Democratic Republic of Congo

From assassination to state murder?

Introduction

Almost two years on from the assassination of President Laurent-Désiré Kabila in January 2001, the trial of his suspected assassins and their accomplices appears to be entering its final stages. The public prosecutor has called for the death penalty for 115 of the 135 accused, just days after the government announced an end to a moratorium on executions which had nominally been in place for 3 years.[i] If found guilty, the defendants will have no right of appeal against their sentences, even if they are sentenced to death.

The trial, which began in March 2002 and was closed to independent observers for some five months, has not met international standards of fair trial. Although the military tribunal which has been trying the defendants – the *Cour d'ordre militaire* (COM), Military Order Court – is to be abolished on 18 December 2002, it is feared that any sentences pronounced by the tribunal before its dissolution will be considered valid and implemented, including any death sentences.

The defendants include members of the armed forces and security services, as well as many civilians. The majority have been in detention since early 2001. Many have reportedly been ill-treated or tortured in detention. Amnesty International is not in a position to ascertain the guilt or innocence of most of the defendants, but fears that a small number of the defendants may be prisoners of conscience, detained simply because they are related to criminal suspects who are still at large.

Amnesty International is publishing this document to highlight its concerns regarding the unfairness of the trial and the possibly imminent passing of death sentences. The organisation is calling for all the defendants to receive a fair trial in line with international standards and to have the right to appeal against their sentences. Amnesty International is opposed to the death penalty in all circumstances, considering it to be a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment.

Rounding up the alleged assassins

In spite of a four-month investigation carried out in early 2001 by a specially established Commission of Inquiry[ii] and a lengthy trial, the exact circumstances of President Kabila's assassination remain contentious. It is alleged that one of the president's own bodyguards, **Lieutenant Rachidi Muzele**, fired the shots which

killed President Kabila at one of his official residences, the *Palais de Marbre* (Marble Palace), at around 1pm on 16 January 2001. The Commission of Inquiry asserted that a Congolese armed group, the *Rassemblement congolais pour la démocratie* (RCD-Goma), Congolese Rally for Democracy, was responsible for planning the assassination with the backing of Rwanda and Uganda – a charge which all three parties have vigorously denied. The prosecution in the current trial contends that the president's *aide de camp*, **Colonel Eddy Kapend Irung**, orchestrated the assassination and then shot dead the alleged assassin Lieutenant Muzele moments afterwards in order to cover up his own role in the assassination. Colonel Kapend denies playing any part in the assassination and claims that Lieutenant Muzele committed suicide as he was being apprehended.

Arrests began immediately after the assassination and included other presidential bodyguards, members of the armed forces, members of the security services, and at least 45 civilians. Most of the arrests took place between January and March 2001, with the Commission of Inquiry apparently enjoying unlimited powers to detain suspects without charge or trial. Colonel Kapend was arrested in March 2001. The majority of those now on trial come from eastern DRC, in particular from the provinces of North-Kivu and South-Kivu.

The overall picture is somewhat complicated by the fact that some of the current defendants were initially arrested not in connection with the assassination but with an alleged coup plot which the DRC authorities claimed to have uncovered in October 2000.[iii] They are understood to include 19 members of the DRC security services who had fled to Brazzaville in neighbouring Republic of Congo and were arrested there in January 2001. Despite the fact that they were registered asylum-seekers with the United Nations refugee agency UNHCR, all 19 were transferred to the custody of the DRC authorities in Kinshasa on 24 April 2001 in violation of international human rights and humanitarian law. Several of them were reportedly tortured during the initial period of their detention at an unofficial security service detention centre in Kinshasa.

A number of female defendants appear to be on trial purely because they are related to suspects in the assassination. If this is the case, Amnesty International would consider them to be prisoners of conscience. They include **Anne-Marie Masumbuko Mwali** and **Rosette Kamwanya Beya**, who were arrested in March 2001 and who are both married to a former member of the Congolese armed forces, **Major Janvier Bora Kamwanya Uzima**. Major Bora had himself been arrested on 20 January 2001 and detained at an unofficial detention centre known as the *Groupe Litho Moboti* (GLM) building, before managing to escape and flee the country in February 2001. **Anne-Marie Masumbuko Mwali** was reportedly tortured in an

unofficial detention centre before her transfer to Kinshasa's main prison, the *Centre pénitentiaire et de reéducation de Kinshasa* (CPRK), Kinshasa Penitentiary and Reeducation Centre. **Honorine Fonokoko**, the wife of President Kabila's alleged assassin, Lieutenant Muzele, is also on trial.

Two human rights defenders, **N'sii Luanda Shandwe** and **Golden Misabiko Baholelwa**, were also detained for three and seven months respectively during 2001, ostensibly in connection with the assassination. In fact, both men were prisoners of conscience, detained because of their human rights activism.[iv] Golden Misabiko was interrogated on three separate occasions by the Commission of Inquiry, with questions focussing on a communiqué which ASADHO, the human rights group of which he was a branch president, had issued in December 2000 denouncing the execution of an army officer and alleged coup conspirator, **Anselme Masasu Nindaga** (see page 7). Golden Misabiko was severely tortured at the GLM detention centre before his transfer to the CPRK.

Both N'sii Luanda and Golden Misabiko were held with the majority of the other assassination suspects in *pavillon 1* (cell-block 1) at the CPRK. Initially the defendants were held incommunicado, with no visits allowed from relatives or lawyers, and they were kept under constant armed guard by soldiers of the Zimbabwe Defence Forces (ZDF), a small contingent of which was permanently stationed within the CPRK.[v] Detainees were forbidden even to speak to each other. To go to the toilet, detainees were forced to sit on the floor in a row, one in front of the other, and relieve themselves in that position, all the while under armed guard. They were then made to pick up their own waste with their bare hands. Such conditions and treatment clearly amounted to cruel, inhuman and degrading punishment. Following a visit by the International Committee of the Red Cross in April 2001, conditions in *pavillon 1* began to improve somewhat -- the quality of the food improved, detainees were allowed one five-minute visit from a relative each week and, for the first time, they were given water to wash in. More recently, the detainees have been allowed more regular visits and relatives have been allowed to bring them food. During a visit to Kinshasa in October 2001, Amnesty International delegates sought but were refused permission by the DRC authorities to visit the detainees in *pavillon 1*.

The trial

The trial of the suspected assassins and accomplices began on 15 March 2002. It has been conducted before the *Cour d'ordre militaire* in a room at the CPRK normally reserved for prison visits. Almost all of the defendants are charged with capital crimes, including the assassination of the head of state, treason and plotting against the regime. None of the defendants were given adequate time to prepare their defence -- most

were notified of the start date of their trial only two or three days in advance and they were only allowed to meet their lawyers for the first time on the opening day of the trial itself.[vi]

Initially, independent journalists, human rights activists and other members of the public were allowed to attend hearings of the court. However, the COM announced that from 2 May onwards court sessions would be held *in camera*, which effectively meant a ban on independent observers attending. Only on 16 September were the public once again granted access.[vii]

When the trial began, there was apparently a total of some 119 defendants, but this number subsequently grew to 135 as further suspects were arrested or added to the charge sheet in the course of the trial. Bizarrely, these included several witnesses who had been called to testify before the court and who were arrested as they gave evidence in the witness box. For example, **Emile Mota**, an economic advisor to President Kabila who was reportedly at the *Palais de Marbre* when President Kabila was assassinated, was arrested during a COM session in early April after the state prosecutor claimed to detect inconsistencies in his testimony. Some defendants are also being tried in their absence, including **Major Janvier Bora Kamwanya Uzima**, who escaped from the GLM detention centre in February 2001 (see page 2). President Kabila's alleged assassin, the late Lieutenant Muzele, is also listed as one of the accused.

On 11 October the prosecution wound up its case by requesting the death penalty against 115 of the 135 accused. Ominously, this request followed close on the heels of an official announcement by the DRC government on 23 September that the moratorium on executions, which had nominally been in place for 3 years,[viii] had been lifted.

On 19 November the DRC government announced that the *Cour d'ordre militaire* was to be abolished on 18 December 2002. This was an unexpected but wholly welcome announcement. Ever since the creation of the COM by President Laurent-Désiré Kabila in August 1997, Amnesty International and other Congolese and international human rights organizations have been campaigning for its reform or, failing that, for its abolition on the grounds that it does not meet international standards for fair trial.

Despite having been initially established to try military cases, the COM's remit was significantly extended following the declaration of a state of emergency in several provinces of the DRC after the outbreak of war in 1998. The COM has since tried and imprisoned dozens of civilians, including political prisoners and prisoners of conscience.[ix] The court lacks the appropriate legal expertise, the judges and

prosecutors generally being members of the army or the security services with little or no legal training.[x] Their status as members of the executive branch of the government also places in question their independence and impartiality.[xi] The COM's statute prohibits any appeal to a higher or any other jurisdiction, which is considered to be critical to a defendant's rights.[xii] Although, in theory, defendants can appeal to the DRC president for clemency, this does not amount to a review of the trial in terms of the facts and the legal proceedings. In practice, death sentences have sometimes been carried out within hours of sentencing, when clearly there has been no time to appeal for presidential clemency.

These shortcomings of the COM have been manifest in the current trial of the alleged assassins of President Kabila and their accomplices. Their trial cannot be said to have met international standards for fair trial. In the event that any of these defendants are sentenced to death and then executed after an unfair trial of this kind, Amnesty International would consider their executions to be an arbitrary deprivation of the right to life.[xiii]

The death penalty – a lottery with no winners

> *'Until now nothing has led us to believe that the real guilty parties will be revealed and sanctioned according to the law. The fear therefore is that innocent people will pay the price.'* - La Voix des sans voix[xiv]

At least 200 people have been executed in the DRC since 1997 after being sentenced to death by the *Cour d'ordre militaire* after unfair trials. They have included civilians as well as members of the security services, and some of those executed have been children. Some were executed just minutes or hours after their trial, when clearly there had been no time to appeal for presidential clemency. For instance, on 12 December 2000 eight prisoners from the CPRK, reportedly including three civilians, were executed by firing squad. Among them was a police officer, **Kabangi Ngoy**, who had been sentenced by the COM the previous day for a murder committed four days earlier. On 15 January 2000, **Kasongo**, a 14-year-old child soldier, and 22-year-old **Mumba Kabemba** were executed within 30 minutes of their trial, after being found guilty of murder.[xv]

Among the more recent executions known to have taken place in government-controlled DRC is the execution of a former army officer **Anselme Masasu Nindaga,** who was executed in November 2000 after a COM trial which was held in secret in Katanga Province and reportedly lasted just a matter of hours. He had been found guilty of allegedly plotting to overthrow President Laurent-Désiré Kabila along with seven other co-defendants who were also executed with him: **Pasteur-Louis Sebuyange**, **Chevalier Muanda Shita**, **Muhindo Kahulu**, **Vincent Madjaga**,

Baltazar Shamba, **Guy Mokonzi** and an individual known as **Zico.**[xvi] The executions took place immediately after the trial in the presence of several senior military officers, reportedly including Colonel Charles Alamba Mongako, who is the main COM prosecutor (*Procureur général près la COM*) in the current assassination trial. When questioned by Amnesty International about these executions during a meeting in Kinshasa in October 2001, the DRC Human Rights Minister, Professor Ntumba Luaba, admitted that he strongly doubted (*'je doute fort'*) that there had been any scope for the defendants to appeal for presidential clemency. It was Golden Misabiko's denunciation of these executions which led to his own imprisonment in February 2001 (see page 3). At that time, the DRC government were vehemently denying that these executions had taken place. Only several months later did they eventually acknowledge that they had indeed happened.

On 29 March 2001 President Joseph Kabila underlined in an address to the United Nations Commission for Human Rights (UNCHR) in Geneva that he was committed to a continuing moratorium on executions until such time as parliament was able to debate the abolition of the death penalty.[xvii] The president also gave assurances that the *Cour d'ordre militaire* would henceforward only deal with military cases.[xviii] His speech was seen by many at the time as signalling the new president's commitment to improving respect for human rights in the DRC. However, while there have been no known executions since March 2001, the *Cour d'ordre militaire* has nevertheless continued to sentence people to death. For example, on 13 September 2001 some 13 soldiers were sentenced to death, five of them in absentia, by the COM in Likasi in Katanga Province for their alleged participation in the same alleged coup plot against President Laurent-Désiré Kabila a year previously for which Anselme Masasu Nindaga and seven others were executed. There are currently thought to be approximately 80 people on death row at the CPRK in Kinshasa alone. Amnesty International is deeply concerned that they, and all the other detainees currently on death row throughout the DRC, are now at risk of execution following the lifting of the moratorium on 23 September. Contrary to President Kabila's commitment to the UNCHR, the moratorium has been lifted without there having been any parliamentary debate on the abolition of the death penalty.[xix]

Amnesty International raised its concerns about the lifting of the moratorium during a meeting with DRC Human Rights Minister, Professor Ntumba Luaba, in late October 2002. The Minister cited rising 'criminality' as the principal justification for the lifting of the moratorium, claiming that violent crime was increasing because perpetrators were aware that they would not be executed for their crimes.

The deterrence argument is often used by proponents of the death penalty, despite the fact that scientific studies have consistently failed to find convincing

evidence that the death penalty deters crime more effectively than other punishments. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996 , concluded that '*...research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis'*.

Indeed, rather than deterring violent crime, evidence from other countries shows that it is likely that executions may actually result in further violent crime through the brutalisation of society. For example, in the United States of America the average murder rate for states that used the death penalty was 6.6 per 100,000 of the population but only 3.5 in states without capital punishment.

Many criminologists believe that one of the most influential factors on potential criminals is whether or not they believe they will be caught and punished. The reality is that almost all criminals tend to assume that they will not be caught. The question of the punishment they may face, whether it be life imprisonment or execution, is therefore scarcely relevant. It follows that the most effective means of deterring crime, including violent crime, lies not in imposing harsher punishments but in ensuring that law enforcement officials are as effective as possible.

If the deterrence argument turns out on closer inspection to be without substance, the danger of innocent people being executed is unfortunately very real. In the DRC, the obvious deficiencies of the *Cour d'ordre militaire*, together with the failure to submit the verdicts of the COM to another, competent jurisdiction for review, are likely to significantly heighten the chances of this happening. But the threat of miscarriages of justice is universal. Since 1973 in the USA, for example, 102 prisoners have been released from death row after evidence emerged of their innocence of the crimes for which they had been sentenced to death. Some had come close to execution after spending many years under sentence of death.

Unfortunately, others have not been so lucky -- throughout the world, people have been executed only to be subsequently exonerated of the crime for which they were convicted. Recurring features in these cases have included prosecutorial or police misconduct, the use of unreliable witness testimony, evidence or confessions, and inadequate defence representation. Some or all of these factors may apply in the current trial of President Kabila's alleged assassins and their accomplices. If any executions go ahead, any mistakes that have been made will be irreversible.

Throughout the world there is a growing trend towards the abolition of the death penalty. African countries which have abolished the death penalty in recent

years include South Africa, Côte d'Ivoire and Angola. In 2002 alone, two countries, Cyprus and the Federal Republic of Yugoslavia, have abolished the death penalty for all crimes and one, Turkey, has abolished it in peacetime. In all, 111 countries have abolished the death penalty in law or in practice. Amnesty International is urging the DRC government to join this trend by reimposing the moratorium on executions, with a view to moving towards the eventual abolition of the death penalty in the DRC.

Conclusion

As well as being a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, executions create yet more victims of violence through the suffering inflicted upon the relatives and loved ones of individuals who are executed. In the last four years, the DRC as a whole has experienced unprecedented levels of violence, with over 3 million people estimated to have died as a consequence of the conflict which has ravaged the country. Many of the belligerents are now engaged in ongoing talks aimed at achieving peace and reconciliation among the Congolese people. Joining the worldwide trend towards the abolition of the death penalty would provide a much-needed tonic for the respect of human rights in the DRC and thereby serve to foster a climate for reconciliation. Sentencing to death and executing those accused of involvement in the assassination of President Kabila would merely serve to further brutalise an already deeply traumatised society. Surely the time has come to stop the killing.

Recommendations

To the DRC government:

- Immediately reimpose the moratorium on state executions with a view to moving towards the eventual abolition of the death penalty in law and in practice;
- Ensure that the defendants in the current assassination trial have the right to appeal against their sentences to a competent jurisdiction which conforms to international fair trial standards;
- Immediately and unconditionally release any defendants who are on trial purely because they are related to suspects in the assassination.
- Commute all existing death sentences;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights concerning the abolition of the death penalty.

To the international community:

- Urge the DRC government to immediately reimpose a moratorium on state executions;
- Raise concerns about the unfairness of the trial of President Kabila's alleged assassins and their accomplices and press for all the defendants to have the right to appeal against their sentences to a competent jurisdiction;
- Offer resources and expertise to assist in the rebuilding of a judicial system in the DRC which conforms to international standards for fairness.

What you can do

Please write to the DRC authorities expressing concern about the unfairness of the trial of President Kabila's alleged assassins and their accomplices and urging that the moratorium on state executions be reintroduced immediately.

Président Joseph Kabila
Présidence de la République
Kinshasa-Ngaliema
République démocratique du Congo

Professeur Ntumba Luaba
Ministre des Droits humains
Ministère des Droits humains
33/C Boulevard du 30 juin
Kinshasa-Ngaliema,
République démocratique du Congo

Ngele Masudi
Ministre de la Justice
Minstère de la Justice
Palais de Justice, BP 7016
Kinshasa-Gombe
République démocratique du Congo

Colonel Charles Alamba Mongako
Procureur général près la Cour d'ordre militaire
Palais de Justice, BP 7016
Kinshasa-Gombe
République démocratique du Congo

Footnotes

[i] The DRC government gave assurances to Amnesty International in August 1999 and to the then UN Special Rapporteur on the DRC, Roberto Garreton, in early 2000 that a moratorium on executions was in place. Despite this, several executions have taken place since 1999. The last known executions took place in December 2000. President Joseph Kabila publicly reconfirmed the moratorium in March 2001.
[ii] The Commission of Inquiry, consisting of members of the Congolese security services as well as Angolan, Namibian and Zimbabwean army officers, was set up on 7 February 2001. It made public its findings on 23 May. Many observers considered that the Commission did little to elucidate the true circumstances of the assassination of President Kabila.
[iii] Further details on this can be found in the Amnesty International report *Deadly conspiracies?* (AFR 62/004/01), published in March 2001.
[iv] See Amnesty International Urgent Action (UA) 118/01, issued on 16 May 2001, and UA 143/01, issued on 6 June 2001, and follow-ups for further information on these two cases. In 2002 Golden Misabiko fled the DRC following continued persecution by the authorities and has been granted asylum abroad. N'sii Luanda was rearrested on 19 April 2002 on contrived treason charges and is once again a prisoner of conscience at the CPRK, though he is not held in *pavillon 1*. Please refer to UA 120/02, issued on 22 April 2002, and follow-ups for further information.
[v] Zimbabwe was an important ally of the DRC government in the conflict which broke out in the DRC in 1998. Around early November 2002, in the context of a general withdrawal of Zimbabwean troops from the DRC, the ZDF contingent left the CRPK. *Pavillon 1* is now guarded by Congolese soldiers**.**
[vi] '*In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*'. (Article 14(3)(b) of the International Covenant on Civil and Political Rights (ICCPR))
[vii] '[...] *everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and public may be excluded from all or part of a trial for reasons of morals, public order (ordre publique) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances, where publicity would prejudice the interests of justice [...].*'(Article 14(1) of the ICCPR) These exceptions are all narrowly construed. It is unclear on what basis the judges in the current trial excluded the public and free press, or how circumstances might have changed to allow their readmission in September. Article 9(b) of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms identifies the right of everyone '*to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments'*. The UN Human Rights Committee has stated: '*It should be noted that apart from exceptional circumstances noted in Article 14(1) of the ICCPR, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons*'.
[viii] See Footnote 1.
[ix] In its General Comment on Article 14 of the ICCPR the UN Human Rights Committee has stated that '*while the Covenant does not prohibit such categories of courts [ie military or special courts], nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such*

courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14'.

[x] '*Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law [...].*' (Principle 10 of the UN Basic Principles on the Independence of the Judiciary) The president of the COM, who is presiding over the current trial, is an army general. Of the four other judges involved in this trial, two are also army generals, one is an army commander, and one is the Inspector-General of Police.

[xi] The African Commission on Human and Peoples' Rights has stated that the creation of a tribunal comprising members of the armed forces belonging largely to the executive branch of government creates the appearance of, if not actual lack of impartiality and thus violates Article 7(1)(d) of the African Charter on Human and Peoples' Rights (ACHPR). See the Constitutional Rights Project, CRP (in respect of Zamani Lakwot and six others) vs Nigeria (87/93); CRP vs Nigeria in respect of Wahab Akamu, G. Adege and others (59/91) in the 8th Annual Activity Report of the ACHPR 1994-1995, ACHPR/Rpt/8th/Rev.1.

[xii] '*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*' (Article 14(5) of the ICCPR)
The African Commission on Human and Peoples' Rights has stated that '*[...] to foreclose any avenue of appeal to competent national organs in criminal cases...clearly violates Article 7 (1) (a) of the ACHPR, and increases the risk that severe violations may go unredressed'*. CRP vs Nigeria, *ibid.*

[xiii] '*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*' (Article 6(1) of the ICCPR) The UN Human Rights Committee (HRC) has stated that the imposition of the death penalty after a trial in which the provisions of the ICCPR have not been respected and where the sentence cannot be remedied by appeal would constitute a violation of the right to life. See UN Doc. CCPR/C/47/D/282, para. 10.6, *Kelly v. Jamaica* (253/1987), 8 April 1991, Report of the HRC, (A/46/40), 1991, paras. 7 and 5.14.

[xiv] *'Jusque ce jour, rien n'augure que les vrais couplables seront connus et sanctionnés conformément à la loi. Il y a donc crainte que des innocents en paient le prix.'* Quoted from a statement made at a press conference by a leading Congolese human rights organisation, the *Voix des sans voix* (Voice of the Voiceless), on 13 October 2002.

[xv] The imposition of the death penalty on children, under any circumstances, is strictly prohibited in international law, including under Article 37(a) of the Convention on the Rights of the Child, to which the DRC is party.

[xvi] For further details, please refer to the Amnesty International report *Deadly conspiracies?* (AFR 62/004/01), published in March 2001.

[xvii] *'Le moratoire sur l'application de la peine de mort sera appliqué jusqu'à l'aboutissement des débats parlementaires sur la suppression [de la peine capitale].'* Quoted by Agence France Presse (AFP), 30 March 2001

[xviii] "Il a assuré avoir donné des instructions à *'la cour d'ordre militaire pour qu'elle ne connaisse plus que des infractions aux codes et aux règlements militaires'*." Quoted by AFP, 30 March 2001

[xix] At present there is no properly functioning parliament in the DRC. Most of the powers of the state are exercised through the Presidency.