

PUBLIC

AI Index: AFR 62/011/2004

UA 172/04 Death penalty/Unlawful detention/Torture and ill treatment/
Unfair trial/Medical concern

13 May 2004

DEMOCRATIC REPUBLIC OF CONGO (DRC)

Léonard SAFARI (m) aged 17
Samson BAGANIZI (m) aged 15
Portance HABIMANA (m) aged 17
SENGIYUMVA ZABAYA (m) aged 17
ISONGO ZABENGA (m) aged 16
KANYARO NYANDU (m) aged 16
INNOCENT HATEGEKIMANA (m) aged 15
TWIZEYIMANA RUZINDANA (m) aged 17
Faustin BIRINDWA (m) aged 17
MUDOGO BAENI (m) aged 16
BONANE SERUSHAGO (m) aged 17
Papy MANGO (m) aged 16
Emmanuel BUZIMA (m) aged 17
Ruitamu Kanyabugoyi (m)
Six other child soldiers aged 15 to 17

The child soldiers named above are being held in the city of Goma, North-Kivu province at Munzenze central prison and in two military detention centres, the Goma military prosecutor's lock-up and the T2 military lock-up. They are in overcrowded conditions with poor sanitation and a poor diet. Some are reportedly in very poor health and being denied medical care. Léonard Safari is dangerously ill with dysentery and other infections, whilst other boys are suffering from serious illnesses, injuries or wounds received in combat. Some of the boys were reportedly beaten at the time of their arrest.

Three of the children are illegally detained because they are accused of purely military offences. Faustin Birindwa, detained since September 2003, is accused of abandoning his post. Mudogo Baeni, arrested in February 2004, is accused of desertion. Samson Baganizi, detained since January 2004, is accused of wasting ammunition and reportedly suffered rib injuries sustained following his arrest. Under DRC military law, military jurisdiction does not apply to children aged under 18. The other children are accused of offences under the DRC's common criminal code, including common theft or aggravated theft, extortion, armed robbery, assault, rape and murder, and in some cases of a mixture of civil and military crimes. Although accused of crimes punishable under the common criminal code, the children are still illegally detained since they are held under military jurisdiction of the military prosecutor's office. Almost all the children are awaiting trial or passing of sentence. A number such as Bonane Serushago who was arrested in May 2003 have spent a prolonged period in pre-trial detention.

Only two children have been tried and sentenced. However both were before a military tribunal, which is illegal under existing DRC law. Ruitamu Kanyabugoyi, arrested in January 2004, was sentenced to five years' imprisonment for aggravated armed assault. He is reportedly suffering from rib injuries sustained during ill-treatment after arrest. Isongo Zabenga, arrested in June 2003, has been sentenced to death for murder, although he is not believed to be at imminent risk of execution. He is reportedly suffering from old bullet wounds to his sides.

The child soldiers served with the RCD-Goma armed group. The children have tragic personal histories. Some were forcibly recruited and / or recruited at a very young age. Faustin Birindwa was recruited at the age of nine. Others, such as Sengiyumva Zabaya, are war orphans.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in French or English or your own language:

- calling for the children, including those named above to be immediately seen by doctors and given appropriate medical treatment;
- calling for the children to be protected from torture or ill-treatment and from inhuman conditions of detention. Where children allege they have been tortured or ill-treated, their allegations must be investigated;
- urging for the immediate and unconditional release of Faustin Birindwa, Mudogo Baeni and Samson Baganizi, who are held for purely military offences, in contravention of the military judicial code which applies only to those aged 18 or older, and of all children who are under the age of criminal responsibility;
- calling for the sentences imposed by military tribunal on Ruitamu Kanyabugoyi and Isongo Zabenga (who is under sentence of death) to be quashed as illegal. Adding that these two children should be released or be promptly re-tried by a civilian court that meets international fair trial standards;
- calling for the release of children accused of lesser offences against the common penal code, citing international standards which state that the detention of children should be a measure of last resort;
- in cases of children accused of more serious offences under the common criminal code, ask that these children be transferred immediately to the jurisdiction of the civilian judge for children. If children are to be tried and sentenced by civilian courts, calling for these courts to meet international standards for fair trial and the courts to take the young age and best interests of the defendants into consideration when passing sentence;
- reminding the authorities that no children should be recruited or used by the DRC's armed forces and that therefore no child should be detained or tried by military jurisdiction;
- calling for any child in military detention to be released or transferred to a civilian jurisdiction.

APPEALS TO:

Government Vice-President (also Head of governmental Political, Defence and Security Commission and President of RCD-Goma)

Azarias RUBERWA MANYWA

Vice-Président de la République

Présidence de la République

Le Cabinet du Vice-Président

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Salutation: **Son Excellence Monsieur le Vice- Président de la République / Your Excellency**

RCD-Goma Governor of North-Kivu province

Mons. Eugène SERUFULI

Gouverneur Province due Nord-Kivu

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COPIES TO: diplomatic representatives of Democratic Republic of Congo (DRC) accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 24 June 2004.