March 2001 that they should be closed, they continued to operate.
346. The security forces use the pretext of state security to arbitrarily arrest individuals linked to groups considered to be a threat to the government. Individual arrested and detained in the name of state security are frequently held without charge, presentation of evidence, access to a lawyer or due process. The security services frequently exhibit the attitude of guilty until proven innocent and have showed great reluctance to release individuals detained illegally, even after protests from NGOs and the international community. In several of the cases, evidence suggested the arrest was made to settle a personal score for a government official or member of the security services.
347. Amnesty International in its report of 6 June 2001 indicates that the ARN, the DEMIAP and the other security services function outside the framework of the Congolese law and the international treaties on human rights to which the DRC is signatory. Torture and mistreatment are commonplace in the non-official detention centres belonging to the security services.
348. The People's Forces for Self-Defence is a paramilitary group that was established by the deceased President Laurent-Désiré Kabila for the purposes of surveillance and denouncement of enemies of the people in Kinshasa/Masina.
349. Immediately after war broke out in August 1998, former President L.D. Kabila called on citizens to organize themselves in order to "drive out the enemy". Encouraged by the participation of youths from the commune of Masina in Kinshasa in tracking certain persons considered to be enemies of the nation, the former President requested that people be recruited from all the communes in Kinshasa and throughout the country to serve in the FAP.
350. Consisting primarily of unemployed youths, members of the FAP came from all backgrounds, including companies, universities and public administrations. Both employed persons and students could enlist and still continued with their usual activities. The work of the FAP, whose members did not bear arms, consisted mainly of denouncing individuals suspected of being members of or conspiring with rebel groups. However, the FAP were also known for sometimes arresting people before handing them over to the competent authorities.
351. Membership in the FAP was voluntary, even though the government authorities urged many people to enlist. Recruits did not receive any wages. However, after participating in demonstration supporting the regime, they sometimes received "sums of money and food." According to the newspaper "Le Potentiel", the former President had given the responsibility of making the FAP operational in the Congolese capital to Christophe Muzungu, vice-governor of Kinshasa in 2000. On 19 December 2000, the latter indicated that approximately 120,000 had in fact already enlisted, but that initially 100,000 of them would be trained, and was

hoping that by early 2001, Kinshasa would have a FAP that would be 400 to 500,000 strong.

352. Current President Joseph Kabila dissolved the FAP after some of its members joined the FAC.

3. Armed Groups Operating in the DRC

353. The largest armed groups operating in the DRC, apart from the FAC, are the RCD-Goma supported by the Rwandan government, the MLC, supported by the Ugandan government and the RCD-ML. In the Ituri region, two tribally-based armed groups emerged in 2002: the Lendu-dominated APC and the Hema-dominated UPC. The security services and soldiers of the rebel factions are poorly trained and generally unpaid. The security services routinely extort money, goods and services from the local population. In areas controlled by Hutu militias, Mayi-Mayi, Ethnically-based militia or other armed groups, there is no organized security services; those with weapons control the local population and extort money, goods and services.
354. All security services and members of armed groups have committed numerous, serious human rights abuses, particularly in the eastern part of the country and in the Ituri area. These abuses include deliberate large-scale killings, cannibalism, burning of entire villages, disappearances, torture, rape, dismemberment, mutilation, extortion, robbery, arbitrary arrest and detention, harassment of human rights workers and journalists and forcible recruitment of child soldiers. They have little respect for the freedom of speech, assembly, association and religion. Combatants have abducted women and children and forced them to perform labour, military service and sexual services. Armed forces have targeted churches and religious leaders in the areas under their control and committed numerous abuses, including arbitrary killings, beatings and the violent dispersal of religious services.
355. Violence against women and rape are serious problems and have occurred with impunity.²³⁶ They have often raped women and girls as part of a more general attack in which these forces killed and injured civilians and pillaged and destroyed property. This was done to terrorize communities or punish them for real or supposed aid to opposing forces. In other cases, women and girls were raped simply due to their ethnicity. In some cases, victims were forced to leave with the rapists and have not been seen since. Some may have been killed and others may be held by their abductors for continuing sexual and other services. Some rapists aggravated their crimes by other acts of extraordinary violence such as puncturing the vagina with spears or cutting off parts of the body. Armed combatants from militia groups and regular soldiers responsible for acts of sexual violence commit war crimes. Where these crimes are widespread or systematic, they could amount to crimes against humanity.

²³⁶ See also section VI.B. Women.

V. Refugees and Internally Displaced Persons

A. Internal Displacement

356. The latest available statistics provided by OCHA show a total of 2,706,993 internally displaced persons (IDPs) in the DRC at the end of January 2003, of a total population of 55 million individuals. The geographical break-down is as follows; Equateur 167,629, Katanga 347,364, Maniema 180,000, North Kivu 929,000, Province Orientale 641,000, South Kivu 271,000, East and West Kasai 143,000 and Kinshasa 28,000. Figures are considered to be underestimated due to the difficulties related to access and registration. In one year, the number of IDPs has gone up with over 700,000. It is estimated that other vulnerable groups, including IDP "host communities", amount to over 20 million persons.
357. Since August 1998 through the end of 2002, the war has displaced between 2.4 to 2.7 million.²³⁷ In 2002, an additional 500,000, mainly in Ituri and South Kivu, were displaced. The number of people internally displaced within the DRC is estimated to have risen from 2,041,000 to 2,275,000 people.²³⁸ Almost 90% of these people are in North and South Kivu, Orientale, Maniema, and Katanga provinces in eastern DRC. 80% of rural families in North and South Kivu are reported to have been displaced at least once in the past five years. Less than 40% of IDPs are able to benefit from assistance.
358. The presence of various armed groups continues to spread violence and provoke massive displacements. Increased insecurity in eastern DRC has resulted in further massive displacements since August 2002. According to OCHA, nearly 1 million IDPs in Eastern DRC remain inaccessible to the humanitarian community due to concerns related to security and logistics.
359. Reasons for internal displacement include fighting between the different armed groups, ethnic clashes and flagrant human rights violations directed towards the civilian population, who are targeted as a strategy of war. Systematic rape and recruitment of child soldiers are areas of particular concern. Further traumatising is the fact that many internally displaced experiences several displacements.
360. Similarly, most of the refugees in Zambia belong to the IDPs who were settled in the southern part of the country, in Pweto and on the shores of Lake Mweru. These people have moved to the refugee camp in Zambia when RCD and the government forces clashed in Pweto. It has to be noted that Pweto, like Mweru, is changing hands almost daily.
361. The staggering number of internally displaced persons in the DRC provides a breeding ground for potential asylum seekers, particularly those living in border areas with other countries. IDPs are extremely vulnerable to health problems as they lack access to health care, live in substandard housing conditions and survive

²³⁷ Global IDP Database of the Norwegian Refugee Council, 20 May 2003, pp. 8, 47; UN OCHA August 2002.

²³⁸ UN Office for the Coordination of Humanitarian Affairs, *Affected Populations Report DRC*, August 2002.

on very little food. About 74% of IDPs are women and children, according to government statistics. People are moving from one place to another to reach food or to flee insecurity.

B. Refugees in the DRC

1. General Situation²³⁹

362. All neighbouring countries, except Zambia and Tanzania, produce refugees seeking asylum in the DRC. The DRC was hosting by the end of 2002 332,978 refugees of the following origin: Angola (184,201), Burundi (19,374), Central African Republic (2,864), and Republic of the Congo (7,212), Rwanda (20,510), Sudan (75,781), Uganda (23,012) and other (24).
363. There are some 70,000 Sudanese refugees in north-eastern DRC, based mainly in the Province Orientale. Some Ugandan refugees remain in the Province Orientale and in North Kivu. There are still some 20,000 Ugandan refugees in the Province Orientale and in North Kivu. Even after the repatriation has officially been completed, a number of Rwandese refugees remain, mostly hiding in the rainforest and prevented from getting out by either the ex-Forces Armées Rwandaises, the militiamen, or simply because of general insecurity. They are extremely difficult to reach. To address this, UNHCR has opened 14 assembly points and 3 transit centres in North and South Kivu and in Maniema. On market days people with water and food are posted at these assembly points. This has allowed UNHCR to get access to those who would like to be repatriated to Rwanda. They are brought to Goma or to Bukavu for a medical check-up, and after 7-10 days they are transferred to Rwanda, their country of origin. Although the operation is a voluntary repatriation, in some cases it resembles an evacuation, as many of them might be captured or detained by rebel movements once they leave the forest. Around 80% of those repatriated are women and children. It is believed that they are brought to UNHCR by the heads of their families either in preparation for a return to normal life or because they want to take up arms. UNHCR estimates this group to amount to around 27,000 people.
364. In the areas of Baraka and Fizi in the south, there are Burundian refugees. Those are insecure areas inaccessible by UNHCR. Burundians are also in the South-Kivu, where the FDD, the Burundian opposition movement, is operating. The Burundian government claims they are supported by the Kinshasa government and have links either to government held parts of the country or to the FDD political wing supporting the movement from outside of Burundi. A residual caseload of about 2,000 refugees, namely Rwandese and Burundian Hutus, is in the province of Kasai Orientale (probably due to the closeness of Mbuyi-Mayi). UNHCR assists them in getting settled. While the integration of Hutus is problematic in the east of the country, it is possible in this part of Kasai Oriental.
365. In the south-west, near the border to Angola, as well as south-west of Kinshasa there are Angolan refugees assisted by UNHCR. Angolans are the biggest refugee

²³⁹ See also Country Operations Plan, on Refworld 2003 and on www.unhcr.ch/cops/.

group in the DRC; the total is around 144,000 refugees. The majority of Congolese of Congo-Brazzaville (in 1998, 50,000 of them crossed the border to Kinshasa) have returned in spontaneous return movements. There remains a residual group of around 1,500 people. After the mutiny in Bangui, the capital of the Central African Republic, around 30,000 people crossed the border to Zongo in 2001. They have returned quietly. Out of these 30,000 we have only 135 left in Zongo.

Numbers at a Glance		Source
Internally Displaced Persons	2,706,993	UN OCHA (January 2003)
Refugees from the DRC	389,500	UNHCR (February 2003)
Refugees in the DRC	287,000	UNHCR (July 2003)

2. Legal Framework

366. The DRC is party to the Geneva Refugee Convention of 28 July 1951 (signed on 19 July 1965), the Protocol of 31 January 1967 (signed on 13 January 1975) and the OAU Convention governing the specific aspects of refugees problems in Africa of 10 September 1969 (signed on 14 February 1973). The DRC is also party to the Charter of the OAU since 13 September 1963 and the African Charter on Human and People's rights since 20 July 1987. The International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant as well as the International Covenant of Economic, Social and Cultural Rights were acceded to on 1 November 1976. The Convention of the Rights of the Child was ratified on 27 September 1990 and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was acceded to on 18 March 1996; the DRC acceded to the International Convention on the Elimination of All forms of Racial Discrimination on April 1976.
367. Three years of preparatory work carried out jointly by the DRC Government and UNHCR led to the adoption on 16 October 2002 of the Law 021/2002 on the Status of Refugees in the Democratic Republic of Congo. The DRC President subsequently promulgated the law on 16 October 2002. The law provides the legal framework for the attribution of the refugee status and the improvement of the conditions of refugees and creates eligibility bodies competent for determining the refugee status of persons seeking asylum in the DRC: the National Commission for Refugees (Commission Nationale pour les Réfugiés/CNR) and the Appeal Commission (Commission des Recours). Local representations of the CNR are foreseen at a provincial level.
368. Despite the adoption of the Law on the Status of Refugees in the DRC, no further steps were taken before the end of the year towards its concrete implementation (i.e. adoption of an implementation decree). As long as the eligibility commission is not in place and functioning, UNHCR will continue to recognize refugees under its mandate,

3. Principle of Non-Refoulement

369. In principle, the Law 021/2002 of 16 October 2002 on the Status of Refugees in the DRC provides that no refugee or asylum seeker shall be *refouled* or expelled to a country where his life or freedom may be at risk for reasons of race, religion,

nationality, membership to a particular social group or political opinions or to his country of origin if the latter is subjected to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of the territory (article 30). Monitoring of the respect of the principle of *non-refoulement* is difficult in most of the rebel-controlled areas for security and lack of access constraints. In Aru area, UNHCR was not able to resume its presence in Boga, where Ugandan refugees had been provided assistance until August 2002 when our implementing partner had to evacuate for security reasons. Similar observations apply to colleagues working in North and South Kivu and Maniema provinces in eastern DRC where the deterioration of the situation since the withdrawal of Rwandan troops has not enabled UNHCR to access the refugees.

370. In the Equateur Province, which is under MLC control, Jean-Pierre Bemba, the MLC leader, has repeatedly reassured UNHCR that he would not *refoule* Central African refugees despite his close relationships with and support to the Central African President. There has been no report of *refoulement* of Angolan refugees in Bas-Congo, Kahemba and Katanga provinces. In the context of security agreements with its Congolese and Angolan counterparts, the DRC Government has repeatedly said that it would not hesitate to hand over ex-UNITA members or ex-FLEC activists to the government of Angola, or Congolese (RoC) refugees should they try to organise subversive activities against their country of origin.
371. The *refoulement* of 2 Sudanese refugees in Aru was reported to the office. The new comers had allegedly been asked to provide money to Congolese border authorities upon arrival in Doruma. Their personal belongings were subsequently seized and the two men were not given the possibility to enter the DRC territory.
372. The situation of Rwandan refugees throughout the country has drastically changed since the conclusion of the Pretoria Agreement between the DRC and Rwanda on 30 July 2002, by which the DRC will disarm ethnic Hutu Rwandan militias (ex-FAR and Interahamwe) on its territory and Rwanda agrees to withdraw its troops. The agreement reiterates the content of the Lusaka Cease-fire agreement of 1999 regarding the tracking down and disarmament of ex-FAR and Interahamwe forces on the territory of the DRC and creates the Third Party Verification Mechanism composed of the UN Mission in the DRC and South Africa.
373. Article 8.4 of the said agreement provides that MONUC, acting together with all relevant UN agencies, should be requested to immediately set up processes to repatriate all Rwandese, ex-FAR and Interahamwe to Rwanda, including those in Kamina, in coordination with the government of Rwanda and the DRC. While MONUC and other UN agencies, including UNHCR, repeatedly stressed the voluntary character of the repatriation, South Africa has opted for a repatriation programme by any means, even by force. As a direct consequence of this position, 8 Rwandan refugees were forcibly *refouled* to Rwanda on 30 October 2002.

4. Admission and Readmission of Asylum-Seekers at Border Points and Existing Reception Arrangements

374. All border posts with Angola but Matadi remained closed until the second half of 2002. In the context of security and repatriation agreements/discussions between

the DRC and Angola, the following posts reopened Lufo, Kipangu, Kindompolo, Kivandaba and Kimvula in Bas-Congo, Shamushamu, Shamukwale and Mutekami in Kahemba. The official closure of border points did not however impede asylum seekers to enter the DRC territory and apply for asylum. Asylum seekers have a general access to refugee status determination procedures and/or to protection and assistance once DRC authorities agree to recognise them as refugees on a *prima facie* basis.

375. During the year 2002, the DRC granted protection to some 8,000 new *prima facie* refugees, most of whom arrived from the Republic of the Congo (4,400) and Angola (3,600). Congolese refugees fled the resumption and expanding of the fighting in the Pool region; their presence and number estimates in the Bas-Congo province was reported to UNHCR by local authorities.
376. UNHCR office and local authorities in Kimvula drew Kinshasa's attention in September 2002 to the arrival of Angolans who had not previously been registered with the authorities or UNHCR. The information collected during various sectorial missions indicated that the group was mainly composed of Angolans who had crossed the DRC border several months before. They had not however been able to reach the camps due to lack of information or lack of transport or no possible access from Bandundu Province (no shuttle to cross the river from Tembo and Popokabaka areas). The group was also composed of Angolans coming directly from areas in Angola where they had been hiding until the withdrawal of UNITA and where there was absolutely no assistance. A few cases had been refugees in the DRC and had taken the decision to spontaneously repatriate to Angola; upon arrival in their respective places of origin, they could not sustain themselves because of lack of local authorities, assistance or rehabilitation programmes. They therefore chose to come back to the DRC and were granted refugee status by the DRC authorities.
377. Furthermore, 1,400 Sudanese arrived in the DRC in 2002, fleeing ongoing fighting in South Sudan, forced recruitment by the Sudan People's Liberation Army (SPLA) and gross human rights violations (torture, murders, kidnapping, sexual violence, forced marriages).

5. Protection Against Expulsion, Deportation and Extradition

378. The DRC's extradition procedures are regulated by the decree of 12 April 1986. Bilateral extradition agreements exist between the DRC and Burundi and the DRC and Rwanda. A tripartite agreement also regulates extradition procedures between the DRC, Angola and the Republic of the Congo. Refugee protection against extradition is ensured by the application of the international legal instruments to which the DRC is party as well as by universally recognised human rights.
379. The Law 021/2002 of 16 October 2002 on the status of refugees in the DRC provides that when a refugee or an asylum seeker is being expelled for reasons of nationality or public order, s/he shall be allowed to submit evidence to clear himself before the National Refugee Commission or the Appeal Commission which advice shall be sought. When the decision of expulsion is maintained, a reasonable delay shall be given to UNHCR to submit the case for resettlement (article 31).

C. Refugees in Neighbouring Countries

380. Those who managed to leave the DRC are in Tanzania, where UNHCR has registered 200,000 refugees from mainly the shores of the lake of Tanganyika, the area of North- and South-Kivu and north-eastern Katanga. Most of them are in refugee camps near the city of Kigoma, which is not far away from the lake area. Other neighbouring countries which are also receiving Congolese refugees include Zambia, having announced between 60,000 and 100,000 Congolese refugees, and the Republic of the Congo with 100,000 refugees, fleeing the prisons of the MLC troops in the province of Equateur and staying mainly in the north of the Republic, as well as over 2000 individual cases, who have launched request for asylum in the city of Congo-Brazzaville. A few Congolese refugees, less than 1,000, are in Burundi. In Uganda, there are some 10,000 Congolese as well. The caseload in Rwanda – between 24,000 and 30,000 – is mainly made up of Banyamulenge, Congolese of Tutsi origin.
381. Congolese refugees living in neighbouring countries are also potential asylum seekers in a second or a third nation due to the existence of conflicts in the country of asylum.
382. Especially with regard to Congo-Brazzaville, there arises the question of the security of asylum. Kinshasa and Brazzaville are the closest capitals in the world and events in Kinshasa are followed very closely by the authorities in Brazzaville, and vice versa. Neither UNHCR nor any other human rights or humanitarian organisation is fully aware of what is going on between the two capitals. Recently UNHCR had to relocate some 60 refugees and asylum seekers from Brazzaville to Pointe-Noire, another city further southwest, for security reasons. Based on the events of April 2001 and having received information that the government of Brazzaville probably tends to send a few refugees back again this year, they took the decision to displace these people to the south in order to make it more complicated logistically for the authorities to expel these people from Congo-Brazzaville to Kinshasa. Otherwise, they would have just had to take them across the Congo River and hand them over to the Kinshasa authorities. This group of about 60 people were members of the so-called Masasu group, going back to executed Commander Masasu. Yet, some Congolese of Tutsi origin were also still in Brazzaville. A durable solution to their problems would be resettlement to a third country.
383. Brazzaville itself has its own opposition rebel movements. During an attack in Brazzaville on 9 May 2002, arms were apparently distributed to the Hutus present in the city, Congolese of Tutsi origin were feared to be in danger, and so UNHCR had to relocate all these people as well. The currently 60 people in Pointe-Noire are waiting for a solution through either resettlement or perhaps relocation in a third country of asylum, be it through a normal process of resettlement or through other negotiations to bring them to a safe area.
384. While able to cross the border to Congo-Brazzaville, Congolese refugees with either political or family ties with the opposition or the ethnic groups in the Congo may still be at high risk. Their situation remains a matter of concern.

385. UNHCR is very prominent in the refugee status determination procedures in neighbouring countries where asylum-seekers from the DRC may be at risk of being returned to the DRC. If a country denies asylum and UNHCR is convinced that the case is valid, it will find another country of asylum within the region. UNHCR often resorts to relocation within the same country when a certain group of people is believed to be in danger. This makes it much more difficult for the government to deport or expel a person.

D. Return of Failed Asylum Seekers

386. Asylum-seekers from the DRC rejected after going through fair eligibility procedures may still face problems if deported home. In eastern DRC, return has not been sustainable, as renewed fighting and security threats have led to multiple displacement for some groups of people. Moreover, the authorities have been of little assistance, especially in territories controlled by rebel groups.
387. Access to land is a major obstacle, as there are conflicts between customary and written law. Some chiefs, under customary law, have used and even sold the lands of people who have fled. Others have taken advantage of the fact that customary property was not properly registered, and put the property in their own name.²⁴⁰
388. Issues such as the individual's place of origin, last place of habitual residence, family relations, ethnic group, and profession should be considered before the person is deported. An individual approach is therefore required based on the circumstances of each case and careful consideration of the changing political and security context in the DRC.
389. The police of the deporting country escort the majority of deportees sent back to the DRC. According to the authorities, when the deportee returns with a travel document "tenant lieu de passport," he/she is referred and accompanied to the immigration office in the centre of the capital to complete immigration formalities. The authorities reiterate that the deportee, while he/she is completing immigration formalities, is not a detainee and that as soon as Congolese nationality is confirmed the person is allowed to leave immigration premises.

1. Determination of Nationality

390. The problem in the deportation procedure may occur when the deportee is in fact a non-Congolese national and has acquired a DRC passport in a fraudulent manner. The DRC immigration authorities indeed reported to UNHCR and the local office of the UN High Commissioner for Human Rights (UNHCHR) in Kinshasa that in several instances deportees holding identity/travel documents issued by the DRC diplomatic missions turn out to be non-Congolese nationals after a thorough interview. In such cases, there have been reports that persons suspected of being nationals of countries considered as "unfriendly" (e.g. Uganda, Rwanda) may be arbitrarily detained and face ill-treatment. Nationals of other countries would normally be released after interrogation. However, in cases the authorities consider instances of trafficking in fraudulent documents, individuals have reportedly been

²⁴⁰ Norwegian Refugee Council, *Advocating for IDP Protection in the Democratic Republic of Congo*, April-September 2003, p. 13.

taken to court on charges of possession of fraudulent documents and sentenced accordingly. Such cases may eventually be handed over to the embassy of their respective country of origin in Kinshasa in view of expulsion, or to the IOM if the embassy is not available.

391. It is therefore recommended that *States carefully ascertain the nationality of rejected asylum-seekers before they are processed for return to the DRC.*

2. Detention Upon Return

392. While the DRC authorities maintain their position as to the procedure in place to receive deportees, the UNHCHR has received reports on deportees transferred to the DRC security services such as ANR (Agence Nationale des Renseignements) and DEMIAP (Détection Militaire des Activités Anti-Patrie / Military Detection of Unpatriotic Activities) for interrogation. The DRC authorities deny these allegations. The Minister of the Interior recently announced that these two security services no longer officially operate at the Ndjili airport of Kinshasa. Currently, only the police and the DGM (Direction Générale des Migrations) are officially operating at the Kinshasa airport level. The remaining security services reportedly have not in fact ceased their operations, maintaining an unofficial presence.
393. While few cases of deportation to the DRC are reported to UNHCR/UNHCHR, reports from local human rights NGOs and victims show that certain individuals who are deported (regardless of whether they sought asylum abroad), or even repatriated voluntarily, may face serious problems if interrogated by security services upon arrival to Kinshasa. Should the authorities in Kinshasa discover that a deportee has a political or military profile, or has sought asylum abroad owing to a political or military background, such person may be at risk of arbitrary detention and ill-treatment.

3. Obtaining Information Before Return

394. Another important issue is where in the DRC he or she should be returned. If they are from the east, there is no way they may be returned there straight away. Since this part of the country of the DRC is virtually closed in, it would be necessary to cross over countries like Uganda, Rwanda, Kenya, or Burundi. Lubumbashi is receiving international flights from South Africa from time to time, yet although it is an international airport, it is very difficult to return a person to Lubumbashi and get information on what would happen to him/her after the return. Moreover, they may return to find that their property has been taken. In Kinshasa, by contrast, it is possible to obtain information from diplomatic missions or NGOs.
395. It is a common practice of UNHCR to share information on the country of origin. The only advice UNHCR normally gives to those asking for country of origin information from the capital is that such an enquiry should not put in jeopardy the security of the family members. Once the authorities learn that somebody is asking for information or a background check on an individual, it may pose a danger to family members. Yet, UNHCR does share general country information, and sometimes is in the position to answer very specific questions on an individual case, particularly if that individual case is well known and can easily be traced. It is also possible to provide information about the area of origin, e.g. on Kisangani.

There is a lot of information from the mission of the UN, NGOs or the clergy, and UNHCR tries to use this as a source of information without jeopardizing the situation of the family members.

4. Persecution on the Grounds of Seeking Asylum Abroad

396. UNHCR is not aware of cases where people had been detained solely for seeking asylum. Usually they are accused of some offence, like alliance with the enemy, as, for example, in the case of people from Kivu, having fled to Nairobi and subsequently to Europe and then being deported to Kinshasa. Upon arrival, they may be accused of being sympathisers or supporters of the armed opposition. There is a greater likelihood of bringing an additional charge that may be the main reason for a person to be held, instead of only the fact of seeking asylum.
397. Difficulties have occurred when countries of asylum have deported someone and handed over all the information about this asylum seeker to the home government. Informing them that the applicant has e.g. claimed that he was imprisoned and beaten could cause serious problems for the individual. There was the case of a Rwandese who was in the final stages of being granted refugee status in a European country and approached the host country's authorities to be issued proper travel documents. The authorities decided to contact the Rwandese embassy, inquiring about this person, and received the reply that he was involved in the genocide. This approach is something that must in all cases be avoided. Reporting to the authorities of the country of origin about the asylum claim obviously could create serious trouble for a person who may not have problems otherwise.

5. Return to a Situation of Internal Displacement

398. For someone from Equateur, it has to be kept in mind that Equateur is in the hands of the MLC. Hopefully, the ongoing talks on the framework agreement, if implemented, will allow people to move freely in this part of the country, but it has to be remembered that people from Equateur coming to Kinshasa may be seen as a threat to the government.
399. The framework agreement would in fact enable returns and give the government the possibility to control the movement of refugees, asylum seekers and IDPs back to their areas of origin. However, in the present context, a person from Equateur should not be sent to Kinshasa without a background check.
400. Another aspect that should be considered is the humanitarian situation for internally displaced persons. If someone from Equateur is returning to or deported to Kinshasa, it is difficult to facilitate travel from Kinshasa to Equateur. There is no direct easy access to Equateur; they may have to be flown there. Even if they were safe in Kinshasa, they could easily be stranded in the city for months, even years, not being able to join their family. Then people are captivated in a situation where they cannot find a job, accommodation, etc. and may not be able to survive by themselves. Moreover, these individuals may also be confronted with illness, and then the issue of lack of access to medical care arises again.
401. Even people with money find themselves in a difficult situation. First, there is a high probability that it would be taken from them on their arrival by the security

forces. Second, even if they manage to keep their money, they need security clearance to leave Kinshasa to go to other areas, if they are accessible in the first place. Such persons may also become stranded in Kinshasa, trying to obtain authorisation to travel from Kinshasa to an area that may even be controlled by the government as well.

402. The economic and social fabric of the DRC has all but disintegrated because of decades of neglect, oppression, and conflict. In the current chaotic situation, affecting the very survival of large segments of the population, humanitarian considerations should be given the broadest possible interpretation whenever return is envisaged.
403. Therefore, *UNHCR cautions against any forcible returns to areas outside Kinshasa, notably in view of the lack of socio-economic support necessary for sustainable re-integration in the countryside. Persons originating from Kinshasa, and who are not in need of international protection, may be returned there, provided that family links and economic support in the capital are sufficient.*²⁴¹

VI. Conclusions

404. The economic and social fabric of the DRC has all but disintegrated because of decades of neglect, oppression, and conflict. In the current chaotic situation, affecting the very survival of large segments of the population, humanitarian considerations should be given the broadest possible interpretation whenever return is envisaged. UNHCR has cautioned, therefore, against any forcible returns to areas outside Kinshasa, notably in view of the lack of socio-economic support necessary for sustainable re-integration in the countryside. Persons originating from Kinshasa, and who are not in need of international protection, may be returned there, provided that family links and economic support in the capital are ascertained.
405. The political and social situation in the DRC remains critical despite some progress in the ongoing peace process. According to many humanitarian observers, insecurity in the DRC is likely to continue despite the establishment of a new government: many armed groups are not part of the peace process, and it is not certain that former rebel groups can transform into political movements. Power sharing is not easily accepted, and all means have been used to hold sway over the central authority in order to control the wealth of the country.
406. As long as the conflict continues, so shall the egregious human rights abuses continue. Despite impressive achievements at the national level, the DRC will remain a significant exporter of citizens fleeing persecution and misery resulting from political and economic mismanagement, exacerbated by the pillaging of the country's resources by local and foreign elites, whose truest interests lie closer to the consolidation of their gains.

Geneva
October 2003

²⁴¹ ACCORD/UNHCR.

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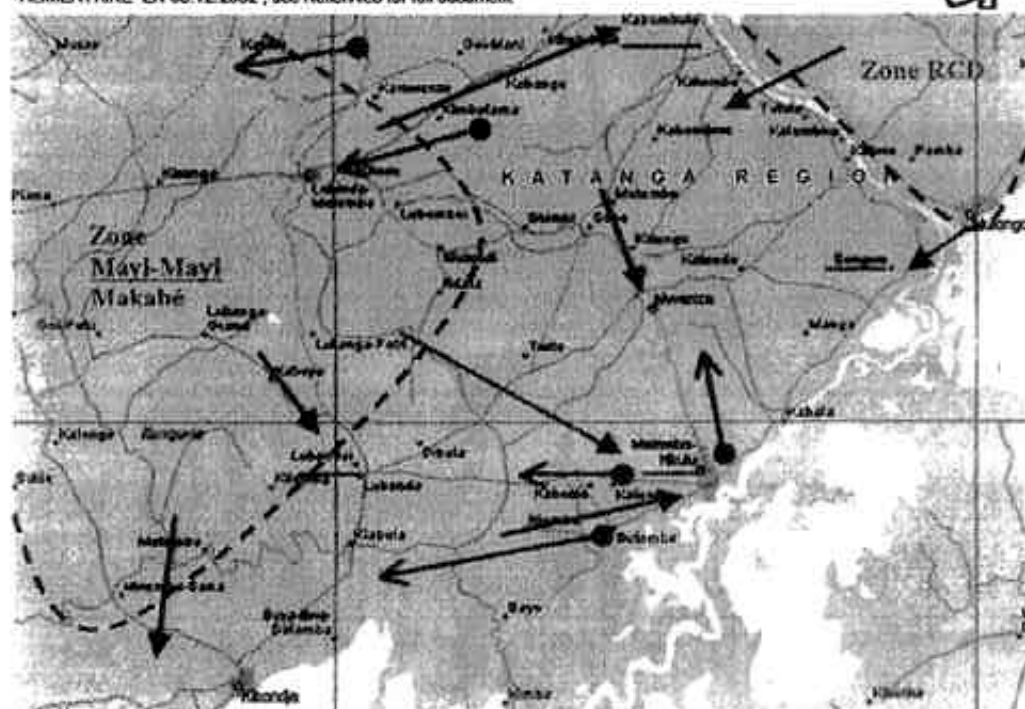
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Democratic Republic of Congo Internally displaced people Movements



Map extracted from FAO, INFORMATIONS SUR LA SECURITE ALIMENTAIRE EN 30.12.2002, see ReliefWeb for full document



Mouvement IDP's (tendance des déplacements jusqu'en Août 2002) →

Retour (depuis accord de paix) ●→

Principaux lieux de concentration des déplacés —

C. Statistics

Asylum applications lodged in industrialized countries, 1993-2002

Origin: Democratic Republic of Congo

Figures generally refer to applications lodged in first instance.

All 2002 figures are provisional and subject to change. A dash ("-") indicates that the value is zero or not available.

Values between 1 and 4 indicated with an asterisk.

Source: UNHCR/Governments. Compiled by: UNHCR, Population Data Unit, PGDS.

Query
date:

23 July 2003

Country	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
AUL	-	-	-	-	8	-	5	-	-	-	18
AUS	38	43	48	62	92	150	134	92	67	50	776
BEL	4,016	1,963	972	860	1,230	1,714	1,402	1,421	1,371	1,789	16,738
BUL	-	-	-	-	-	-	-	-	-	19	25
CAN	322	417	592	1,127	767	744	880	985	1,245	649	7,726
CYP	-	-	-	-	-	-	-	-	-	-	8
CZE	15	18	8	15	14	18	39	18	-	-	145
DEN	12	22	13	16	11	16	14	34	32	12	182
FIN	67	41	34	13	10	18	5	27	23	53	291
FRA	2,197	1,765	1,241	1,064	1,348	1,778	2,272	2,950	3,781	5,280	23,656
GBR	630	775	935	690	690	660	1,240	1,030	1,395	2,315	10,320
GFR	2,896	1,579	3,277	3,722	2,907	948	801	695	859	1,007	18,691
GRE	7	-	-	6	11	18	-	13	32	65	156
HUN	-	-	5	12	-	8	27	5	15	-	78
ICE	-	-	-	-	-	-	-	-	-	-	-
IRE	-	6	14	112	704	246	272	358	281	270	2,265
ITA	30	24	35	48	59	149	25	71	93	64	596
JPN	-	-	-	-	-	-	-	-	-	-	-
KOR	-	-	-	-	7	-	-	16	6	-	32
LUX	-	-	-	7	5	5	-	9	18	26	75
LVA	-	-	-	-	-	-	-	-	-	-	-
MTA	-	-	-	-	-	-	-	-	-	8	9
NET	1,305	2,180	771	435	592	411	252	539	500	522	7,507
NOR	6	16	11	7	7	5	5	8	-	15	83
NZL	-	-	-	-	-	-	-	-	-	-	6
POL	-	-	-	5	8	-	-	-	-	-	33
POR	98	-	6	28	36	28	9	12	10	6	233
ROM	-	-	-	-	240	-	9	-	-	-	258
SPA	68	87	30	71	114	207	161	90	118	175	1,121
SVK	-	-	-	-	-	-	-	-	-	-	-
SVN	-	-	-	-	-	-	-	-	-	-	7
SWE	69	37	33	19	36	35	48	86	45	108	496
SWI	357	276	320	695	605	536	523	540	602	746	5,209
TUR	-	-	-	-	-	-	-	-	-	24	35
USA	-	-	-	163	346	299	194	260	217	385	1,864
Total	12,136	9,254	8,353	9,140	9,854	8,005	8,328	9,253	10,736	13,585	90,644

Notes

* DEN: Includes applications lodged at embassies abroad.

** GFR: 1995-1997 includes re-opened applications.

Figures for the USA and UK refer to cases.

On average, there are some 1.3 persons per asylum case in the United Kingdom and 1.4 persons per case in the USA.

Annual Statistical Report

Year covered:	2002
Country of asylum / residence being reported:	Democratic Republic of Congo

Table I. Refugees and others of concern to UNHCR – Summary

Type of population	Data element	Begin year(*)	End of year
1. Refugees	Total refugee population	362,012	332,978
2. Asylum-seekers	Total pending applications	308	397
3a. Returned refugees	Total returns during past 2 years	14,226	11,571
3b. Returned IDPs	Total IDP returns during past 2 years	-	-
4a. Internally displaced	Total IDP population (of concern to UNHCR)	3,458	9,000
4b. Others of concern	Total Others (of concern to UNHCR)	-	-
Total population of concern		380,004	353,946

(*) Should equal End-of year previous Annual Statistical Report.