



OPERATION MBATA YA BAKOLO

MASS EXPULSIONS OF
FOREIGN NATIONALS IN THE
REPUBLIC OF CONGO

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2015 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2015

Index: AFR 22/1951/2015
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

ISBN:
ISSN:

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Cover photo: A woman arrived from Brazzaville at Ngobila Beach, the port of Kinshasa, with her children. © Habibou Bangré

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EXECUTIVE SUMMARY

Mbata ya Bakolo (Slap of the Elders in Lingala), a law-enforcement operation started by the Republic of Congo on 4 April 2014, resulted in the deportation across Congolese frontiers of at least 179,452 nationals from the Democratic Republic of Congo (DRC). The operation was established in response to a perceived increase in criminality, which the authorities believed was being driven by *kuluna*, members of criminal gangs from the DRC. This report documents crimes under international law, and human rights violations committed by agents of the Republic of Congo or by persons acting with the authorization, support or acquiescence of the authorities of the Republic of Congo, as part of operation *Mbata ya Bakolo* or as a consequence of it. Operation *Mbata ya Bakolo* was originally planned to be conducted for 15 days, yet the Police spokesperson told Amnesty International in September 2014 that “*the operation would only end when its final objective had been achieved*”. Based on the evidence presented in this report, Amnesty International considers that many crimes committed as part of operation *Mbata ya Bakolo*, including arbitrary detentions, deportations, torture, rape and other crimes of sexual violence, persecution and other inhumane acts, may amount to crimes against humanity.

All official communication on the operation indicates ‘illegal migrants’ as the operation targets. Yet, in the operation’s implementation DRC nationals were quickly equalled to *kuluna* and targeted, without any evidence of links to criminal organisations and mostly irrespective of their migration status. DRC nationals were targeted for stops, identification checks, arbitrary arrests and detention. They were often forcibly rounded up from their homes in the middle of the night or before dawn and arbitrarily arrested solely on grounds of nationality. Rounds up of people also happened in the streets and markets. At no point were any of those arrested shown a warrant or any other document relating to the charges or other ground on which the arrests were being carried out. The police frequently used excessive force during arrests. They intimidated and frightened people, extorted money and took or destroyed property and other valuables. In some cases, the police raped women and girls.

During the operation forcible returns of asylum seekers and refugees, as well as other violations of the principle of *non-refoulement* took place. The police facilitated transport from police stations to “the Beach”, the port of the city of Brazzaville and border crossing to the DRC, from where DRC nationals would take a boat to make the crossing back into the DRC. Those arrested and taken to “the Beach” by the police had no chance to challenge their deportations. Moreover, expulsions of DRC nationals happened nation-wide. Arrivals of DRC nationals were registered at 33 DRC border posts, in the provinces of Bandundu, Bas-Congo, Equateur and Kinshasa. Mass expulsions of DRC nationals stopped in September 2014. However, around the time this report was finalised in May 2015, a new phase of operation *Mbata ya Bakolo* was started in Pointe-Noire.

The police made considerable use of media platforms and outlets to publicise the operation and inspire public cooperation. They made announcements on radio, television and through megaphones encouraging the general population to provide any information they had about “criminal households” in their neighbourhoods. The police also levied fines of CFA300,000 (US\$600) on landlords with “illegal” tenants. Local artists composed songs “the

Ngala [foreigners or DRC nationals] are going home now, let us save our jobs and let them go”, which were broadcast over the radio and played in public transport vehicles.

Operation *Mbata ya Bakolo* and the xenophobic attacks and behaviour it caused among the general population created an environment in which DRC nationals were unable to enjoy their rights, including the rights to non-discrimination, security of person, work, adequate housing, education and access to healthcare. It instilled fear in DRC nationals, effectively confining them to their homes, to avoid being subjected to verbal abuse and harassment by the general population; or to harassment, extortion, beatings and arbitrary arrest by the police. As a result, many DRC nationals felt that they had no choice but to leave. The authorities said that these returns were “voluntary”, but they are in fact disguised expulsions and a violation of international law.

Considering the number of allegations of abuses by police officers documented by Amnesty International, the organisation is concerned that to date there has been no accountability for the crimes under international law and human rights violations that have taken place during operation *Mbata ya Bakolo*. Despite the numerous allegations, no serious attempt to investigate, prosecute and punish those responsible for the violations of human rights has taken place. DRC nationals who suffered violations face serious obstacles accessing remedies. Some DRC nationals who remained in the Republic of Congo told Amnesty International that they cannot complain to the police because they are afraid that the police will target them for arrest, or that they will be expelled. Those who experienced violations during expulsion no longer have access to remedies in the Republic of Congo. The Republic of Congo and the DRC made various public commitments to set up a joint commission to investigate allegations of human rights violations committed during the *Mbata ya Bakolo* operation, but at the time of writing, no action by either government to implement these commitments had been taken.

Amnesty International is particularly alarmed by the arrests, detentions and deportations that have been taking place since 14 May 2015. The government must immediately halt this new phase of the operation, and guarantee the non-repetition of mass deportations of DRC nationals and other foreigners. The Republic of Congo authorities should additionally ensure that all allegations of crimes under international law and human rights violations committed during operation *Mbata ya Bakolo* are promptly and thoroughly investigated by a competent, impartial and independent body of civilian character and abrogate all policies which are discriminatory—whether in law or in practice—and still in force.

I. METHODOLOGY

This report is based on field and desk research conducted between April 2014, when *Mbata ya Bakolo* commenced, and April 2015.

Amnesty International deployed a team of researchers to the Republic of Congo and DRC, who visited Brazzaville and Pointe-Noire in the Republic of Congo, and Kinshasa in DRC in September 2014. They conducted 112 interviews with families and individuals who were directly affected by operation *Mbata ya Bakolo*. In the Republic of Congo the team spoke to 84 families and individuals, all of whom were refugees, asylum seekers or rejected asylum seekers.¹ In Kinshasa Amnesty International researchers interviewed 28 families and individuals, all of whom had been expelled or otherwise returned.² Amnesty International was directly in contact with some of the people interviewed before the field mission; others were identified by local human rights organisations in both countries. Interviewees were keen to share their story with Amnesty International, but did not want their identities revealed. Therefore all names of victims provided in this report are pseudonyms.

In the Republic of Congo the research team met with the Ministry of Justice; the Deputy-Director of the National Police, who was also the Police Spokesperson and Director for Public Security; the National Committee Assisting Refugees (*Comité national d'assistance aux réfugiés*, CNAR) and the National Human Rights Commission (*Commission nationale des droits de l'homme*).³ The team also met with the office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM). In addition, the team met with several diplomatic missions, journalists and a range of national human rights organisations who shared their views and experiences of the operation.

In Kinshasa the team met with the Minister of Interior and the Ministry of Justice, as well as the head of the division of social affairs of the municipality of Kinshasa, IOM and the United Nations Children's Fund (UNICEF). The team also met officials from UNHCR and the UN Joint human rights office of the UN Organisation Stabilization Mission in the Democratic Republic of Congo (MONUSCO) as well as a range of humanitarian and human rights organisations and media workers based in Kinshasa.

¹ In the Republic of Congo, group interviews were conducted in French, Lingala and Swahili, without the use of a translator.

² Interviews were conducted in the Masina neighbourhood (*quartier Masina*), Kalamu neighbourhood (*quartier de Kalamu*) and in the municipality of Kinshasa (*commune de Kinshasa*). They were conducted in French and Lingala. For five interviews a Lingala translator was used.

³ The government officials interviewed shared information about the operation, including the concept note of operation *Mbata ya Bakolo*, a report discussing the protection of human rights during the operation and relevant legislation. All information shared is reflected in this report.

8 Operation *Mbata ya Bakolo*
Mass expulsions of foreign nationals in RDC

Amnesty International would like to thank all those who provided information.

II. OPERATION *MBATA YA BAKOLO*: AN ATTACK AGAINST DRC NATIONALS AND OTHER FOREIGNERS

1. CONTEXT

Operation Mbata ya Bakolo, or “Slap of the Elders” in Lingala, started in the Republic of Congo on 4 April 2014. Mass expulsions of nationals of the Democratic Republic of Congo (DRC) ended in September 2014. Government authorities presented it as a security operation in response to increased criminality, which the authorities believed was being driven by *kuluna* gangs (organised criminal gangs) from the DRC.⁴ Officials from the Ministry of Justice told Amnesty International researchers that crime had increased because “*following operation Likofi in DRC targeting the kuluna, they sought refuge here and started to commit crimes here [in the Republic of Congo]*”.

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Previously, the *Police Nationale Congolaise* of the Democratic Republic of Congo (PNC) launched operation *Likofi*, “punch” in Lingala, in November 2013, to dismantle the *kuluna* gangs operating in Kinshasa. Both the United Nations Joint Human Rights Office⁶ and international NGOs documented serious human rights violations perpetrated during operation *Likofi*.⁷ Before

⁴ The term *kuluna* refers to organised criminal gangs that operate in Kinshasa. They opportunistically attack pedestrians, robbing them of valuables such as watches, money, mobile phones and jewellery. They are usually armed with clubs, machetes or other sharp objects, such as broken bottles or knives and have injured or killed people who try to resist. Human Rights Watch, *Operation Likofi, Police Killings and Enforced Disappearances in Kinshasa, Democratic Republic of Congo*, November 2014, p. 12.

⁵ Meeting between Amnesty International and the Ministry of Justice, Republic of Congo, 12 September 2014. See also: Ministère des affaires étrangères et de la coopération, *Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l'Homme*, Brazzaville, September 2014, para. 13; annexed to a Letter dated 15 October 2014 from the Embassy of the Republic of Congo in Switzerland to the United Nations High Commissioner for Human Rights, (Government reply to joint communication UN Special Rapporteurs) [https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_\(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_(2.2014).pdf).

⁶ The United Nations Joint Human Rights Office reported nine extra-judicial executions and 32 enforced disappearances by the PNC. Press Release, UNICEF/MONUSCO, *DRC: UNICEF and MONUSCO concerned by reports on disappearances and murders of young people and children in Kinshasa*, 27 November 2013. MONUSCO, *Report of the United Nations Joint Human Rights Office on human rights violations committed by agents of the Congolese national police during operation Likofi in Kinshasa between 15 November 2013 and 15 February 2014*, October 2014.

⁷ Human Rights Watch (HRW) documented human rights violations perpetrated by the police during operation *Likofi*, including 51 cases of extra-judicial executions and 33 cases of enforced disappearances. Though some *kuluna* were arrested during operation *Likofi*, Human Rights Watch (HRW) reported that the police targeted young men and teenage boys because of their age or dress. Human Rights Watch, *Operation Likofi, Police Killings and Enforced Disappearances in Kinshasa, Democratic Republic of Congo*,

Operation *Likofi* was launched, the police conducted a 10-day awareness campaign to create fear among the *kuluna*, causing many to flee to other provinces in DRC or to Brazzaville.⁸

Amnesty International researchers secured a copy of the concept note of operation *Mbata ya Bakolo*, which states the following objectives:

*“- the kuluna phenomenon is eradicated;
- the barracks and illegal churches that serve as shelter for delinquents are destroyed; [...]*
*-Bandits and foreigners in an irregular situation are arrested.”*⁹

Although the concept note states that the main objective of the operation is the eradication of the phenomenon of the *kuluna*, it does not line out in detail how that objective will be achieved. While the deportations or expulsions of suspected criminals are not explicitly mentioned as a main line of action, several references in the concept note indicate that they were anticipated. For example, one of the risks of the operation is identified as the *“degradation of the relations with friendly countries in case of mass returns of foreigners to the border.”*¹⁰ The concept note does not mention any guarantee of procedural fairness, such as the bringing of arrested suspects before judicial authorities. The two only tasks of the judicial cells of the police forces participating in the operation are *“to lead investigations linked to the operation”* and *“to establish procedures for returns to the border”*.¹¹

Operation *Mbata ya Bakolo* was implemented by 1,212 police officers, who were under the sole command of the Director General of the police, General Ndengue.¹² The police in Brazzaville used local television, radio stations and megaphones to raise awareness about the operation and to encourage the general population to provide any information they had about “criminal households” in their neighbourhoods. Individuals interviewed told Amnesty International researchers that the police made statements such as: *“those who are hidden, with or without papers, you have to leave our country today”*,¹³ or *“If you see them, you call the police and we will come to arrest them”*.¹⁴

November 2014.

⁸ Human Rights Watch, *Operation Likofi, Police Killings and Enforced Disappearances in Kinshasa, Democratic Republic of Congo*, November 2014.

⁹ Ministry of Interior and Decentralisation, General Directorate of Police, « Concept d'opération 'Mbata ya Bakolo' du Directeur Général de la Police, relative à la lutte contre le phénomène 'Kouluna' dans la ville de Brazzaville », Brazzaville 3 April 2014, NMR : 00552/MID/DGP/DSP (« Mbata ya Bakolo » concept note), p. 2, See Appendix 1.

¹⁰ "Mbata ya Bakolo" concept note, p. 2.

¹¹ "Mbata ya Bakolo" concept note, p. 4.

¹² "Mbata ya Bakolo" concept note, p. 4. Amnesty International approached General Ndengue for comments on the content of this report, but received no response.

¹³ Interview with affected person 022, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014.

¹⁴ Interview with affected person 012, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

A number of measures, going beyond law enforcement, were taken to achieve the operation's objectives. The police requested the active involvement of the *chef de quartier, de zone et de bloc* (neighbourhood chiefs, area chiefs and chiefs of the blocks).¹⁵ According to the testimonies collected by Amnesty International, the police distributed forms to all the *chefs de quartier* (neighbourhood chiefs) to identify all "foreigners" living in their district.¹⁶ According to other testimonies, the police also asked school personnel to demand that DRC children leave their schools and their families to go back to the DRC (see section IV.5 below). According to one account, the police also called meetings with pastors, telling them that they would be fined CFA300,000 (US\$600) if they allowed DRC nationals into their churches.¹⁷

The police also announced that it would levy fines of CFA300,000 (US\$600) on landlords with "illegal" tenants. The director of public security and spokesperson of the police confirmed to Amnesty International: "*I personally asked all police officers to impose a fine of CFA 300,000 to landlords that are housing illegals and I asked the police officers to use that money directly to continue the work. I thus confirm that this money has not entered into the treasury of the state, but served to support the work of the police.*"¹⁸ According to one report, the same fines were asked from hotels hosting foreigners.¹⁹

On 27 June the Director General of the police announced operation *Longwa na nzela*, "free the roads", an off-shoot of *Mbata ya Bakolo* (see section V below). *Longwa na Nzela* implemented a 2011 decree that only Congolese nationals could earn a living as a driver.²⁰ As a result, the police started stopping drivers for nationality checks. Amnesty International spoke to several DRC nationals who lost their jobs and livelihoods as a consequence. General Ndengue explained that operation *Longwa na nzela* was launched because "*Operation Mbata ya Bakolo has grown in scope. Cleaning up a city is also combatting criminality on public roads. Because on the public roads, there are also kuluna.*"²¹

Three weeks into operation *Mbata ya Bakolo*, the number of people crossing the river from Brazzaville to Kinshasa increased significantly. According to the General Directorate for Migration of the Democratic Republic of Congo, 4,762 people, on average, crossed the river from "the Beach" in Brazzaville and arrived on Ngobila Beach, Kinshasa every day between 23 April and 13 May 2014.²² Between 16 May and 7 September 2014, 21,381 persons passed through the

¹⁵ "*Mbata ya Bakolo*" concept note, p. 3.

¹⁶ Interview with Mme Elenga, neighbourhood chief and commissioner on the National Human Rights Commission, Amnesty International, Brazzaville, 11 September 2014, Interview with diplomatic mission in Brazzaville, 9 September 2014.

¹⁷ Interview with anonymous pastor, national of the Republic of Congo, Brazzaville, 9 September 2014.

¹⁸ Meeting with Colonel Jules Tchoumou, the spokesperson of the General Directorate of the Police, Amnesty International, 10 September 2014

¹⁹ Interview with diplomatic mission in Brazzaville, 9 September 2014.

²⁰ Decree No. 2011-480 of 29 July 2011.

²¹ Official announcement of operation *Longwa na nzela*, available at <https://www.youtube.com/watch?v=UJaD6IoLkpl#t=27> (last accessed 29 January 2015)

²² General Directorate for Migration, Democratic Republic of Congo, *Statistique des Congolais expulsés par la République du Congo du*

Cosmos transit site,²³ opened by several UN agencies next to the port.²⁴ Mass expulsions of DRC nationals ended in September 2014.



Satellite image showing the distance between Brazzaville and Kinshasa ports.

Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, Swisstopo and the GIS User Community. This map should not be interpreted to represent Amnesty International's view on questions of borders or disputed areas and their names.

05 avril au 01 septembre 2014. This number was calculated by Amnesty International by adding up the total number of expelled persons per day from 23 April until 13 May 2014 and dividing the total number by 21.

²³ The transit site was opened on the premises of a hotel that is no longer operating, formerly called "Hotel Cosmos". The transit site was therefore referred to as the Cosmos transit site.

²⁴ Interview with UNHCR, Brazzaville, Republic of Congo, September 2014. Statistics were collected by *l'Agence d'Assistance aux Rapatriés et Réfugiés au Congo*, Partner of UNHCR in the Republic of Congo.



View of Kinshasa from the port of Brazzaville. © Amnesty International

Although expulsions are not mentioned as a main line of action in the concept note describing the operation, Amnesty International's research demonstrates that the core of operation *Mbata ya Bakolo* consisted of mass expulsions of DRC nationals, mostly irrespective of their migration status. According to the government of the Republic of Congo, 158,724 families, that is about 245,000 DRC nationals, returned "voluntarily" to DRC during the operation.²⁵ According to the DRC government, operation *Mbata ya Bakolo* resulted in the deportation of at least 179,452 nationals of the Democratic Republic of Congo (DRC).²⁶ Over 40% of those registered in the DRC (73,614) were minors. At least 60 of them were refugees or asylum-seekers.²⁷ A number were migrants who were lawfully residing in the country.²⁸

Amnesty International considers that operation *Mbata ya Bakolo* was a widespread or systematic attack directed against a civilian population, within the meaning of Article 7.1 of the Rome Statute of the International Criminal Court. The following section discusses the characteristics of such an attack (that it targeted DRC nationals; that it was large-scale; and that it was systematic).

²⁵ *Les dépêches de Brazzaville*, « L'opération *Mbata ya Bakolo* reprend », No, 2212, Tuesday 20 January 2015, available at http://www.lesdepechesdebrazzaville.fr/_zbhfiles/download.php?doc=20150120_DBZ_DBZ_ALL.pdf.

²⁶ General Directorate for Migration, Democratic Republic of Congo, *Statistiques des Congolais expulsés par la République du Congo du 05 avril au 01 septembre 2014*.

²⁷ Meeting between Amnesty International and UNHCR, Kinshasa, Democratic Republic of Congo, 18 September 2014. See also section Section III.6, p. 35.

²⁸ Several persons affected by the operation told Amnesty International they had the papers required to legally reside in the country, some of them explained their papers were torn into pieces by the authorities, others showed all or some of them to the research team.

2. OPERATION *MBATA YA BAKOLO* TARGETED FOREIGN NATIONALS, SPECIFICALLY DRC NATIONALS

Based on the premise that an increase in criminality was caused by the presence of the *kuluna*, operation *Mbata ya Bakolo*'s stated objective equated "bandits" and "foreigners in an irregular situation" as security targets. In addition to the operation's concept paper, all other official communication by the police (written documents and television) seen by Amnesty International indicates "illegal migrants" as the operation's targets.

In the operation's implementation, however, DRC nationals were quickly equalled to *kuluna* (criminals) and targeted, without evidence of links to criminal organisations and mostly irrespective of their migration status. Amnesty International researchers heard from multiple sources that the Director General of the Police, General Ndengue, and other police officers would trawl the streets in their vehicles or on foot, using megaphones to exhort the public to identify and report DRC nationals.²⁹

Government officials deny that DRC nationals were targeted during the operation. The Director of public security and spokesperson of the police told Amnesty International: "*It is not a manhunt of the Zairois. We had an increase in criminals here due to operation Likofi in Kinshasa. The kuluna came to operate and hide here in Brazzaville.*"³⁰ When Amnesty International researchers raised concerns with officials of the Ministry of Justice about the targeting of DRC nationals during the operation, they were told that *Mbata ya Bakolo* was "*a general operation, not targeting any community in particular*".³¹

Despite the declarations of government officials, the numbers show a different picture. According to data released by the government, during the first two months of operation *Mbata ya Bakolo* 4,092 people were arrested (*personnes interpellées*) because of irregular migration status; 3,933 of them (96%) were DRC nationals. According to the same data, 2,303 of those arrested had been or were being taken to the border; all of them were DRC nationals.³² According to General Jean Francois Ndengue, 4,670 people of 18 different nationalities had been arrested after 3 months of operation; 4,423 of them (95%) were DRC nationals. Of the 4,670, 4,174 people of 15 different nationalities had been arrested for irregular migration status; 3,927 (94%) of them were DRC nationals. 1,961 people had been taken to the border; all of them were DRC

²⁹ This information was confirmed by numerous interviews with affected persons, eg Interview with affected person 022, Brazzaville, Republic of Congo, 9 September 2014, Interview with affected person 023, Brazzaville, Republic of Congo, 9 September 2014, Interview with affected person 025, Brazzaville, Republic of Congo, 9 September 2014 and four human rights organisations based in Brazzaville.

³⁰ Meeting with Colonel Jules Tchoumou, the spokesperson of the General Directorate of the police, Amnesty International, 10 September 2014.

³¹ Meeting between Amnesty International and the Ministry of Justice, Republic of Congo, 12 September 2014.

³² Ministère des affaires étrangères et de la coopération, « Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l'Homme », Brazzaville, September 2014, Table 2; annexed to a Letter dated 15 October 2014 from the Embassy of the Republic of Congo in Switzerland to the United Nations High Commissioner for Human Rights, [https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_\(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_(2.2014).pdf).

nationals.³³ The official estimate of the total number of individuals who returned “voluntarily” to their country of origin as a result of operation *Mbata ya Bakolo* similarly refers only to DRC nationals.³⁴ Amnesty International received information of approximately 20 non-DRC nationals expelled from the Republic of Congo as part of operation *Mbata ya Bakolo*; in all cases, their expulsion seems to have been a mistake. Seven West Africans were deported to Kinshasa, arrested by the authorities of the DRC and released a few days later.³⁵ Amnesty International also met a group of approximately 10 people in Kinshasa who said they were nationals of the Republic of Congo but were mistakenly taken for DRC nationals because they had no ID on them and deported.³⁶

Jean-Pierre, a refugee from the Central African Republic (CAR), told Amnesty International:

“On 4 April, the police passed by my house [I was not home]. They thought I was a Kinois [from Kinshasa], so they took everything. After that I took over the shack of an expelled DRC national.”³⁷

In January 2015 General Jean Francois Ngendue announced *Mbata ya Bakolo II*, the second phase of operation *Mbata ya Bakolo*. He was quoted in the press as saying: *“In the second phase of the operation which is starting, we are turning to other foreign communities in our country. We are looking at our brothers from West-Africa.”³⁸*

LARGE-SCALE OPERATION

The expulsions of DRC nationals during *Mbata ya Bakolo* happened nation-wide. The operation officially started in the capital Brazzaville on 4 April 2014, but was later expanded to the rest of the country. On 31 July 2014 a ceremony was held in the town hall of Dolisie, the third city of the Republic of Congo, located in the Niari department.³⁹ Local press quoted General Ngendue as saying during his inaugural speech: *“all measures have to be taken to avoid that fleeing criminals from all over find refuge in the peaceful city of Dolisie”*.⁴⁰ According to the press he

³³ MN TV, *Emission police et population 1: Bilan opération Mbata ya Bakolo*, published 30 June 2014, <https://www.youtube.com/watch?v=Egyl6q-9HHQ> (at 9'14”).

³⁴ *Les dépêches de Brazzaville*, « L'opération Mbata ya Bakolo reprend », No, 2212, Tuesday 20 January 2015, available at http://www.lesdepechesdebrazzaville.fr/_zbhfiles/download.php?doc=20150120_DBZ_DBZ_ALL.pdf.

³⁵ Meeting between Amnesty International and the International Organisation for Migration (IOM), Kinshasa, 18 September 2014.

³⁶ Amnesty International encountered this group of people in front of the embassy of the Republic of Congo in Kinshasa on 16 September 2014.

³⁷ Interview with affected person 008, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

³⁸ *Les dépêches de Brazzaville*, « L'opération Mbata ya Bakolo reprend », No, 2212, Tuesday 20 January 2015, available at http://www.lesdepechesdebrazzaville.fr/_zbhfiles/download.php?doc=20150120_DBZ_DBZ_ALL.pdf.

³⁹ « Sécurité publique: l'opération *Mbata Ya Bakolo* officiellement lancée à Dolisie et à Nkayi » *Brazzaville*, 7 August 2014, <http://brazza-news.com/?p=9219>, « Les Congolais de RDC visés : Brazzaville décide de durcir les opérations d'expulsion », *Kongo Times* 14 August 2014, http://afrique.kongotimes.info/afrique/afrique_centrale/congo_brazzaville/7982-congolais-rdc-vises-brazzaville-decide-durcir-operations-expulsion-apres-pointe-noire-traque-etrangere-poursuit-dolisie-nkayi-congolais-kinshasa.html

⁴⁰ « Sécurité publique: l'opération *Mbata Ya Bakolo* officiellement lancée à Dolisie et à Nkayi » *Brazzaville*, 7 August 2014,

subsequently invited the neighbourhood chiefs to inform the police of all irregular foreigners present in their zones, and reiterated that even foreigners who have been living in the country for a very long time, still needed to regularise their situation.⁴¹ On 2 August 2014, a similar ceremony took place in N'Kayi, in Bouenza department.⁴²

Despite several announcements that the start of the operation in Pointe-Noire, the second largest city of the country, was imminent, *Mbata ya Bakolo* was not officially launched there, until 14 May 2015.⁴³ According to civil society sources, censuses of all foreigners were organised in the course of July 2014, and a contingent of at least 100 police officers was sent to Pointe-Noire, ready to start the operation at any moment.⁴⁴ According to the local press an estimated number of 13,000 DRC nationals were said to have left Pointe-Noire “voluntarily”.⁴⁵

Figures of the total number of DRC nationals that were expelled from the Republic of Congo differ. The most detailed statistics Amnesty International obtained were collected by the Directorate for Migration of the DRC. By 1 September 2014, 179,452 arrivals of DRC nationals were registered at 33 border posts, in the provinces of Bandundu, Bas-Congo, Equateur and Kinshasa.⁴⁶ The figures given by the Government of the Republic of Congo are even higher. When addressing the Senate on 26 August 2014, Raymond Zephirin Mboulou, Minister of Interior and Decentralisation, cited the number of 158,724 families or approximately 245,000 DRC nationals.⁴⁷

A SYSTEMATIC OPERATION

Operation *Mbata ya Bakolo* was systematic both in its design and in its implementation.

People described to Amnesty International how high numbers of police officers were driving through the city by motorbikes and pick-ups, using sirens.⁴⁸ A TV presenter described the

<http://brazza-news.com/?p=9219>.

⁴¹ « Sécurité publique: l'opération *Mbata Ya Bakolo* officiellement lancée à Dolisie et à Nkayi ». Amnesty International approached General Ndengue for comments on the content of this report, but received no response.

⁴² <http://brazza-news.com/?p=9219>, http://afrique.kongotimes.info/afrique/afrique_centrale/congo_brazzaville/7982-congolais-rdc-vises-brazzaville-decide-durcir-operations-expulsion-apres-pointe-noire-traque-etrangers-poursuit-dolisie-nkayi-congolais-kinshasa.html

⁴³ Five days into the operation, on 19 May 2015, the spokesperson of the police, Colonel Jules Tchoumou announced at a press conference held in Pointe-Noire that 1,150 persons had been arrested.

⁴⁴ Interview with *Rencontre pour la paix et les droits de l'homme* (RPDH), Amnesty International, Pointe-Noire, 10 September 2014.

⁴⁵ Interview with *Observatoire Congolais pour les droits de l'homme* (OCDH), Amnesty International, Pointe-Noire, 10 September 2014. See also *Les dépêches de Brazzaville*, « L'opération *Mbata ya Bakolo* reprend », No. 2212, Tuesday 20 January 2015.

⁴⁶ Government of the Democratic Republic of Congo, *Statistiques des Congolais expulsés par la République du Congo du 05 avril au 01 septembre 2014*. The number given includes both de facto expulsions and expulsions by force.

⁴⁷ *Les dépêches de Brazzaville*, « L'opération *Mbata ya Bakolo* reprend », No. 2212, Mardi 20 Janvier 2015.

⁴⁸ Interview with affected person 025, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014.

operation as “*spectacular*”, the police being present everywhere.⁴⁹ The operation was not only very visible in the streets, also on TV and radio *Mbata ya Bakolo* was the subject of daily discussion. According to testimonies collected by Amnesty International, the police repeatedly requested the population to denounce “illegal foreigners” and repeated fines that would be imposed on people who housed them.

Two sources said that General Ndengue stated “*Moto na moto na Mboka na ye*”, meaning everyone has to go back to his/her country.⁵⁰ Operation *Mbata ya Bakolo* was originally planned to be conducted for 15 days, but was seemingly extended to achieve its final objective.⁵¹ At the end of June 2014, three months into operation *Mbata ya Bakolo*, Colonel Tsoumou, the spokesperson of the General Directorate of the police, explained in an update on television that “*many undocumented persons have been repatriated, [...] but not all have been found, some are still hiding. In some cases Congolese people are hiding them, therefore the operation continues.*”⁵² In a meeting with Amnesty International in September 2014 the Police spokesperson stated that “*the operation would only end when its final objective had been achieved*”.⁵³

⁴⁹ MN TV, *Emission police et population 1: Bilan opération Mbata Ya Bakolo*. Available at <https://www.youtube.com/watch?v=Egyl6q-9HHQ>.

⁵⁰ Interview with national human rights organisation, Brazzaville, 8 September 2014, Interview with affected person 014, Amnesty International, 8 September 2014. Amnesty International approached General Ndengue for comments on the content of this report, but received no response.

⁵¹ Ministry of Interior and Decentralisation, General Directorate of Police, « Concept d'opération *Mbata ya Bakolo* du Directeur général de la Police, relative à la lutte contre le phénomène ‘Kouluna’ dans la ville de Brazzaville », Brazzaville 3 April 2014, NMR : 00552/MID/DGP/DSP, p. 3.

⁵² MN TV, *Emission police et population 1: Bilan operation Mbata ya Bakolo*. Available at <https://www.youtube.com/watch?v=Egyl6q-9HHQ>.

⁵³ Meeting with Colonel Jules Tchoumou, the spokesperson of the General Directorate of Police, Amnesty International, 10 September 2014

III. CRIMES UNDER INTERNATIONAL LAW AND OTHER HUMAN RIGHTS VIOLATIONS DURING *MBATA YA BAKOLO*

Operation *Mbata ya Bakolo* used a purported rise in criminality as a pretext to arrest and expel refugees, asylum seekers and both regular and irregular migrants, in the vast majority from the DRC. This section documents the crimes under international law and human rights violations committed by the Republic of Congo agents as part of operation *Mbata ya Bakolo* or as a consequence of it. Amnesty International considers that these acts were committed as part of a widespread as well as systematic attack against a civilian population and may constitute crimes against humanity.

DRC nationals were targeted for stops, identification checks, arrests and detention. Amnesty International documented victim and eye-witness accounts describing how police 4x4 vehicles drove around the city searching for DRC nationals. During the operation, people were often forcibly rounded up from their homes in the middle of the night or before dawn and arbitrarily arrested solely on grounds of nationality. The police also rounded up people in the streets and markets, often ignoring valid documentation presented by DRC nationals. As far as Amnesty International is aware, at no point were any of those arrested shown a warrant or any other document relating to the charges or other ground on which the arrests were being carried out. The police also frequently used excessive force during arrests, extorted money and belongings, and intimidated DRC nationals. In some cases, the police raped women and girls. Those arrested were then often taken to a police post and held there in inhumane conditions, awaiting a bus to transport them to the port of Brazzaville (commonly called “the Beach”⁵⁴ by the local population) for expulsion. They were not charged with any offence or taken through any legal due process. Individuals were expelled *en masse*, irrespective of their asylum or migration status; forcible returns of asylum seekers and refugees in violation of the principle of *non-refoulement* took place. Amnesty International received reports of the death of several individuals during the operation.⁵⁵

⁵⁴ When Congo became Congo Free State and the language of the administration switched from English to French, names of certain locations, such as “Beach” continued to be referred to in English.

⁵⁵ Amnesty International received information about the deaths of 11 persons. According to these reports, three of them drowned in the Congo River (Amnesty International’s interview with affected person 107, Kinshasa 18 September 2014; Amnesty International’s interview with MSF (Médecins Sans Frontières), Kinshasa, 18 September 2014), two persons died in a train packed with people leaving Pointe-Noire (Amnesty International’s interview with affected person 090, Kinshasa, 15 September 2014), three persons were killed by mob violence (Amnesty International’s interview with affected person 083, Kinshasa, 15 September, Amnesty International’s interview with MSF, Kinshasa, 18 September 2014). Two persons died following police violence (Amnesty International’s interview with affected person 109, Kinshasa, 15 September, Amnesty International’s interview with MSF, Kinshasa, 18 September 2014) and one person died in detention from suffocation (Amnesty International’s interview with MSF, Kinshasa, 18 September 2014. However the organisation

1. ARBITRARY ARRESTS AND EXCESSIVE USE OF FORCE BY THE POLICE

During the 112 interviews, Amnesty International documented 54 cases of arbitrary arrests of DRC nationals; eight persons interviewed said they had been arrested multiple times during the operation. According to the information collected by Amnesty International, the Republic of Congo officials did not take into consideration the asylum or migration status of DRC nationals. In those cases where the police asked individuals for papers, these were often ignored or, in some cases, ripped apart. All of those interviewed by Amnesty International said that the police arbitrarily carried out arrests solely on the basis of the individual being a DRC national, irrespective of asylum or migration status. At no point were any of those arrested shown a warrant or any other document relating to the charges or other ground on which the arrests were being carried out.

Richard (not his real name), a 36-year-old refugee from the DRC, told Amnesty International:

*"I had gone to work. A police man asked me what my nationality was. I showed him my papers [refugee card] to explain I was a refugee. He told me there was no war in DRC and that I had to go back. They told me to get in their car and took me to the police station."*⁵⁶

People were often forcibly rounded up from their homes in the middle of the night or before dawn. Amnesty International researchers heard from multiple sources how the police frequently used excessive force during arrests. Twenty-four persons Amnesty International spoke to said that the police took their valuables off them, including mobile phones, money and household goods. Some of them were extorted multiple times by the police. Families could sometimes avoid their arrest by paying bribes. Some of the people who were detained managed to be released by paying bribes or soliciting an intervention by UNHCR.

Nelson (not his real name), a 42-year-old pastor from the DRC who had lived in Brazzaville for 12 years, explained how police officers entered his church:

*"It was on 28 May, they entered into the church and started to beat the people who were inside. Even when you showed them your documents, they tore them up and said you have to go back to your country. That day, they beat one person so badly he died later. We were six persons from DRC and three from the Republic of Congo [in the church]. They did not touch the three of the Republic of Congo. They put us in their vehicle and took us to the police station."*⁵⁷

Patrick, a 56 year-old refugee from the DRC with four daughters, told Amnesty International:

"On 1 May 2014, around 8pm, 6 policemen came to my house. They asked for money even after I showed them my papers. If I did not pay they would take my papers. My youngest children, 4

was not able to corroborate these accounts.

⁵⁶ Interview with affected person 075, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁵⁷ Interview with affected person 109, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014; Amnesty International was not able to corroborate the death of the person who was beaten up in the church.

and 8 years old started to cry and asked their mother to give them money otherwise the police would take their dad. They started to beat me up in front of my children and my wife. My wife ended up paying CFA20,000 [US\$40]."

"The following day around 9pm they came to knock again, saying 'Hey Zairois, you still haven't left?' My daughter said her father was not yet home [hoping they would leave], yet they entered by force. They took the chairs of the house. They were 7 in total. They asked money again. My wife gave them CFA10,000 [US\$20]. They said 'give us more'. They forced me into their car and my wife gave CFA25,000 [US\$50] in total: 10,000 US\$20] to save herself, 10,000 [US\$20] for me and 5,000 [US\$10] for the chairs.

The following day at around 4am in the morning, the police knocked our door again. We did not answer, but they smashed the door. They took my oldest daughter and took her outside. She is 15 years old. They took my wife and they also took her behind the house. They took me, they handcuffed me and made me fall on the floor. Me, I begged them to leave me, I said I would give them everything I had. They said they could not forgive a 'Zairois'. They were 14 in total. The commander was outside. They rolled me up to the street. They blindfolded me and took me with them."⁵⁸

Patrick's wife paid CFA15,000 [US\$30] to get Patrick out of detention. Cedric (not his real name), an asylum seeker from the DRC who is married to a woman from Brazzaville and father of one child told Amnesty International that he was arrested twice. He explained how he was almost deported after his second arrest:

"I sell on the market of Poto Poto. In July 2014, the police came to the market to ask for documents. I showed them my APS ['attestation provisoire de séjour' or temporary residence permit] and they said: 'Why did all the Zairois come here? There are no refugees here.' They confiscated my phone, so I could not communicate. They took me to the police station. I spent the night there and the next morning they put me in a car to go to the Beach [border to cross to Kinshasa]. It was in the morning around 9am. My wife had come to the police station, she was crying. She had our child with her. One policeman felt sorry for her and asked how much she had. She paid CFA35,000 [US\$60] and he let me get off."⁵⁹

ASYLUM-SEEKERS IN LIMBO IN THE REPUBLIC OF CONGO

Asylum-seekers in the Republic of Congo face numerous problems to legalise their status.

Fifty-two years after ratifying the 1951 Refugee Convention, the Republic of Congo has still not adopted a law that implements this international instrument.⁶⁰ Besides legal challenges, the National Commission for the Assistance

⁵⁸ Interview with affected person 082, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁵⁹ Interview with affected person 076, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁶⁰ The National Committee for the Assistance of Refugees (CNAR) is currently regulated by decree (Décret No. 99310 du 31 Décembre 1999 portant création, attributions, organisation et fonctionnement du comité national d'assistance aux réfugiés). The Commission of Eligibility and the Commission of second instance are regulated by executive decision (Arrête No. 8041 du 28 Décembre 2001 portant la création, organisation, attributions et fonctionnement de la commission d'éligibilité au statut de réfugié ; Arrête No.8040 du 28 Décembre 2001 portant création, attribution, organisation et fonctionnement de la commission des recours des réfugiés). In a

of Refugees (CNAR) and the Commission of Eligibility also face a number of practical and resource-related challenges, which have caused a tremendous backlog in the processing of refugee requests.⁶¹

Under the current legal framework, every request for asylum should be deliberated by the Commission of Eligibility within 3 months. Passed this time limit, the asylum-seeker is considered to have received a positive response.⁶² In practice, this legal framework is not applied; the CNAR considers everyone who has not received a final decision an asylum-seeker. All asylum-seekers over the age of 15 should receive a temporary residence permit or “*attestation provisoire de séjour*” (APS) from the executive secretary of the Commission of Eligibility, valid for the duration their file is being examined by the Commission.⁶³ However in practice, temporary residence permits are issued by the CNAR and need to be renewed every 6 months.

Amnesty International spoke to 10 individuals who had been waiting or were waiting for the determination of their status for periods ranging from 11 up to 17 years.

Frustrated by the long waiting times, many asylum-seekers stopped following the procedure of renewal of their temporary residence permits, reasoning that according to the legal framework, they were already refugees. As a consequence, many of them were only in possession of expired temporary residence permits when they were stopped by the police during operation *Mbata ya Bakolo*.

Priscilla (not her real name), an asylum-seeker from the DRC, mother of three children aged four, eight and ten years, told Amnesty about her and her husbands' arrest:

“They came to our house at 3 am. We showed them the APS [temporary residence permit]. They said: ‘we don’t know what that is, there is no war in DRC.’ They told us to get into their vehicle. The children were crying. My husband said: ‘no, she is pregnant, leave with me.’ They said: ‘no you are all leaving, your children will join you in the police station tomorrow.’ I could not sit in the vehicle, they told me to lay down under the seats. When the vehicle left, my ten year old ran after the vehicle, crying. The fifth street after ours, the commander saw I was pregnant and he heard the child following the vehicle crying. They let me get off the vehicle. I called UNHCR to get my husband out.”⁶⁴

Rachel (not her real name), a single mother of three children, had been chased out of her house

meeting between Amnesty International and the CNAR, the Director explained that the current three legal documents contain lacunas and that a comprehensive law on refugee and asylum status is urgently needed. Meeting between Amnesty International and CNAR, Brazzaville, 9 September 2014. A project of law would currently be in Supreme Court and could possibly be adopted in 2015.

⁶¹ The CNAR itself was closed during 9 months in 2008-2009, following a criminal investigation against one of its staff members. The Commission of Eligibility, supposed to convene every month, has very irregular sittings. The last session took place in September 2013. Meeting between Amnesty International and CNAR, Brazzaville, 9 September 2014.

⁶² Article 8 (arrête No. 8041 du 28 Décembre 2001 portant la création, organisation, attributions et fonctionnement de la commission d'éligibilité au statut de réfugié).

⁶³ Articles 14 and 15 (arrête No. 8041 du 28 Décembre 2001 portant la création, organisation, attributions et fonctionnement de la commission d'éligibilité au statut de réfugié).

⁶⁴ Interview with affected person 054, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

and was provided shelter by UNHCR. The police arrested her four times from the UNHCR-provided house:

*"The police always comes to the house UNHCR arranged for me. They take me to the police station and every time I call UNHCR [to assist me for release]. They always come between 1 and 2 am in the morning."*⁶⁵

Bernard (not his real name), an asylum-seeker who has been living in Brazzaville with a temporary residence permit for 17 years, explained:

*"Already in the beginning of July six policemen came to my house at 5am in the morning and arrested me, my wife and my daughters to bring us to Kinshasa. I had to contact UNHCR. We were liberated by 10am thanks to the intervention of UNHCR."*⁶⁶

2. BEATINGS, VIOLENCE AND INTIMIDATION

While searching for DRC nationals, the police intimidated and frightened people, took or destroyed property and other valuables.

Naomi, (not her real name) a 32-year-old DRC national who migrated to Brazzaville in 2011, told Amnesty International:

*"One day in April 2014, around 11pm, the police entered my house without even knocking the door. I showed them my documents. The police officer told me: 'despite all that, you have to leave.' They tore the first document I had showed them into pieces and told me to leave [the country]. They searched the house and left. Three days later my family and I came home from church and found that the door of our house had been forced open and the mattress burned. The radio and six plastic chairs were out on the courtyard. Our landlord told us that the police had left us the following message: 'We burnt your belongings to mark our visit and to warn you that you have to go back to DRC'".*⁶⁷

Elise (not her real name), an asylum-seeker from the DRC and mother of five children told Amnesty International that her 10-year-old daughter was home alone when the police came:

"It was the beginning of April 2014. I went to church with all the children, except the ten year old. The police came to our house. They asked my little girl for her ID. She told them her mother had it and that I was in church. The police took some matches and started burning our mattresses and clothes. My daughter fled to the neighbours. [After the incident] the landlord told us to leave."

⁶⁵ Interview with affected person 007, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

⁶⁶ Interview with affected person 040, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁶⁷ After the incident the landlord pressured Naomi and her family to leave the house. She stayed with friends for a while until her husband found enough money to pay for a fast boat to cross to Kinshasa. Interview with affected person 096, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

*I found another house but it is only a temporary solution. We are sleeping on the floor now.*⁶⁸

Christine (not her real name), an asylum-seeker and mother of a 12-year-old, told Amnesty International researchers that the neighbours called the police, who found her at home one day in May 2014:

*“The police broke the gate. They did not ask anything, they only said ‘leave, leave, this is not your country. You have to leave.’ Then they took matches and they started to burn all my belongings. I could not save anything at all, not even the sponge.”*⁶⁹

Jeanine (not her real name), a 41-year-old widow and asylum-seeker from the DRC, told Amnesty International:

*“In April 2014 the police arrived at the market to arrest all DRC nationals who worked there. The police asked for my papers. I showed them and one of the police officers hid them somewhere. My daughter who was with me started crying. Another police officer asked her why she was crying. She told him that the other police officer had hidden my papers. He looked for the papers, found them and gave them back. The police then told us that they did not need our papers and that if our husbands were dead, we could just go and join them in hell.”*⁷⁰

The humanitarian agencies providing medical assistance in Kinshasa to expelled DRC nationals told Amnesty International that many were injured by beatings they received from the police.⁷¹ Dieumerci (not his real name), a 22-year-old asylum-seeker from the DRC who works as a bricklayer, told Amnesty International:

*“One night around 11pm I left the house to go and buy bread. Around the market in the commune of Mungali the police stopped me. They were numerous and spread over two police vehicles. They asked for my papers and I showed them my APS [temporary residence permit] which was already expired. They tore it into pieces and started to beat me up in front of everyone. They threw me in a trench afterwards and left me for dead. Some neighbours who knew me called my mother. She came to look for me and brought me to the hospital.”*⁷²

Claude (not his real name), a father and refugee from DRC, remained in Brazzaville after his wife and 12 children were expelled while he was at work. He told Amnesty International researchers:

“I was stopped in the street around 7pm, I could not show my card so the police started beating

⁶⁸ Interview with affected person 050, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁶⁹ Interview with affected person 051, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁷⁰ Interview with affected person 021, Amnesty International, Brazzaville, Republic of Congo, September 2014.

⁷¹ Interviews with *Oeuvre Social pour le Développement* (OSD) Amnesty International, Kinshasa, Democratic Republic of Congo, 19 September 2014. *Oeuvre Social pour le développement* (OSD) ran a mobile clinic providing first aid and screening at the arrival centre located in Kinshasa municipality. People requiring specialised care were referred to OSD’s permanent clinic in town. OSD treated 48 individuals at their permanent clinic.

⁷² Interview with affected person 002, Amnesty International, Brazzaville, Republic of Congo, 7 September 2014.

me. They knocked me over and kicked me all over with their boots. People that were around wanted to react but when the police officers said, 'no, it is a Zaïrois', those people started to make fun of me. When the police officers saw the blood started streaming, they said, 'no it is an old man, he did not come here to commit crimes.' In the end they brought me to a health centre."⁷³

Sarah (not her real name), 21-year-old DRC national, told Amnesty International her husband was at work when the police came to ask for her papers. They started to search the house and found US\$200 that was hidden under a sofa. When Sarah tried to resist, a policeman knocked her with the butt of his rifle in the abdomen. She was rushed to the dispensary by the neighbours. The following day Sarah was diagnosed with internal bleeding and was operated. After four days of hospitalisation, Sarah, her husband and her two children waited four days more for a boat. The wound was badly infected and when she arrived in Kinshasa she went to the hospital where she was hospitalised for another two months and half.⁷⁴

3. RAPE AND OTHER SEXUAL VIOLENCE BY THE POLICE

Amnesty International researchers documented five cases of rape by the police, one of which was of a five-year-old girl.

Diani (not her real name) told Amnesty International about the rape of her younger sister Charlotte (not her real name), who was five years old:

*"They came around 1am in the morning, they were hooded but wearing police uniforms. They took the children [Charlotte and her 13-year-old sister] and my husband. My husband was taken to the police station of Poto Poto. By 5 am they brought him to the Beach. They brought the children back to the house around 6am and brought us to the Beach to cross [back to the DRC]. When Charlotte tried to urinate later that day there was a lot of blood, and we brought her to the hospital [where it was confirmed that she was raped]."*⁷⁵

Lydia (not her real name) a 34-year-old from the DRC, who sold salted fish from Pointe-Noire at the market in Brazzaville, explained how she and four of her friends from DRC were first robbed by police officers at the market. The same officers then followed, beat and raped them:

"They said 'you are Zaïrois, you came here to steal our wealth.' They took two bags of dried fish and CFA150,000 [US\$300] from me. We [left the market, and] took a taxi to a friend's house. When we took out our luggage from the boot we saw the police car had followed us, [so we] ran into the house. The police went into the house together with us. They said 'you are Zaïrois, you have to go back to your country and leave everything you have here, we are going to kill you.' They started to beat us and then raped us. It was a little house, they raped us in turns, one by one. I was the second one. I was raped by four men. When they finished the rapes, they destroyed

⁷³ Interview with affected person 012, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

⁷⁴ Interview with affected person 106, Amnesty International, Kinshasa, Democratic Republic of Congo, 17 September 2014.

⁷⁵ Interview with affected person 112, Amnesty International, Kinshasa, Democratic Republic of Congo, 18 September 2014.

everything there was in the house. The chief said a code word and they left."⁷⁶

Pauline (not her real name), a 21-year-old migrant from the DRC, told Amnesty International that she was home alone with her four-year-old daughter, at 3am, when six police officers entered her house:

*"They knocked on the door, but as I did not open, they broke the door and entered by force. I was in the bed with my child. They entered into the room and pushed the child aside. They came in and said that the Zairois have to go back to their country, that they have to leave everything behind in Congo and go back with empty hands. When they came in they started to take everything, two of them took all our belongings and the four others were in the room. They took off my clothes and started to rape me one by one. As I was fighting them and trying to resist, they told me they would show me how a Brazzavillois treats a Zairois: Like a dog. One of them tied my arm and the other one injured me with an instrument. When my husband came home he found me injured and brought me to the health centre. The staff started by saying that they would not touch a Zairois. But as I was bleeding a lot, one of the nurses said that as a measure of grace they had to treat me or I would die. They gave me 63 stiches, but did not treat anything else. When I said I was raped they only proscribed me some medicines."*⁷⁷

4. INHUMANE DETENTION CONDITIONS

Those arrested were then often taken to a police post and held there, awaiting a bus to transport them to the Beach (the port and border crossing to the DRC) for expulsion. As far as Amnesty International is aware, those arrested were not charged with any offence or taken through any due process.

Amnesty International's research has shown that detention conditions were extremely poor. The humanitarian agencies providing medical assistance in Kinshasa to expelled DRC nationals told Amnesty International that most of the conditions treated were incurred following prolonged detention with insufficient food, water and air (up to two weeks).⁷⁸ Amnesty International interviewed six people who described being held for days without food or water, in overcrowded cells, with standing room only.⁷⁹ Christophe (not his real name), a 54-year-old father of five children, explained:

"They put us in the cells where we stayed for nine days. They told us they were waiting until we were 50 or 60 [people], then we would be transported to DRC. They gave us half a bread in those

⁷⁶ Interview with affected person 086, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

⁷⁷ Interview with affected person 110, Amnesty International, Kinshasa, Democratic Republic of Congo, 19 September 2014.

⁷⁸ Interviews with *Oeuvre Social pour le Développement* (OSD) Amnesty International, Kinshasa, Democratic Republic of Congo, 19 September 2014. *Oeuvre Social pour le développement* (OSD) ran a mobile clinic providing first aid and screening at the arrival centre located in Kinshasa municipality. People requiring specialised care were referred to OSD's permanent clinic in town. OSD treated 48 individuals at their permanent clinic.

⁷⁹ Interviews with affected persons 013, 027, 080, Brazzaville, Republic of Congo and affected persons 102, 109 and 111, Kinshasa, Democratic Republic of Congo, Amnesty International, September 2014.

nine days. She [my wife] tried to negotiate my release without success [...]. Despite our injuries, they would not give us treatment. There were others that had injuries."⁸⁰

Simon (not his real name), 38, an asylum-seeker from DRC, was arrested at his home in Brazzaville by police officers wearing civilian clothes. He told Amnesty International:

*"They asked me whether I was Zairois, I showed them my APS and they told me they did not recognise that paper. They handcuffed me and put me with the other Congolese (Zairois) and took us to the police station. They made us go to the first floor where there were men, women and children. They searched everyone and took everything they could find. They said: 'refugee or not, with or without papers, you all have to go back to your country.' They brought us to a small room, approximately 60 persons, men, women and children mixed. It was really hot, we were choking. We had to ease ourselves on the floor in the corner of the same room. During the whole time we were there we did not drink or eat."*⁸¹

Simon was released after 30 hours, following UNHCR's intervention.

Amnesty International spoke to two people who witnessed abuse by other detainees while in detention.

"We were 40 persons in a room of 3x3 meters. There was a second room with children and women. I was there for four days. Two or three Congolese criminals were in charge. They could walk around freely in the salon, while we were pressed together in the room. When bread would come, they kept four breads for themselves and gave us one." said Frank (not his real name), 43 years old.⁸²

Mathieu (not his real name), a 19-year-old DRC national, told Amnesty International about his experience at the central police station.

*"We saw a prisoner who governed the prison there. A Brazzavillois. He asked us, 'who has something? If you have money, you can pay to get out.' Some others paid. The prisoners who were there started to beat us. There were two rooms, 400 people in total, all DRC nationals. They undressed us from our clothes and made 18 of us go into the cell."*⁸³

5. MASS EXPULSIONS ACROSS THE RIVER CONGO⁸⁴

The police facilitated transport from police stations to "the Beach", the port of the city of

⁸⁰ Interviews with affected person 102, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

⁸¹ Interview with affected person 080, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

⁸² Interview with affected person 027, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014.

⁸³ Interview with affected person 111, Amnesty International, Kinshasa, Republic of Congo, 18 September 2014.

⁸⁴ Amnesty International was told by two affected persons that the police also brought DRC nationals to the embassy of the DRC in Brazzaville; According to one person, there were at least 500 DRC nationals in the embassy.

Brazzaville and border crossing to the DRC, from where DRC nationals would take a boat to make the crossing back into the DRC. Those arrested and taken to “the Beach” by the police had no chance to challenge their deportations.



Boats ferried DR Congo nationals expelled from the Republic of Congo. During the peak days of the operation, 7,000 to 8,000 people arrived in Kinshasa daily. © Habibou Bangré

Laura (not her real name), a 36-year-old DRC national and mother of four, told Amnesty International she was threatened by some of her neighbours who were soldiers and police officers, taken to the Beach and expelled:

“One night in April me and my husband were arrested, brought to the Beach by the police and then expelled to Kinshasa.”⁸⁵

Christophe (see testimony section III.4), was taken to the Beach after having been detained for nine days:

“On 24 May 2015, I was brought to the Beach, put on a boat and sent directly to Kinshasa. They had taken my documents and destroyed them.”⁸⁶

In many cases, DRC nationals decided to go to “the Beach” and return to Kinshasa out of fear (see Section IV). According to the General Directorate for Migration of the Democratic Republic of Congo, a total of 158,042 people crossed from “the Beach” in Brazzaville to Ngobila beach in Kinshasa between 5 April and 1 September 2015, with an average of 1,275 people crossing

⁸⁵ Interview with affected person 098, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

⁸⁶ Interviews with affected person 102, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

per day.⁸⁷ The boats were insufficient in number,⁸⁸ forcing thousands of people to wait at the Beach for days, in overcrowded conditions and without access to shelter, sanitation or medical care, before securing passage. Interviewees also reported having to pay bribes to the policemen to get onto the Beach or to be allowed into a boat.⁸⁹

Jean (not his real name), a 26-year-old DRC national, told Amnesty International that himself and his wife decided to leave Brazzaville out of fear after the police has stolen or burned out everything in their house. His wife gave birth at the Beach:

*"She was brought to the hospital for 24 hours and then escorted back to the Beach to be expelled."*⁹⁰

Claudine (not her real name) mother of six and DRC migrant whose documents were expired, went to the Beach in April. She had given birth to twins a month earlier and said she feared her family would become a victim of police violence. She described three difficult days on the Beach:

*"There were no toilets, we had to use plastic bags to ease ourselves. Men were not allowed to leave the Beach anymore. Only women could leave to buy little things like water and some food".*⁹¹

Marie (not her real name), a 35-year-old DRC national told Amnesty International:

*"I spent two days on the Beach before leaving. During those two days, there were children that were dying and even women who gave birth on the spot. I witnessed a delivery myself. The baby died because of suffocation. I slept outside with my four children and there were a lot of people. The police trampled them and pushed them. And even though the boat was free, they asked money to let us enter into it. I gave CFA20,000 [US\$40] to a policeman to get into the boat."*⁹²

Francis (not his real name), a 55-year-old DRC national and a father of six, told Amnesty

⁸⁷ General Directorate for Migration, Democratic Republic of Congo, *Statistique des Congolais expulsés par la République du Congo du 05 avril au 01 septembre 2014*. Within the 5 month period, there were 25 days on which no crossing were recorded. The 158,042 people crossed spread over 124 days.

⁸⁸ The boats were facilitated by the DRC government (through ONATRA, the company that operates the boats in normal times). There are two types of boats available: the fast and small ones (cano rapide) and the slow and big ones. People who were better off paid for tickets on the fast ones; others had to wait for the slow and big ones, which were free of charge, but police officers would still ask for bribes to let people pass.

⁸⁹ Interview with affected person 103 and affected person 104, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

⁹⁰ Jean added that his wife told him that she was whipped when entering the boat by police who were asking money "to save DRC nationals from the whips." Interview with affected person 101, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

⁹¹ Interview with affected person 097, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

⁹² Interview with affected person 108, Amnesty International, Kinshasa, Republic of Congo, 18 September 2014.

International how his wife died on the day they took the boat to Kinshasa:

*“The boat arrived around 9-10am. We also had our suitcases. When the boat arrived, I took the children and my wife also took one child. As the suitcases were already put in the boat by the porters, my wife was worried they were going to fall. So, my wife stayed with the suitcases and I went back for the [other] children. When the boat left, the police pushed my wife and the suitcases in the water. She immediately drowned in the water with the suitcases. The ONATRA [Office Nationale de Transport] security guard held me back, because I wanted to dive to try to save my wife. We have never been able to see the body of my wife. Up to today, we have not been able to bury her. She was 44 years old.”*⁹³

Two other cases of individuals who drowned in the Congo River because they were pushed into the water by the police or fell because they lost balance after being hit by the police were reported by Medecins Sans Frontieres.⁹⁴

On 16 May 2014 several UN agencies, including UNHCR, FAO and UNDP facilitated the opening of a transit site next to the port (COSMOS). Conditions were slightly better at the COSMOS transit centre than at the Beach. There was shelter, and water and food was provided.

⁹³ Interview with affected person 107, Amnesty International, Kinshasa, Democratic Republic of Congo, 18 September 2014.

⁹⁴ Interview with Médecins Sans Frontières (MSF), Amnesty International, Kinshasa, 18 September 2014.

“On Friday 2 May [2014] we were at home in Brazzaville when the neighbourhood chief (*chef de quartier*) and the police arrived at our house. They told us anyone from the DRC had to leave. They threatened the landlord that anyone from the DRC had to leave his house immediately or else he would pay a fine of 150,000 francs [US\$300]. We are legal in Brazzaville but they refused to even look at our identity papers! We took some clothes and were forced onto a boat to Kinshasa. I am here now with four children and we are living on the streets. We are abandoned now. We are in danger here.”

Jacqueline (not her real name), DRC national living in Brazzaville since 2009, phone interview from Kinshasa, 10 May 2014.

HUMANITARIAN CONSEQUENCES IN THE DRC

Most of those who arrived in Kinshasa were living in very dire conditions in various places throughout the city, including in host families or makeshift camps with no adequate shelter, access to food or medical facilities. Until mid-May 2014, many were staying at the Cardinal Malula Stadium, which hosted about 3,000 people.⁹⁵ In May 2014 the International Organization for Migrations (IOM) launched a Flash Appeal to assist “vulnerable migrants massively expelled from Congo-Brazzaville and in urgent need of direct assistance”.⁹⁶ The organization established a new transit site in Maluku.

The division of social affairs of Kinshasa municipality identified 47 unaccompanied children, who had been deported from the Republic of Congo. They managed to reunite 37 children with their families, but had to place at least 10 children with orphanages, community-based organisations or with temporary host families.⁹⁷ The head of the division of social affairs told Amnesty International researchers about one unaccompanied girl, who was raped near Beach Ngobila in Kinshasa. She arrived in Kinshasa on her own, and got lost in the chaos. She was later placed with a host family by the division of social affairs.⁹⁸

⁹⁵ UNICEF, *72,000 migrants congolais expulsés de Brazzaville à Kinshasa : L'UNICEF et ses partenaires sur le terrain*, 13 May 2014, <http://reliefweb.int/report/democratic-republic-congo/72000-migrants-congolais-expuls-s-de-brazzaville-kinshasa-l-unicef>.

⁹⁶ IOM Democratic Republic of Congo, Flash Appeal: Direct Assistance to Vulnerable Migrants Expelled from Congo-Brazzaville, 9 May 2014, https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Flash-Appeal_DRC-16-May-2014.pdf

⁹⁷ Meeting between Amnesty International and the head of the division of social affairs of the commune of Kinshasa, 17 September 2014.

⁹⁸ Meeting between Amnesty International and the head of the division of social affairs of the commune of Kinshasa, 17 September 2014.



Many of those arriving in Kinshasa were initially sheltered at Cardinal Malula Stadium. Here, a woman uses a piece of fabric as a makeshift shelter. © Habibou Bangré



A woman prepares a meal on the terraces of Cardinal Malula Stadium in Kinshasa where many arriving from Brazzaville were initially sheltered. © Habibou Bangré

6. UNLAWFUL DEPORTATIONS AND OTHER VIOLATIONS OF THE PRINCIPLE OF *NON-REFOULEMENT*

When the implementation of operation *Mbata ya Bakolo* started, it became quickly evident that deportations and expulsions of DRC nationals were not just a *modus operandi* of the operation; they were the objective of the operation. Deportations and expulsion were carried out summarily and without any legal procedure, in many cases not even allowing the individuals affected to contact family and friends, let alone to contact lawyers or to challenge their deportation in court. In Brazzaville, Amnesty International spoke to 25 people whose families had been separated as a result of the deportations. Claude (see also testimony in section III.2), a refugee from DRC who had lived in Brazzaville for 14 years, explained how his wife and his 12 children were expelled while he was at work:

*"I worked as a night guard. Even though he denies [it], our landlord called the police to come and find us. They came on the 2 May [2014] around 9.30pm. I was at work. When I came back the next morning, my neighbours told me that my family had been expelled in chaos."*⁹⁹

Bosco's (not his real name) wife and three children were arrested and deported to the DRC on their way to church:

*"In May [2014] my wife was going to church with the children. On the way they were surprised by a bus full of police officers. They [police] recognised their accent in Lingala and they were taken to the Beach [the port of Brazzaville and border with DRC]. My youngest child was only two months old."*¹⁰⁰

Francois (not his real name), an asylum-seeker from the DRC, explained:

*"On 17 May around 2pm, my wife was picking up our five children from school. They were arrested and brought to the police station. They let her make a phone call and she called me. I immediately called UNHCR. They said they would go around 4.30pm but the police commander was not there. At 9am the next morning the bus had left. I have not been in contact with my wife anymore, and I don't know where she is".*¹⁰¹

Pierre and Victorine (not their real names), asylum-seekers from the DRC, told Amnesty International researchers that their two sons, who are six and 11 years old respectively, were home alone in May 2014 when, according to the neighbours, the police came and took them. Pierre and Victorine have not received any news of their children since that day.¹⁰²

Amnesty International considers that many of the acts described in this section and in the previous one (see above: *Mass expulsions across the river Congo*) may amount to the crime

⁹⁹ Interview with affected person 012, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹⁰⁰ Interview with affected person 067, asylum-seeker, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

¹⁰¹ Interview with affected person 023, asylum-seeker, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014.

¹⁰² Interview with affected person 066, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

against humanity of deportation within the meaning of Article 7(1)(d) and 7(2)(d) of the Rome Statute of the International Criminal Court, that is “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”¹⁰³. Additionally, Amnesty International considers that those acts breached several international law obligations to which the Republic of Congo is bound, including: Article 33 of the 1951 Convention relating to the Status of Refugees; Article 3 of the UN Convention Against Torture; Article 13 of the International Covenant on Civil and Political Rights; Article 2.3 of the Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa; Articles 7 and 12 of the African Charter on Human and Peoples’ Rights (see below).

“LAWFULLY PRESENT”

The government of the Republic of Congo has maintained that operation *Mbata ya Bakolo* was in line with the country’s international obligations, in particular with Article 13 of the International Covenant on Civil and Political Rights (ICCPR), because the operation targeted only foreigners in an irregular migration status.¹⁰⁴ On the other hand, the UNHCR office in Kinshasa confirmed the deportation of 60 refugees and asylum seekers from the Republic of Congo.¹⁰⁵ Amnesty International estimates that the total number of return refugees and asylum-seekers is potentially much higher. Of the 109 individual deportations of DRC nationals on which Amnesty International collected information, 104 affected refugees or asylum-seekers¹⁰⁶ and several affected migrants in a regular migration situation. The representative of UNHCR in Brazzaville told Amnesty International that his staff member in charge of protection spent 80% of his time negotiating the release of refugees and asylum-seekers from police stations, preventing their expulsion.¹⁰⁷ The government of the Republic of Congo admitted in its response to the communication of United Nations Special Rapporteurs (See also section V.2 below) that the deportations did not affect exclusively individuals in an irregular migration status.¹⁰⁸

The government of the Republic of Congo took no preventive measures to protect refugees,

¹⁰³ Article 7.2 (d) of the Rome Statute.

¹⁰⁴ Ministère des affaires étrangères et de la coopération, « Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l’Homme », Brazzaville, September 2014, para. 31; annexed to a Letter dated 15 October 2014 from the Embassy of the Republic of Congo in Switzerland to the United Nations High Commissioner for Human Rights, [https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_\(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_(2.2014).pdf).

¹⁰⁵ Meeting between Amnesty International and UNHCR, Kinshasa, Democratic Republic of Congo, 18 September 2014.

¹⁰⁶ This includes some asylum-seekers whose APS (*attestation provisoire de séjour*) was already expired. See above: “Asylum-seekers in limbo in the Republic of Congo”.

¹⁰⁷ Meeting between Amnesty International and UNHCR, Brazzaville, Republic of Congo, 12 September 2014.

¹⁰⁸ “On remarquera que la **quasi-totalité** des ressortissants de la République Démocratique du Congo reconduits dans leur pays ont séjourné illégalement sur le territoire congolais”; emphasis added. Ministère des affaires étrangères et de la coopération, « Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l’Homme », Brazzaville, September 2014, para. 39; annexed to a Letter dated 15 October 2014 from the Embassy of the Republic of Congo in Switzerland to the United Nations High Commissioner for Human Rights, [https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_\(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_(2.2014).pdf).

asylum-seekers and other people in need of international protection. Neither the National Human Rights Commission nor UNHCR had received a prior notification or explanation of the operation.¹⁰⁹ Only after a high-level intervention of the UNHCR Representative in Brazzaville, the Minister of Interior issued a circular to all police units stating that refugees and asylum seekers should not be affected by the operation.¹¹⁰

Additionally, Amnesty International notes that the requirement in Article 7(2)(d) of the Rome Statute and Article 13 of the International Covenant on Civil and Political Rights (ICCPR) that the individuals affected be “lawfully” present in the territory of the state refers only to lawfulness under international law.¹¹¹ In this sense, the failures of the asylum system in the Republic of Congo need to be taken into account (see above: *Asylum-seekers in limbo in the Republic of Congo*).

“WITHOUT PERMITTED GROUNDS”

Mass expulsions contravene international law (see below: *The international law framework: the obligation of non-refoulement and the prohibition on mass expulsions*). The African Charter on Human and People’s Rights forbids mass expulsions of non-nationals (Article 12.5). A general prohibition on collective expulsions follows from the procedural safeguards against arbitrary expulsions, such as those in Article 13 of the ICCPR. As each foreigner is entitled to an individual decision on their expulsion, mass expulsions, as well as other forms of summary expulsion, are unlawful. Moreover, mass expulsions prevent the proper identification of individuals entitled to international protection, including refugees.

¹⁰⁹ Meeting between Amnesty International and the National Human Rights Commission, 11 September 2014. Meeting between Amnesty International and UNHCR, 12 September 2014.

¹¹⁰ Meeting between Amnesty International and UNHCR, September 2014.

¹¹¹ Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, 30 September 1986, para. 9. Christopher K. Hall, “Article 7: Crimes against humanity”, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Baden-Baden, Nomos Verlagsgesellschaft, 1999, p. 161.

“Even in such extreme circumstances as expulsion [...] the affected individuals should be allowed to challenge the order/decision to expel them before competent authorities, or have their cases reviewed, and have access to legal counsel, among others. Such procedural safeguards aim at making sure that non-nationals enjoy the equal protection of the law in their country of residence, ensure that their daily lives are not arbitrarily interfered with, and that they are not sent back/deported/expelled to countries or places they are likely to suffer from torture, inhuman or degrading treatment, or death, among others.”¹¹²

The government of the Republic of Congo has maintained that operation *Mbata ya Bakolo* was in line with the country’s international obligations, in particular with Article 13 of the International Covenant on Civil and Political Rights (ICCPR), because the operation targeted “criminals” and was justified by “compelling reasons of national security”.¹¹³ However, the “compelling reasons of national security” exception does not apply to the requirement of “a decision reached in accordance with law” (see below: *The international law framework: the obligation of non-refoulement and the prohibition on mass expulsions*).

THE INTERNATIONAL LAW FRAMEWORK: THE OBLIGATION OF *NON-REFOULEMENT* AND THE PROHIBITION ON MASS EXPULSIONS

All individuals, irrespective of their asylum or migration status, have the right to both substantive and procedural safeguards in case of transfer from the jurisdiction of a state. From the substantive point of view, individuals have the right not to be transferred to a country where they risk human rights violations such as torture or other ill-treatment, enforced disappearance or extrajudicial executions (the principle of *non-refoulement*). From the procedural point of view, they have the right to challenge the transfer, including on the grounds that they risk such violations.

The principle of *non-refoulement* prohibits states from transferring anyone to a country where they would have a well-founded fear of persecution or would face a real risk of other serious human rights violations or abuses. The principle of *non-refoulement* is the cornerstone of international refugee law and is set out, *inter alia*, in Article 33 of the 1951 UN Convention relating to the Status of Refugees (which the Republic of Congo ratified on 15 October 1962) and in Article 2.3 of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (which the Republic of Congo ratified on 16 January 1971). In addition, the principle of *non-refoulement* is well established in international human rights law.¹¹⁴ While under international refugee law the

¹¹² African Commission on Human and Peoples’ Rights, *Institute for Human Rights and Development in Africa v Angola*, communication no. 292/2004 (2008), Decision, May 2008, para. 84, <http://www.achpr.org/communications/decision/292.04/>.

¹¹³ Ministère des affaires étrangères et de la coopération, « Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l’Homme », Brazzaville, September 2014, para. 31; annexed to a Letter dated 15 October 2014 from the Embassy of the Republic of Congo in Switzerland to the United Nations High Commissioner for Human Rights, [https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_\(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_(2.2014).pdf).

¹¹⁴ The principle of *non-refoulement* is explicitly codified in, *inter alia*, Article 3 of the United Nations Convention Against Torture (which the Republic of Congo ratified on 30 July 2003); Art 16 of the International Convention for the Protection of All Persons from Enforced Disappearance (which the Republic of Congo signed on 6 February 2007); and Principle 5, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Additionally, the principle of *non-refoulement* is part

principle of *non-refoulement* applies only to asylum-seekers, refugees and other individuals entitled to international protection, under international human rights law it applies to everyone, both nationals and non-nationals, including migrants, irrespective of migration status. The principle of *non-refoulement* prohibits also indirect (or chain) *refoulement*, that is transfers to a state where there is a risk of onward *refoulement*; and constructive *refoulement*, that is *refoulement* through pressure to return to a place where the individual's live or rights are at risk.

Additionally, **states are obliged to give non-nationals the opportunity to challenge the transfer on the grounds that such a transfer would put them at real risk of human rights violations.** This is a procedural corollary to the principle of *non-refoulement*.¹¹⁵ Under Article 13 of the International Covenant on Civil and Political Rights (ICCPR, which the Republic of Congo ratified on 5 October 1983) non-nationals lawfully present in a state's territory cannot be expelled unless a decision to do so has been reached "in accordance with law". The Republic of Congo is under the same obligation also by virtue of Articles 7.1.a and 12.4 of the African Charter on Human and Peoples' Rights. The individual has the right to submit reasons against expulsion, to have the decision individually reviewed by the competent authority (or someone designated by it) and to be represented before it.

Mass expulsions violate international law. As it entitles foreign nationals to an individual decision, Article 13 is violated by laws or decisions providing for collective or mass expulsions.¹¹⁶ Mass expulsions are explicitly prohibited under Article 12.5 of the African Charter on Human and Peoples' Rights.

of customary international law and as such applicable to all states, regardless of whether they are parties to relevant treaties.

¹¹⁵ The Committee against Torture observed that the obligation of *non-refoulement* encompasses a right to an effective remedy for its breach, requiring "an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation" that non-refoulement issues arise. Committee against Torture, *Agiza v. Sweden* (communication no. 233/2003) Decision, UN Doc. CAT/C/34/D/233/2003, 20 May 2005, para. 13.6-7.

¹¹⁶ Human Rights Committee, General Comment No. 15: *The position of aliens under the Covenant* (Twenty-seventh session, 1986), para. 10.

IV. CONSEQUENCES OF OPERATION *MBATA YA BAKOLO*: XENOPHOBIA AND PERSECUTION

“It is no longer possible to live here, you cannot work, and you cannot move around if you are not Congolese”

Simon (not his real name), 38-year-old asylum-seeker from DRC (12 September, Brazzaville)

Blaming the deteriorating security situation on the presence of *kuluna* in the city, operation *Mbata ya Bakolo* targeted foreign nationals, specifically DRC nationals, and was therefore in and of itself discriminatory. Additionally, the targeting and profiling of foreign nationals, specifically DRC nationals, as well as the request to the general population to give information about “criminal” households to the police, fostered xenophobic attitudes.

Marie (not her real name), a 39-year-old refugee from the DRC, told Amnesty International:

“I was sitting at the hairdresser’s when General Ndengue passed on the street with a megaphone: ‘If you see them, you denounce them, we don’t want them anymore’. The lady who was doing my hair was a Congolese women from Brazzaville. I was terrified that she [the hairdresser] would recognise my accent in Lingala. I started shaking, I did not dare to speak Lingala anymore, I only responded to her in French.”¹¹⁷

Local artists composed songs singing “This is our Nation, the *Ngala* [foreigners or DRC nationals] have to go back now”¹¹⁸, which were broadcast over the radio and played in public transport vehicles. DRC nationals were victim of racially motivated violence; they were threatened, bullied and harassed by their neighbours and people in the street. They were expelled from their houses, sometimes forced to sleep on the street because they had nowhere to go. DRC nationals lost their jobs and livelihoods and their ability to support themselves and their families. They faced discrimination at school and when trying to access health care facilities. Xenophobia against DRC nationals grew, creating an environment in which DRC nationals were unable to enjoy their

¹¹⁷ Interview with affected person 025, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014. Amnesty International approached General Ndengue for comments on the content of this report, but received no response.

¹¹⁸ DJ Eric Nsoni, *Mbata ya Mo Kolo*, 2014, <https://www.youtube.com/watch?v=UMj24I2cvJw>, see lyrics in Appendix 3.

rights, including their rights to security of the person, work, housing, education and health.

Operation *Mbata ya Bakolo* instilled fear amongst DRC nationals. Those who believed they were safe in returning to the DRC left, while those who did not feel they could go back to the DRC were effectively confined to their homes, to avoid being subjected to verbal abuse and harassment by the general population; or to harassment, extortion, beatings and arbitrary arrest by the police. Most of the DRC nationals interviewed by Amnesty International said they lived in fear, unable to leave their houses after 6pm and that they restricted their movements even in the day time. Simon, a 38-year-old asylum-seeker from the DRC working as a tailor in Brazzaville, explained:

*"In my neighbourhood, people are saying that the Zairois have to leave. 'We don't want them here, the Zairois.' The neighbours are saying that the population has taken over and that there is no love left between the two populations. In the month of May [2014], the police passed by and asked for my documents. I showed them my APS [attestation provisoire de séjour, or temporary residence pass] and they told me I had to pay money. I paid CFA10,000 [US\$20]. The neighbours are denouncing to the police now. It is no longer possible to live here, you cannot work, and you cannot move around if you are not Congolese."*¹¹⁹

Aimee (not her real name), an asylum-seeker from the DRC and mother of nine children, told Amnesty International:

*"They threatened me at the market saying, 'We are going to take care of you. You will see.' The neighbours say they are tired of us, they throw stones at us, and they cut our house off of the electricity grid. Our children don't go to school anymore because we are scared they will be taken and sent back to Kinshasa."*¹²⁰

Others explained that they were too scared to leave the house and go to work. Claude (see also testimony in sections III.2 and III.6), a father and refugee from DRC, who stayed in Brazzaville after his wife and 12 children were expelled while he was at work explained:

*"I have been working as a night guard since 3 December 2010, but I stopped working on 19 May 2014 because I was too scared to be arrested. In the neighbourhood where I was working the police went from plot to plot."*¹²¹

Dieumerici (see also testimony in Section III.2), 22-year-old asylum-seeker who was severely beaten up by the police and left for dead in a trench, explained to Amnesty International he stopped working:

*"I do not leave the house anymore, and I don't even go to work anymore."*¹²²

¹¹⁹ Interview with affected person 080, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

¹²⁰ Interview with affected person 004, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹²¹ Interview with affected person 012, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹²² Interview with affected person 002, Amnesty International, Brazzaville, Republic of Congo, 7 September 2014.

Amnesty International considers that many of the acts described in this section may amount, among others, to the crime against humanity of persecution within the meaning of Article 7.1.h and 7.2.g of the Rome Statute of the International Criminal Court, that is “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”. Additionally, Amnesty International considers that those acts breached several international law obligations to which the Republic of Congo is bound (see below).

As a result, many DRC nationals felt that they had no choice but to leave. The authorities of the Republic of Congo said that these returns were “voluntary”, but they are *de facto* expulsions and are a violation of international law.

“IMPERMISSIBLE GROUNDS”: DISCRIMINATION BASED ON NATIONALITY

Under international law, all states have the obligation to respect, protect and promote the human rights of all individuals within their territory and subject to their jurisdiction.¹²³

The UN Human Rights Committee has specifically stated that “each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”.¹²⁴ The Committee on Economic, Social and Cultural rights has stated that “the ground of nationality should not bar access to Covenant rights. [...] The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers [...] regardless of legal status and documentation.”¹²⁵ The Committee on the Elimination of Racial Discrimination has equally indicated that distinctions based on nationality or immigration status amount to discrimination where they are not proportionate to a legitimate aim under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹²⁶

In particular, states have an obligation to “take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence” and to “take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of ‘non-citizen’ population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large”.¹²⁷

Additionally, states have an obligation to remove all obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing employment and health.¹²⁸

¹²³ Article 2, para. 1, International Covenant on Civil and Political Rights.

¹²⁴ UN Human Rights Committee, General Comment No.15: *The position of aliens under the Covenant*, 11 April 1986, para. 2.

¹²⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No 20, Non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, 2 July 2009, para. 30.

¹²⁶ UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination against non-citizens, 19 August 2004 (CERD General Recommendation 30), para. 4.

¹²⁷ CERD General Recommendation 30, para. 11-12.

¹²⁸ CERD General Recommendation 30, para. 29.

1. INCITEMENT TO HOSTILITY AND DISCRIMINATION IN LOCAL MEDIA

Three nationals from the Republic of Congo and several DRC nationals expressed concerns during interviews with Amnesty International that radio and television programmes were "*generating a culture of hate in the community*".¹²⁹ They referred specifically to radio and TV talk shows in the Republic of Congo which invited callers to share their opinions about operation *Mbata ya Bakolo* or DRC nationals.¹³⁰ Several TV talk shows in which callers were invited to share their opinion incited people to hostile attitudes towards DRC nationals and increased popular support for the operation.¹³¹ According to a DRC national affected by the operation and a Congolese human rights defender in Brazzaville, statements like "on va les tuer tous" (we are going to kill them all) and "*même pas un seul devrait rester sur notre territoire*", which means "not even one can stay on our territory" were made on television without any repercussions or intervention by the authorities.¹³²

During operation *Mbata ya Bakolo*, songs that incited the public to discrimination and xenophobia were composed, played on the radio and sang by the general population on public transport. Amnesty International researchers obtained the recordings of two songs that were composed about the operation and which were played and sang in buses and bars. These songs praise operation *Mbata ya Bakolo*, and give listeners "tips" to help them identify DRC nationals, for example by looking out for the use of different words to refer to certain things, the slight difference in accent when pronouncing certain words in Lingala and the differences in the way they said certain numbers in French.¹³³

2. RACIALLY-MOTIVATED ATTACKS AND INTIMIDATIONS

Justine, 28, told Amnesty International researchers how she was subjected to an "identification test" in Pointe-Noire, when she went on the bus to the market with her six-year-old son:

"The bus stopped at a roadblock. The roadblock was set up by the police, but civilians were in charge of it. The police was there, they said [to the civilians manning the roadblock] 'you can

¹²⁹ Interview with anonymous pastor, national of the Republic of Congo, Brazzaville, 9 September 2014, Interview with National Human Rights Organisation, Brazzaville, Republic of Congo, 7 September 2014, Interview with National Human Rights Organisation, Brazzaville, 11 September 2014.

¹³⁰ References were made to "*Allo Brazza*" broadcasted by ES-TV, and to DRTV and MNTV. Amnesty International approached all broadcasters for comments. The organisation only received a reply from ES-TV which stated that "every intervener who made remarks that could feed hatred or hostility between the two populations was immediately cut without any other form of process". ES-TV's full response is included at Appendix 2.

¹³¹ References were made to "*Allo Brazza*" broadcasted by ES-TV, and to DRTV and MNTV.

¹³² Interview with affected person 004, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014, Interview with National Human Rights Organisation, Brazzaville, 11 September 2014.

¹³³ Congolese from DRC pronounce, for example, the word sugar differently in Lingala. As an ex-French colony, the Congolese from Brazzaville say seventy as "*soixante-dix*" and ninety as "*quatre-vingt dix*", while DRC nationals, as an ex-Belgian colony say "*septante*" and "*nonante*".

*beat but not kill.' They made everyone come out of the bus. They asked us to count from one to seventy-five [septante-cinq]. When I said seventy [septante], they said 'you are Zairois' and they started to beat me with a lot of people. My son ran away [while they were beating me up] and up to today, I don't know where he is."*¹³⁴

Justine left the Republic of Congo shortly after this incident. Amnesty International believes that Justine may have suffered a racially-motivated attack at the instigation of or with the consent or acquiescence of the police.

Micheline, 23, told Amnesty International researchers that a group of young Congolese men threatened her in Pointe-Noire when she was eight months pregnant:

*"They had knives and broken glass bottles and they had decided to take my baby out. They said 'We are going to kill you, or you leave and you go back to your country.' I went to the hospital afterwards but they did not want to treat me. Yet I still gave birth there three days later. It was a premature birth because of the emotions."*¹³⁵

Micheline left the country shortly after she gave birth. Victor, 39, immigrant from the DRC, told Amnesty International researchers:

*"I was in possession of all three cards, none was expired. I had a consular card valid from 15 April 2014 to 14 April 2015, attestation of domicile valid until 10 October 2014 and a certificate of registration. I had lived in Brazzaville since 1996 with the three required cards. On 20 April, I sent my wife and children to Kinshasa out of fear. They [Congolese] were chasing people out in other neighbourhoods. I stayed but there were a lot of problems even in our neighbourhood. People told me I had to leave. On 15 May, they pillaged my butcher shop. They came in the night and took everything, even the freezer. I also had a hairdresser salon. I wanted to find someone to buy my space, but the owner refused and he told me that 'from now on, only the children of this country will be allowed to work.' On 17 May when I was in my butcher shop, the police arrived. They asked for my papers. I showed them, but they said I had to go back to DRC. They took me to the police station. I had to pay CFA30,000 [US\$52] to be liberated. Five days later I left Brazzaville to come to Kinshasa."*¹³⁶

George (not his real name), a 46-year-old DRC national, said:

"I arrived in Brazzaville in 1996 with a valid resident permit. I am a civil engineer. We were in the middle of the rehabilitation of Mpila district [in Brazzaville]. When I came home from the construction site on 4 June 2014, the neighbourhood chief arrived with four policemen around 4pm. They told me I have to leave the country. I showed them my papers and they told me that

¹³⁴ Interview with affected person 087, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹³⁵ Interview with affected person 090, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹³⁶ Interview with affected person 104, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

that was none of their business."¹³⁷

After this incident, George and his family left Brazzaville for Kinshasa. Antoine (not his real name), a refugee, explained how his wife Alice, was subjected to xenophobic harassment at the market:

*"A woman told her 'Why don't you go back to the DRC, there is no place for you, Zaïroise, on this market' My wife Alice responded that she was a refugee and that she should not be sent back to DRC, but they destroyed her stall and stole all her merchandise."*¹³⁸

3. VIOLATIONS OF THE RIGHT TO ADEQUATE HOUSING

As mentioned above (see section II.2), in the framework of operation *Mbata ya Bakolo* the police announced that it would levy fines of CFA300,000 [US\$600] on landlords with "illegal" tenants. Twenty seven families, almost one out of 4 families Amnesty International spoke to, reported that they lost their house as a consequence of this announcement. Families often left the country after losing their house, others temporarily stayed with friends while trying to find another place to live. Some people received assistance from UNHCR. Eric (not his real name), an asylum-seeker from the DRC, explained:

*"It has become very difficult to rent a house, even if you have money, because the authorities have passed messages on the radio that everyone who rents his house to a foreigner without papers, will pay a fine of CFA300,000 [US\$600]. These messages were regularly brought by Colonel Jules Tchoumou, the spokesperson of the police both on the radio and the TV."*¹³⁹

Either in the way this measure was communicated, or in the way it was understood, "illegal" tenant were equated to DRC nationals. Francois, an asylum-seeker whose wife and five children were expelled, told Amnesty International researchers:

*"In June, the megaphones passed in our neighbourhood. 'Those who keep Zaïrois, will pay a fine of CFA300,000 [US\$600]'. My landlord, an old lady, said she did not want problems. Now all the compounds are empty. I am now living with a friend of mine."*¹⁴⁰

Grégoire, a refugee and father of seven children, told Amnesty International, that the police came to his house twice. The first time was in the second week of April 2014. They were let go when they presented their refugee cards.

"One week later another team came back. We showed them our refugee cards. 'Even if you have these cards, you still have to leave' said the police. They went to see the landlord next door and told him; 'Make them leave or you pay CFA300,000 [US\$600]'. After that incident, the landlord

¹³⁷ Interview with affected person 085, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹³⁸ Interview with affected person 014, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹³⁹ Interview with affected person 001, Amnesty International, Brazzaville, Republic of Congo, 7 September 2014.

¹⁴⁰ Interview with affected person 023, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014.

*asked us to leave, but he was nice and reimbursed us the rent we had already paid.”*¹⁴¹

DRC nationals forcefully evicted by their landlords and rendered homeless were often forced to leave their children with neighbours or friends. Lorraine, an asylum-seeker who has been in the Republic of Congo for 14 years, told Amnesty International researchers that she had been living out on the street since she was evicted on 9 June 2014, while her seven-year-old son stayed with the neighbours. The neighbours were arrested and expelled later that month, along with her child.¹⁴²

¹⁴¹ Interview with affected person 026, Amnesty International, Brazzaville, Republic of Congo, 9 September 2014.

¹⁴² Interview with affected person 043, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

RIGHT TO ADEQUATE HOUSING

Refugees, asylum-seekers and migrants have a right to adequate housing that they should enjoy without discrimination and on an equal footing with nationals of the country they reside in.¹⁴³ The Republic of Congo has an obligation to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, regardless of their legal status and documentation.¹⁴⁴

The fines imposed on landlords in the Republic of Congo hindered access to adequate housing and resulted in discrimination against DRC nationals who lost their house, irrespective of their legal status, rendering some homeless. States have an obligation to provide migrants in irregular situations at risk of homelessness with a level of housing which ensures their dignity.¹⁴⁵ Forced evictions do not only undermine the right to adequate housing, but also related rights such as the rights to health, food, water and education.¹⁴⁶

4. VIOLATIONS OF THE RIGHT TO WORK

Sixteen persons, or 20% of the people Amnesty International spoke to, who were still living in the Republic of Congo, explained that they lost their livelihood as a direct consequence of *Mbata ya Bakolo*.

Rachel (not her real name), an asylum-seeker from DRC and mother of three, told Amnesty International researchers that she had been working in a private school as a teacher for three and a half years. The Director of the school called her into her office on 17 April 2014 and explained to her that they could no longer keep her, as '*Zairois*' were no longer allowed to work.¹⁴⁷

Antoine, a 57-year-old refugee, applied a job as an accountant with an insurance company. The company director told him that they had received clear instructions from the Congolese government to not employ foreigners and especially not DRC nationals.¹⁴⁸

On 27 June the General Director of the police announced operation *Longwa na nzela*, "free the roads", an off-shoot of *Mbata ya Bakolo*. *Longwa na Nzela* implemented a 2011 decree that only Congolese nationals could earn a living as a driver.¹⁴⁹ As a result, the police started stopping drivers for nationality checks. Amnesty International spoke to several DRC nationals who lost their jobs and livelihoods as a consequence. Patrick (not his real name), a 56-year-old refugee living in Brazzaville since 2002, and father of four girls explained:

"I am a truck driver. I tried to force things, I tried to resist, but I got caught every day. Sometimes

¹⁴³ International Covenant on Economic, Social and Cultural Rights, articles 2 and 11.

¹⁴⁴ ICESCR Committee, General Comment No 20, Non-discrimination in economic, social and cultural rights, 2/09/2009/

¹⁴⁵ Report of the Special Rapporteur on the human rights of migrants, 16 April 2010, UN Doc. A/HR/14/30, para. 88.

¹⁴⁶ Report of the Special Rapporteur on the human rights of migrants, 16 April 2010, UN Doc. A/HR/14/30, para. 52.

¹⁴⁷ Interview with affected person 007, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹⁴⁸ Interview with affected person 014, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹⁴⁹ Decree No. 2011-480 du 29 July 2011.

I paid CFA10,000 [US\$18], CFA5,000 [US\$9] or CFA3,500 [US\$6] depending on the mood of the police officers. They told me to go home without looking left or right and to park the truck, otherwise they would confiscate the truck. I had to stop working since that day. I am desperate, I don't know what to do. They [the police] chased me away from the market at Thomas Sankara. I went to another market and they chased me away too. I showed them [the police] my papers from UNHCR, and they told me to go somewhere else. How are we going to live? What are we going to eat?"¹⁵⁰

Self-employed people working in the informal sector, who were selling at the market or on the street, were chased away by the police or harassed and exposed to violence by other sellers. Elodie (not her real name), an asylum-seeker who left the DRC in 1997 after her husband was killed explained:

"I used to earn a good living here working as a tailor, but now I cannot work anymore because they [the other tailors with whom I was sharing the workshop] chased me out of the workshop."¹⁵¹

Victor, 39, immigrant from the DRC (see also testimony in section IV.2) said *"I also had a hairdresser salon. I wanted to find someone to buy my space, but the owner refused and he told me that 'from now on, only the children of this country will be allowed to work'."*¹⁵²

¹⁵⁰ Interview with affected person 082, Amnesty International, Brazzaville, Republic of Congo, 12 September 2014.

¹⁵¹ Interview with affected person 006, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹⁵² Interview with affected person 104, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

RIGHT TO WORK

The right to work, recognised in the International Covenant on Economic, Social and Cultural Rights, is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.¹⁵³ States have an obligation to guarantee the accessibility of the right to work. This means that the labour market must be open to everyone under the jurisdiction of States parties.¹⁵⁴ Any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, [...] which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality is prohibited.¹⁵⁵

The obligation to respect and protect the principle of non-discrimination in relation to the right to work is immediately applicable and is neither subject to progressive implementation nor dependent on available resources.¹⁵⁶ The republic of Congo can therefore not implement a blanket policy which prohibits any non-national to work.

While States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.¹⁵⁷

5. VIOLATIONS OF THE RIGHT TO EDUCATION

Ten families out of the 82 interviewed in Brazzaville explicitly told Amnesty International that their children were no longer going to school following operation *Mbata ya Bakolo*. Naomi, (see testimony section III.2), a 32-year-old migrant from the DRC, explained:

*"In the school where my children were going, the director called a meeting for all the parents of DRC nationals on the request of General Ndengue. They insisted that all the children and their parents who were Zaïrois had to go back to Kinshasa."*¹⁵⁸

Rachel(not her real name), an asylum-seeker from the DRC, told Amnesty International how her 13-year-old child had to leave school in April 2014 simply because he was from the DRC:

"He stopped going to school in the month of April [2014]. The teacher said he did not have the

¹⁵³ ICESCR Committee, General Comment No18, The right to work, 6 February 2006, UN Doc E/C.12/GC/18, para. 1.

¹⁵⁴ ICESCR Committee, General Comment No18, The right to work, 6 February 2006, UN Doc E/C.12/GC/18, para. 12.

¹⁵⁵ International Covenant on Economic, Social and Cultural Rights, Article 2, para. 2 and Article 3.

¹⁵⁶ ICESCR Committee, General Comment No18, The right to work, 6 February 2006, UN Doc E/C.12/GC/18, para. 33.

¹⁵⁷ International Convention on all forms of discrimination and CERD, General Recommendation 30 on Discrimination against non-citizens, para. 35.

¹⁵⁸ Interview with affected person 096, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014. Amnesty International approached General Ndengue for comments on the content of this report, but received no response.

right to come anymore because he was from DRC. It was a public school. I am also scared to send him."¹⁵⁹

Nine parents explained they were too scared to send their children to school, half of them mentioning that their children were bullied and threatened by their classmates because they were from DRC.¹⁶⁰ According to an anonymous diplomat, it was said on television that *"every student will now have a good place in the classroom, now that the children of the Zairois have left."*¹⁶¹

RIGHT TO EDUCATION

As for other economic, social and cultural rights, the prohibition against discrimination in relation to the right to education is of immediate effect.¹⁶² The principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals and irrespective of their legal status.¹⁶³ States have an obligation to respect the right to education and must ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in its territory.¹⁶⁴ States parties have to protect the right to education for all and must therefore adopt measures, which should include legislation, to ensure that private schools do not discriminate on prohibited grounds.¹⁶⁵

6. VIOLATIONS OF THE RIGHT TO HEALTH

Amnesty International researchers spoke to four people who said they were refused access to health services by health care workers due to their nationality. Two of them had been raped by police officers. At least two of the testimonies indicate that the health workers were intimidated by the police officers who were implementing *Mbata ya Bakolo*. In those instances, the fact that the interviewees could not access healthcare was a consequence of direct state action.

Lydia (not her real name), a 34-year-old migrant, told Amnesty International researchers how she and four of her friends were raped by police officers at their house in Brazzaville (see also testimony in section III.3). Afterwards, the neighbours took them to a nearby health centre where the nurse refused to treat them. Lydia explained:

"There were Congolese [from DRC] neighbours on both sides [of the house]. They brought us to a small health centre. The nurse did not want to treat us. She said 'when you bring Zairois here, the police comes to threaten them here, they will come to beat you here, and afterwards, they

¹⁵⁹ Interview with affected person 007, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹⁶⁰ Interview with affected person 024, 028, 029, 031, Amnesty International, Brazzaville, September 2014.

¹⁶¹ Interview with Amnesty International, Brazzaville, 9 September 2014.

¹⁶² ICESCR Committee, General Comment No 13, the right to education, 8 December 1999, UN Doc E/C.12/1999/10, para. 31.

¹⁶³ Convention on the Rights of the Child, article 2 and UNESCO Convention against discrimination in Education, article 3 (e)

¹⁶⁴ International Convention on all forms of discrimination and CERD, General Recommendation 30 on Discrimination against non-citizens, para. 30.

¹⁶⁵ ICESCR Committee, General Comment No 20, Non-discrimination in economic, social and cultural rights, 2 September 2009, UN Doc E/C.12/CG/20, para. 11.

*will do the same to others. We are all going to be in danger. It is better if you go back to your country'.*¹⁶⁶

Philomene (not her real name), who is 44, migrated to Brazzaville in 2006. She told Amnesty International researchers that she was in a health centre in April 2014 with her seriously ill six-year-old son, when the police came:

"They screamed at us; 'Zairois, go back to your country'. Those who were not too ill left one by one. Later even the doctor, who was also a DRC national, fled the health centre and I found myself alone with my son in the empty health centre. He had an infusion [a drip]. As I did not know how to remove the infusion, I left the health centre with my son, while carrying [the drip]. A woman on the street helped us to remove it. It was not possible to go to a health centre were the medical staff were not DRC nationals[F1], so I walked to the Beach with my son on my back."¹⁶⁷

THE RIGHT TO HEALTH

Health facilities, goods and services must be physically and economically accessible by all sections of the population, including refugees, asylum-seekers and migrants, regardless of their legal status and documentation and without discrimination on any kind.¹⁶⁸ Therefore States parties must respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.¹⁶⁹

7. OPERATION *MBATA YA BAKOLO* LED TO DISGUISED EXPULSIONS

As a result of operation *Mbata ya Bakolo* and of the discriminatory attacks, and other human rights violations documented in the previous sections, the lives of many DRC nationals in the Republic of Congo became so impossible that they felt like they had no choice but to leave. Twenty-five of the 28 individuals and families interviewed by Amnesty International in Kinshasa, DRC had decided to leave the Republic of Congo. Two women from these families had been raped by police officers¹⁷⁰, four suffered racially motivated attacks¹⁷¹, one had been arbitrarily

¹⁶⁶ Interview with affected person 086, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹⁶⁷ Interview with affected person 088, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹⁶⁸ ICESCR Committee, General Comment No 14, Right to the highest attainable standard of health, 11 August 2000, E/C.12/2000/4, para. 34 and ICESCR Committee, General Comment No 20, Non-discrimination in economic, social and cultural rights, 2 September 2009, UN Doc E/C.12/CG/20, para. 20.

¹⁶⁹ International Convention on all forms of discrimination and CERD, General Recommendation 30 on Discrimination against non-citizens, para. 36.

¹⁷⁰ See section III.3; Interview with affected person 086, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014 and Interview with affected person 110, Amnesty International, Kinshasa, Democratic Republic of Congo, 19 September 2014.

¹⁷¹ See section III.2; Interview with affected person 087, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014, Interview with affected person 090, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014; Interview with affected person 104, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014 and

arrested and released¹⁷², one had been a victim of excessive use of force by the police¹⁷³, five of them said to be threatened or intimidated by the police or their landlords and neighbours¹⁷⁴, six of them indicated to have left out of fear¹⁷⁵.

The government of the Republic of Congo has called these departures “voluntary returns”.¹⁷⁶ According to UNHCR, “voluntariness” implies “an absence of any physical, psychological, or material pressure”.¹⁷⁷ Under the Rome Statute of the International Criminal Court, “the term ‘forcibly’ [in the crime against humanity of deportation] is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment”.¹⁷⁸ Amnesty International considers that truly voluntary returns are those effected by individuals who are in a position to make a choice, i.e. whether to remain in the host country or to return to their country of origin. Those individuals who do not have permission to remain in the host country and are facing forcible transfer do not have such a choice and therefore their return cannot be characterised as voluntary.

Interview with affected person 108, Amnesty International, Kinshasa, Democratic Republic of Congo, 18 September 2014.

¹⁷² See section III.4 Interview with affected person 111, Amnesty International, Kinshasa, Republic of Congo, 18 September 2014.

¹⁷³ See section III.2 Interview with affected person 106, Amnesty International, Kinshasa, Democratic Republic of Congo, 17 September 2014.

¹⁷⁴ Interview with affected person 096, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014 (see section III.2) and Interview with affected persons 83, 85, 100 and 101, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹⁷⁵ Interview with affected persons 84, 89, 93, 94, 97 and 99, Amnesty International, Kinshasa, Democratic Republic of Congo, 15 September 2014.

¹⁷⁶ Republic of Congo, *Rapport de la République du Congo sur la protection des droits de l'homme pendant l'opération "Mbata ya Bakolo"*, p5, annexed to Letter No. 0506/14/MPC/ONUC/OI/C2 from the Ambassador of the Republic of Congo in Switzerland to three Special Rapporteurs, dated 5 September 2014, [https://spdb.ohchr.org/hrdb/28th/Congo_05.09.14_\(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo_05.09.14_(2.2014).pdf).

¹⁷⁷ UNHCR, *Voluntary Repatriation: International Protection*, 1996, para. 2.3, <http://www.unhcr.org/4164f6404.html>

¹⁷⁸ International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000), footnote 12.



During operation *Mbata Ya Bakolo*, thousands of DR Congo nationals arrived back in the country every day. While some were able to return with their personal effects, this was not the case for all. © Habibou Bangré

In the case of the Republic of Congo, the human rights violations and abuses committed in the framework of operation *Mbata ya Bakolo* and outlined in this report caused many DRC nationals to leave the country. Their returns constitute disguised expulsions, in violation of several international law obligations to which the Republic of Congo is bound, including: Article 33 of the 1951 Convention relating to the Status of Refugees; Article 3 of the UN Convention Against Torture; Article 13 of the International Covenant on Civil and Political Rights; Article 2.3 and 5.1 of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa; Articles 7 and 12 of the African Charter on Human and Peoples' Rights (see below).

DISGUISED EXPULSIONS AND CONSTRUCTIVE REFOULEMENT

The International Law Commission (ILC) draft articles on the expulsion of aliens provide that “[A]ny form of disguised expulsion of an alien is prohibited”.¹⁷⁹ The ILC has defined disguised expulsions as “the forcible departure of an alien from a State resulting indirectly from an action or an omission attributable to the State, including where the State supports or tolerates acts committed by its nationals or other persons, intended to provoke departure of aliens from its territory other than in accordance with the law.”¹⁸⁰ The notion of disguised expulsion therefore includes the notion of “constructive refoulement”, that is the deliberate denial of human rights leading to the indirect effect of forcing people to return to their country of origin.

Both the notions of disguised expulsions and constructive refoulement derive from the principle of *non-refoulement* and express the idea that the illegality of *refoulement* is not mitigated by the fiction that the individuals concerned “freely chose” to return to their country of origin, when returning to the country of origin is preferable to continuing to suffer the deprivations and harassment visited upon them by the host state.¹⁸¹

¹⁷⁹ Adopted by the International Law Commission at its sixty-sixth session, in 2014, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/69/10, para. 44); article 10(1).

¹⁸⁰ Draft articles on the expulsion of aliens, article 10(2).

¹⁸¹ See for example: Steven M. Schneebaum, *The United Nations Must Work to Prevent the Illegal Constructive Refoulement of the People of Ashraf*, 25 May 2010, <http://www.usccar.org/2011/10/01/the-united-nations-must-work-to-prevent-the-illegal-constructive-refoulement-of-the-people-of-ashraf/>

V. LACK OF ACCOUNTABILITY FOR THE VIOLATIONS COMMITTED

DRC nationals who suffered human rights violations during operation *Mbata ya Bakolo* have faced serious obstacles accessing remedies. Some DRC nationals who remained in the Republic of Congo told Amnesty International that they cannot complain to the police because they are afraid that the police will target them for arrest, or that they will be expelled. Other national mechanisms, such as the National Human Rights Commission failed to investigate any of the human rights violations committed during operation.

Those who experienced violations during expulsion or otherwise decided to go back to the DRC no longer have access to remedies in the Republic of Congo. The Republic of Congo and the DRC made various public commitments to set up a joint commission to investigate allegations of human rights violations committed during the *Mbata ya Bakolo* operation.¹⁸² At the time of writing, however, no action by either government to implement these commitments had been taken.

1. OBSTACLES TO ACCESS TO JUSTICE

Most of the people Amnesty International interviewed did not try to seek justice because they were scared of reporting the violations to the police, the main authority implementing operation *Mbata ya Bakolo*. Pauline (not her real name), a 21-year-old DRC migrant who reported being raped by the police, explained why she would not consider lodging a complaint:

“We did not even go to the police station, because even inside there, they were ill-treating people.”¹⁸³

Antoine and his wife Alice (not their real names), wrote a complaint letter after Alice’s stall at the market was pillaged and destroyed by Brazzavillois (see also testimony in sections IV.2 and IV.4). As a result, Antoine was intimidated and arrested:

“One day when I was home alone, the phone rang. It was the legal advisor of the security services. They wanted to talk to my wife who had made a complaint. I told them I was her husband and they asked me to urgently come to the market so we could talk about the file. I went to the place

¹⁸² *Communiqué final suivant les travaux de la quatrième session de la commission spécial de défense et sécurité entre la république démocratique du Congo et la république du Congo*, Kinshasa, 3 June 2014, a.o. published in « *Les dépêches de Brazzaville* », No., 2029, Thursday 5 June 2014 and *Communiqué final de la visite de travail à Kinshasa du président de la république du Congo*, son Excellence Monsieur Denis Sassou N’Guesso, 19 September 2014, [https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_\(2.2014\)_A1.pdf](https://spdb.ohchr.org/hrdb/28th/Congo_15.10.14_(2.2014)_A1.pdf)

¹⁸³ Interview with affected person 110, Amnesty International, Kinshasa, Republic of Congo, 19 September 2014.

where my wife used to have her stall. I was surrounded by ten police officers. They lifted me up and put me in their vehicle. I showed my refugee card, but that didn't help. They took my phone, my refugee card and my shoes. I was detained for 10 days. During the detention one of the commanders told me 'you can thank God that you are still here. Do you know how many refugees we have expelled? We are executing an agreement between DRC and the Republic of Congo. UNHCR whom you are counting on has neither power nor territory. We are sovereign'."¹⁸⁴

2. LACK OF ACCOUNTABILITY FOR VIOLATIONS COMMITTED BY THE POLICE OR OTHER PUBLIC OFFICIALS

Amnesty International has serious concerns about the unwillingness of the government to conduct prompt, thorough and impartial investigation related to operation *Mbata ya Bakolo*.

According to media sources, 17 policemen accused of having committed abuses in relation to operation *Mbata ya Bakolo*, including the rape of a 13-year-old girl and of a woman in detention, were excluded from service during a public ceremony held by the General Police Directorate on 18 April 2014. Out of the 17, at least eight had been reportedly referred to prosecution authorities.¹⁸⁵ The same press articles quote the deputy director of police as confirming that some of the officers excluded had been accused of rape; and that the police station at "the Beach" had been closed two days earlier because of the poor behaviour of its personnel.

However, in September 2014 officials of the Ministry of Justice and Human Rights told Amnesty International that they had no specific examples of human rights violations that had been committed during operation *Mbata ya Bakolo*. When Amnesty International asked how the Minister of Justice addressed human rights violations during the operation, the cabinet director replied:

*"The operation was conducted with a road map: written instructions had to be followed by the police officers. Some officers have misbehaved and have been excluded from the police. We do not have any specific cases of human rights violations."*¹⁸⁶

¹⁸⁴ Interview with affected person 014, Amnesty International, Brazzaville, Republic of Congo, 8 September 2014.

¹⁸⁵ "Opération *Mbata ya Bakolo*: 17 agents rayés des effectifs permanents de la police nationale", *Agence d'Information d'Afrique Centrale*, 21 April 2014, <http://www.adiac-congo.com/print/content/operation-mbata-ya-bakolo-17-agents-rayes-des-effectifs-permanents-de-la-police-nationale>; "Direction générale de la Police: 17 policiers sanctionnés", *Journal de Brazza*, 25 April 2014, <http://www.journaldebrazza.com/article.php?aid=4455>.

¹⁸⁶ Meeting with the Ministry of Justice, Amnesty International, Brazzaville, 12 September 2014. On 23 March 2015 Amnesty International sent an official communication to the Ministry of Justice and Human Rights, the Ministry of Interior, the Directorate General of the Police and the Prosecutor, raising serious concerns about the human rights violation brought to the organisation's attention. Amnesty International requested the government to share information on the investigations that had taken place into all allegations of excessive use of force and sexual violence by the police. The government did not respond to any of the specific questions raised by Amnesty International. In April 2015 the Ministry of Justice and Human Rights referred Amnesty International to the official response the government had provided to the communication of the three Special Rapporteurs (mentioned below).

The director of human rights added:

*“In our opinion, there have not been hundreds of cases [of police abuses]. There have only been a few cases of minimal violence. [...] Not any case of rape was brought to our attention.”*¹⁸⁷

The officials added that the government was ready to sanction misbehaviour and said it had done so, referring to a list of 18 police officers who had been found guilty of theft and extortion committed during the operation and had faced disciplinary sanctions.¹⁸⁸

COMMUNICATION OF UNITED NATIONS SPECIAL RAPPORTEURS

On 21 July 2014 the United Nations Special Rapporteur on the rights of migrants, the Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences sent a communication to the government of the Republic of Congo, expressing their concerns about the mass expulsions and raising allegations of ten cases of human rights violations.¹⁸⁹ The lack of detail in the response the government provided to the Special Rapporteurs seems to indicate that no serious investigations were conducted. The allegations of human rights violations are simply denied or discarded, stating that the government was not able to trace the affected persons nor establish the facts.

In response to allegations of a case of violation of the right to liberty and security, the government states that “all expelled DRC nationals were automatically brought to the border at the Beach (or port) in Brazzaville. As the individual had not committed a crime, it is unlikely that he would have been taken and detained in a detention place.”¹⁹⁰ This statement contradicts Amnesty International’s research, documenting 54 cases of arbitrary arrests (see above). In response to an allegation of a case of a 44-year-old woman from the DRC who was refused medical care based on her nationality, the government stated that “discriminatory practices on grounds of social origin, nationality, sexual orientation or gender identity do not exist in Congo and are prohibited by the Congolese Constitution.”¹⁹¹ This statement contradicts Amnesty International’s research, documenting four situations in which DRC nationals were refused access to health services by health care workers due to their nationality (see

¹⁸⁷ Meeting with the Ministry of Justice, Amnesty International, Brazzaville, 12 September 2014.

¹⁸⁸ The Directorate General of the Police shared the official memorandum which indicates their suspension from service for 35 days (Ministère de l’intérieur et de la décentralisation, Direction générale de la Police, service du Personnel, Note de Service, 0629, Brazzaville 18 April 2014, on file with Amnesty International). The police informed Amnesty International researchers during the meeting that the police officers were later in the month of May excluded (fired) from the police service. Press articles reported that two more Notes were issued, sanctioning police officers for misconduct during operation *Mbata ya Bakolo*.

¹⁸⁹ Special Rapporteur on the rights of migrants, Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment and Special Rapporteur on violence against women, its causes and consequences, Communication no. COG 2/2014, 21 July 2014, [https://spdb.ohchr.org/hrdb/28th/public - AL Congo 21.07.14 \(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/public - AL Congo 21.07.14 (2.2014).pdf)

¹⁹⁰ Ministère des affaires étrangères et de la coopération, « Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l’Homme », Brazzaville, September 2014, p10; annexed to a Letter dated 15 October 2014 from the Embassy of the Republic of Congo in Switzerland to the United Nations High Commissioner for Human Rights, [https://spdb.ohchr.org/hrdb/28th/Congo 15.10.14 \(2.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/Congo 15.10.14 (2.2014).pdf).

¹⁹¹ « Observations du gouvernement de la République du Congo relatives à la communication conjointe des Procédures Spéciales du Conseil des Droits de l’Homme », Brazzaville, p. 11.

above). The four cases of rape brought to the attention of the government were simply discarded because they were not reported.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment considered the government's response to be insufficient and concluded that the allegations were therefore substantiated and that, in forcibly expelling DRC nationals, the Republic of Congo had violated Articles 1 and 16 of the Convention against Torture.¹⁹²

3. UNAVAILABILITY OF OTHER AVENUES FOR COMPLAINT: ACTION AND INACTION BY THE NATIONAL HUMAN RIGHTS COMMISSION

The *Commission nationale des droits de l'homme* (National Human Rights Commission) in the Republic of Congo failed to investigate any of the human rights violations committed during operation *Mbata ya Bakolo*. The only action that the Commission carried out in response to operation *Mbata ya Bakolo* was to request the police to respect human rights and human dignity during the operation, a request aired on the radio.¹⁹³

The commissioners told Amnesty International that they had not received any complaints from victims or non-governmental organisations and therefore had not conducted any investigations.¹⁹⁴ Yet, the Commission can investigate human rights violations *ex officio* and can equally take the initiative to provide its opinion and recommendations to any government authority.¹⁹⁵

Given the considerable media attention given to the operation, the Commissioners were aware of the actual and potential human rights violations that were taking place.

One of the Commissioners explained the Commission's inaction to Amnesty International as follows:

*"You have to understand the challenges, we have problems with immigration, we have a lot of refugees and we are a young Commission. It is difficult to defend all rights. Poverty is one of the biggest human rights violations."*¹⁹⁶

Commissioner Elanga¹⁹⁷ added:

¹⁹² Special Rapporteur on torture and other cruel, inhuman or degrading treatment, *Observations on communications transmitted to Governments and replies received*, UN Doc. A/HRC/28/68/Add.1, 5 March 2015, para. 118-120.

¹⁹³ Meeting with the national human rights commission, Amnesty International, Brazzaville, Republic of Congo, 11 September 2014.

¹⁹⁴ Meeting with the national human rights commission, Amnesty International, Brazzaville, Republic of Congo, 11 September 2014.

¹⁹⁵ Additionally, the Commission has the authority to take up both cases raised by individuals who consider themselves to be victims of a human rights violation, and cases raised by a third person or a non-governmental organisation. Loi N.5 2003 du 18 Janvier 2003 portant attributions, organisation et fonctionnement de la Commission nationale des droits de l'homme, Articles 5 (1) and 26.

¹⁹⁶ Meeting with the National Human Rights Commission, Amnesty International, Brazzaville 11 September 2014.

¹⁹⁷ Commissioner Gisèle Elanga is the President of the section of the National Human Rights Commission in charge of Equity,

*"I am a neighbourhood chief myself, in Poto-Poto. We received instructions to identify all foreigners; there was not really a manhunt. All West-Africans had their papers. Most of the departures were voluntary. But you have understood what the Zairois are like. When you house a Zairois, he is capable of raping your daughter. It is a very unreliable race."*¹⁹⁸

Gender, Vulnerable persons, Minorities and Indigenous peoples.

¹⁹⁸ Meeting with the National Human Rights Commission, Amnesty International, Brazzaville 11 September 2014.

4. ACCOUNTABILITY FOR ABUSES COMMITTED BY PRIVATE INDIVIDUALS AND FAILURE TO PROTECT

Amnesty International research shows that DRC nationals were threatened, bullied and harassed by their neighbours and people in the street and in several instances, were victims of racially-motivated violence.

On 25 April 2014 the General Police Directorate issued a statement that “...acts of revenge, retaliation and intimidation by Congolese citizens towards foreigners in an irregular situation have been observed.” This statement confirms that Amnesty International’s research findings and demonstrates that the police knew that abuses against DRC nationals were taking place.

The statement continues “*Operation Mbata ya Bakolo is a police operation and [that] it is the task of the police only to ensure that rules are respected. In other words, the population should only get involved in the operation to the point where they can give indications to the police about criminal households.[...] The Directorate of Police sends a warning to all individuals who by their words, actions or attitude, contribute to endanger the lives of foreign citizens living in the Republic of Congo.*”¹⁹⁹

Despite its obligation to protect DRC nationals the police seems to have done nothing more than “sending a warning”. No cases of criminal investigations or prosecutions regarding acts of civilians in the context of Operation *Mbata ya Bakolo* were brought to the attention of Amnesty International, either by the victims, or by the police.

5. SOME INITIATIVES BY THE AUTHORITIES OF DRC AND REPUBLIC OF CONGO

Many people who experienced human violations during *Mbata ya Bakolo* experienced them in the process of being expelled. Others were victims of police violence and abuse and fled the country shortly afterwards. The majority of the persons affected by *Mbata ya Bakolo* no longer had access to the relevant justice mechanisms in the Republic of Congo.

On 14 April 2014 the then Vice-Minister of Foreign Affairs of the DRC, Celestin Tunda Wa Kasende, undertook a mission to Brazzaville to observe the situation. Recognising the difficulties of victims to access justice he announced upon his return that a bilateral commission would be set up, composed by experts of both countries to investigate the conditions of the expulsions and to verify allegations that some people had died during the expulsions.²⁰⁰ Presidents Joseph Kabila and Denis Sassou-Nguesso met on 19 September 2014. It was the first time they were meeting since *Mbata ya Bakolo* was launched. They reiterated their commitment to establish a joint commission to investigate the allegations of human rights violations that occurred during the expulsions (*Commission mixte d'enquête sur les allégations de violations des droits de l'homme ayant émaillé les opérations d'expulsion de la République du Congo des ressortissants*

¹⁹⁹ Direction Générale de la Police, Communiqué de presse, fait à Brazzaville, 25 Avril 2014.

²⁰⁰ <http://radiookapi.net/emissions-2/dialogue-entre-congolais/2014/04/14/ce-soir-les-conditions-de-refoulement-des-ressortissants-de-la-rdc-de-brazzaville/>

de la République Démocratique du Congo).²⁰¹

Despite these promises, the joint investigation commission had not been set up yet at the time of writing. In April 2015 the government of the Republic of Congo declared to the UN Committee against torture that the authorities were “waiting for a response to the proposal from the authorities in the Democratic Republic of the Congo”.²⁰²

²⁰¹ « Communiqué final de la visite de travail à Kinshasa du président de la République du Congo, son Excellence Monsieur Denis Sassou N'guesso », Vendredi 19 Septembre 2014.

²⁰² “Committee against Torture considers report of the Republic of Congo”, 23 April 2015, http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear_en%29/804F580E0F43F774C1257E3000526484?OpenDocument

CONCLUSION AND RECOMMENDATIONS

Amnesty International believes that crimes under international law, and human rights violations have been committed by agents of the Republic of Congo or by persons acting with the authorization, support or acquiescence of the authorities of the Republic of Congo, as part of operation *Mbata ya Bakolo* or as a consequence of it. Based on the evidence presented in this report, Amnesty International considers that many crimes committed as part of operation *Mbata ya Bakolo*, including arbitrary detentions, deportations, torture, rape and other crimes of sexual violence, persecution and other inhumane acts, may amount to crimes against humanity.

Considering the number of allegations of crimes under international law and human rights violations committed by Republic of Congo officials, in particular by police officers, Amnesty International is concerned that to date no criminal investigation or prosecution seems to have taken place and none of those suspected of criminal responsibility have been brought to justice. Amnesty International recalls that the Republic of Congo is a state party to the Rome Statute of the International Criminal Court since 2004 and under clear obligation to investigate and prosecute perpetrators of these crimes in fair trials.

Amnesty International is also particularly alarmed by the arrests, detentions and deportations that took place in Pointe-Noire since a new phase of operation *Mbata ya Bakolo* was started on 14 May 2015. The government must immediately halt this new phase of the operation, and guarantee the non-repetition of mass deportations of DRC nationals and other foreigners.

TO THE GOVERNMENT OF THE REPUBLIC OF CONGO

- Immediately halt all current plans of mass expulsions of foreign nationals from the Republic of Congo;
- Ensure the respect of all procedural guarantees in case of deportation, expulsion or any other transfer of foreign nationals from the jurisdiction of the Republic of Congo;
- Allow those unlawfully expelled, deported or otherwise transferred from the Republic of Congo to return, if they so desire.

Accountability

- Ensure that all allegations of crimes under international law and human rights violations committed during operation *Mbata ya Bakolo* are promptly and thoroughly investigated by a competent, impartial and independent body of civilian character;
- Where sufficient admissible evidence is gathered, prosecute those suspected of responsibility in proceedings before ordinary civilian courts which comply with international fair trial standards and without recourse to the death penalty;

- Provide all victims of crimes under international law and human rights violations committed during operation *Mbata ya Bakolo* with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Investigate all allegations of racially motivated violence, prosecute those suspected of responsibility and impose on those found guilty penalties that commensurate with the gravity of the crime.

Discrimination and xenophobia

Bring an end to any form of discrimination against DRC nationals or other foreign nationals by Congolese officials and address xenophobic attitudes and behaviour towards DRC and other foreign nationals within communities in Congo. In particular:

- Ensure that a definition of discrimination, in line with international law, is integrated in the laws of the Republic of Congo and that discrimination is prohibited in all its forms;
- Immediately halt all forms of targeting, stigmatization, stereotyping or profiling of DRC nationals by police officers;
- Immediately abrogate all discriminatory policies—whether in law or in practice—still in force, in particular the policy of fining landlords for housing non-nationals in an irregular migration status;
- Publicly and regularly announce on the radio and television that all tenants are free to house foreign nationals, including DRC nationals, and that the policy of imposing financial penalties has ceased;
- Ensure access to health care and education to all foreign nationals without discrimination, including DRC nationals, and ensure that complaints of non-compliance can be made to an independent body with the right of appeal to a court;
- Publicly announce on the radio and television and other media that discrimination against DRC nationals will no longer be tolerated, and that all non-nationals, including DRC nationals, should have full access to education and health services, whether public or private;
- Develop a policy on the regulation of equal access to work which is in line with international law and standards, and, until such a framework is in place, refrain from imposing restrictions on the right to work of foreign workers;
- Ensure that at no time are foreign workers subjected to intimidation, either by government officials or by others.
- Ensure that victims of discrimination and/or racially-motivated violence have access to justice and full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Prohibit all songs or other public messages that incite to discrimination or hostility against DRC nationals, other foreign nationals or other national, ethnic, religious, linguistic, social or other groups.

Protection of refugees and asylum-seekers

- Promptly adopt comprehensive asylum legislation, recognising in particular the right not to be subjected to *refoulement*, in line with international law;
- In cooperation with UNHCR, identify refugees and asylum seekers with the purpose of guaranteeing their protection, in particular their right not to be subjected to *refoulement*;

Cooperation with UN Special Procedures

- Issue a standing invitation to the Special Procedures of the UN Human Rights Council;
- Invite the Special Rapporteur on the human rights of migrants to carry out a fact-finding visit, with the necessary guarantees and assurances according to the terms of reference for country missions, to the Republic of Congo.

TO ALL OTHER GOVERNMENTS

International cooperation and universal jurisdiction

- Any state in the territory under whose jurisdiction a person alleged to have committed a crime during operation *Mbata ya Bakolo* is found should, if it does not extradite that person to another state or surrender him or her to an international criminal tribunal, submit the case to its competent authorities for the purpose of prosecution

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Request an invitation for a fact-finding mission under its protective mandate to the Republic of Congo by the Special Rapporteur on Refugees, Asylum-seekers, IDPs and Migrants in Africa to make observations and recommendations regarding the human rights situation of non-nationals in the country;
- Issue a public statement expressing concern over allegations of crimes against humanity committed by the Government of Congo;
- Call on the Government of the Republic of Congo to immediately stop all mass expulsions and initiate thorough, independent and impartial investigations into crimes under international law and all human rights violations committed in the context of operation *Mbata ya Bakolo*.

TO THE AU COMMISSION CHAIRPERSON

- Issue a public statement expressing concern over allegations of crimes against humanity committed by the Government of Congo;
- Call on the Government of the Republic of Congo to immediately stop all mass expulsions and initiate thorough, independent and impartial investigations into crimes under international law and all human rights violations committed in the context of operation *Mbata ya Bakolo*.

APPENDIX 1

MINISTRE DE L'INTERIEUR
ET DE LA DECENTRALISATION
DIRECTION GENERALE DE LA POLICE
DIRECTION DE LA SECURITE PUBLIQUE
N° 00552 / MID/DGP/DSP.

REPUBLIQUE DU CONGO
Unité *Travail* Progrès

Brazzaville le, 03 AVR 2014

CONCEPT D'OPERATION

« MBATA YA BA KOLO »

du Directeur Général de la Police, relatif à la
lutte contre le phénomène « KOULOUNA »
dans la ville de Brazzaville.

IDENTIFICATION

Exemplaire n° : 011 de 27 exemplaires
Code : OP-MBATA 2014
NMR : 00552 / MID/DGP/DSP

I. RAPPEL DE LA SITUATION.

1.1. Situation générale

Au plan régional

La situation sécuritaire est caractérisée au plan régional par la crise persistante en Centrafrique d'une part et en République Démocratique du Congo d'autre part.

- En République centrafricaine, elle se manifeste par des violences inter confessionnelles entre musulmans et Chrétiens. Les antibalakas poursuivent leurs exactions contre les populations civiles malgré la présence de SANGARIS et de la MISCA. Certaines victimes traversent les frontières pour trouver refuge dans les pays voisins.
- En République Démocratique du Congo, l'insécurité persiste dans le pays. Les autorités ont lancé l'opération « LIKOFI PLUS » qui fait suite à « LIKOFI » pour lutter violemment contre les KOULOUNA. Ces derniers sont en errance à l'intérieur de la RDC et même à Brazzaville où ils ont exporté leurs comportements violents.

Au plan national

La situation est relativement calme.

- Au plan politique :

Après le recensement administratif spécial, le débat politique s'anime autour des questions relatives aux élections locales et de la révision ou pas de la constitution.

APPENDIX 2



EQUATEUR SERVICE TELEVISION
435.25 MHz - Son B.G
87.5 - Son Stéréo
143, avenue du Général de Gaulle - Plateau-Ville
00(242)055380218/066661095
ashungu@gmail.com
Brazzaville - République du Congo

Brazzaville, le 11 juin 2015

Le Directeur Général
A
Monsieur le Directeur Régional d'Amnesty
International

Monsieur,

Nous accusons réception de votre lettre Réf : TO22/2015.002 du 25 mai 2015 en ce jour du 9 juin, donc il nous a été impossible de vous répondre avant le 1^{er} juin comme vous le proposiez dans votre courrier.

En ce qui concerne notre participation à la campagne de haine ou d'hostilité lors de l'opération « *Mbata ya Bakolo* », nous voudrions d'abord vous préciser que nous même, Directeur Général de ESTV, sommes d'origine et de nationalité congolaise de la RDC, et nous ne voyons pas comment nous pouvions laisser la chaîne dont nous avons la responsabilité depuis sa création s'en donner à ce genre d'exercice.

Il est vrai que pendant le déroulement de l'opération *Mbata ya Bakolo*, notre tranche d'animation interactive, « *Allo Brazza* », avait consacré quelques émissions à cette opération. Nous pouvons vous dire que les différentes animations en rapport avec cette opération de police étaient sérieusement encadrées par nous même.

Au cours de ces tranches d'animation, nous avons donné la parole aux auditeurs aussi bien de Brazzaville que ceux de Kinshasa. Tout intervenant qui tenait de propos alimentant la haine ou l'hostilité entre les deux peuples était tout de suite coupé sans autre forme de procès... Nos deux animateurs avaient pour instruction « *la neutralité dans les commentaires* », c'est qui fut scrupuleusement respecté.

Dans nos différents Journaux Télévisé, nous nous sommes contentés de ne relater que les faits, et interdiction était faite aux journalistes, de faire un quelconque commentaire ou analyse en rapport avec l'opération *Mbata ya Bakolo*.

Nous vous prions de bien vouloir agréer, monsieur le Directeur Régional, nos franches et sincères considérations.

Alain Shungu Ngongo
Directeur Général

APPENDIX 3

Chanson Mbata ya Mo Kolo « La gifle de l'ainé »

Paroles

Q : eh ! Toi présente toi

R : **Monsieur je suis Congolais**

Q : oui ! Mais tu es Congolais d'où?

R : **Je suis de Gamboma**

Q : Mais tu es d'où?

R : **Je suis Congolais**

Q : Mais tu es né où?

R : **Je suis Congolais d'ou né en Equateur-**

Allé -La gifle de l'aine-

Eh Non, pardon je suis Kinois

Mais, c'est un problème de nationalité

Mon général NDENGUE (Général Bradock)

Que cela soit écrit et accomplis

Q : Maman, tu peux dire « sucre »

R : **sicre**

Q: Dit Primus

R : **Primis**

Q : Dit-nous quatre vingt dix

R : **Nonante**

Q : Dit-nous soixante dix

R : **Septante**

Allé -La gifle de l'ainé -pia pia

CHANT

Solo : Après la pluie vient le beau temps
Ah oui ! C'est notre Nation à nous

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : vous avez injurié Denis SASSOU NGUESSO
L'autorité suprême, le fils de maman MOUEBARA

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : vous avez oublié tout le bien fait du Président,
Que maintenant vous l'injurié

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : vous avez brûlé le drapeau du Congo,
Le Congo Brazza. Tous les brazzavillois vous ont vus.

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : les Ngala s'en vont à présent des nombreuses
familles vont être sauvé de leur emploi

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : ce que vous avez dit à la télé, nous avons
tous entendu à présent, regagner votre pays

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : Vous injuriez sans cesse le général NDENGUE
(le Général Bradok), mais qu'à t-il fait de mal
Repartez chez vous

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : mon pauvre époux, quand il a perçu son salaire
Est pris en chandelle par les prostitués ngala
à Mabouaka (Semblable au Pigale en France)

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Solo : aujourd'hui nos sœurs sont devenues véritables prostituées
Parce que les filles ngala les ont appris à tel enseigne qu'elles
en font trop

Chœur : les Ngala repartent chez eux maintenant
Sauvons nos emplois- laissez les partir

Paroles : nous ne sommes pas entrain de vous faire la chasse
Vous venez chez autrui, que pour semer la mort
Aux paisibles citoyens et la désolation

**Mettez- vous en règle, l'immigration fait développer une nation.
Regagnez avant tout votre pays, pour vous permettre
De régulariser vos situations.**

Mais ne procéder pas à injurier notre président,

Le général NDENGUE- aussi vous brulez notre drapeau

Pourquoi refusez-vous de partir chez vous?

Vous sentez vous coupable de crimes ou de rébellion

N'oubliez pas que KABILA aussi vous attend.

Chœur : les Ngala repartent chez eux maintenant

Sauvons nos emplois- laissez les partir

Nuances de prononciations des mots entre congolais de Congo-Brazzaville et congolais de la République démocratique du Congo

Brazzaville

Kinshasa

- | | |
|--------------------|---------------|
| - Lait | Miliki |
| - Jus | Sicré |
| - Sucre | Sicre |
| - Bus | Bis |
| - Moto | Wewa |
| - Mvula (la pluie) | Mbula |
| - Les Ngala | Les étrangers |



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