

Note: This translation has been prepared by the Registry for internal purposes and has no official character

ANNEX I

EXTRACTS FROM THE FRENCH CODE OF CRIMINAL PROCEDURE

Article 40

(Law No. 85-1407 of 30 December 1985, Article 1.)

The *Procureur de la République* receives complaints and denunciations and determines what action should be taken on them. He informs the complainant if the case is discontinued, as well as the victim where the latter has been identified. (Sentence inserted by Law No. 98-468 of 17 June 1998, Article 27.) Where the offences are committed against a minor and are provided for and punished by Articles 222-23 to 222-32 and 227-22 to 227-27 of the Criminal Code, the discontinuance notice must be reasoned and notified in writing.

Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of an indictable offence is obliged to notify forthwith the prosecutor of the offence and to transmit thereto any relevant information, official reports or documents.

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Article 80

(Law No. 93-2 of 4 January 1993 Article 22 and 226-III; Law No. 93-1013 of 24 August 1993, Article 7-I.)

The investigating judge may only investigate pursuant to an application from the prosecutor.

The prosecutor's application may be directed against a named or unnamed person.

Where facts not covered by the prosecutor's application are brought to the knowledge of the investigating judge, the latter must communicate forthwith to the prosecutor the complaints or the official records which establish their existence. (Sentence added by Law No. 999-515 of 23 June 1999, Article 14-1.) The prosecutor may then require the investigating judge, by a supplemental application, to investigate the new facts, or require him to open a separate investigation, or send the case to the trial court, or order an enquiry, or decide to discontinue the case, or proceed to one of the measures provided for in Articles 41-1 to 41-3, or to transfer the complaint or the official reports to the prosecutor who is territorially competent. (Sentence added by Law No. 999-515 of 23 June 1999, Article 14-1.) If the prosecutor requires the opening of a separate investigation, this may be entrusted to the same investigating judge, designated under the conditions set out in the first paragraph of Article 83.

In the event of a complaint with civil-party application the case proceeds as stated under Article 86. (Sentence added by Law No. 999-515 of 23 June 1999, Article 14-2.) However, where new facts are brought to the attention of the investigating judge by the civil party in the course of the investigation, the provisions of the previous paragraph apply.

Article 80-1

(Law No. 93-2 of 4 January 1993, Article 23 and 226-III; Law No. 93-1013 of 24 August 1993, Article 7-II; superseded with effect from 1 January 2001 by Law No. 2000-516 of 15 June 2000, Article 19 and 140.)

On pain of nullity, the investigating judge may place under judicial examination only those persons against whom there is strong or concordant evidence raising a likelihood that they could have participated, as perpetrator or accomplice, in the commission of offences of which he is seised.

He may proceed with placement under judicial examination only after having heard the observations of the person or having given him the opportunity to be heard, accompanied by his lawyer, either in the manner provided by Article 116 governing first-appearance interviews, or as a legally represented witness under the provisions of Articles 113-1 to 113-8.

The investigating judge may only place a person under judicial examination if he considers himself unable to apply the procedure for legally represented witnesses.

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**SUBSECTION 2: THE LEGALLY REPRESENTED WITNESS (*TÉMOIN ASSISTÉ*)
(ARTICLES 113-1 TO 113-8)**

Article 113-1

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

Any person mentioned by name in the prosecutor's originating application and who is not placed under judicial examination may only be examined as a legally represented witness.

Article 113-2

(Inserted by Law No. 2000-516 of 15 June 2000, Article 33 and 140, in force on 1 January 2001.)

Any person mentioned by name in a complaint or implicated by the injured party may be heard as a legally represented witness. When such persons appear before the investigating judge, it shall be mandatory for them to be examined in that capacity if they so request.

Any person implicated by a witness or against whom there is evidence raising a likelihood that he/she could have participated, as perpetrator or accomplice, in the commission of offences of which the investigating judge is seised, may be heard as a legally represented witness.

Article 113-3

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

The legally represented witness benefits from the right to be assisted by a lawyer, who is given prior notice of interviews and who has access to the case file, in accordance with the provisions of Articles 114 and 114-1. He may also ask the investigating judge to be confronted with the person or persons who have implicated him, in accordance with the provisions of Article 82-1. The defence counsel is chosen by the legally represented witness or officially assigned by the president of the bar association if the person concerned so requests.

During his first interview as legally represented witness, the person is informed of his rights by the investigating judge.

Article 113-4

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

During the first interview as a legally represented witness, the investigating judge confirms his identity, notifies him of the prosecutor's originating application, the complaint or the denunciation, informs him of his rights and carries out the formalities provided for in the last two paragraphs of Article 116. This information is entered in the official record.

The investigating judge may, by registered letter, notify a person that he will be heard as a legally represented witness. That letter shall contain the information provided for in the previous paragraph. It shall indicate that the name of the lawyer chosen or the request for officially assigned counsel must be sent to the investigating judge's *greffier*.

Article 113-5

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

The legally represented witness cannot be placed under judicial supervision, or in pre-trial detention, or be committed for trial by the investigating judge or by the Examining Chamber.

Article 113-6

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

At any point of the proceedings, the legally represented witness may, during his interview or by registered letter with return receipt, request that the investigating judge place him under judicial examination; the person is then regarded as under judicial examination and benefits from all rights of the defence, from the time of his request or of the dispatch of his registered letter with return receipt.

The provisions of Article 105 are not applicable to the legally represented witness.

Article 113-7

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

The legally represented witness is not required to take the oath.

Article 113-8

(Inserted by Law No. 2000-516 of 15 June 2000, Articles 33 and 140, in force on 1 January 2001.)

If, during the course of the proceedings, it becomes apparent that there is serious corroborative proof justifying the placing of the legally represented witness under judicial examination, the investigating judge may only place him under judicial examination by applying the provisions of the seventh paragraph of Article 116 after informing the person of such intention, if necessary by registered letter, and after allowing him to make his observations known. The judge may also place such person under judicial examination by sending him a registered letter, at the same time as the notice of the end of the investigation provided for in Article 175, listing each of the charges against him, as well as their legal characterization, and informing him of his right, lasting for a period of twenty days, to request acts or to apply for the proceedings to be annulled under Articles 81, 82-1, 82-2, 156 and 173. The person shall also be informed that if he requests to be heard again by the judge, the judge is obliged to interview him.

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Article 654

Unless an appearance has been requested or authorized, a deposition shall be taken in writing at the witness' residence by the President of the Court of Appeal, or, if the witness resides outside the town where the Court of Appeal sits, by the President of the *Tribunal de grande instance* for his place of abode.

The court seised of the case will send for this purpose to the above-mentioned judge a statement of the facts of the case, together with a list of requests and questions upon which the testimony is required.

Article 655

The deposition thus taken shall be immediately delivered to the *greffe* or sent under a closed and sealed envelope to the *greffe* of the requesting court and communicated forthwith to the public prosecutor as well as to the parties concerned.

Before the Assize Court it shall be read out in public and entered as part of the proceedings.

Article 656

The written deposition of a representative of a foreign power shall be requested through the intermediary of the Minister for Foreign Affairs. If the request is granted, such deposition shall be taken by the President of the Court of Appeal or by such judge as he shall have delegated.

Subsequent proceedings shall be governed by Article 654, paragraph 2, and Article 655.

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Article 689-1

(Law No. 75-624 of 11 July 1975, Art. 12; Law No. 92-1336 of 16 December 1992, Articles 61 and 373.)

Pursuant to the international conventions referred to in the following articles, a person who has committed, outside the territory of the Republic, any of the offences enumerated in these articles may be prosecuted and tried by French courts if that person is present in France. The provisions of the present article are applicable to attempts to commit such offences, in cases where such attempts are punishable.

Article 689-2

(Law No. 85-1407 of 30 December 1985, Art. 72-1; Law No. 92-1336 of 16 December 1992, Articles 61 and 373.)

For purposes of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, any person who has committed torture within the meaning of Article 1 of that Convention may be prosecuted and tried in accordance with the provisions of Article 689-1.

ANNEX II

[NOT TRANSLATED]

ANNEX III

[NOT TRANSLATED]

ANNEX IV

[NOT TRANSLATED]

ANNEX V

FRENCH COURT OF CASSATION, CRIMINAL CHAMBER, 13 MARCH 2001

IMMUNITY — Immunity of a Head of State — International Custom — Criminal proceedings against an incumbent Head of State (no)

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Applicant for cassation: the Prosecutor-General of the Paris Appeal Court . . .

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00-87.215

Having regard to the Order of the President of the Criminal Chamber dated 22 November 2000 seeking the immediate examination of the appeal;

Having regard to the pleadings filed by the appellant and the respondent;

On the sole ground of cassation based on the violation of international customary criminal law relating to the immunity from jurisdiction accorded to foreign Heads of State:

Having regard to the general principles of international law;

Whereas international custom prohibits the prosecution of incumbent Heads of State, in the absence of any contrary international provision binding on the parties, before the criminal courts of a foreign State;

Whereas the association X and Z lodged complaints as civil parties, on a charge of aiding and abetting the destruction of property caused by an explosive substance involving the death of a third party, in connection with terrorist activities, against A, incumbent Head of State of the Libyan Arab Jamahiriya, whom they allege was implicated in the attack, carried out on 19 September 1989, against a DC 10 aircraft owned by UTA, which, in exploding over Niger, caused the death of 170 individuals, several of whom were of French nationality;

Whereas, in confirming the order of the investigating judge that there are grounds to initiate an investigation, notwithstanding the contrary submissions of the *ministère public*, the Appeal Court judges contend that, whilst immunity for foreign Heads of State has always been recognized by the international community, including France, no immunity can cover the offences of aiding and abetting the destruction of a property caused by an explosive substance involving the death of a third party, in connection with terrorist activities;

Whereas, however, in so ruling, notwithstanding that under international law the offence alleged, regardless of its gravity, does not come within the exceptions to the principle of immunity from jurisdiction for incumbent foreign Heads of State, the Indictments Chamber has misconstrued the aforementioned principle;

Whereby it follows that the judgment is quashed with immediate effect, the Court of Cassation being empowered to apply the law and terminate the proceedings, pursuant to Article L.131-5 of the Code on the Administration of Justice;

For these reasons,

QUASHES and ANNULS, in all its provisions, the Judgment of the Indictments Chamber of the Paris Court of Appeal dated 20 October 2000;

HOLDS that no judicial investigation is called for;

HOLDS that it is not appropriate to refer the matter back to the court below.

Mr. COTTE
President.

Mme. CHANET
Reporting Judge.

Mr. LAUNAY
Advocate-General.

Mr. BOUTHORS, SCP Piwnica et Molinié.
Counsel.

ANNEX VI-1

D 1/2

Henri Leclerc & Associes
Société Civile Professionnelle d'Avocats
5, rue Cassette — 75006 Paris

Paris

Monsieur le Procureur de la République
Près le Tribunal de Grande Instance de

4, Boulevard du Palais
75001 Paris

Paris, 7 December 2001

Our ref: FIDH v. Sassou Nguesso and Others
HL/CL — 025190

Sir,

I have the honour, on behalf of:

- the International Federation for Human Rights (FIDH);
- the Congolese Observatory of Human rights (OCDH) [*Observatoire congolais des Droits de l'Homme*];
- the French Human Rights League [*Ligue Française pour la Défense des Droits de l'Homme/Ligue des Droits de l'Homme*]

To lodge with you a complaint against:

- Mr. Denis Sassou Nguesso, President of the Republic of the Congo;
- General Pierre Oba, Minister of the Interior, Public Security and Territorial Administration;
- General Norbert Dabira, Inspector-General of the Armed Forces;
- General Blaise Adoua, Commander of the Republican Guard/Presidential Guard;
- and all others.

On account of crimes against humanity, disappearances and acts of torture, as set out in the attached complaint.

Notwithstanding that the facts occurred on the territory of the Republic of the Congo, the French courts have jurisdiction in respect of crimes against humanity by virtue of international custom and, in any event, in respect of acts of torture pursuant to Article 689-2 of the Code of Criminal Procedure and to the Convention against Torture and other Cruel,

Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984.

I append to this complaint:

- a report by the International Federation for Human Rights (FIDH report, June 1999);
- a report by the International Commission of Enquiry on Congo Brazzaville (FIDH report, April 2000);
- a report by Médecins Sans Frontières dated October 1999;
- a report by the United Nations High Commissioner for Refugees dated 21 May 1999;
- a statement by Mr. Linot Bardin Duval Tsieno, a survivor from Brazzaville Beach, giving an account of the facts which he witnessed.

I shall be happy to provide any such further particulars as you may require.

[Yours, etc.]

Henri LECLERC.

May I draw your attention to the fact that General Dabira is currently in France, for what may be a short stay.

ANNEX VI-2

D 2

INTERNATIONAL FEDERATION FOR HUMAN RIGHTS

Paris

To the Procureur de la République,
Tribunal de Grande Instance de

Paris, 5 December 2001

Sir,

The International Federation for Human Rights (hereinafter "FIDH"), a non-governmental organization having advisory status with the United Nations, Unesco and the Council of Europe and observer status with the African Commission on Human and Peoples' Rights, . . . the Congolese Observatory of Human Rights (hereinafter "OCDH"), affiliated to FIDH, and the French Human Rights League (hereinafter "the League"),

Represented by
Maître Henri Leclerc
Advocate at the Paris Bar . . .
Adopting his office as their address for service

Have the honour to depose the following information with a view to the opening of a judicial investigation and seeking any necessary measures for the commencement of proceedings against the following individuals, it being noted that General Norbert Dabira is currently present on French territory. They accordingly request you, pursuant to Article 6 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to take the necessary interim measures to ensure the detention of that individual or his presence on French territory.

The persons against whom this claim is directed are the following:

- Mr. Denis Sassou Nguesso,
President of the Republic of the Congo
Born in 1943 at Edou, Oyo District
Of Congolese nationality
Residing at Brazzaville, BP 2947
- General Pierre Oba
Minister of the Interior, Public Security and Territorial Administration;
- General Norbert Dabira
Inspector-General of the Armed Forces,
Resident at 54, Allée des Tilleuls
Bois Parisis
77240 Villeparisis
- General Blaise Adoua
Commander of the Republican Guard, known as the "Presidential Guard";
- And all such other persons as the investigation may disclose.

The FIDH, OCDH and LDH state the following:

A. Context

The Republic of the Congo is a country rich in natural resources . . . Following an initial period of free and democratic elections and a peaceful alternation of power, an acute political crisis suddenly arose, marked by a series of violent civil wars. Today, the Republic of the Congo has barely emerged from three particularly deadly civil wars, which, within a period of five years, have plunged the country into a cycle of massive human rights violations.

The Republic of the Congo is divided into four geographical areas, and the population is distributed among four main ethnic groups, namely: the Kongo, the Sangha, the Téké and the M'bochi.

1993-1999: The three Congo-Brazzaville civil wars

First civil war: 1993

The first civil war broke out in 1993. Initially, the protagonists were the President of the Republic, Pascal Lissouba, and the Mayor of Brazzaville, Bernard Kolelas (originally from the “Pool” District). Pascal Lissouba, Bernard Kolelas and Denis Sassou Nguesso formed “ethnic” militias to support them in the fighting.

Second civil war: 1997

The second civil war broke out on 5 June 1997, between the supporters of Sassou Nguesso and those of Pascal Lissouba. This second civil war resulted in the massacre of thousands of unarmed civilians.

Denis Sassou Nguesso overthrew President Lissouba and proclaimed himself President of the Republic. The war between the militias reached its height between June and October 1997. During that period, the capital was divided into three areas:

- The South, controlled by the Ninjas (militia of Kolelas)
- The Centre, controlled by the Cocoyes (militia of Pascal Lissouba)
- The North, controlled by the Cobras (militia of Denis Sassou Nguesso).

Civilians and members of the security forces suspected (generally on account of their ethnic origin) of being favourable to a rival group were killed, imprisoned or removed from their homes and taken to areas under the control of rival groups.

Third civil war:

In 1998, the new Government launched large-scale military offensives against areas in the south of the Congo. At the same time, the southern districts of Brazzaville (Bakongo and Makelekele), home to those originally from the south of the country, were “pounded”. The Government forces set about “cleansing” the southern districts of the capital, whilst, in the rest of the country, massacres were carried out in the Pool, Niari, Lékoumou and Bouenza areas. The Government was clearly targeting southerners. The south of the Congo and the south of Brazzaville were the scene of violence on a scale whose full extent is still unknown.

In December 1998, several hundred thousand people fled the fighting and group violence in the Congolese capital. The majority of those displaced escaped to the Pool, an area of tropical forest to the south of Brazzaville. They lived for several months in a state of utter deprivation, prisoners of the militias, with the aid agencies powerless to come to their help.

The disappearances

The disappearances mainly took place between 5 and 14 May 1999, involving individuals who had taken refuge in the Pool region during the 1998 civil war and crossed over to the Democratic Republic of the Congo, before returning to the Congo through the river port of Brazzaville, following a tripartite agreement establishing a humanitarian corridor under the auspices of the High Commission for Refugees (HCR).

... On 5 May 1999 at the river port of Brazzaville ... 52 young men — according to witnesses — were detained by the police ... To this day there is no news of them.

The following persons also disappeared in similar circumstances:

...[particulars of seven named individuals]

On Friday 14 May 1999, a number of people were also “disappeared” by those officially responsible for their protection. ... Witnesses having requested anonymity state that these abductions were often carried out by soldiers of the President Guard and uniformed or plain-clothes policemen in unregistered white 4x4 Toyota Hilux vehicles. The witnesses claim to have recognized, among these armed men, a certain “Vital”, a well-known fighter. It should be noted that the abductions were witnessed by the ATC port security commander, who let it be known that those responsible were special services agents.

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It has been estimated that almost 200 persons disappeared on a single day (14 May 1999) in similar circumstances.

From April 1999, under a tripartite Agreement with the Congo and the Democratic Republic of the Congo, the Office of the High Commissioner for Refugees in the Congo organized the repatriation of individuals from Bakongo to Brazzaville. Rumours of disappearances of those persons — sometimes hard evidence of disappearances — caused the HCR, from the end of May 1999, to set up a “monitoring” system at the Makelelele Sports Complex and at the Beach, so as to keep a better check on the returnees. The Office of the HCR has a list of 108 persons who disappeared between the end of May and July 1999.

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However, General Oba, Minister of the Interior, Security and the Administration of the Territory, and the members of his office, including Colonel Mongo, stated to the FIDH mission, which visited the area in January 2000, that they had no knowledge of any disappearances. The Head of the HCR Office in the Congo was concerned to make it clear that his staff, which conducted the monitoring, had received threats from military officers and NCOs. It should also be noted that on each occasion that displaced persons arrived at the Beach, they were given a special welcome by the authorities, and in particular by the Mayor

of Brazzaville or his Deputy, or by a representative of the Government, who made a speech of welcome and reassured the new arrivals.

The active and repeated presence of the civilian authorities making falsely reassuring propaganda speeches to the refugees as they arrived at the river port of Brazzaville is sufficient evidence of their implication in a concerted plan, together with the security services, the aim of which — under cover of speeches emphasizing reconciliation and peace — was to single out certain categories of individuals on account of their political opinions or their regional or ethnic origin on the basis of mere suspicion of their having participated in the activities of “pro-Lissouba” or “pro-Kolelas” militias.

We would also emphasize the particularly surprising attitude of the Brazzaville Prosecutor’s Office. The Procureur de la République acknowledged that he had been seised of an application by the OCDH requesting him to investigate cases of disappearances. But he did not see fit to act on that application, on the ground — in his own words — “that it lacked precision.”.

Yet, notwithstanding, this senior judicial officer felt free to make the curious statement that the Congolese judicial system provided effective protection for human rights and that, within his own territorial area of jurisdiction, the general human rights situation was satisfactory.

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We would also cite the remarkable work of the Association of the Parents of Persons Arrested by the Security Forces and Reported to have Disappeared (*Association des Parents des personnes arrêtées par la force publique et portées disparues*), which collected and collated statements from many families on the circumstances of these disappearances. The Association worked over a period running from March to November 1999 and identified over 350 cases of disappearances. The President of this Association, Marcel Touanga, lost his own son, Narcisse Stanislas Touanga, at the ATC port of Brazzaville in the following circumstances: on 8 May 1999, Narcisse Touanga was returning from Mbandza Ngoungou together with his mother and three cousins. They were returning to Brazzaville through the humanitarian corridor established by the agreements between the two Congos and the High Commission for Refugees. They arrived at the Brazzaville ATC port at 4.30 p.m. As soon as they arrived, Narcisse Touanga was detained by members of the Republican Guard (also known as the Presidential Guard), who were at the port reinforcing the border police. One hundred twenty-five individuals were detained that day.

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In despair, Colonel Touanga used his contacts to visit different sites where bodies had been dumped. But he did not find his son there, and to this day he has no news of him.

We can now reconstruct what happened, thanks to the account of a survivor of these arrests, currently in France, who told us his story. What apparently happened was that, when the refugees arrived at the Brazzaville ATC port, they found a large group of “Cobras” (militia of Sassou Nguesso) waiting to welcome them. The Cobras separated the men from the women. The men aged between 5 and 75 were regarded as potential “Ninjas” and led to a room, where they were stripped and subjected to a thorough body search.

Around 11 p.m. the door was opened and they were told to leave all their things and get into a “Coaster” bus, which drove them off in an unknown direction. On arrival, they were ordered to line up.

The survivor continues:

“We were ordered to line up, which was difficult, because we were all wearing hoods. We were then told to lie face down. After a short pause, we were asked to sit up . . . Then I heard this: ‘What are you waiting for? Start shooting!’ When the shots began, I thought, naively, that they were shooting in the air . . . They weren’t shooting in bursts, but in single shots. I only realized I was about to be executed when the man nearest to me fell across me with two or three bullets through him . . .”

B. Attributability

The four individuals cited in this document are responsible for the crimes committed in the Congo and are named in their capacity as hierarchical superiors of the direct authors of those crimes.

1. Responsibility of Mr. Sassou Nguesso

Mr. Sassou Nguesso is the Head of State of the Republic of the Congo. The Presidential Guard and the Cobra militias are responsible for the close security of the President and thus report directly to Mr. Sassou Nguesso.

The disappearances and acts of torture in this case necessarily involved political or military structures with a highly organized command structure. It is the existence of this chain of command and authority, and its importance in the commission of the crimes, which requires the prosecution, not only of their direct authors, but also of their hierarchical civil and military superiors.

In law, responsibility of the hierarchical superior covers situations both where he fails to act, whether positively (tolerance for the actions of his subordinates) or negatively (negligence, whether or not deliberate, in becoming aware of the actions of his subordinates) in relation to crimes perpetrated by his subordinates. Thus, as a result of the vertical command structure, the superior is under an obligation to punish or prevent his subordinate from committing crimes.

Military commanders are responsible for crimes committed by their men, if they “knew or, owing to the circumstances at the time, should have known”¹ that such crimes were about to be committed and have failed to take the necessary measures to prevent or punish the crimes.

A hierarchical superior engages his traditional individual criminal responsibility where he orders, requests or encourages the commission of a crime . . .

Article 71 of the French Code of Military Justice . . . provides in Article 4: “Where a subordinate is prosecuted as principal author of a war crime and his hierarchical superiors

¹This provision is enshrined in numerous texts of international humanitarian law, including Additional Protocol No. 1 to the Geneva Conventions (Arts. 86 and 87), the Statutes of the International Tribunals for the former Yugoslavia and Rwanda (Arts. 7.3 and 6.3) and the Statute of the International Criminal Court (Art. 28).

cannot be prosecuted as co-authors, they shall be regarded as accomplices to the extent that they organized or tolerated the criminal actions of their subordinates.”

In effect, a military commander who fails in his obligation to act in relation to offences committed by his subordinates may be regarded as having thus assisted them in committing those offences. Inaction on the part of a military commander represents a blank cheque equivalent to complicity.

We should also recall the jurisprudence of the Chamber of the International Criminal Tribunal for Rwanda under the presidency of Judge Laity Kama, who set out as follows the principle of the “criminal responsibility of the hierarchical superior” taken from Article 6 (3) of the Tribunal’s Statute:

“Article 6 (3) does not necessarily require that the superior had knowledge in order for his criminal responsibility to be engaged. It merely suffices that he had grounds for knowing that his subordinates were about to commit a crime or had done so and that he failed to take all necessary and reasonable measures to prevent commission of the crime or to punish the perpetrators.”²

The military structure established in the Congo shows that the individuals named in this complaint could not have been unaware of the events taking place at the time of the return of the Congolese population to Brazzaville. Indeed, a letter from the High Commission for Refugees (HCR) dated 21 March 1999 directly alerts those authorities, who continued until September 1999 to order, or permit the commission of, the crimes described in this complaint. In particular, we find in this letter from the HCR to the Brazzaville Minister for Foreign Affairs, Co-operation and *La Francophonie*, with copies to the Interior and Health Ministers, the following passage:

“We regret to inform you that we are receiving reports of regular arrests, carried out without our knowledge, of certain repatriated individuals. Thus, on 5 May, 20 young people are said to have been arrested by armed men and taken to an unknown destination and their families have still been unable to obtain any news of them or of their whereabouts. On 10 May further arrests reportedly took place. In addition, we were also informed that, on 12 May, 415 persons repatriated from Kasanguniu in the Democratic Republic of the Congo were beaten and maltreated by armed men acting in an undisciplined manner. According to our reports, these incidents principally occurred at the Nganga Lingolo Centre.

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As a result of the offices which they held, the individuals named in this complaint exercised effective authority over the armed forces involved. They accordingly had the necessary legal power to oppose and prevent the commission of the crimes in question. Their personal responsibility is accordingly engaged and established.

2. The immunity of Mr. Sassou Nguesso as Head of State

It used generally to be held that a Head of State in office traditionally enjoyed immunity from jurisdiction and execution. However, in light of the practice in international

²Prosecutor v. Jean Paul Akayesu, ICTR-94-4-T, 2 September 1998.

relations over recent years, it would seem, on the basis of international instruments as well as of international custom, that those principles might be susceptible to change.

As regards international instruments dealing with human rights, many of these provide for the personal criminal responsibility of authors, whatever their official status, of grave violations of human rights. Reference may be made in this regard to the Treaty of Versailles of 28 June 1919, the Statute of the Nuremberg Military Tribunal, whose principles were endorsed by the United Nations General Assembly, Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the Geneva Conventions, the International Convention Against Torture and Other Cruel and Degrading Treatment or Punishment of 1984 (entered into force in 1987), the Declaration of 18 December 1992 on the Protection of All Persons Against Enforced Disappearances, as well as the Statutes of the two *ad hoc* Tribunals for the former Yugoslavia (Art. 7-2) and Rwanda (Art. 6-2), which have had occasion, in the most striking manner, to implement the principle that a Head of State, including a Head of State in office, may lack immunity.

Thus, in 1919, the Treaty of Versailles had already recognized that the immunities of Heads of State in international law had limits, particularly where international crimes were involved.

The personal criminal responsibility of government members had also been provided for in Article 7 of the Statute of the Nuremberg Tribunal, and the Tokyo Tribunal reached similar conclusions on the basis of Article 6 of its Statute.

Almost 50 years later, Article 6 of the Statute of the International Tribunal for Rwanda states in paragraph 2 that “the official position of any accused person, whether as head of state or Government, or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment”.

In support of this doctrine, we would also cite the Order of Judge Vandermeersch rendered on 6 November 1998 in the course of his investigation in the proceedings commenced against Mr. Augusto Pinochet in Belgium, in which he states:

“[A person having the status of a former Head of State] continues however to enjoy immunity in respect of acts carried out in the exercise of his duties as Head of State . . . If the crimes of which Mr. Pinochet currently stands accused were to be regarded as proven, it could not however be considered that they had been carried out in the performance of his duties: criminal acts of such a kind cannot be deemed to fall within the normal exercise of the duties of a Head of State, one of whose tasks consists precisely in ensuring the protection of his fellow citizens.

Moreover, the immunity accorded to Heads of State would not appear to apply in relation to international crimes such as war crimes, crimes against peace or crimes against humanity.” (E. David, *Éléments de droit pénal international, 1997-1998, Presse Universitaire de Bruxelles*, pp. 36-37.)

Judge Vandermeersch also cites in support of his findings an extract from the Statute of the Nuremberg International Military Tribunal: “The protection which international law accords to representatives of the State cannot apply to criminal acts. The authors of those acts cannot invoke their official status in order to escape normal prosecution and avoid punishment (1 October 1946).”

The Statute of the Nuremberg Tribunal is recognized as having created customary norms. Doctrine as a whole agrees that international custom, as a source of international law,

forms part of public international law. Accordingly, the prosecution of authors of crimes under international law cannot be sacrificed to the principle of immunity of State representatives.

Those principles were moreover incorporated into the Statute of the International Criminal Court, adopted in Rome on 17 July 1998, namely in its Article 27:

“1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.”

On 25 November 1998, a few months after the adoption on 17 July 1998 of the Statute of the Criminal Court, the House of Lords in the *Pinochet* case stated that the immunity on which a Head of State might rely could not cover the most heinous crimes against humanity. That decision was confirmed on 24 March 1999 by that same House of Lords in a different composition. According to that Statute, international boundaries can no longer serve either as a pretext for the commission of a crime or as a refuge. Nor can the highest office within a State provide protection.

Moreover, on 24 May 1999 Mr. Slobodan Milosevic, President of the Federal Republic of Yugoslavia, was charged together with four senior civilian or military officials by the Criminal Tribunal for the former Yugoslavia (ICTY), and at the same time international arrest warrants were issued against those persons. Since then Mr. Milosevic has been arrested and transferred to The Hague to answer for his crimes before the ICTY.

Even if it were established that a Head of State enjoyed immunity from jurisdiction and execution, that could only be in respect of acts falling within the normal scope of his functions. But it cannot be considered that the acts of torture and maltreatment practiced by the highest authorities in the Congo are acts falling within the normal scope of the functions of a Head of State. In other words, Mr. Sassou Nguesso cannot benefit from the principle of immunity, and that applies *a fortiori* to his Ministers.

It follows from the foregoing that immunity as Head of State, even in office, cannot be relied on by way of defence, since the result would be to remove all possibility of effectiveness from international human rights instruments, which would thus become mere declarations of intent, without binding force, contrary to the essential laws and principles of humanity.

3. On General Dabira in particular

General Dabira is Inspector-General of the Armed Forces. The Inspectorate-General of the Armed Forces, like any inspectorate, is responsible for checking, monitoring and verifying the legality and implementation of the tasks entrusted to the various branches of the armed forces. That control applies to the entire military apparatus: at technical, tactical, logistical, administrative, etc., level.

The Inspector-General of the Armed Forces reports directly to the Minister of Defence, who accordingly takes the necessary decisions in light of the reports received by him from the Inspector. In principle, General Dabira's activities cover not only the army, but also the air force and the navy. Thus he is responsible for the inspectors of each branch of the armed forces (land, air, sea), who are his deputies. Through them, he acquires information and reports on it to the Minister of Defence, who takes such sanctions as may be appropriate.

The responsibility of General Norbert Dabira, as Inspector-General of the Armed Forces, in the events of March to September 1999 is clear. In effect, the abductions and disappearances had been carried out by elements of the Republican Guard (hence, members of the military), members of Central Military Intelligence [Direction Centrale des Renseignements Militaires (DCRM)], members of the Department of Military Security [Direction de la Sécurité Militaire (DSM)], and of other armed forces units posted along the human corridor. Those abducted were sometimes held in premises of the DSM, the DCRM, at the Presidential Palace, etc.

For quite some time, the Inspectorate-General of the Armed Forces did not, to our knowledge, take any measure to put a stop to these mass arbitrary arrests and the ensuing disappearances. Moreover, the Defence Ministry never acknowledged the existence of the disappearances until two months ago, when a parliamentary commission of enquiry was set up — so far without effect — as a result of popular pressure . . .

As Inspector, General Norbert Dabira at the very least encouraged those operations which resulted in the disappearances by his lack of reaction. His power of review over the armed forces did not operate. No act of punishment or prevention was observed, despite the lengthy period over which the events in question lasted. Moreover, General Norbert Dabira is one of the leading Cobra

warlords, playing a central role in one of the groups fighting the Ninjas³ and the Cocoyes⁴ in 1997, 1998 and 1999. It was the civil war of December 1998, which continued into 1999, which provided one of the pretexts for the Cobras to organize the abduction of young, unarmed, non-combatant civilians, suspected — for the most part wrongly and without any proof — of being Ninjas or Cocoyes.

At this level, General Norbert Dabira, a high-ranking army officer and head of the Cobras, who was certainly aware of the provisions of the Geneva Conventions and hence of the law of war, could have played an important role in the prevention of arbitrary arrests and the ensuing disappearances.

II. APPLICABLE LAW

A. Definition of the crime of disappearance

The Declaration on the Protection of all Persons from Enforced Disappearances does not contain a definition, but in its preamble it includes an illustration of what constitutes forced disappearance:

“Preamble:

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups of private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law”.

The draft Convention on the Protection of all Persons from Enforced Disappearances contains a definition and list of offences falling under the head of forced disappearance, and lays down the criteria to be applied in regard to individual criminal responsibility.

“Article 1:

1. For the purposes of this Convention, forced disappearance is considered to be deprivation of a person’s liberty, in whatever form or for whatever reason, brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information, or refusal to acknowledge the deprivation of liberty or information, or concealment of the fate or whereabouts of the disappeared person.

2. This article is without prejudice to any international instrument or national legislation that does or may contain provisions of broader application, especially with regard to forced disappearances perpetrated by groups or individuals other than those referred to at paragraph 1 of this article.”

³Militia of Bernard Kolelas.

⁴Militia of Pascal Lissouba.

C. Disappearances constitute crimes of torture

A disappearance is a complex criminal act.

It violates several human rights for the person who suffers it, and in particular the right not to be arbitrarily deprived of liberty and the right not to be tortured. The Inter-American Court of Human Rights, in its judgment of 29 July 1988 in the *Velasquez Rodriguez* case, held that disappearance is a form of torture for the disappeared person.

“156. . . . prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person by providing that:

- (1) Every person has the right to have his physical, mental, and moral integrity respected.
- (2) No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.”

Forced disappearance as such also constitutes a violation of the human rights of the family members of the disappeared person: more specifically, it constitutes an act of torture and/or cruel and inhuman treatment against the family members of the disappeared persons. The Declaration on the Protection of all Persons from Enforced Disappearances provides in Article 1, paragraph 2, that “any act resulting in an enforced disappearance . . . causes grave injury to the victim himself and to his family”.

International jurisprudence has also recognized this characterization. See *inter alia* the concluding observations of the United Nations Human Rights Committee concerning Algeria⁵, which state that “disappearances are a violation of Article 7 of the International Covenant on Civil and Political Rights as regards the families of the disappeared”⁶, and also a decision of the same Committee in the case of *Quintero v. Uruguay*⁷, of 21 July 1983, which

⁵Concluding observations — Algeria — United Nations doc. CCPR/C/79/Add. 95. 18/08/98, para. 10.

⁶To the same effect, see *inter alia*

— Communication 540/1993, *Celis Laurenano v. Peru* — views 25 March 1996, para. 8.5. “In the circumstances, the committee concludes that the abduction and disappearance of the victim and the prevention on contact with his family and with the outside world constitute cruel and inhuman treatment, in violation of article 7, juncto article 2, paragraph 1 of the Covenant (ICCPR).”

— Communication 542/1993, *Katombe L. Tshishimbi v. Zaire*, views 26 March 1996, para. 5.5. “In the circumstances, the committee concludes that the removal of the victim and the prevention of contact with his family and outside world constitute cruel and inhuman treatment, in violation of article 7 of the Covenant.”

— Communication No. 440/1990, *Youssef El-Megreisi v. The Libyan Arab Jamahiriya*, para. 5.4.

— Communication No. 449/1991, *Mojica v. Dominican Republic*, para. 5.7.

⁷Communication 107/1981, *Almeida de Quintero v. Uruguay*, views 1982, para. 14: “The Committee understand the anguish and stress caused to the mother by the disappearance of the daughter and the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In this respect, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of Article 7 (ICCPR).”

confirms that the relatives of the disappeared must also be regarded as victims *inter alia* of maltreatment.

Also relevant is the jurisprudence of the European Court of Human Rights, which in its judgment in the case of *Kurt v. Turkey*⁸ of 25 May 1998, states:

“the Commission considered that the uncertainty, doubt and apprehension suffered by the applicant over a prolonged and continuing period of time caused her severe mental distress and anguish. Having regard to its conclusion that the disappearance of her son was imputable to the authorities, the commission found that she had been subjected to inhuman and degrading treatment within the meaning of Article 3 . . . Having regard to the circumstances described above as well as to the fact that the complainant was the mother of the victim of a human rights violation and herself the victim of the authorities’ complacency in the face of her anguish and distress, the Court finds that the respondent State is in breach of Article 3 in respect of the applicant.”

Examples to the same effect may be found in the jurisprudence of the Inter-American Court of Human Rights, and in particular in its judgment of 24 January 1998 in the *Blake* case (Guatemala), paragraph 97 of which states that every disappearance causes grave suffering both to the disappeared person and to their family.

The Inter-American Commission on Human Rights, in numerous reports on the human rights situation in countries of the American hemisphere since 1977, also recognizes enforced disappearance as a form of torture for the families of the disappeared. In its 1980 report on Argentina, the Commission states: “It is . . . a true form of torture for the victim’s family . . . because of the uncertainty they experience as to the fate of the victim and because they feel powerless to provide legal, moral and material assistance.”⁹

Finally, reference may be had to the work of the United Nations Working Group on Enforced Disappearances, which emphasizes that “[t]he very fact of being detained as a disappeared person, isolated from one’s family for a long period is certainly a violation of the right to humane conditions of detention and has been represented to the Group as torture”¹⁰.

Furthermore, the Spanish judge Baltazar Garzon, of Central Investigating Court No. 5 of the Audiencia Nacional, held that the cases of enforced disappearances of which he was seised were crimes of torture, citing the jurisprudence of the European Court of Human Rights as well as that of the Inter-American Court of Human Rights, in:

- his Order of 30 April 1999, in which he reconfirmed the provisional arrest of Pinochet and the international arrest warrants of 16 and 18 October 1998 against Pinochet;
- his Order of 27 April 1999, in which he expressly states that the 1,198 cases of disappearances contained in his original extradition application of 3 November 1998 must be regarded as cases of torture against the families of the disappeared in light of the Declaration on the Protection of All Persons from Enforced Disappearances and of the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights.

⁸*Kurt v. Turkey* (15/1997/799/1002) of 25 May 1998.

⁹OEA doc. OEA/SER/L/V/II.49, 11 April 1980, p. 53.

¹⁰United Nations doc. E/CN.4/1983, para. 131.

C. The universal nature of the crime of torture

Torture is unanimously condemned by States. Numerous international instruments have enshrined its prohibition, and it is clear from the legal arsenal created since 1945 that torture is prohibited without exclusion or reservation. Reference may be had *inter alia*, in addition to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, to:

- Article 5 of the Universal Declaration on Human Rights of 1948;
- Article 7 of the International Covenant on Civil and Political Rights of 16 December 1966;
- Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;
- Article 5 of the American Convention on Human Rights of 22 November 1969;
- Article 5 of the African Charter on Human and Peoples' Rights, adopted by the Member States of the OAU (Organization of African Unity) in June 1981.

Many national constitutions also enshrine the prohibition of torture.

Overall, these instruments tend to confirm the universal nature of the ban on torture, which thus acquires the nature of a peremptory norm of international law. Such a peremptory norm, or *jus cogens*, is defined as follows in Article 53 of the 1969 Vienna Convention on the Law of Treaties:

“A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

In adopting that Convention, the States meeting in Vienna in 1969 “sought to confirm, by a massive majority, the existence of a universal legal community based on its own specific values, which all its members were bound accept” (Nguyn Quoc Dinh, Patrick Daillier and Alain Pellet, *Droit international public, LGDJ* — 5th edition).

The International Court of Justice (ICJ), in an *obiter dictum* in its Judgment of 5 February 1970 (*Barcelona Traction* case), confirms this approach, stating: “In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”

The International Criminal Tribunal for the former Yugoslavia, in the *Furundzija* judgment rendered by the First Instance Chamber in 1998, confirms the universal character of the prohibition of torture. Thus in its Judgment the Chamber recognizes the peremptory nature of the prohibition of torture in international law:

“the other major feature of the principle proscribing torture relates to the hierarchy of rules in the international normative order. Because of the importance of the values it protects, this principle has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special

customs or even general customary rules not endowed with the same normative force.

Clearly, the *jus cogens* nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate.”

The Chamber continues:

“one of the consequences of the *jus cogens* character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in the territory under its jurisdiction. Indeed, it would be inconsistent on the one hand to prohibit to such an extent as to restrict the normally unfettered treaty-making power of sovereign States, and on the other hand bar States from prosecuting and punishing those torturers who have engaged in this odious practice abroad. This legal basis for States’ universal jurisdiction over torture bears out and strengthens the legal foundation for such jurisdiction found by other courts in the inherently universal character of the crime.”

The prohibition of torture constitutes a peremptory norm of international law, and the prosecution of its perpetrators admits of no derogation — including the principle of immunity — irrespective of any official capacity of such perpetrator.

D. Enforced disappearances as a crime against humanity

Enforced disappearances are not only a multiple violation of human rights but also an international crime. The Inter-American Convention on the Forced Disappearance of Persons establishes the principle of *aut dedere aut judicare* with the aim of suppressing the practice of disappearances (Art. IV, Inter-American Convention).

International law also recognizes that the systematic or widespread practice of enforced disappearances is a crime against humanity. In the 1980s the General Assembly of the Organization of American States, followed by the Parliamentary Assembly of the Council of Europe, recognized such a practice to be a crime against humanity. The Declaration on the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on the Forced Disappearance of Persons did the same. Furthermore, in Article 7 (1) (i) and (2) (i), the Statute of the International Criminal Court included the widespread or systematic practice of enforced disappearance of persons in the list of crimes against humanity, in the following terms:

“‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

Such a situation is akin to torture; torture is an international crime in itself and when practised on a widespread or systematic scale against a civilian population it becomes an international crime which is characterized as a crime against humanity.

Furthermore, criteria of liability have been defined in Articles 2 and 3 of the Draft International Convention on the Protection of All Persons from Forced Disappearance:

“Article 2

1. The perpetrator of and other participants in the offence of forced disappearance or of any constituent element of the offence, as defined in article 1 of this Convention, shall be punished. The perpetrators or other participants in a constituent element of the offence as defined in article 1 of this Convention shall be punished for a forced disappearance where they knew or ought to have known that the offence was about to be or was in the process of being committed. The perpetrator of and other participants in the following acts shall also be punished:
 - (a) Instigation, incitement or encouragement of the commission of the offence of forced disappearance;
 - (b) Conspiracy or collusion to commit an offence of forced disappearance;
 - (c) Attempt to commit an offence of forced disappearance; and
 - (d) Concealment of an offence of forced disappearance.
2. Non-fulfilment of the legal duty to act to prevent a forced disappearance shall also be punished.

Article 3

1. The systematic or massive practice of forced disappearance constitutes a crime against humanity.
2. Where persons are suspected of having perpetrated or participated in an offence, as defined in articles 1 and 2 of this Convention, they should be charged with a crime against humanity where they knew or ought to have known that this act was part of a systematic or massive practice of forced disappearances, however limited the character of their participation.”

Crimes against humanity were first defined in the Statute of the Nuremberg Tribunal as a consequence of the horrors and atrocities committed by Nazi Germany and its allies during the Second World War.

Article 6 (c) of the Nuremberg Statute defines crimes against humanity as follows:

“Murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds, where such acts or persecutions, whether or not in violation of the domestic laws of the country

where perpetrated, were committed as a result of any crime falling within the jurisdiction of the Tribunal or in connection with any such crime.”¹¹

This definition served as a basis for the French courts, which in the course of decisions handed down by them in cases concerning crimes against humanity, arrived at the following formula: “Crimes against humanity are crimes of ordinary law committed in certain circumstances and for certain reasons specified in the text defining them.”¹²

According to the definition laid down in the Statute of the Nuremberg Tribunal, the reasons in question are those of a “political, racial or religious” nature.

In 1964 legislature was passed removing the time bar from crimes against humanity, and providing that crimes as defined in the United Nations resolution of 13 February 1946, which itself took note of the definition of crimes against humanity set out in the Charter of the International Nuremberg Tribunal, are inherently imprescriptible.

In 1994 the French legislator incorporated a formal definition of crimes against humanity into the Criminal Code, which provides in Article 212-1:

“The deportation, enslavement or massive and systematic practice of summary executions or abductions of individuals followed by their disappearance or by torture or inhuman treatment on political, philosophical, racial or religious grounds organized in pursuance of a concerted plan against any group of the civilian population is punishable by rigorous imprisonment for life.

The first two subparagraphs of Article 132-23 concerning the minimum period of detention shall apply to the crimes specified in the present article. — Pén. R 645-1.”

There can be no doubt that abductions of individuals followed by their disappearance and summary executions were practiced in a massive and systematic manner, for political or racial reasons (membership of an ethnic group thought to be complicit with a political opponent), against a group of the civilian population (refugees and displaced persons).

The crimes were directed against the civilian population

This criterion is quite clearly satisfied, since all the evidence in our possession confirms that the arrests followed by executions or disappearances were committed against refugees or displaced persons returning home following appeals by the Government and by the President of the Republic himself.

The acts were committed for political, racial or religious reasons

This was clearly so as regards the murders, torture and forced disappearances of individuals committed by the Congolese forces for political or ethnic reasons, that is to say, in this case, in order systematically to eliminate any person presumed, for reasons of geographic or ethnic origin, to have links with the political opponents of those in power, that is to say with Messrs. Lissouba and Kolelas.

¹¹The crimes in question are crimes against peace or war crimes.

¹²*Touvier case*, Crim. 6 February 1975, Bull. Crim. No. 42; [for English text see *International Law Reports*, 100 *ILR*, p. 337.]

There can be no doubt that the victims of these acts of repression were targeted for political or racial reasons.

The acts were committed as part of a concerted plan

The active and repeated presence of the civilian authorities making falsely reassuring propaganda speeches as the refugees arrived at the river port of Brazzaville is sufficient evidence to confirm their involvement in a concerted plan, together with the security forces, the aim of which — under cover of speeches of an ostensibly conciliatory and peaceful nature — was to target certain categories of persons, by reason of their political opinions, their regional or ethnic origin, or simply on the basis of suspicion of participation in activities of “Pro-Lissouba” or “Pro-Kolelas” militias.

The massive and systematic nature of the crimes

The systematic, generalized nature of the crimes committed in the Congo, indiscriminate in its targeting of the civilian population, is clearly apparent from the various enquiries and testimony cited. Thus, this systematic practice of arbitrary arrests followed by forced disappearances, as well as arbitrary extrajudicial executions, committed against the Congolese population fall within the definition of a crime against humanity as set out in Article 212-1 of the French Criminal Code.

The acts of torture, murder and forced disappearance, as well as of simple imprisonment or other form of serious deprivation of physical liberty, as alleged and established in the present complaint, thus constitute crimes against humanity by reason of the fact that they were committed for political and racial reasons, in pursuance of a concerted plan.

III. THE JURISDICTION OF THE FRENCH COURTS

A. In regard to crimes against humanity

We have seen that the earliest formal embodiment of the notion of a crime against humanity in French legislation was the Law of 26 December 1964 providing that such crimes would be imprescriptible and defining them simply by reference to the United Nations resolution of 13 December 1946 [*sic*; read “13 February 1946”], which itself took note of the definition contained in the Nuremberg Charter.

Furthermore, Article 212-1 of France’s New Criminal Code makes a crime against humanity a criminal offence and provides that:

“The deportation, enslavement or massive and systematic practice of summary executions or abductions of individuals followed by their disappearance or by torture or inhuman treatment on political, philosophical, racial or religious grounds and organized in pursuance of a concerted plan against any group of the civilian population is punishable by rigorous imprisonment for life.”

The French authorities have jurisdiction to try the perpetrators of crimes against humanity by reason of the fact that such crimes strike at the very essence of humanity. They

have jurisdiction to do so even where these crimes are committed abroad by foreigners against foreign victims.

This principle was reasserted by the Belgian courts when six complaints of arbitrary detention, murder and torture were brought against Mr. Augusto Pinochet, the former President of the Republic of Chile, before a Belgian investigating judge by Chilean citizens in respect of acts committed in Chile. By an Order dated 8 November 1998, the investigating judge began by recharacterizing the facts as constituting crimes against humanity. He went on to hold that Mr. Pinochet could not claim any immunity in respect of crimes against humanity. In doing so he invoked customary international law, which confers on every State the power to exercise its jurisdiction in regard to crimes against humanity. According to the Belgian investigating judge, even in the absence of any treaty obligation, national authorities have the right and even, in certain circumstances, the obligation to pursue the perpetrators of such crimes regardless of their whereabouts¹³.

This is because, where crimes against humanity are concerned, the rules of international criminal law are directly applicable in the domestic legal order of States. Judge Vandermeersch put this as follows:

“It has to be asked here whether the offence of a crime against humanity as embodied in international law should be regarded as directly applicable within the Belgian domestic legal order.

What our domestic criminal law embodies is not the notion of a crime against humanity, but of acts falling within the definition of a crime against humanity which overlap with certain acts which are offences under the ordinary law (such as assassination, murder, assault, sequestration accompanied by torture, taking of hostages, etc.).

If we take it that custom is the result of a practice whereby the States concerned demonstrate their belief that they are acting in conformity with what amounts to a rule of law, the offence of a crime against humanity appears to be a customary offence (ref. omitted).

As stated earlier, the concept of a crime against humanity has been embodied in various international instruments, but these would appear merely to have enshrined an offence which already existed under customary law. As evidence of this, we would point to the fact that several of these legal instruments were created only *a posteriori* after the acts had been committed, and had those offences not previously existed in customary law the application of these instruments would have fallen foul of the principle of the non-retroactivity of the criminal law . . .

It therefore seems correct to say that, before their codification in treaties or legislation, crimes against humanity were enshrined in international custom and thus form part of international *jus cogens*, which has binding effect *erga omnes* on the domestic legal order (ref. omitted).”

The offence of a crime against humanity does not exist as such in any general international convention, except for certain international agreements concerning the crimes against humanity committed by the Nazis and their allies during the Second World War. It

¹³Order of 6 November 1998, Augusto Pinochet Ugarte case, Office of the Investigating Judge Mr. D. Vandermeersch, Belgium, 118, *Journal des Tribunaux*, p. 308, 1999.

does nevertheless exist formally in customary international law and *with it goes the universal jurisdiction of all States to prosecute such crimes.*

If States *are required* to prosecute the perpetrators of crimes against humanity, *a fortiori* they also have power to do so, and to do so without any consideration of frontiers. In the *Barbie* case¹⁴ it was held as follows:

“By reason of their nature, *the crimes against humanity* with which Klaus Barbie, who claims German nationality, is charged in France, where those crimes were committed, *do not simply fall* within the scope of French domestic law but are subject to an international criminal order to which the notions of frontiers and extradition rules arising therefrom are completely foreign.”

The universal jurisdiction of the courts in regard to crimes against humanity derives from various resolutions adopted by the United Nations General Assembly, among them resolutions 3 (I) of 13 February 1946, 170 (II) of 31 October 1947, 2840 (XXVI) of 18 December 1971 and 3074 (XXVIII) of 3 December 1973, which require States to prosecute persons guilty of acts constituting crimes against humanity regardless of their nationality or that of their victims or the place of the crime. For example, resolution 2840 (XXVI) (“Question of the punishment of war criminals and of persons who have committed crimes against humanity”) of 18 December 1971 characterizes refusal by States to co-operate in the arrest, prosecution or extradition of persons guilty of war crimes or crimes against humanity as contrary to international law.

To like effect, resolution 3074 (XXVIII) of 3 December 1973, entitled “Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity”, lays down the following as the first of these principles:

“War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.” (Para. 1)

These resolutions therefore impose on States an obligation to prosecute or extradite. Moreover, the Lyon Indictments Chamber and the French Court of Cassation relied on a United Nations General Assembly resolution in founding the jurisdiction of the French courts to try the crimes against humanity of which Klaus Barbie was accused.

The report by Judge Christian Le Gunehec, Counsellor to the Court of Cassation, in the Klaus Barbie case, may also be cited:

“These decisions undoubtedly support the conclusion that the Agreement of 8 August 1945 is an integral part of the French legal order, and that its provisions, to use the formula employed by President Mongin in his celebrated report on the Touvier case, heard in 1976, possess even greater authority, according to this country’s constitutional tradition, than its laws.”

He continued:

“Granted that [the Agreement of 8 August 1945] has been incorporated into the positive law of France, there can be no doubt about the force of that

¹⁴App. Lyon, Ch. Acc., 8 July 1983 and Cass. Fr. (Crim.), 6 October 1983, JDI, 1983, pp. 782 and 785, note Edelman.

Agreement: it had the force of law even where it conflicted with a domestic law, by virtue of Article 26 of the Constitution of 27 October 1945, and it continues to possess ‘even greater authority’ than the laws of France pursuant to Article 55 of the Constitution of 4 October 1958.”

He concluded:

“It should be noted, however, that the French Parliament, in that same Law of 26 December 1964, refers, again expressly, to the resolution of 13 February 1946, at least as regards the definition of crimes against humanity. We can thus take it that, to that extent, the resolution is incorporated in the domestic legal order, but in a manner other than that provided for in Article 55 of the Constitution. At all events the content of the resolution, in so far as it elucidates and confirms the provisions of the London Agreement of 8 August 1945, cannot be disregarded by the French criminal courts.”

In regard to the restricted application of these texts, which might be thought to apply in French law solely to crimes against humanity committed during the Second World War, the following passage later in the same report may be cited:

“But the 1943 Declaration, the 1945 Agreement and the 1946 resolution are on a different level. Those instruments apply to the major international crimes — war crimes, crimes against peace, crimes against humanity — and the principles which they lay down, that of punishment of the guilty and of universal co-operation to achieve that end, are neither a matter of temporary convenience nor expediency.”¹⁵

Although the resolutions of the United Nations General Assembly have no binding force, nonetheless they undoubtedly testify to the existence of the political will of States, an element indispensable to the creation of a customary norm, and consequently, as Judge Le Guhenec shows, they can become an integral part of domestic law.

International jurisprudence also enshrines the principle of universal jurisdiction in regard to crimes against humanity, even where there are no domestic provisions expressly conferring such jurisdiction on national courts.

For example, in the *Furundzia* case, the International Criminal Tribunal for the former Yugoslavia observed as follows:

“one of the consequences of the force of *jus cogens* which the international community attaches to the prohibition of torture is that every State is entitled to prosecute and punish or extradite individuals accused of torture who are present on its territory . . . This legal basis for the universal jurisdiction of States in regard to torture confirms and strengthens the basis which, in the view of other courts, derives from the essentially universal nature of that crime. It has been held that since international crimes are universally proscribed regardless of where they are committed every State is entitled to prosecute and punish their perpetrators.

As the Supreme Court of Israel held in general terms in the *Eichmann* case, and a United States court in the *Demjanjuk* case, it is the universal nature of the crimes in question (namely, international crimes) which empowers every State to prosecute and punish those who have taken part in them.” (For

¹⁵Recueil Dalloz, 1984, 11th volume, Jurisprudence.

Eichmann, see *ILR* 36, p. 298; for Demjanjuk, see 612 F. Supp. 544 (N.D. Ohio 1985)¹⁶)

These precedents demonstrate that, even in the absence of express provisions in the domestic law of the prosecuting State enabling it to exercise jurisdiction, international law empowers domestic courts to exercise universal jurisdiction over crimes against humanity.

Domestic courts are therefore entitled to look to international custom as the source of their right to exercise jurisdiction to prosecute the perpetrators of a crime against humanity alleged to have been committed outside France where neither the perpetrator nor the victim is a French national.

B. In regard to the crime of torture

1. The provisions of the French Code of Criminal Procedure

Article 689-1 of the Code of Criminal Procedure provides:

“Pursuant to the international conventions referred to in the following articles, any person who has committed, outside the territory of the Republic, any of the offences enumerated in these articles may be prosecuted and tried by the French courts if that person is present in France. The provisions of the present article are applicable to attempts to commit such offences wherever any such attempt is punishable.”

Article 689-2 of that Code provides:

“Pursuant to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, any person who has committed torture within the meaning of Article 1 of the Convention may be prosecuted and tried under the conditions provided for in Article 689-1.”

It should be noted that the above provisions were enacted after the ratification by France of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly in resolution 39/46 of 10 December 1984. The Convention entered into force on 26 June 1987.

2. The provisions of the Convention of 10 December 1984

2.1. Mention needs to be made of the following provisions of Article 1 defining the notion of torture:

“1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or

¹⁶Aff. IT-95-17/1-T, 10 December 1998, para. 156.

acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

2.2. *Article 6 of the Convention provides:*

“1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in Article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.”

The draftsmen of the Convention considered that the persons to be prosecuted by signatory States should be public officials on the one hand and, on the other, other persons acting in an official capacity, and should include those acting at the instigation or with the consent or acquiescence of any such official or other person.

A perusal of the *travaux préparatoires* of the Convention of 10 December 1984 shows that its draftsmen, in referring to “public officials”, intended the expression to include anyone having any official authority from the State, whether civil or military, who:

- consents to an act of torture;
- assists any other person to commit an act of torture;
- gives an order for such an act to take place or intervenes with that in view;
- or fails to take the necessary measures to prevent or punish torture.

IV. FRENCH *ORDRE PUBLIC*

The incorporation into the French Criminal Code of Article 222-1, which makes the infliction of torture or barbaric conduct on any person a crime punishable with 15 years of rigorous imprisonment, and of Article 212-1 which makes a crime against humanity a serious criminal offence, brings French *ordre public* into line with the provisions of the above-mentioned international instruments.

It is certain that, until the date of seisin of these proceedings, General Dabira was present on French territory at the following address:

54, Allée des Tilleuls
Bois Parisis
77270 Ville Parisis.

The information contained in the present complaint testifying to the responsibility of the Congolese authorities for crimes against humanity, enforced disappearances and torture committed in the Republic of the Congo is sufficient to entitle FIDH, OCDH and LDH to request you as *Procureur de la République*, acting under Article 6 of the aforementioned

Convention and Article 659-1 of the Code of Criminal Procedure, to open a judicial investigation and take all such steps as are necessary to bring proceedings in light of the presence on French territory of the persons named in the present document and any such other persons as the investigation may disclose.

Siki KABA
President, FIDH

Michel TUBIANA
President, LDH

(Only Mr. Kaba signed this complaint, and he affixed the stamp of FIDH)

Parfait Moukoko
President, OCDH

Attachments:

- Report by FIDH: Congo-Brazzaville: Seizing the opportunity for a lasting peace, April 2000
 - Joint FIDH/OCDH report: Arbitrary actions by the State, the militia terror, June 1999
 - Testimony by Mr. Lino Bardin Duval Tsieno, survivor of the Beach disappearances
 - Letter from the High Commissioner for Refugees dated 21 May 1999
-

ANNEX VI-3

D 12

**TRIBUNAL DE GRANDE INSTANCE DE MEAUX
OFFICE OF THE *PROCUREUR DE LA RÉPUBLIQUE***

NOTICE OF EXTENSION OF JURISDICTION

The *Procureur de la République* of the Meaux *Tribunal de grande instance*,

Having regard to the preliminary enquiries currently being undertaken by the Versailles *SRPJ* (Regional Judicial Police Service) into acts constituting crimes against humanity.

Against: person or persons unknown

Having regard to the urgency

Having regard to the provisions of Article 18, paragraph 4, of the Code of Criminal Procedure,

Whereas evidence should be taken from Mr. Tsieno and Mr. Tounga

Hereby requests Mr. Dupeyroux or any assistant he may designate to travel to Montfermeil and the Paris Region, and if necessary over the whole of the national territory, to conduct any examinations, searches or seizures and, in general, any operations that may assist in establishing the truth, including, in particular, any appropriate interviews and enquiries.

Done at the Public Prosecutor's Office, 8 December 2001

On behalf of the *Procureur de la République*

C. KRIEF, Assistant Prosecutor

ANNEX VI-4

D 24

POLICE REPORT

17 September 2001, 9 a.m.

Reporting officer: Richard Thery

Police Lieutenant in the

Regional Judicial Police Directorate, Versailles

Serious Crime Squad

Judicial Police Officer residing at 19 Avenue de Paris, Versailles

On duty

Continuing the preliminary enquiry

Having regard to Articles 75 *et seq.* of the Code of Criminal Procedure

I hereby confirm the appearance before me, on a summons, of the person named below, whose statement follows:

As to the aforementioned person's identity:

My name is Tsieno, Linot Bardin Duval.

I am the son of Ntinou and Theodore Henriette

I am a Congolese national.

I am married to Mrs. Yengo Micaelli Babette Severine.

I have two children with the forenames Tsieno, Nganga Milandan Merveilli Gabrielle and Tsieno, Bimangan Cardin Naturel.

My wife and two children have remained behind in Brazzaville, Congo.

I hold an agricultural machinist's diploma.

I arrived in France on 6 February 2001.

I was born on 25 September 1971 in Brazzaville, Congo.

My present address is 5 rue des Degas, Montfermeil, the home of Gaston Manima.

I am currently unemployed.

I have submitted an application for refugee status to the police headquarters. It was lodged with the French Office for the Protection of Refugees and Stateless Persons (OFPRA) on 12 March 2001. The receipt confirming the filing of my application is dated 3 October 2001 and is valid until 2 January 2001 under the reference number 7503455879.

As to the facts.

I take note of the reason for my being summoned, namely the events that took place in the Congo in the course of 1999.

Before starting to address the facts, I would point out that I have difficulty speaking because of an operation I recently underwent on my palate. The wound is not yet completely healed and I therefore have difficulty in articulating.

In 1997 and 1998, a war was taking place in the southern part of the Congo where I lived. It pitted the supporters of the current President of the Republic of the Congo, Mr. Denis Sassou Nguesso, against the Ninja, a sort of private militia, or irregular army, led by Pastor Ntoumi. Mr. Sassou Nguesso relied on the support of the Cobra ethnic group. Indeed, the Cobra made up the bulk of the regular army led by the current President of the Republic of the Congo, Mr. Sassou Nguesso, who thus relied on them for the conduct of his war.

At that time, I was working as a shopkeeper, and I had a clothing shop in Brazzaville. I did not participate in the fighting. I was not a soldier nor did I belong to any of the three dominant ethnic groups, namely the Cocoye, the Cobra and the Ninja.

The Brazzaville region was controlled by the Ninja.

We remained in Brazzaville until May, in the Pool region which is my home region.

The two sides bombarded each other on a daily basis and shells frequently fell on civilian dwellings. In addition, a famine took hold and I was no longer able to feed my family. I therefore decided to leave Brazzaville using the humanitarian corridors that had been opened up by the Office of the High Commissioner for Refugees.

I should point out that on 18 December 1998, the starting date of the conflict, because of the intense shelling I was separated from my wife and my children. I had no further news of them until I arrived in France.

I was thus able to leave the Brazzaville region with my wife and children. I left in the company of my uncle, his wife and his children. We set off in the direction of the other Republic of the Congo, the former Zaire.

I can no longer recall the exact date of our departure. It was May 1999. Our route followed the course of the Congo river. Thousands of refugees were following the same route.

The journey lasted less than a week. We disembarked at Ngombe Matadi, and the HCR directed us towards the town of Mbanza-Ngungu, in the south of Zaire.

I remained in that town for roughly one week, and the HCR escorted us in groups by train to the port of Kinshasa. This was on 13 May 1999. We spent the night of 13 to 14 May 1999 in a town whose name I cannot recall.

On 14 May 1999, at around 9 a.m., we set off again by train in the direction of the port of Ngobila, accompanied by HCR officials.

On arrival at the port, at around 4 p.m. the HCR took us off the train in order to take the boat. The mission of the HCR ended there. I was unable to take the first boat. However, my uncle, his wife and his children succeeded in getting on board.

I therefore waited for the second boat of the ATC Company. We made the crossing. Before the boat even arrived in the port of Brazzaville, it was intercepted by the Cobra who made everybody on board get off.

They separated the men and the women into two lines.

The women were merely searched and the Cobra let them go. The men were taken to the hall of a building. Before entering, they undressed us to search us. We were therefore completely naked.

They considered that the males aged 5 to 75 belonged to the Ninja ethnic group. That was entirely false. In fact, I have never been a member of that group and I do not think that the others were.

I do not believe there could have been any Ninja fighters among us, because it would have been totally senseless for them to return to Brazzaville which was in the hands of the Cobra. Moreover, before returning to that city, we had been reassured by the speech made by Mr. Denis Sassou Nguesso, who had explained to us that we ran no risk in returning.

That was the reason why many refugees had decided to return to Brazzaville, since nothing could happen to them if people were not armed.

There were approximately 500 of us in that big hall. We were crammed together. The doors were closed. The Cobra men had remained outside to guard the exits and prevent us from leaving. Our luggage had remained outside. We were left like that for some hours. They assured us that they would let us go the following morning.

Finally, at around 11 p.m., I caught sight of a stationary bus through the iron grill which served as a door. I was also able to see the women waiting for their husbands. At that moment, the Cobra fired in the air to disperse the women and encourage them to return to their homes.

They made us get on the bus in rotation. I got on the first bus. We were tightly packed inside. It was a bus that normally seats 50 persons.

I do not know how many shuttle trips the bus made.

I should mention that, in the meantime, they had returned our clothes. While boarding the bus, they forced us to cover our faces with our clothes so as to prevent us from seeing where we were going. After confirming that we were all hooded, they made the bus move off in an unknown direction. Inside the bus, we were guarded by Cobra agents. They regularly struck people with the butts of their weapons in order to terrorize us. They said it was the last day of our lives and that we were all going to die because we were the nephews of the former Prime Minister belonging to the former majority, i.e., Mr. Bernard Kolelas. At that time the President was Mr. Pascal Lissouba.

There was no ambiguity in their words. They wanted to kill us because they considered that we were Ninja.

We must have driven for about half an hour. We arrived at a place that I didn't know. It was where Mr. Denis Sassou Nguesso, President of the Republic of the Congo, lived. It was his palace.

The Cobra made us get out and line up. We were still hooded. They took us close to the River Congo. At that point, they made us take off all our jewellery, our belts, anything they could make use of.

We must have arrived at that place at around 11.30 p.m. I cannot be sure since my face was masked.

Then they made us kneel down in rows. The Cobra were behind us. They spoke briefly among themselves in French and in Lingala, a local language.

At one point, I heard a Cobra asking another: "What are you waiting for to shoot?"

The person he was talking to answered in Lingala. I therefore did not understand what he said and a moment later shots rang out.

Intermittent salvos of two or three shots were fired. At that moment, I wondered what was happening. I thought at first that they were shooting into the air.

Very quickly, however, I realized that they were firing at the persons kneeling down, of whom I was one. When it came to the turn of the person who was next to me, they fired and he fell onto me. I realized that he was dead.

He was to my left. He therefore fell on my right side, right next to me. My turn had come.

The shooter fired at me. The bullet entered under my left ear and exited from my upper lip, taking out my teeth. I did not lose consciousness but I fell on my face. The bullet that had come out also went through my right arm.

The Cobra continued executing the other persons. This time cries rang out, because I think that the people had understood what was going to happen to them.

I remained calm on the ground and played dead. After executing everybody there and in order to prevent any survivors from fleeing, they fired bullets into everybody's knees. In my case, it was the left knee that was shot. The bullet penetrated from the back and came out just below the kneecap.

There was a moment of quiet and then a Cobra said: "Those who are not dead need only get up, nothing will be done to them." Nevertheless, I did not move because I did not believe them at all, especially after what had just happened.

Subsequently, to ensure that we were all really dead, they took a torch and inspected the bodies. I was able to see the light through the garment covering my face. When they reached me, I held my breath and they thought that I was dead.

After the inspection, they set off on foot towards the bus which had remained outside the Presidential Palace.

I got up and took off my hood. I could see a large number of bodies on the ground. I noticed that my right arm was bleeding profusely and I then took a shirt from a dead body in order to make a tourniquet. The dead bodies of that day were not the only ones. There were

also bodies that had been there much longer. I was able to see because the gleam from the lamps of the Presidential Palace reached the place where I was located. There were hundreds of dead bodies.

Shortly afterwards I heard a new group arriving from the Palace. I hid in long grass and watched what was happening. The Cobra again lined up the hooded persons in rows and executed them.

I was not able to count the number of persons in the new group. I observed that the shooters were the same ones who had accompanied us to that place. They were persons belonging to the Cobra ethnic group. They were wearing the Cobra ash blue uniform.

They were equipped with automatic weapons known as PEM.

I waited for them to leave before fleeing in the direction of the bank of the River Congo. I crawled because my knee was broken. I spent the entire night in the long grass a few metres away from the dead bodies.

Around five o'clock in the morning, I think, I set off, moving away from the corpses until I reached the river bank. I followed the river banks in the direction of central Brazzaville. It took me six days to arrive in the city centre. I drank water from the river and I did not eat. On 19 May 1999, I went to the Brazzaville city hall.

Four Cobra asked what had happened to me. I made up a story. They believed me and took me to where the public could see me and someone could come to my aid. Eventually, a young man picked me up and took me to the hospital. I stayed there for one and a half months.

I left the hospital on 27 July 1999.

A rumour quickly circulated in the districts of Brazzaville, to the effect that there was a survivor from the massacres. I was in a very tight spot and my parents were very frightened. They therefore did everything they could to get me out of the country, as they were afraid that the Cobra would come to finish the job.

I hid until my departure. I went out only at night.

Finally, I succeeded in buying a visa and getting on a plane to France, where I applied for political refugee status.

On my arrival in France, I wrote to the OFPRA and told them my story. I decided to put everything in writing. I used the computer of my uncle, Benjamin Ntougamani, who lives at 28 Avenue des Fleurs in Saint Ay (45). He helped me write the application. Indeed, he is President of the France-Congo Education Association.

At your request, I am submitting a typed account of what happened to me, amounting to 10 pages.

I think that the Cobra were trying to exterminate all the people who crossed the river from southern Congo, where there is a Ninja majority. That was their aim, I think, even if in my view they were wrong, because the Ninja did not cross the river.

Question: Can you tell me more about the site of the executions?

Answer: It was the Presidential Palace of Mr. Sassou Nguesso. That was the place from which he ran the country. I do not think it possible that the people in the palace were not in the know, especially since the shots made a great deal of noise and the dead bodies could not pass unnoticed. Moreover, there were dead bodies going back some time, which to my mind could have meant that the Palace was in on what was happening from the beginning, otherwise it had plenty of time to prevent it.

Question: Who do you think ordered the executions?

Answer: I don't know. All I can say is that the executions took place at the Presidential Palace of Mr. Sassou Nguesso and were carried out by the Cobra who report to Mr. Sassou Nguesso.

Question: Do you know of any other survivors?

Answer: No, none.

Question: Did you participate in the fighting and do you belong to the Ninja ethnic group?

Answer: No, absolutely not.

This is the first time I have testified to the police. I have a medical file because I am following a course of treatment in the orthopaedics and traumatology unit of Avicenne hospital in Bobigny (tel.: 01 48 95 53 14).

I have nothing more to declare.

Having personally read it through, the interested party stood by his statement and signed this report in my presence at 12.15 p.m.

Mr. Tsieno, Linot

Police Lieutenant

Annex: Follows hereafter:

Attached to this report is the written account of Mr. Tsieno, Linot, comprising 10 pages.

Police Lieutenant

ANNEX VI-5

D 28

POLICE REPORT

18 January 2002, 8 a.m.

Reporting officer: Richard Thery

Police Lieutenant serving in the

Regional Judicial Police Directorate, Versailles

Interview of Mr. Touanga, Marcel.

I am the son of Pierre Touanga and Adrienne Nkoussou.

I am a Congolese national.

I am married to Mrs. Madeleine Bikindou.

I have nine children.

I arrived in France on 27 August 2001.

I was born on 28 December 1943 in Madingou, Congo.

I am currently living in the home of Mr. Samuel Bemba, whose address is 30, rue des Mahonias, Bâtiment 30, escalier 07, Nice (06).

My telephone number is 06 77 39 91 31.

I am currently in retirement.

I have applied for refugee status in the area of the Nice Prefecture. The application was filed with the French Office for the Protection of Refugees and Stateless Persons (OFPRA) in October 2001. The receipt confirming the filing of my application for refugee status is dated 14 February 2001 under the reference number 0603076509.

As to the facts

I take note of the reason for my being summoned to appear, namely the events that took place in the Congo in the course of 1999.

I would point out that I am surprised at being interviewed again in this connection.

Indeed, I have already been interviewed, on 24 September 2001, by Major Mercier of the Criminal Investigation Unit of the National Gendarmerie in Paris.

On 18 December 1998, the third civil war broke out in Brazzaville, pitting the residual Ninja forces of former Prime Minister Bernard Kolelas against the Government troops of Sassou Nguesso. Coming from Bakongo, the Ninja swept into the southern districts of

Brazzaville. The circumstances of their arrival in Brazzaville are difficult to define, but what is certain is that their arrival heralded a period of fighting within the Pool region, following which the law enforcement authorities based in the districts and supported by Government troops with logistical backing from the army were obliged to give up territory in the face of the advance by the Ninja militias and a militia group maintained by a certain Pastor Toumi, leader of the Stsloulou.

The ruling régime was obliged to organize a counter-attack with the aim firstly of driving out the Ninja from the southern districts of Brazzaville and secondly of freeing all the areas occupied by the Ninja. The Government troops established a ring around all the areas flanking the southern districts, i.e., a line running from the River Congo via the coastal road passing in front of the residence of the French ambassador to the airport of Maya Maya. According to rumours that were circulating, the Government troops, reinforced by Cobra and a group of mercenaries, had been ordered to shoot at anything that moved. As a result, from the first hours of the counter-offensive by the so-called Government troops, hundreds of thousands of deaths were recorded in the Bakongo and Makelekele region as far as Djoue. This gave rise to a dual exodus: the first wave of people headed for the northern districts of Brazzaville which were under the control of Government troops; while most people made their way beyond the Djoue bridge to the area of Nganfa-Lingolo which was under the control of the Ninja. This split was due to tribal divisions among the inhabitants of Bakongo, most of whom were natives of the Pool region.

It was following this incursion by the Ninja that violent fighting erupted, albeit preceded by intense shelling of the southern districts by heavy artillery.

From the first days of fighting, the Cobra gained the upper hand. The Ninja evacuated the city, retreating towards the port of Djoue. From that moment, the city fell under the control of the Cobra militia controlled by Mr. Nguesso. When the Cobra took control of the city, they fired indiscriminately at people, without distinction as to sex or age.

At that time I was in the Bacongo District where I lived. I had no official function, being a colonel without assignment. Previously I had served as Director of Co-operation in the National Police Secretariat, during the presidency of Pascal Lissouba. I would point out that Mr. Lissouba and Mr. Nguesso both had their own forces. Most of the police force, of which I was a member, had remained neutral in these conflicts, particularly during the first civil war in 1997. When he came to power in October 1997, Mr. Nguesso placed individuals who had fought by his side in privileged positions, and I had no post in this new distribution of responsibilities.

My family was with me in Bakongo, but my wife and children later fled to Madibou, because everyone thought that the hostilities would last only a few hours and everyone hoped to find refuge there. For my part, I remained in Bakongo, since any attempt to venture into the Ninja area posed serious risks for me given my political and administrative background of association with Sassou Nguesso; indeed, I had occupied important positions during Mr. Nguesso's first term of office from 1977 to 1992 (member of the Central Committee of the Congolese Labour Party, Member of Parliament, Ambassador and national leader of the Party's youth movement).

From 1963 to 1992 the country was ruled by a one-party political system directed successively by Mr. Alphonse Massamba, President from 1963 to 1968, Mr. Marien Ngouabi, President from 1968 to 1977, Mr. Jacques Yombi Opango from 1977 to 1978, and finally Mr. Sassou Nguesso from 1978 to 1992.

From 1989 to 1994 I was Ambassador to Cuba and no longer belonged to any political party, because all members of the police force had been prohibited, since 1990, from

exercising political functions or belonging to any political party. From 1994 to 1999- I had no post, as Mr. Lissouba, President of the Republic since 1992, wanted to work only with officials who were his own followers. Subsequently, in March 1996, I was appointed Director of Co-operation.

As far as I am concerned, five days after the commencement of hostilities I took refuge in the northern districts of Brazzaville, where I awaited the return of my family. I waited until May 1999. On 8 May 1999, at 4 p.m., my family arrived in a convoy under UNHCR escort.

I should point out that, in fact, after wandering for six months in the savannah of my home region of Pool, my family had to cross the River Congo in order to take refuge in the Mbandza-Ngoungou camp, where they were taken in hand by the UNHCR and the International Red Cross. In the meantime, on the initiative of the Red Cross and the UNHCR, an international agreement was signed regulating the evacuation to Brazzaville of all citizens who had taken refuge in the three camps located in the Democratic Republic of the Congo. The UNHCR was encouraged by Mr. Sassou Nguesso's repeated appeals to citizens wandering in the Pool region and in areas of the Democratic Republic of the Congo, requesting them to return to Brazzaville where they would be assured of safety and welcomed. These repeated statements reassured the populations who agreed to return to Brazzaville. In this context, my family placed themselves at the disposal of the international organizations and agreed to return to Brazzaville, where they arrived on 8 May 1999 at 4 p.m., in a convoy of small boats, carrying 1,500 persons, which came down the River Congo from Kinshasa.

Upon disembarkation, they were greeted by Government officials who, on behalf of the Head of State, wished them a safe return to their homes. Unfortunately, the border police at the Brazzaville Beach were reinforced by a number of elements belonging exclusively to the Presidential Guard, who carried out identity checks of citizens and subsequently arrested numerous persons on the pretext of a routine inquiry, guaranteeing that they would be released a few hours later.

The Presidential Guard carried out the duties normally assigned to the border police without the latter being able to object. Indeed, the Presidential Guard has authority over all forces constituted on Congolese territory. It is placed under the direct orders of the President of the Republic, Mr. Sassou Nguesso. His private residence is located one kilometre away along the River Congo. The General commanding the Presidential Guard is Mr. Blaise Adoua. There is no intermediary between the latter and President Nguesso.

The Presidential Guard took the people off the boats and separated the men from the women and children. Everybody was searched, but the search was more thorough for the men. In the course of the searches and on specific grounds, some people were arrested. These people were then placed in a room where they were stripped of their clothes. From that moment, they were forbidden any contact with their relatives who were ordered to leave the area of the port. It was against this background that I arrived at Brazzaville Beach and found my family. My wife explained to me that my son Narcisse was being held by the Presidential Guard.

I then found out that my son, together with a Corporal named Soiand Nouani, had been separated from the other police personnel who were also returning, and who had not been troubled. I was . . . I returned to the port and spoke to the Chief Administrator of the Beach, Lieutenant Colonel Alamoua, whom I asked why my son had been taken away. His reply, word for word, was: "I have been relieved of all duties concerning detention for questioning, which surprises me, and I advise you to go and see Captain Adoua".

I went to see the Captain concerned who stood to attention and told me that he knew me. I again asked why my son had been separated from the others; he replied that it was a question of space in the vehicle which had already set off in the direction of the Military Intelligence Directorate with the police personnel.

The Captain explained to me that he had to ask my son some questions. I suggested that he return my son to me and that I would bring him the following morning to the administrative headquarters. Captain Adoua replied that that was impossible as he had received specific instructions concerning my son Narcisse from General Blaise Adoua.

I then asked to speak to the General in question through a hand-held communication system. He replied that his device was not working and that he did not know where General Adoua was. Having gone on for over half an hour, the discussion turned into an argument.

I then requested the Captain to keep my son on the spot until I found General Adoua. At the same time, he for his part undertook to try to contact him. I then had the opportunity to embrace my son and I asked him to remain calm while I pursued my initiatives.

I was never able to find General Adoua, even at his home where I left a letter asking that my son be released. I also made a number of other representations, in particular to . . . Gérard Bitsindou, the Mayor of Makelekele, Mr. Morel, and Mr. Hounounou, Mayor of Bacongo. The Minister assured me that he would take action and promised that my son would be freed that night. I also made other representations, including to Colonel Edgard Mogani, Central Commissioner of Brazzaville, and Colonel Jean-Pierre Gassak . . ., Director of the Private Office of the Minister of the Interior.

Having been assured that they would take action, I returned to the port. There was no longer anyone there representing either the Presidential Guard or the police. My son, too, was no longer present. I waited until midnight, but in vain.

The next day, 9 May 1999, at around 7.30 a.m., I went to the Military Intelligence Directorate and was informed that he was not there. The persons present suggested that I go to the Republican Guard. My son was not there and I was advised to go to the Gendarmerie barracks where there were 122 persons in detention, but not my son. They were all seated in a large courtyard.

When I was at the Gendarmerie barracks, I heard an individual in civilian clothes, accompanied by four other armed persons, order the execution of all those who were detained there. His justification was that the 122 persons concerned came from Pool, and that, in as much as they were Ninja, they had to be killed. I went up to that individual, who knew me. I asked him to explain himself: he replied that he had received instructions to execute all those persons. I should point out that those men belonged to the Presidential Guard and that they received their orders from General Adoua.

I explained to that man that the 122 persons concerned, who should have had my son with them, all belonged to the Gendarmerie. They could not therefore be executed without authorization from the senior officers of that institution. A Colonel in civilian clothes immediately arrived and ordered those individuals to leave his premises, explaining that the persons concerned were under the protection of the Gendarmerie. In this way, those persons were able to escape being massacred. I then returned to the premises of the Republican Guard, where there was still no news of my son.

On 10 May 1999, I approached General Hilaire Mouko, Head of the Presidential Security Force, who assured me that he would take action.

On 11 May 1999, I returned to the Republican Guard. I was received by the Advisor to General Adoua, Captain Mbossa, and by Staff Sergeant Rigobert Mobed. They assured me that my son was in their cells.

On the orders of the Advisor to General Adoua, Captain Mbossa and Staff Sergeant Mobed went to the premises of the Republican Guard to look for my son. They returned half an hour later without him. They explained that my son and his comrade had been removed from the cells late in the morning of 9 May by an officer whose grade and identity had not been mentioned in the records and documents of the service. They had been so informed by persons who had been in the same cell as Narcisse. They gave me an appointment for the next day at 11 o'clock.

I kept the appointment. There was still no news of my son. Staff Sergeant Mobed formally acknowledged that he had personally . . . Narcisse on his arrival, that he had protected him from harassment by members of the Presidential Guard and had minded his kitbag and his shoes.

Subsequently, I was not received again by the Presidential Guard until 15 December 1999, when at my request General Adoua was to . . . me in his office. For reasons of security and in the light of past events, I got four families to go with me, whose children had also been arrested. General Adoua informed us in substance that all the persons arrested at Brazzaville Beach, who had not returned to their families three days or one week later, had been executed. We then asked for the bodies to be returned and at that point he told us that the bodies had been destroyed. Addressing the background to the operation and even the events that had led up to the war, General Adoua observed that politicians of all affiliations were responsible for that tragedy which had led to the loss of persons from the south as well as the north. He recommended that men of peace in every region should mobilize to get rid of the policy-makers and all the members of the current political establishment who had led our people to experience such a tragedy. He acknowledged that his units had been stationed at Brazzaville Beach and in the so-called humanitarian corridors on instructions from his hierarchical superiors. In addition to this physical contact, I had written as a father and as President of the Parents' Association to a number of public figures including the President of the Republic, the Minister for Defence Mr. Lekoundzouitihi, the Minister of the Interior Pierre Oba, the Minister for Public Health Mr. Opimba, the wife of the Head of State Mrs. Antoinette Sassou Nguesso, the Inspector-General of the Armed Forces Mr. Norbert Dabira and the Chief of Staff General M. Ndolou. Finally, I also approached the Chief of Staff of the Gendarmerie, Mr. Valence Ossete. Among all these personalities, the only replies came from the wife of the President, the Inspector-General of the Armed Forces and the Head of the Gendarmerie, who asked me not to give up hope and to give them time to make investigations.

In the light of what I had witnessed at the Beach and the remarks of General Adoua, we decided to set up an association to investigate the disappearances. The investigations revealed that the persons detained at the Beach, in the humanitarian corridors and on the sites had all been executed. Our various investigations enabled us to ascertain that the executions were carried out at the headquarters of the Presidential Guard, at the Palace of Mr. Nguesso, on the river bank along the coastal road below the Presidential Palace and in other places including certain police stations in the north of Brazzaville, the so-called border police station in the direction of Maya Maya along the River Congo, and in the Itatolo cemetery.

I myself had the opportunity to ascertain the existence of numerous mass graves in the places mentioned. There were corpses riddled with bullets to the head and all over the body. Many bodies were unrecognizable because of the tortures to which they had been subjected.

The Djoue bridge was a favoured spot for executions, since the bodies were thrown over the railing.

I myself witnessed the destruction of mass remains at the Presidential Palace by means of incineration. Indeed, when I went to the Palace on 19 May 1999, bodies were being burnt in the open air, within sight of all the officials present and with their knowledge. This scenario was repeated on 21 and 24 May 1999. I learned from witnesses that some bodies were still alive.

Sacks containing human remains were also discovered near the Djoue bridge, and this may help to substantiate rumours of organ trafficking organized by the Office of the President.

Question: What did General Adoua mean when he spoke of instructions from superiors?

Answer: He meant that it was Mr. Sassou Nguesso who had ordered those executions so as to traumatize the population in the south and get the situation fully under control. Mr. Lekoundzouitihi, the Minister for National Defence, played an important role in the transmission and implementation of those orders. He was responsible for monitoring the implementation of all operations. We know this through having contacted his services, and during our investigations we came across five bodies of members of Military Intelligence Directorate units who had been executed on his direct orders on account of misconduct.

The Minister for Youth and Sport, Mr. Okonfri-Salissa, was the head of the front . . . an internal movement made up of Cobra and military personnel and responsible for carrying out any operations designed to protect the Government in power.

The Minister of the Interior, Mr. Oba, knew what was happening as regards the Presidential Guard and did nothing. But he committed himself to disinforming the international community.

Question: What is the extent of Mr. Norbert Dabira's responsibility?

Answer: Personally, I have no evidence of his physical involvement, but I know that he was aware of what was happening in the Presidential Guard, because he had been appointed Chairman of the Commission set up to look into the conduct of the security services towards civilians.

Question: Did you earlier participate in the fighting and are you a member of an ethnic group?

Answer: No, I belong to none of the ethnic groups: Cobra, Ninja, or Cocoye. I never participated in the fighting. The same is true of my son who was only a sergeant in the Gendarmerie. I cannot say what became of my son, but I am certain that he was executed. I never found his body.

I do not know why my son was executed. Either he got mixed up with the mass executions or someone had a personal grudge against him because of my public persona, my background, especially since I myself have escaped execution attempts.

I have taken refuge in France because of my activities in the association which is seeking to shed light on these events. I have succeeded in mobilizing support for human rights outside my country and even in establishing a parliamentary commission in the Congo. I am therefore a very . . . person in my country.

Lastly, I wish to state that I am under a great deal of pressure to abandon my actions, especially from the Ambassador of the Congo in Paris.

I have nothing else to declare.

Having personally read it through, the deponent stood by his statement and signed the present report in the presence of myself and my assistant at 11.30 a.m.

ANNEX VI-6

D 14

Versailles, 22 January 2002

Police Captain Franck du Peyroux

Serious Crime Squad

To

The Regional Judicial Police Director, Versailles

Through hierarchical channels

SUBJECT: CRIMES AGAINST HUMANITY, DISAPPEARANCES, ACTS OF TORTURE

Reference: The transmittal order from Mrs. Krief, Assistant *Procureur de la République* of the Meaux *Tribunal de grande instance* (Seine-et-Marne)

Attached documents:

- 14 police reports from the Directorate numbered 2001-2530 and certified copies thereof.
- Return copies of the transmittal order dated 8 December 2001, the annexes and the Application for extension.

I have the honour to report to you the results of the preliminary investigation conducted in accordance with your instructions and those of the above order.

This investigation into crimes against humanity committed in 1999 in the Congo was conducted under the direction of Chief Inspector Patrice Faugeroux, with the participation of Police Lieutenants Martine Volle and Richard They, as well as Police Constable Ludovic Lamarche.

On 7 December 2001, Maître Henri Leclerc, representing the interests of the International Federation for Human Rights (FIDH), the Congolese Observatory of Human Rights and the French Human Rights League, filed a complaint with the *Procureur de la République* of the Paris *Tribunal de grand instance* against the President of the Republic of the Congo for CRIMES AGAINST HUMANITY and acts of torture.

The complaint was accompanied by a communication from the FIDH dated 5 December 2001, which summarized the political and historical context of the years 1998-1999 in the Congo, a period which followed three civil wars.

The same document referred to the presence, in the Ile de France region, of a survivor, Mr. Tsieno, of the parent of a victim, Mr. Touanga, and of a possible perpetrator in the municipality of Villeparisis, Seine et Marne, in the person of General Dabira, former Commander of the Presidential Guard.

The Paris Public Prosecutor's Office then transmitted these documents to the Meaux Public Prosecutor's Office. Mrs. Krief, Assistant *Procureur de la République*, instructed the Directorate to begin a preliminary investigation, requesting the hearing of witnesses, on the

one hand, and the search for information concerning the former Commander of the Congolese President, on the other.

Investigations quickly revealed the precise identity and location of the former Commanding Officer of the Presidential Guard in the Congo during the events of May 1999.

Mr. Norbert Dabira, born on 24 June 1949 in Mboma (Congo), was in fact residing at 54 Allée des Tilleuls, Villeparisis. It was noted that the person concerned, who declared his occupation as that of an office worker, also had a residence permit valid until February 2003 and that he had purchased a motor vehicle in December 1999.

As for the victims, Mr. Linot Tsieno, aged 30, married and the father of two children, unemployed in France, a former trader in the Congo and with no particular ethnic affiliation, was interviewed on 17 December 2001.

Having resided in the Congo until February 2001, he provided a certain amount of information concerning the internal conflicts in his country. Following the various civil wars pitting the Cobra ethnic group — supporters of the President of the Congo — against the private militias of Pastor Ntoumi (the Ninja), Mr. Tsieno fled with his family. He left Brazzaville for the port of Kinshasa. For one week, the journey was uneventful, under the supervision of the Office of the High Commissioner for Refugees.

The boat was then intercepted and boarded by the Cobra. Families were separated. While the women were searched and allowed to remain free, that was not the case for the men who were isolated in a building and then searched and stripped of all their clothing. Considered as being related to the Ninja, they were ill-treated and then, with their faces covered, taken to the vicinity of a river not far from the Presidential Palace. They were stripped of their possessions and ordered to line up on their knees. Mr. Tsieno heard several gunshots and was then shot in the face and the arm. Realizing that summary executions were being carried out, he remained lying on the ground, pretending to be dead. Before the Cobra left, he also received a wound in his knee.

As the only survivor, he moved upriver and reached the local hospital where he underwent treatment for a month and a half.

Mr. Touanga, who had already been interviewed last September by military officers of the Paris Criminal Investigation Unit (*Section de Recherche*) pursuant to two warrants issued in the year 2000, on 12 January and 2 March respectively, by Mr. Leloir, investigating judge at the Paris *Tribunal de grande instance* (Office of Mrs. Houyvet) in relation to the same facts, repeated the information he had given concerning the disappearance of his son, Narcisse.

A retired colonel, he said that he had conducted numerous investigations to find his son who had been abducted, together with a hundred or so other persons, on 8 May 1994, by the forces of the Presidential Guard. Following numerous representations to military officials, he was able to speak with his son for a few minutes.

On 10 May 1999, he learned from Captain Mbossa, a member of the Presidential Security Force commanded by General Mouko, that his son had been removed from the jail cells by an officer whose identity had not been recorded in the *ad hoc* register.

Some days later, Mr. Touanga learned from General Adoua in person that the bodies had been incinerated and that those criminal acts had been committed on the instructions of his direct superiors. He implicated the current President, Mr. Sassou Nguesso.

He had no evidence concerning any responsibility on the part of the Inspector-General of the Armed Forces, Mr. Dabira. He implied that the latter could not have been unaware of the facts because he had headed a commission responsible for looking into the conduct of the presidential forces vis-à-vis civilians.

Finally, in the context of his investigations and as President of an association for the missing persons, he said that he had seen mass graves. He added that the bodies were unrecognizable and that they exhibited signs of torture.

At the request of the Prosecutor of the Meaux *Tribunal de grande instance*, the file is returned in its current state.

The Police Captain.

ANNEX VI-7

D 29

Réquisitoire (Prosecutor's Originating Application)

No.: 25146/01

The *Procureur de la République* of the Meaux *Tribunal de grande instance*

Having regard to the appended documents, and in particular PV No. 2530/2001

Whereas it being apparent from said documents that there are against a person or persons unknown

Indicia suggesting that he (she, they) participated in the following acts:

- Crimes against humanity: massive and systematic abductions of individuals, followed by their disappearance
- torture or inhuman acts for ideological reasons in implementation of a concerted plan against a group of the civilian population

Having regard to Article 212-1 of the Criminal Code and

Article 689-1 of the Code of Criminal Procedure

Having regard to Articles 80, 80-1 and 86 of the Code of Criminal Procedure

Hereby requests his honour the investigating judge to commence an investigation by all available legal means

Done at the Public Prosecutor's Office, 23 January 2001

[manuscript amendment: "this should read 2002"]

On behalf of the *Procureur de la République*

C. KRIEF, Assistant Prosecutor

ANNEX VI-8

[NOT TRANSLATED]

ANNEX VI-9

[NOT TRANSLATED]

ANNEX VI-10

D 33, D 34

EVIDENCE FROM MR. TSIENO, D34, D33, ANNEX TO D24, D9

CIVIL-PARTY APPLICATION

I the undersigned,

Mr. Linot Bardin Duval Tsieno

Born 25 September 1971 in Brazzaville (Congo Brazzaville)

Congolese national

Residing at: chez Mr. Gaston Manima, 5 rue Degas, Montfermeil (93370)

But adopting the address of my lawyer for the purposes hereof:

Maître Patrick Baudouin

19 avenue Rapp, Paris (75007)

hereby apply to commence civil-party proceedings, further to the case opened by the prosecutor's office at the Meaux *Tribunal de Grande Instance*, in the context of a judicial investigation, directed against officials of the Congo Brazzaville authorities, into crimes against humanity, enforced disappearances and acts of torture (Prosecution case No. 01 25146).

Done at Paris

31 January 2002

ACCOUNT OF MR. LINOT BARDIN DUVAL TSIENO: BRAZZAVILLE BEACH SURVIVOR

When the 1998 fighting broke out, I was living in Kinsoundi district, in the south of Brazzaville, with my parents. We saw the Ninjas coming into Brazzaville on Friday 17 December 1998. We stayed there all day, as we didn't think the fighting would last long. The N'silulus that we had seen were so poorly armed that the idea of a major offensive by these people didn't even cross our minds. On Saturday 18 December, automatic fire and shelling were becoming more intense in Bacongo. Unable to stand it any longer, we decided to take refuge in the countryside — in the south, where we thought we would be safe, as that is where my parents' village is (Kimpila). I come from the Pool.

We crossed the Djoue Bridge without any problems. We didn't see any fighting there. We were not taken hostage by anyone (as official sources claim). We walked all day, passing through Nganga, Lingolo and Linzolo, until we reached Mbanza Ndounga, where we spent the night. The next day we finally arrived at our destination, Kimpila.

I was never recruited by the Ninjas during my stay in Kimpila; in any case, I believe that becoming a member of the Ninja militia was a voluntary act, not forced. However, I often saw Ninjas passing through Kimpila on their way to fight, and heard heavy-weapons fire in the distance, but I never witnessed any clashes between the two militias. I never saw any Cobras during my stay in Kimpila. The only military operation I witnessed was the shelling of Mbanza Ndounga. I will interrupt my account here to tell you about this, as I was involuntarily an eyewitness to it.

At that time the main Cobra force had not yet besieged the Pool or the village. My girlfriend had taken refuge there, and it was visiting her that I saw the village get shot up by a helicopter. My friend had a stall in the Mbanza Ndounga market. That day there were big crowds at the market. The people, both civilians and militia members, were surprised to see on the horizon, flying low over the river, a shape vaguely resembling an aeroplane, recognizable by the sound of its engine. The helicopter — which is in fact what it was — turned and headed towards the market.

People began to panic. The Ninjas tried to reassure us, telling us not to worry, as it was one of our helicopters, sent by Bernard Kolelas and Bikinkita. We'd hardly got our breath back when we heard firing and saw flames coming from the helicopter. A lot of people were hit. It was clearly the helicopter which fired first; it was flying very close to the ground, enabling us to see that the pilot was a white man. I am convinced that it was as a result of this attack that the frightened inhabitants decided to cross the river Congo en masse and enter Democratic Congo.

Before the attack, the southerners fleeing from the "fighting" along with the Ninjas would not have considered crossing the border, as they would never have had the money to survive there.

Mbanza Ndounga was at that time one of the major centres for southerners fleeing the war. Shaken by the shooting and knowing that they didn't have the money to survive in Democratic Congo, they decided to go there anyway to escape another attack. I also believe that it was this attack that helped the Cobra advance into the area.

Throughout the entire three months of the conflict, I stayed in Kimpila, from January 1998 to April 1999, until the President's speech, urging the belligerents to end their hostilities and surrender their weapons, led us to believe we could return to Brazzaville.

In an emotive appeal, President Sassou Nguesso urged all Congolese, regardless of their ethnic group, to lay down their weapons and return to Brazzaville, where no harm would be done to them. However, we could still hear fighting. And so we couldn't return to Brazzaville by National Highway 1, as that was apparently where the front line ran. The road to Brazzaville was effectively cut.

So we had to go across the border in the hope of returning to Brazzaville via Democratic Congo. Only you couldn't get to Brazzaville without first being registered by the UNHCR at the refugee camp in Manbza-Ngoungou; at least that is what we thought. At that time, the Cobras had not yet invaded the Pool.

My uncle and I went to Mbelo, where we were able to cross the river. The Ninjas tried to stop us, saying that we might inform on them to the army. After negotiating with them, we crossed the border and arrived in Ngombe-Matadi in Democratic Congo, where we were registered. The soldiers of Democratic Congo behaved relatively well; after searching us, they just took our valuables. They told us to go to Mbanza-Ngoungou, 45 km away.

We spent three days in Ngombe Matadi and then started walking the 45 km to Mbanza-Ngoungou. We arrived there on foot just as a train was leaving for Brazzaville via Kinshasa.

As I said, the day after we arrived, a train was leaving for Brazzaville. We couldn't take it. For a while, there were no more trains. We heard vague rumours from the Brazzaville crossing that the men were apparently being stripped on arrival at the Beach. Their bodies were being closely examined for signs that they had been carrying weapons (marks of gun straps). But I knew in all honesty that I had never borne arms. So, with a clear conscience, I got ready to take the next boat.

We stayed in Mbanza-Ngoungou for about two weeks. There were a lot of us Congolese from Brazzaville; I even think there were more of us than the locals.

I left with the next group. Before we took the train, there was a roll-call, which produced a total of 1,500. We stopped to spend the night in Kazangoulou. The next day we left again at about 10 a.m. and arrived at the Beach at about 4 p.m. The UNHCR people responsible for escorting us included both blacks and whites, who were getting off in Kinshasa at the port of Ngobila and not going on to Brazzaville Beach.

The UNHCR took a roll call, as a result of which I realized that our party included many people from the same family. I was travelling with my uncle and his wife. We were unable to board the same boat, as there was no room for me in their boat. My uncle casually said goodbye, hoping to find me again once we got to Brazzaville. This would probably have been a Kinshasa ship, as it was bigger than the ATC boats from Brazzaville.

When it was my turn to board, our boat didn't dock at the normal passenger harbour, but at the fishing port. It was about 5 p.m.

Our welcoming committee included a sizeable group of Cobras — big men, heavily armed — which didn't exactly inspire confidence.

They signalled to us to get into two lines: one for the women and one for the men. The women were lightly searched. The men, from ages 5 to 75, were being treated by the Cobras as potential Ninjas. Then they took us to a room where we were stripped naked and carefully examined. They said those who had marks on their bodies were Ninjas.

When it was my turn, the searchers found nothing suspicious. However, I was put to one side with all the others. We had to leave our bags at the entrance.

The very young boys were released, while all the teenagers stayed with my group.

Around 6 p.m. the Cobras or soldiers told us not to worry: "Don't be scared," they said, "everyone gets this treatment. Tomorrow you'll be free to go. Nothing will happen to you; you're quite safe here."

At some point during the evening, our guards suggested we eat something, if we had anything in our bags; so I did, as I had some food and drink in my bag.

Outside, there was a crowd of women looking for their husbands. Shots were fired in the air to disperse them.

At this point, people who were tired from the journey began to fall asleep. They were woken by the sound of a truck. Ten were picked and told to get into the truck to go somewhere, I don't know where. Some time later, the same happened to ten more. Then nothing happened until about 11 p.m. In the meantime we were wondering what had happened to our 20 fellow-prisoners. Had they been jailed or killed?

Around 11 p.m. the door opened and we were told to leave all our belongings and get into a "Coaster" bus standing in the middle of the yard. Before the bus started, we were told to take off our shirts. Our guards made them into hoods, through which we could hardly breathe. I had no idea where we were going, though I know now, having survived these dreadful killings organized by the men in power. My murdered companions died without knowing where they'd been killed.

In the bus, people were sobbing and begging for mercy; some tried unsuccessfully to soften our tormentors' hearts by claiming to be related to some colonel or other. It was no use; on the contrary, they beat us all the harder.

Yes, we were tortured during our final journey. The beating only stopped at the second palace, on the plateau (as I now know). They jeered at us, saying things like: "You're the Ninjas, Kolelas' boys, you're for it today, we're going to give you a good thrashing." They said this in the local language, Lingala, so we understood perfectly. As we got off the bus, our welcoming committee cheerfully continued to torment us.

Once on the ground, we were told to get into single file. At one point, either because I was distracted or because I was so scared, I let go of the hand of the person in front of me. This meant another beating, until one of our tormentors took my hand and put it in my neighbour's.

Our funeral procession proceeded down a small path through long grass. We were welcomed by an appalling smell of decomposing flesh, and then we began to realize what was in store for us. The sobs and groans got louder. We were ordered to form a line, which was hard, as we had hoods on. We were then ordered to lie flat on our stomachs. After a short pause we were ordered to sit up. During all this time we had our hands free.

From then on the orders which followed were given in a dialect that was obviously from the north of the country, which meant I couldn't understand a word, whereas until then everything had been said in the vernacular: Lingala. However, at the end of this string of exchanges, interspersed with incomprehensible grunts, I heard this: "What are you waiting for? Hurry up and shoot!"

Those words, apparently deliberately chosen so that our situation should be clear to us, still ring in my ears and will certainly do so for ever.

When the shots broke the silence of the night, I still naively believed that they were shooting into the air. I hadn't really heard any screams, as the gunmen gave their victims no chance. They were not firing in bursts, but with single shots. I realized I was about to be killed when my neighbour fell on me, having been hit by two or three bullets. (During the night I returned to the execution site to borrow — or rather take — his hood and saw that he had several wounds, one of which had removed half of his head.)

I was still coming to terms with my neighbour's death when I found myself lying flat on the ground, having in my turn been shot in the head. I must have lost consciousness, as I didn't feel the impact of the bullet, which went through my arm, as I only realized later. As I felt myself coming round, I asked myself a somewhat strange question in the circumstances: "What happened? A moment ago I was sitting on the ground, so how did I get into this ridiculous position, face-down in the dirt?"

It had taken me a while to realize I'd been shot and that I was still alive. So I kept quiet to avoid attracting the killers' attention. Meanwhile the executions continued. I will never forget the long groan and sort of loud inhalation that I heard from my murdered companions just before they died. They certainly didn't have time to realize what was happening to them. I clearly heard heavy breathing, followed by silence.

Another series of shots rang out, coming closer and closer: it was our killers' coup de grâce; what they were doing was smashing the victims' kneecaps to prevent any survivors getting away.

When they came to me, I felt the barrel of a gun against the inside of my knee (I had fallen on my stomach). When the bullet went through my knee, I held my breath so as not to show any reaction. Very fortunately for me, the bullet passed a few millimetres from the kneecap without smashing it.

When the bullet hit, the pain didn't seem too bad; it was only a little later that it really began hurting. I think only two bullets hit me in all. When they executed us we were sitting on the ground. When the bullet hit me I must have started to move my right arm just before the bullet struck. It was definitely the same bullet which passed through my head and my arm.

Once they'd finished their dirty work, the Cobras or soldiers inspected all the bodies with a torch: through the hood I glimpsed a beam of light. I heard some of them saying: "Bango nionsa ba kufi?" meaning in French: "Are they all dead?"

Someone else, obviously a bit of a joker, shouted in a loud voice, half confiding, half threatening: "All those who are not dead stand up. Don't worry, trust us, you won't be hurt."

Today, despite the pain, I smile at the memory of those words. He must have thought to himself that one of us might trust him enough to stand up and shout: "Hi, I'm not dead!"

I don't know exactly what time it was, at least midnight; at any rate I heard the sounds of crickets and grasshoppers. I didn't move for at least ten minutes; our killers had gone away (that's what I told myself, as I still had a hood over my head): the stink of rotting flesh must have upset them. I decided to get up, risking encountering a Cobra who had stayed to keep watch. A sad sight met my gaze in the dim glow of night: ghostly shapes; dozens of bodies like sacks of potatoes littering the ground.

There wasn't much light; but within a 10-metre radius I could make out shapes in every position. Moving slowly, I fell over rotten corpses with bloated stomachs. I stepped over one which had only one leg and a huge stomach. It was then that I started to feel a bad pain in my right arm: I realized I'd been hit there. I retraced my steps, looking to take a hood from the body of one of the victims, so as to make myself a makeshift dressing. I'd barely completed this "first aid" when I saw a light coming back; I just had time to hide behind the body with the bloated stomach when the killers returned, I guess with another group of victims. There were orders, sobs and gunshots (I couldn't actually hear very well, as my left ear was damaged); finally the silence of the night fell.

I had only gone a few metres in the long grass when my leg began giving me agony. By crawling and pushing back the grass with my good arm, I started to make headway without knowing exactly where I was, the only landmarks being some streetlamps in the distance.

They were actually the lights of the corniche. I got down to the river bank. Lying in the long grass beside the river, I suddenly felt dizzy and drowsy. I passed out and slept until dawn. When I woke at around 5 a.m., I realized exactly where I was: we'd been executed in President Denis Sassou Nguesso's Marble Palace. I continued crawling, dragging myself through the long grass until I reached the river. I had terrible difficulty drinking, as my mouth was on fire, my ribs were hurting, my bare torso was itching all over, and my arm and leg were starting to go numb. My progress through the long grass was too painful, so I decided to get into the water. Then I had an idea which undoubtedly saved my life. In my state, it was obviously easier to go with the current, but this would take me straight down to Bacongo, a dangerous area overrun with Cobras — and certain death. With this choice before me, I pretty much forgot my pain and decided to save my life by going up-river towards Yoro. At times I was in the grass, at times up to my chest in the water, fighting against the current, which was becoming too strong for me.

My terrible ordeal in the river had begun near the old Alliance Française, at the spot where two large canals enter the river. These date from the time when the American Embassy wanted direct access to the River Congo. It took me five days from there, going up-river until I came in sight of the City Hall. I'd only in fact covered a few kilometres, sometimes in the water during the day and resting on land at night.

The arrest and execution had been on Friday 14 May; it wasn't until Wednesday 19 May 1999 that I reached the Immigration building near City Hall.

I remember something which I find trivial now, but which had me terrified at the time. While going up the river, I found myself face to face with a large snake; neither of us moved, then the snake suddenly dived. I was unable to react — paralysed: had I lost all sense of danger?

On 19 May 1999, I decided to venture onto dry land for two reasons: the whole area through which I had just struggled so painfully was silent and deserted, almost lifeless, whereas here I was hearing human voices, the sound of vehicle engines — the sound of life. I distinctly heard voices and I shouted, in a voice distorted by the injury to my mouth: "Help!"

To my despair, the people stopped talking, looked at me, then walked away. So I resolved to drag myself along on dry land towards the tarmac road behind City Hall. I was barely half out of the water when I noticed four armed men, who, on seeing me, shouted in my direction in Lingala: "Eh yo kuna o zaliko sala nin? Oyo ezali essika ya ko sumba te" — "What are you doing there? This is not a toilet." I gestured to them to come nearer, which they did. Seeing my state, they stared, wide-eyed. One of them asked me what had happened. I had the bright idea of telling them that I'd been attacked by the Cobras. I made

up a story like this: “There were three of us leaving for Poto-Poto, we came across a Cobra patrol, the other two were able to buy their way out, but, as I had no money, I was beaten and thrown in the water.”

Apparently my version seemed plausible. What made it even more plausible was the fact that the River Congo flows straight from Poto-Poto to where I was. The soldiers complained about the abuses committed by the Cobras, and the way they were behaving. I was very lucky to come across soldiers from the regular army.

They put their weapons down on the ground, lifted me up, each one taking a limb, and asked me if I would like to be carried to the road, in the hope that someone would stop and take me to hospital. The soldiers, who were all from the north of the country, gently put me down on the ground and went away. For a while, people coming to the Immigration Department for their passports just stared at me. Some asked where I lived, but then went away almost immediately. As I couldn't speak clearly, I asked for a piece of paper to write my address. I thought that writing Kinsundi would have scared people, so I didn't write it.

At this time my sisters had taken refuge in Ouenze, with one of my uncles; I admit that I didn't know exactly where this was, but I knew the precise address, and that is what I wrote. I thought it was probably less dangerous for me to give this address than the one in Kinsundi. In any case, in the confusion at the time, everyone who lived in Bacongo was a potential Ninja.

I was left alone for quite a while until a young man came along. We talked a bit and then he went away. A few moments later he returned, driving a very nice car (I found out that he was called Yoka and that he came from the north of the country, and I will remain grateful to him for the rest of my life). He hoisted me up onto the back seat of his nice car, unconcerned about the stench of my filthy wounds and my ragged clothes. We drove towards Ouenze. I'd never been to my uncle's house before; I only had his address in my head and a vague description of the place. After we'd got lost a few times, my saviour began to get worried: “Are you really expected at your house, maybe you're just a burglar? At this rate you're going to run me out of petrol.”

“Don't worry brother; when we get there, you'll see that I really am expected.”

How right I was! In fact, my sisters and the uncle from the journey had been looking for me ever since the notorious 14 May. Not having seen me getting off the next boat, my uncle had alerted the whole family.

When I arrived, people were crying and shouting with joy. The family thought I was dead, as the people of Brazzaville had correctly guessed what was going on at the Marble Palace (popular rumours spoke of the smell of burning bodies in the neighbourhood of the Marble Palace). Many people in Brazzaville knew about the crimes committed at the Beach.

I was hospitalized at the CHU. They wouldn't treat me until my sisters could pay for the medicine. After two months, I'd recovered and resumed work as a trader.

The news had got out that someone had survived the slaughter of 14 May 1999. I knew very well that I was an inconvenient witness, which is why I did everything I could to leave the Congo, so that I would one day be able to testify.

ANNEX VI-11

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FIRST HEARING OF CIVIL PARTY

Prosecutor’s Office No. 25146/01
Investigation No. 3/02/40
Proceedings concerning serious crimes
22 March 2002

Before us, Odette Luce Bouvier, Vice-President for Judicial Investigations, and Mr. Jean Gervillie, investigating judge at the *Tribunal de grande instance* of Meaux, in my office, assisted by Corinne Dey, clerk,

the civil party, Mr. Tsieno Linot Bardin Duval, being present in person.

.....
.....

Maître Patrick Baudouin, counsel for the civil party . . . is present.

The civil party stated the following:

Question: You have filed a complaint as civil party on account of acts of which you were the victim on 14 May 1999 in Brazzaville (Republic of Congo): this complaint is part of a more general complaint on account of crimes against humanity, forced disappearances or torture . . . having taken place between 5 and 14 May 1999 in Brazzaville in the course of an event known as “Brazzaville Beach”. As far as you personally are concerned, please tell us under what circumstances you left your village, Kimpila, to take refuge in the Democratic Republic of the Congo, and to return to Brazzaville on 14 May 1999?

Answer: I was a trader in Brazzaville, in other words I sold small items on the streets. I fled my district, Kinsoudi, in the south of Brazzaville at the end of 1998 because the fighting was really violent, with artillery fire, and the people from the south of the Congo like me, from the Pool, were extremely worried. Personally, I was not part of any militia, neither the Ninjas nor the Cobras. I left on foot to take refuge in my parents’ village, in the Pool, in Kimpila. I stayed there from January 1998 until April 1999, when the Head of State announced to the Congolese people that peace had been declared and ordered both sides to lay down their arms. So, with my uncle (and his wife and their little girl), we decided to return to Brazzaville. But we couldn’t take National Highway 1 to Brazzaville, as that was where the fighting was. So we decided to take a canoe across the river Congo to the Democratic Republic of the Congo. That is what we did, and we finally reached the UNHCR refugee camp at Mbanza-Ndougou. I stayed there with my uncle and his family for two weeks, waiting for the next train back to Brazzaville.

Question: The tripartite agreement of 10 April 1999 between the Republic of the Congo, the Democratic Republic of the Congo (DRC) and the UNHCR (doc. D8) was intended to return Congolese refugees to Brazzaville, with the help of the UNHCR. Were you officially registered with your family as a refugee by the UNHCR, in the DRC, before your return to Brazzaville on 14 May 1999?

Answer: Yes, we were registered. The UNHCR registered each family and then each individual. So we left by train on 13 May 1999. We spent the night at Kazangoulou, then we took the boat to the port of Kinshasa, Ngobila. We arrived at the Beach at about 5 p.m. My uncle and his wife had taken a first boat operated by a DRC company. I took a boat of the ATC, a Congolese company (*Agence Transcongolais de Communication*).

Question: Is it true that you did not arrive at the passenger dock, but at the fishing port?

Answer: Yes, it is true. Our boat did not dock at the normal Beach, where passengers disembark, but at another Beach, the fishing Beach. I must tell you that in the DRC there were rumours that the army was waiting for the returnees, and was undressing them to see if they had any marks on their bodies, so as to check whether they had been carrying guns or arms. It was the young men who were suspected, not the women. And when we arrived on 14 May 1999, the Cobra and soldiers of the regular army were waiting for us. They separated us into two lines, women and men (this applied to everyone, from children to old people).

Question: How could you tell that these were “Cobra” and soldiers of the regular Congolese army?

Answer: We recognize the Cobra from their uniforms and their way of speaking. Their uniform generally does not match, for example they wear two different shoes. Also, their harsh and more threatening manner of speaking means we can tell the difference easily between them and the soldiers. I am sure that there were soldiers from the regular army there to meet us. But I would not be able to give you any names of the soldiers or Cobras whom I saw there that day. We were assembled in a room, where we were stripped and searched. Then we were allowed to get dressed again. There was a man next to the door who, by hitting people on the head, indicated who was free to go and who had to stay. At a certain point, there were gunshots outside to drive away the women, who were trying to find their husbands. Twice during the evening an army driver arrived in a white Toyota and took away ten young men of about my age. Finally, at around 9 or 10 p.m., the soldiers and the Cobra asked us to leave our bags and papers and get on to a “Coaster” bus. The bus was packed, only men (the soldiers had released the little boys earlier). Before the bus left, they told us to take off our shirts and cover our heads with them so that we couldn’t see. In the bus, they started to threaten us: “You’re Kolelas’ boys, the Ninjas. You’re for it. We’re going to give you a thrashing. We’re going to kill you and throw you in the Congo.” They spoke in Lingala or French. During the journey, we were hit with guns and punched. They kicked us, kicked us with their army boots. Then the bus stopped and we walked down a narrow track, through the bush. We went down one part in vehicles, like Toyota 4x4s. They had to do that, as the track was a long way from the river. After telling us to get out and walk in single file, holding the hand of the person in front and the person behind, we arrived at a place where we stopped. That’s where we heard shots. There was an unbearable smell of dead bodies. We were put in lines, then they told us to lie down, then to get up, and then to kneel and that’s when they started to shoot us, one by one. At one point, I heard in Lingala: “What are you waiting for? Hurry up and shoot! There are a lot more of them.” I felt the person whose hand I was holding fall on my legs. I was hit by a bullet in the jaw. The bullet entered behind my left ear and exited from my upper lip, taking out my teeth and gum. This bullet also went through my right arm, removing a large piece of flesh. I lost consciousness, and woke with my face in the grass. After a while, they started to shoot us in the knees. As you can see, they shot me in the inside of the left knee. I felt the gun on my knee before the shot was fired. I waited without moving to make them think I was dead and then, at some point, I didn’t hear the shots any more. They also checked with a torch if there were any survivors. One of them even said that anyone who was still alive should stand up. They wouldn’t hurt them. I waited a good while before daring to take off my hood. That was when I saw bodies, everywhere. It was dark, and I couldn’t tell you how many there were. There were a lot. When I searched the place, I was walking on bodies. I saw bodies with bloated stomachs, rotting. I saw others with the

legs cut off. Today, I could take you to the place where it all happened, because I recognized it as I escaped, after removing my hood. It was behind President Sassou Nguesso's palace. It was Sassou's palace "1", the old palace (opposite the De Gaulle pavilion). At one point, after I'd taken off my hood and made myself a dressing with a shirt from one of the bodies, I saw some men returning on foot and I immediately lay down again. I saw that they were coming through a gate at the back of the Presidential Palace. When you go through this gate, you go down a few metres (the path is on a slope) and you arrive at the place where they shot us. I'd seen nothing on the way there, but it was afterwards, when I took off my hood, that I realised where I was. So then I understood that they had driven the 4x4s into the palace courtyard by the first gate, and then they made us come out on foot by the second gate, which can't be seen by people on the road. I escaped by the river, at times in the water, at times on the bank, and it took me five days to reach the area behind the town hall. There, four soldiers from the regular army saw me lying on the ground, not far from the road; I had the presence of mind to tell them I'd been abducted by the Cobras and they carried me to the road, criticizing the Cobra for what they were doing. I had the good luck to be saved by a young man from the north, called David Yoka, who took me to my uncle's house in Ouenze, in the fifth district. I met my sisters, who had taken refuge with him. I was hospitalized at the CHU in Brazzaville and I have also brought you a photo of myself while I was in hospital, where I stayed for one-and-a-half months. The other photo is with the OPPRA.

Note: Maître Baudouin is to send us a photocopy or new copy of said photo, showing Linot Tsieno on his hospital bed.

Question: You said that after a few months you had to flee from the Congo Republic, as it was rumoured that there was a survivor from the Brazzaville Beach. Were there, to your knowledge, any other survivors from Brazzaville Beach?

Answer: Yes, it was known that there was a survivor from Brazzaville Beach, that is why I left for France on 6 February 2001. I know that there is another survivor from the Beach, Ghislain Matembele. He was wounded by bullets in both of his knees and he is currently in France, in the Paris area. There might be other survivors, but Ghislain Matembele is the only survivor's name I know. I must tell you that I had seen him amongst the returnees when we stopped at Kanzulou, and then at the Beach before we got into the bus, when we were in the room, as I explained to you before. He knew that I was in Paris and that I too had been a Beach victim, and that is why he contacted me once he arrived in France.

Note: Maître Baudouin informs us that he is today filing a further civil-party complaint by Ghislain Matembele in respect of the acts of which he was a victim at Brazzaville Beach on the night of 13 May 1999. Annexed to the present statement is said letter from Maître Baudouin dated 22 March 2002.

Question: The fact that the incidents and killings at the Brazzaville Beach between 5 and 14 May 1999 were part of a concerted plan, organized by the civil authorities with the support of the regular army and the militia would appear, according to the case file, to be supported by the fact that the refugees returning to the Beach were welcomed with a speech from the Mayor of Brazzaville or his representative, and also by the fact that anonymous witnesses have reported seeing soldiers of the Presidential Guard, as well as uniformed police and plain-clothes police. Moreover, on 21 May 1999 the UNHCR representatives officially expressed their concern to the Congolese Minister for Foreign Affairs (see doc. D8) regarding the arrest of young men returning from the DRC under the tripartite agreement of 10 April. Do you have any information on the involvement of the government authorities and senior army officers for the Brazzaville Beach events of which you were a victim?

Answer: Personally, I didn't see the Mayor or any representatives at the Beach on 14 May. The only thing I am sure about is that those who took us to the execution site included soldiers from the regular army.

Note: We have informed the civil party that we are going to arrange a medical and psychological examination for him.

The civil party states: That is absolutely fine. I keep thinking back to what happened. I am currently being treated at the Avicenna Hospital in Bobigny.

.....
.....

We have also informed him that the projected period for completion of the investigation is 18 months.

On expiry of the said period, you will be entitled to request that the proceedings be closed, pursuant to the provisions of Article 175-1 of the Code of Criminal Procedure.

Having read this statement, the civil party approved and signed it, together with ourselves and the clerk.

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ANNEX VI-12

NATIONAL GENDARMERIE (LGDIF)
Paris Criminal Investigation Unit
154 Boulevard Davout
75020 Paris
Police Report No. 1414/2002 BT Paris Bastion XIV

POLICE REPORT ON THE INTERVIEW OF MR. NORBERT DABIRA

in police custody (page 4/9 to page . . .)
At the regional police station of Claye –Souilly (Seine et Marne)

Having been summoned to appear before us at 9.30 a.m., the person named below, interviewed alone, made the following statement:

- My name is Norbert Dabira.
- I was born on 24 June 1949 in Nbomba Boundji (Congo).
- I am the son of David Dabira and Jeanne Somboko.
- By profession I am a regular army Brigadier-General, Inspector General of the Congolese Armed Forces and of the Congolese National Gendarmerie.
- My address in France is 54 rue des Tilleuls, 77270 Villeparisis, and my address in the Congo is Résidence du Camp du 15 août, opposite the officers' mess, Brazzaville.

- I am married with eight children.
- I am a Congolese national.
- I swear to tell the truth, the whole truth.

After studying at Brazzaville State Technical College, I entered the school for regular army officers in Romania and remained there for three years. I did one year of higher studies in social sciences. I then did four years of higher studies at the Moscow Military Academy (USSR), followed by three years of doctoral studies in political science, still in the USSR. Following a period of studies as an occasional student at the Institut des Hautes Etudes de la Défense (Institute of Advanced Defence Studies) in Paris, I followed courses at the Centre for Strategic Studies in Libreville (Gabon).

I have successively held the posts of Head of the Policy Division in Pointe Noire and Head of the Administrative Staff Directorate in the Ministry of Defence (General Policy Directorate). I also served as Secretary of the Multiparty Central Committee. I was a militant in the campaign for a multiparty system.

Following the introduction of the multiparty system and the accession of Pascal Lissouba to the presidency, I had no official function for seven years, during which time I lived for the most part in France. At the time of the 1997 civil war, I served as Military Adviser to President Sassou Nguesso, and since then I have occupied my present position as Inspector General of the Armed Forces and the Gendarmerie, which is all in all a dead end.

I know Mr. Marcel Touanga, he is a former friend. We worked together as activists during the single-party era, that is to say before the Sovereign National Conference of 1991. As I recall, he was Ambassador to Cuba. When his son disappeared in 1999, he came to see me. I did not know because my guard turned him away and he left in anger, thinking that I did not wish to receive him. I learned of this much later. I did, however, see him subsequently, but he never spoke to me about it.

The story concerning the missing persons from the Beach was relayed by the media. That is how I heard about it. Citizens also complained about disappearances. I was intrigued and, in my capacity as Inspector General of the Armed Forces, I was requested at the time by the Armed Forces Minister to set up a commission of enquiry to look into all the functional shortcomings observed in the police and the armed forces, in respect of both operational and disciplinary matters. The commission that was established comprised military personnel, gendarmes and police officers. Under my direction, it was able to work freely.

This was a post-war period during which violent acts were committed against civilians. We worked to put an end to that.

We carried out an assessment on the subject of the missing persons. Our main aim was to look for people who might have committed abuses or to identify flaws in the military command structure. Reports were produced on the subject, addressed to Mr. Justin Lekouenzou, Minister of Defence.

The commission did not deal exclusively with missing persons, but also sought to obtain an overall picture of what was going on. No suspects were identified by name. It was a period of turmoil. The militias had not yet consolidated their grip on the situation. Some converted “ninja” were themselves behaving like members of the police or armed forces. It was impossible to say “X did this, Y did that”.

Some refugees were grouped together in camps under the control of the Congolese Government and the UNHCR.

Question: Do you know about the missing persons from Brazzaville Beach?

Answer: Personally, I have never been part of a group responsible for abducting people, I do not command a unit responsible for committing violent acts. I personally am opposed to that kind of thing.

None of the relatives of the missing persons came to see me in person, apart from Mr. Touanga who came but was unable to meet me. Moreover, this did not come within my purview.

Nor am I the “Cobra” commander; I never was. There were no armed persons committing violent acts under my orders. During the 1997 war, I served as Military Adviser to the President of the FDP (Democratic and Patriotic Forces). I worked with the staff headquarters. I even had a meeting at that time with the opposing parties in order to call for peace.

I consider my position as Inspector General in the Congo to be a dead end. I have no right to inspect forces without instructions from the Minister. I cannot visit any unit on my own initiative. My role is to wait until the Minister gives me an assignment. As a result, I have the impression today that I am serving no purpose. I have no power of initiative.

Question: Thus, according to your statement, you have no authority over the elements of the Presidential Guard?

Answer: Absolutely none. The head of that unit is General Adoua, who himself is under the command of the Head of the Gendarmerie, who at the present time is Colonel Mbouala. In 1999, it was Valence Ossette, who is now retired.

Question: In your capacity as Inspector of the Congolese Gendarmerie, do you have any authority over that unit?

Answer: No.

At one time, after the 1997 war, I was ordered to conduct a census of the gendarmerie and the army. That was my only act of inspection with regard to the armed forces. I was also given charge of an investigation into different types of fraud relating to diplomas.

Question: After learning of the arguments deployed by the complainant, concerning your specific responsibility with regard to the missing persons from the Beach, what are your observations?

Answer: There is undoubtedly some confusion concerning the roles played by an inspector of the French gendarmerie and an inspector of the Congolese gendarmerie. As far as I am concerned, I have no direct authority over the armed forces and, what is more, I am not permitted to exercise such authority either by the relevant regulations or established precedents, given everything that happened prior to my appointment. If I did not act, it is because I have no means of taking action without instructions from the Minister. I cannot even directly approach the intelligence services, much less visit their prisons. The Military Security Directorate (DSM—Direction de la Sécurité Militaire) reports directly to the Minister, while the Central Military Intelligence Directorate (DCRM—Direction Centrale des Renseignements Militaires) is under the authority of the Chief of Staff. I have absolutely no authority over them.

23 May 2002, 11.30 a.m.

Having read through the personal particulars and the statement set out above, I stand by what I have said and have nothing to change, add or retract.

23 May 2002, 3 p.m.

Major Roger Mercier, Judicial Police Officer

Continuation of my interview with Mr. Norbert Dabira:

Question: Who was the head of the Congolese armed forces in 1999?

Answer: It was Brigadier General Yvon Jacques Ndolou.

Question: What was the purpose of the commission of enquiry referred to in your statement? Was it concerned with the missing persons from the Beach?

Answer: The commission of enquiry was looking into events such as the attack on the Military Academy perpetrated by “Ninja”, as well as acts of violence committed by police and military personnel: hold-ups, robberies, killings, settling of scores between “Cobra” and acts committed by reformed “Ninja” who had switched their allegiance to the Government. Its remit was comprehensive. It also looked into the matter of persons who had been abducted at the Beach. Generally speaking, these were acts committed against civilians by uncontrolled elements, bandits acting on their own account.

Question: What types of investigation did you carry out in the context of the commission of enquiry?

Answer: The commission held meetings, conducted hearings of military personnel, mainly those belonging to the Academy who had fled, allowing “Ninja” to move in and set fire to the buildings. With regard to the acts of violence, we were able to interview a number of witnesses who came forward and identified those responsible for plundering, hold-ups, etc.

Question: Were interviews conducted with respect to the missing persons from the Beach?

Answer: No complaints were filed with us directly. We heard reports that people had complained, but I cannot tell you who was doing what. After the broadcasting of news on the radio, it had become a matter of public knowledge. I personally never saw a dead body. I was never contacted by any relatives of missing persons or by survivors, except in the case of Marcel Touanga, who tried unsuccessfully to see me.

Question: Did the work of the commission lead to specific action being taken?

Answer: Regarding the Academy, we determined that there were functional shortcomings. In the other cases, with regard to the acts of violence, we did not know who the perpetrators were as we had no evidence. Our task was not to carry out a police enquiry, as there were other agencies for that purpose.

Question: Was a police investigation conducted with regard to the missing persons from the Beach?

Answer: I have no information on that subject.

23 May 2002, 3.30 p.m.

Having read through the above statement, I stand by what I have said and have nothing to change, add, or retract.

...

Pursuant to the instructions of the judge who had issued the summons, Mr. Norbert Dabira was allowed to withdraw on 23 May 2002 at 5.45 p.m.

ANNEX VI-13

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Record of testimony taken from a witness

On 17 June 2002

Before us, Ms Odette-Luce Bouvier, Vice-President for Judicial Investigations, and Mr. Jean Gervillie, investigating judge, at the *Tribunal de grande instance* of Meaux, in my office, assisted by Danielle Di Napoli, clerk

Conducting a judicial investigation against person or persons unknown

Placed under judicial examination on account of: crimes against humanity, massive and systematic abduction of individuals followed by their disappearance, torture or inhuman acts, for ideological reasons and to implement a concerted plan against a group of the civilian population.

Offences provided for and punished under Articles 212-1 of the Criminal Code and 689-1 of the Code of Criminal Procedure

The witness named below appeared separately, without the person under examination being present, and remitted his notice of summons.

We asked him to state his full name, age, occupation, permanent address and whether he was related in any way to the parties or in their employ.

The witness replied:

My name is Mr. Marcel Touanga.

I was born on 28 December 1943 in Madingou, Congo.

Profession: Retired colonel.

I am currently living in the home of Samuel Memba whose address is: 30 rue des Mahomias, Bâtiment 30, escalier 07, Nice 06200.

I am neither a relation nor a friend of the parties and I do not work for them.

Having administered him the oath to tell the truth and nothing but the truth, we were given the following statement:

Question: As President of the Association of the Parents of Persons Arrested by the Security Forces and Reported to have Disappeared, and as the father of Sergeant Narcisse Touanga, who disappeared on 9 May 1999, we would like you to tell us what information you have relating to the “Beach” incidents in Brazzaville in April and May 1999, during which 353 people returning from Kinshasa reportedly disappeared.

Answer: On 10 April 1999, a tripartite agreement was reached between the UNHRC, the Congolese Government and the Government of the Democratic Republic of the Congo to encourage the return of Congolese who had left Brazzaville and the Congo. President Sassou launched several appeals himself; in particular during the night of 31 December [1998] to

1 January 1999 (his message to the nation), to assure the Congolese who had fled the country that they could safely go back to Brazzaville, and he even pardoned youngsters who had borne arms, and were thus members of militias.

Question: In the file, we have a letter from the regional UNHRC representative for central Africa (Document D8), who, on 21 May 1999, expressed concern at reports of regular arrests of returnees under this tripartite agreement, of which the UNHRC had been unaware. The dates given in this letter are 5, 10, 12 May 1999. Apparently, the return to Brazzaville was not carried out under the conditions promised by the President of the Republic of Congo.

Answer: The return was not conducted in the way the President had promised, nor as the agreement provided. Regarding my son, Narcisse Touanga, (who was a sergeant in the National Gendarmerie and who was not part of any militia), he had fled the December 1998 massacres with his mother and cousins. Since 18 December 1998, the government forces were not only hunting down the Ninjas (who had besieged the south part of Brazzaville) but were also killing civilians, regardless of their age or sex. The only way to survive was to flee. On 8 May, my son, Narcisse, and my wife returned, under this tripartite agreement, to the ATC port in Brazzaville. For boats coming from Kinshasa, there are two arrival points in Brazzaville, the Beach or the ATC port for the larger vessels. Basically, given their number, it would have been unusual for these returnees to be landed at the ATC port: for example, on 8 May 1999, there were about 1,500 of them. This is according to UNHRC figures and the lists which I acquired from the Congolese police at the time. At that time, I was a working colonel and it was the head of police at the Beach, Lieutenant Colonel Alkoa [*sic*], who told me that 1,500 people would be arriving on 8 May 1999. He had a list in his hand. (I have never read this list myself.) My son arrived at 4.30 p.m. and it was my wife who told me that Narcisse had been detained. She told me that she [*sic*] had been separated with one of his friends, Corporal Rolland Nouani. So I went to see Lieutenant Colonel Alakoua, and asked him to do something. He said he was surprised to see that “these people” were acting as border police. He was not just surprised but disapproving too.

Question: However, Lieutenant Colonel Alakoua seemed to know about the procedure, since he told you that he had nothing to do with any of this activity and that you must talk to Captain Obou, to try to get your son back from wherever he was. Which “people” was Lieutenant Colonel Alakoua talking about?

Answer: Lieutenant Colonel Alakoua had actually known about what had been happening for several days. When referring to “these people”, he was talking about people from the Presidential Guard squad who had joined the border police at the ATC port. As for my son Narcisse, when I tried to intervene, he was still there in a building being guarded by members of the Presidential Guard. I went to speak to Captain Obou, who said he knew me and that he could not free Narcisse, as he had received specific instructions regarding my son (he even called him “young Touanga”) from General Adoua, who is the head of the Republican Guard, known as the Presidential Guard. I told my son to be patient and kissed him before going to find the head of the Presidential Guard. I tried to see General Adoua, but was unable to do so. So I went to see the Minister of State in charge of the President’s Office and State Council [*Centriole d’Etat*], Mr. Gérard Bitsingou. When I arrived at his office, he explained to me that he had just been in touch with Mr. François Ndegue, head of the National Police and military authorities (without specifying which ones) and assured me that Narcisse would be freed immediately. I also went to see the Brazzaville police chief, Edgar Mohani, who also knew about the Brazzaville Beach arrests — particularly as some of those arrested were being held at police headquarters. He assured me that they would be freed during the day, and that I need not worry. I also went to see Colonel Jean Pierre Ngassaki, Private Secretary to the Minister of the Interior, Pierre Oba. He was a colleague and a classmate and we had a very good rapport at that time. He emphasized that this was a situation which needed immediate intervention and he was going to give me two visiting cards: the first was addressed to

General Hilaire Mouko (the head of Presidential Security and nephew of the Head of State); on this first card, Colonel Ngassaki wrote urging General Mouko to step in immediately to save young Narcisse Touanga, who was in mortal danger. Obviously he knew perfectly well what was in store for the Beach returnees. He knew what was going on. Unfortunately, I did not have the presence of mind to photocopy this note, which I sent to General Mouko through an officer. I was waiting for the reply at the duty office at the entrance to the Mpila Presidential residence. General Mouko called me back immediately by phone and told me that this affair was nothing to do with his department, but I should get in touch with some other people, the officers responsible from the Presidential Guard. Two days later, I called him back from the office of the Secretary to the Minister of the Interior and he assured me that this matter did not come within his remit. The second visiting card was intended for Colonel Samuel Oko, who was responsible for the security of the higher-grade officials with offices in the headquarters building of the Presidential Guard. Two days later, Samuel Oko told me that my son was no longer in the Presidential Guard building. I should just add that on 8 May 1999, after seeing the Brazzaville police chief and the Minister of State, I'd gone back to Brazzaville Beach and seen that Narcisse was no longer there, and had been told that they [*sic*] had been taken to the headquarters of the Presidential Guard.

Question: Apparently there was some tension between the police and the Presidential Guard at that time, since, on 9 May 1999, you succeeded, with the help of a police colonel, in freeing 122 people arrested at Brazzaville Beach.

Answer: That is correct. I must tell you that the Presidential Guard was originally a security organization and guard of honour for the President of the Republic. From 18 December 1998, the Presidential Guard took upon themselves some police and public security duties, and even a combat role. On 9 May 1999, I was first sent to the Presidential Guard. I was seen by a lieutenant, who told me that none of those arrested at the Beach had been brought to the Presidential Guard building. He suggested that I went to the Military Intelligence Headquarters (*Direction Centrale des Renseignements Militaires (DCRM)*), under Colonel Marcel Nsourou, where they checked in the records and they said that my son was not there and directed me to police headquarters, on the plateau. There I found 122 people who had been arrested at the Beach. I met a man in plain clothes (whose name I do not know) accompanied by four armed men, also in plain clothes, who explained that they had received instructions to liquidate the Ninjas (in fact, all the people originating from the Pool were accused of being Ninjas). I intervened and managed to convince the police colonel not to obey the order given by this person, who was not a member of the police force. Two days later, I found out that Colonel Valence Ossette, who at the time was chief inspector in the police and was fundamentally opposed to the arbitrary arrests and killings, had freed 122 youngsters. I would never see my son Narcisse again. On 13 May 1999, I was nearly killed myself by three young men when I was leaving General Adoua's office. I only managed to escape by calling one of them by his first name, having recognized him. It is us, the parents of those who disappeared from the Beach, who alerted the UNHRC about the arrests and the Beach disappearances. Some time around 15 May 1999, the UNHRC, which was initially sceptical, checked the facts and realized that they were true and organized transport to go and pick people up directly from the Beach, ensuring that they were properly registered (which had not been done before), and take them to centres established by the Government. However, the Beach abductions continued until July 1999.

Question: Together with some of the parents of those who disappeared, you have formed an association for the victims of the Beach arrests in Brazzaville, for the events which took place between 10 April and July 1999. How many people are thought to have disappeared and do you have proof of their disappearances at Brazzaville Beach during this period?

Answer: With regard to the arrests at the Brazzaville Beach, these abductions, followed by summary executions, effectively continued from April to July 1999. Afterwards, some people

were actually abducted from the centres to which they had been taken by the UNHRC, and even from their homes. Thanks to our Association, set up some time around July 1999 (its headquarters are in Brazzaville, but the Minister for the Interior has refused to register it), we have counted 353 people who returned from Kinshasa via the Beach and have disappeared. I have a list, but many parents have so far not dared to add the name of their disappeared child officially, out of fear. Therefore, the list I am giving you today is incomplete. We also filed a complaint with the Public Prosecutor of the Brazzaville *Tribunal de grande instance* in September. Judge Moune took testimony from me on two occasions, and since then I have had no more news.

Annexed to this statement is the list drawn up by the Association of the Parents of Persons Arrested by the Security Forces and Reported to have Disappeared.

Question: Taking into account your knowledge of the political and military structure of your country, do you think it was possible that the President of the Republic was unaware of the arrests and executions of Brazzaville Beach returnees between April and May 1999? Who were the regular and irregular forces behind the operation and who was responsible?

Answer: The Association of which I am President has written directly to the President of the Republic, who has never dealt with us personally but has referred us to his deputy Secretary General, Mr. Bouhouao Zaccari, and to the Minister for Water and Forests, Mr. Henri Djombo. I have to tell you that Mr. Sassou Nguesso, President of the Republic of the Congo, knew about what was happening at Brazzaville Beach and was regularly kept updated on the course of the operation conducted by the Presidential Guard. Up to the present time General Blaise Adoua has been in charge of the Presidential Guard. With regard to the people behind this operation, what I can tell you today is that the Congo's official Government has been taken over by a covert organization (high-ranking officers of the security forces and members of the Government) close to the President of the Republic, who carry out his instructions in such a way that the President of the Republic will never be visible himself. Within this organization, there are groups which exercise pressure on individuals according to their region of origin, using tribal and regional arguments in order to implement the President's policies in the region concerned.

Question: Have you met General Adoua in your role as a representative of the Association which you have formed? What did he explain to you when you met him?

Answer: In a personal capacity, I saw his personal adviser who assured me that enquiries would be made as to my son's whereabouts. That same day, I saw Sergeant Rigobert Mobede, General Adoua's secretary, who told me he had seen my son that evening, 8 May, at 7 p.m. being brought to the headquarters of the Republican Guard, as he was on duty then. He told me that he protected him from being abused and had kept in his possession his bag and his shoes. On 15 December 1999, at our request, we were received together with some other families at Presidential Guard headquarters. General Adoua told us that all those who had been arrested and who had not been freed after three days had been executed. He said: "We executed them because we obeyed instructions from our superiors." The families who were there were the Masmamba Manono family, the M'tsayi family, the Tchilouemba family and the Touanga family.

Question: In their complaint, the International Federation of Human Rights Leagues (FIDH) have also named Pierre Oba, Minister of the Interior, Public Security and Local Administration, as one of the people responsible for the Brazzaville Beach disappearances and executions. Do you think these charges against the Minister of the Interior are true?

Answer: In view of the close relations between senior officers of the Congolese security forces, I would not be surprised if the Minister of the Interior were involved in the Brazzaville

Beach operation. I know that General Oba is part of the President of the Republic's inner circle and furthermore that he arranged for me to see his security adviser (who asked me if I had any proof of Narcisse's death) but I do not have any further evidence of the Minister of the Interior's involvement in the Brazzaville Beach massacres. However, I do believe that, as Minister of the Interior and a general, he had the power to put an end to the Brazzaville Beach massacres, particularly in view of the fact that the border police responsible for security at the Brazzaville port are answerable to the Minister of the Interior. Lieutenant Colonel Alakjoua, the Beach police chief, was bound to have informed his superiors at the Interior Ministry of what was happening.

Question: General Dabira, Inspector General of the Armed Forces at the time of the Beach events and President Sassou Nguesso's military adviser, has also been accused in the FIDH's complaint. It is claimed by the FIDH that General Dabira is head of the Cobra. What is your opinion and in what way could he possibly be involved in the Brazzaville Beach events between March and July 1999?

Answer: I agree with the accusation of General Dabira by the FIDH. A few days before my son Narcisse returned, I had occasion to encounter General Dabira in conversation with Lieutenant Colonel Alakoua, the Beach police chief. He must therefore have been aware of the arrests taking place at the Beach. I must also tell you that at the beginning of this operation, i.e. the day the returnees' arrival was announced (in April 1999), a government delegation was waiting for them with photographers and cameras. The Minister of the Interior conducted this welcoming ceremony: with him was the Minister for Health and Population. As regards General Dabira, he is still President Sassou Nguesso's military adviser and Inspector General of the Armed Forces and he is the President of the Commission responsible for conducting enquiries into the behaviour of soldiers towards civilians. He plays a key role within the State and in the Presidential lobby. In view of his duties in the Armed Forces and his position at the heart of Congolese power, General Dabira must have known about the Brazzaville Beach killings and he did nothing to stop them, even though he had the power to do so. The role of Inspector General of the Armed Forces is a decisive one, as he influences the actions of all senior offices through his connections and daily contacts with the various heads of the Armed Forces. It is clear that the DSM and the DCRM were involved, along with the Republican Guard, in the arrests and executions of the Beach returnees. Indeed, we have evidence from people who arrived at the Beach and were then detained in the buildings of the Department of Military Security (DSM) and Central Military Intelligence (DCRM). Unfortunately, these people are in the Congo and it is not possible to take their evidence from them directly. I believed so strongly in General Dabira's role that I tried to meet him after Narcisse's disappearance. Unable to meet him, I wrote to him and he replied to me on 13 July 1999 with a letter of condolence, of which I will give you a copy. As to the allegation that he is one of the Cobra leaders, he is second in command of this militia after President Sassou Nguesso. He has also written a book entitled *Brazzaville à feu et à sang — 5 June-15 October 1999*, published by Harmattan in 1998, in which he describes his role in the Cobras' organization. You can see from its organizational structure that he is the general adviser to the Commander in Chief, Sassou Nguesso. This is not the regular army but the FDP, the organization of which the Cobra are the armed branch. Furthermore, in the book *Noir Procès* (published by Les Arènes), General Dabira answers in the affirmative to Maître Comte's question: "Did Mr. Denis Sassou Nguesso oversee the Cobra through your authority or that of officers like you?" Moreover, I had invited Mr. Dabira to my house in 2001, because he was concerned about the information our Association was providing to the media regarding the Beach disappearances.

Annexed to this statement is a copy of the letter from the Inspector General of the Armed Forces, General Dabira, to Colonel Touanga, dated 13 July 1999, as well as copies extracted from General Dabira's book referenced above and pages 124 and 125 of the book *Noir Procès* by François Xavier Verschave and Laurent Beccaria.

Question: Therefore, in your opinion, were the heads of the DSM and the DCRM also involved in the Brazzaville Beach massacres between April and July 1999?

Answer: They were definitely involved, since, after people were arrested at the Beach by the Republican Guard, they were taken either to the DSM (under Colonel Mbongo Valentin) or to the DCRM (under Colonel Marcel Ntsourou). However, I want to make it clear that the main place where the Beach returnees were detained was the second presidential palace, on the plateau, next to the Presidential Guard building. You can see it on your map, document D4. It was on the coast road, Chemin de la Flotille, between the presidential palace and the river, that the executions were carried out. This was the main execution site during the Brazzaville Beach killings. A number of bodies were buried there while others were left to rot in the open air. We also have witnesses who were taken there and managed to escape. In France, you have taken testimony from Mr. Matembele and Mr. Tsieno. On several occasions, on 19, 21, and 22 May 1999, bodies were also burnt below the presidential palace. Some witnesses who escaped the killings are still alive in the Congo, but I cannot give you their names for security reasons. Finally, I would like to leave you with a report on how the people who disappeared from the Beach were killed.

Annexed to this statement is the report from Touanga entitled: “The methods of the security forces responsible for the massacres — the Congolese armed forces units and the police”, as well as a report entitled “The responsibility of civil and military people in the Brazzaville Beach massacres in 1999”.

Having read this statement, the witness approved and signed it, together with ourselves and the clerk.

ANNEX VI-14

Paris Court of Appeal
Meaux Tribunal de grande instance
Office of Mr. Jean Gervillie
Investigating Judge

**REPORT ON THE FIRST STATEMENT OF A LEGALLY REPRESENTED WITNESS
(TÉMOIN ASSISTÉ)**

Public prosecution No.: 25146/01
Investigation No.: 3/02/40
Procedure in matters of serious crime

8 July 2002

In the presence of the undersigned, Mrs. Odette-Luce Bouvier, Vice-President for Judicial Investigations, and Mr. Jean Gervillie, investigating judge at the Meaux *Tribunal de grande instance*, in our chambers, with the assistance of Corinne Dey, clerk,

The witness named below entered an appearance, separately from the other persons placed under judicial examination, and produced the written warning by which he had been summoned.

We enquired after his surname, forename, age, family status, occupation, address, whether he was related to the parties, and if so the proximity of such relationship, or whether he was in their employ.

The witness replied:

My name is: Mr. Norbert Dabira
Born on 24 June 1949
In Nboma Boundji, Congo.
Profession: General of a regular army brigade.
Address: 54 rue des Tilleuls, 77270 Villeparisis.
I am neither related to the parties, nor in their employ.

We informed the witness that, in the proceedings initiated pursuant to the public prosecutor's application requesting the opening of an investigation, dated 23 January 2002, he would be examined as a legally represented witness (*témoïn assisté*) in relation to the following acts:

Crimes against humanity: massive and systematic abduction of individuals, followed by their disappearance, torture or inhuman acts, for ideological reasons and to implement a concerted plan against a civilian population group,

Acts provided for and punishable under Article 212-1 of the Criminal Code and Article 689-1 of the Code of Criminal Procedure.

We also informed him that:

As a *témoign assisté* he was entitled to the assistance of a lawyer who would be notified in advance of the hearings and would have access to the case file pursuant to Articles 114 and 114-1 of the Code of Criminal Procedure.

We informed him that he was entitled to choose such a lawyer or to request free legal representation.

The witness replied: I appoint Maître Jacques Verges.

Maître Verges, having been validly summoned by fax on 21 June 2002, i.e., five working days before this hearing, and having had the entire case file made available to him four working days in advance, was present, as was Maître Hélène Clamagirand.

We informed the legally-represented witness that he was entitled, in accordance with the revised procedure under Article 82-1 of the Code of Criminal Procedure, to request a confrontation with the person or persons filing a complaint against him.

We informed the witness of the expected time period for completion of the judicial investigation, which was 18 months, and we advised him that, upon expiry of that time-limit, he could request the closure of the proceedings pursuant to Article 175-1 of the Code of Criminal Procedure.

We advised the witness:

- That he was required to choose an address for service which could be his own or that of a third party appointed to receive the documents served on him if, at the same time, he produced the written agreement of the latter;
- That the address for service should be situated in a *département* of mainland France if the investigation was conducted in mainland France, or, if it was conducted in an overseas *département*, in the *département* concerned.

The witness chose the following address:

c/o Maître Jacques Verges,
20 rue de Vintimille
75009
Paris

This address is the address of my lawyer.

It should be noted that Maître Verges gave his agreement for Mr. Dabira to choose his office as his address for service throughout the proceedings.

We also advised the witness:

- That he was required to notify us of any change in the chosen address up to the time of closure of the investigation, by means of a new declaration or by registered letter with return receipt;
- That any notification or service to the last declared address would be deemed to have been made to him personally.

We then took his statement:

Question: What are your current duties and what were your duties between May and July 1999?

Answer: I am a Brigade General. I am the Inspector General of the armed forces. I have been the Inspector General of the armed forces since 1997.

Question: You have a residence in France, at 54 rue des Tilleuls, Villeparisis. Are you the owner of this residence? What family or other ties do you have in France?

Reply: I am the owner of that residence. It is a private house. I do not remember the date, but I became the owner before 1997, between 1992 and 1996. My entire family lives with me in Villeparisis. I have a child who is ill and has to remain in France for treatment. She was given a spinal bone marrow graft. My wife is obliged to care for her round the clock. My five children live with me there. I have two sons and three daughters.

Question: Do you have a French residence permit?

Reply: I have a diplomatic passport and a diplomatic visa as well. Because of the status of my sick daughter, I have a residence permit. The permit is in Brazzaville. In the ordinary course of events, it will now expire in 2003.

It should be noted that the investigations conducted by the Versailles judicial police revealed that Mr. Norbert Dabira possesses a residence permit valid until 11 February 2003.

Question: How often do you stay in France?

Answer: There is no set pattern. Everything depends mainly on the state of health of my daughter. I may come twice a month or I may not come for six months.

Question: It appears from the information furnished by the police that you even have a French driving licence?

Answer: Yes, indeed, because I needed that licence in order to drive in France.

Question: What are your present duties? Are they the same as those you exercised in 1999?

Answer: The same. As Inspector General of the armed forces, if there is any problem in the military, I receive an order from the Minister of Defence. I carry out an inspection and report back to the Minister of Defence.

Question: Who was the Minister of Defence at the time of the events we are dealing with, that is, between April and July 1999?

Answer: The Minister of Defence at that time must have been Mr. Lekoundzou Ithi Ossetoumba. I report only to the Minister of Defence.

Question: When you were interviewed by the Paris Criminal Investigation Unit, you stated that your position was a "dead end" (document D 47). Why do you consider that to be the case?

Answer: Historically, it is a post that has always been given to military officers approaching the end of their careers. Unlike the situation in France, the incumbent cannot conduct investigations on his own initiative. He must await instructions from the Minister. I can say that for the last eight months, I have ceased to receive any instructions. These are written documents drafted and signed by the Minister for National Defence.

Question: Are you also the Inspector General of the gendarmerie?

Answer: Yes. My duties cover all the armed forces — army, air force, navy and gendarmerie. Work is still being done on the relevant texts for the army, but the gendarmerie did not exist at that time. Hence, there is no specific text at present. There is an inspector for the gendarmerie, Mr. Okana Mbon. I no longer see him these days for as he had nothing to do, he came to see me in order to be assigned an operational post. He found such a post and I told him that he could do that work.

Question: In 1997, according to your statements while in police custody (document D 47), you served as military adviser to Mr. Sassou Nguesso during the war. That same year, you became Inspector General of the armed forces and the gendarmerie, a post which you claim to be a “dead end”, giving you no power over the army. What happened to cause you to move in 1997 from a position of trust, that of military adviser to the President, to a position without any power?

Answer: Only President Sassou Nguesso can answer that question. In 1997 I would have preferred to be appointed to another post, but he chose to give me the job of Inspector General and I fully accept that decision.

Question: The Minister for National Defence is your direct superior. You receive no orders from any other quarter. You report directly to the Minister in question. Presumably you have complete freedom to carry out enquiries in the units. It is therefore hard to see why these functions involve no prerogatives whatsoever.

Answer: In the Commission, it is clear that the heads of corps or of units are required to allow free access to the Inspector. The problem is that, when you remain sitting in your chair for eight months, at my age with my qualifications, you are entitled to think that it is a dead-end job and, what is more, you have no operational functions. The purpose of the inspectorate is to enhance the operational capacity of the troops and, for my part, I am campaigning to have the inspection services based to some extent on those in France, to eliminate the Inspectorate General of the armed forces and to have direct inspection conducted in the army units.

Question: When you were interviewed by the officer at the Paris Criminal Investigation Unit, you stated: “Nor am I the ‘Cobra’ commander . . . there were no armed persons . . . under my orders . . . During the 1997 war, I served as military adviser to the President of the FDP (Democratic and Patriotic Forces). I worked with the staff headquarters.” Do you maintain that you have no role in military operations? Do you maintain that, because of your functions, you were not in charge of the Cobra militia?

Answer: When President Lissouba attacked the residence of President Sassou on 5 June 1997, I was alerted by a cousin of the guard on duty at the home of President Sassou. I should tell you that ten days earlier President Lissouba had driven me out of the palace because I was considered to have close links to President Sassou. When I was alerted, I knew that I would also be taken and that my life was in danger, and I organized the resistance to that attack. In the early stages, there was no organized structure. I participated in the attack on the staff headquarters with the men of my guard and in my capacity as a general. We were given 15 military personnel to ensure our security but we ourselves selected them.

Question: In the book you published, entitled *Brazzaville à feu et à sang* (Brazzaville put to fire and sword), the publisher introduces you as the author and makes the following comments: “On 5 June 1997, the militiamen of President Lissouba, together with a large part of the army, initiated a showdown with former President Sassou. The General fought on the side of the Cobra. President Sassou appointed him general adviser responsible for military

operations in the FDP. He was to play a prominent role in the Cobra staff headquarters.” What was the prominent role referred to by your publisher?

Answer: With the 1997 war, the army was separated into several parts. One part of the regular army joined the FDP whose armed forces were known as the Cobra. On the other side, the forces of President Lissouba were the Cocoye or the Memba. During the war, all those who fought for President Sassou called themselves Cobra, whether they were former military men or young people who had joined them.

Question: Why did you state that you had never been a warlord with armed people under your orders, whereas in fact you were one, at least during the period of civil war between June and October 1997?

Answer: The line of defence was divided into two different fronts and the officers with men serving under them were the commanders of those fronts.

Question: It appears, however, from the organizational chart given in your book (document D 53/3), that the different fronts were in the form of “sectors”, but the commanders were connected to the staff headquarters and you were in an intermediate position between the staff headquarters and the military command under the direction of Sassou Nguesso. What were your functions as general adviser?

Answer: Where I am, I have no troops. It is the chiefs of staff who take decisions in relation to the troops. It is the same as in France. The Minister’s advisers do not give orders to the troops. When the chiefs of staff met with President Sassou, I was present and I advised him about what they had to say.

Question: Your role in relation to the Cobra militias emerges even more clearly from the transcript of the hearing of 28 February in the Paris *Tribunal correctionnel* (Criminal Court), as related on page 125 of the book *Noir Procès* (Black Trial) (D 53/4). In response to Maître Comte’s question “Did he (Mr. Denis Sassou Nguesso), through you or officers like you, oversee the Cobra?”, you replied: “Yes”. Did you give direct orders to the Cobra militias?

Answer: It is the word “oversee” which poses a problem. You have to look at the organizational chart. I advised President Sassou. I did not give direct orders to the Cobra.

Question: How do you explain the contradictions between what you have just said and your response to President Montfort when you acknowledged that President Sassou Nguesso supervised the Cobra through you, by means of delegated authority?

Answer: I see no contradiction between what I have just said and what I stated at the hearing. It should be noted that our staff headquarters was composed of several officers. The contradiction to which I would draw attention is that between the term “adviser” and any power to give orders or to supervise. An adviser cannot give orders.

Question: In response to an earlier comment by President Montfort, “we understand that you had a prominent role in the Cobra militia”, you stated “let us say that I was not directly responsible but I played a role, during the war, after 5 June, in the organization of those militias”. In order to organize a militia, one must have the power to give orders.

Answer: As I have explained, in the early days of the 1997 war, there was no organization. As we went along, we became better organized. It is possible that I submitted ideas, either to President Sassou Nguesso or at the meetings I referred to a moment ago, for the organization of the Cobra militias.

Question: As Inspector General of the armed forces, in 1999, did you have control or supervisory authority over armed personnel constituting the Republican Guard?

Answer: I go where I am sent. Everything concerning the army is within my remit. If I receive orders to go to the Republican Guard, I do so.

Question: Did your activities ever include an assignment to inspect the Republican Guard?

Answer: No. There were no problems requiring an inspection at the Republican Guard, I believe.

Question: Who, in 1999, was in charge of the Republican Guard and what was the Guard's chain of command.

Answer: In principle, the Republican Guard is attached to the gendarmerie. The Commander at that time was General Adoua.

Question: As Inspector General of the armed forces, do you exercise control or supervisory authority over the Central Military Intelligence Directorate (DCRM)?

Answer: Those are special services. It is the same as in France. I never carried out an inspection in those services.

Question: As Inspector General of the armed forces, do you exercise control or supervisory authority over the Military Security Directorate (DSM)?

Answer: That is the military secret service. There was no inspection but, I repeat, like any member of the armed forces or the gendarmerie, I can be sent on an assignment if the Minister gives me one. I cannot speak of their duties, but I believe that they have more of an internal role compared with that of the DCRM.

Question: You are being examined in connection with acts committed between April and July 1999, commonly referred to as the events of Brazzaville Beach. You are directly implicated by the complaint of the FIDH which considers that, at that time, given the control you exercised over the different army structures, you did not "take any measure to put a stop to the mass arbitrary arrests and the ensuing disappearances". According to the same complaint, you at least "encouraged those operations by your lack of reaction" at the time of the facts. What do you know about these disappearances and what was your attitude at the time?

Answer: I am glad it is not claimed that I was directly involved in torture. As Inspector General, I had no direct involvement with the troops. I am not an operational commander. There is a host of people who give orders to the troops. For my part, I give no direct orders to the Presidential Guard or other units. I cannot even inspect them on my own initiative. What I knew came from the newspapers and rumours. Those who commit these acts never do so openly and publicly. If my memory serves me well, Touanga came to see me at my house. I think that he must have written me a letter. I wrote back to him saying that I sympathized with him since I myself lost my child in similar circumstances. It was a really dark period. There was the attack on the Academy and the northern districts of Brazzaville.

Question: If you heard of the events, you must have heard that the Republican Guard, together with other military services, was accused of kidnapping, torturing and executing several hundred persons during that period. How do you explain the fact that, although the army was directly implicated, there was no inspection mission to look into those facts?

Answer: I did not hear it mentioned that the Republican Guard was implicated. There was a commission of enquiry set up to look into the events at the Academy, the looting and kidnapping, but not directly concerned with the events at the Beach.

Question: This lack of reaction by the authority exercising control over the army — your authority — is inexplicable given the significance of the events. It would appear, in particular, that the Office of the United Nations High Commissioner for Refugees became concerned about these events and on 21 May 1999 sent a letter to the Ministry of Foreign Affairs of the Republic of the Congo (document D 8).

Answer: There you are, the letter was written not to the Inspector General but to a Minister.

Question: It appears that on 21 May 1999, that is to say little more than a month after the signing of the agreement organizing humanitarian corridors for the return of refugees from the Democratic Republic of the Congo, the United Nations, through the UNHCR, requested explanations concerning “the arrest of repatriated persons by armed elements”. The UNHCR also stated in that letter that they had alerted the Minister for Health and National Solidarity. The question arises whether the lack of control over violent acts committed by armed elements was not a reflection of political will and whether your lack of intervention was not intentional?

Answer: There you have it. A letter was written to the Minister for Foreign Affairs who perhaps wrote to the Minister of Defence. My role is not to go to the army and tell them what they must do. The military police play that role. There are other bodies. In particular, there is the system of justice. The Inspector General of the armed forces deals with operational aspects, problems of a purely military nature.

Question: On what date did the Ministry of Defence, of which you are a part, officially recognize the fact of the Brazzaville Beach disappearances?

Answer: I do not know whether the Minister of Defence officially acknowledged that military personnel were abducting people. To my knowledge, no operational order from the army was ever given to the effect that such or such action should be taken. There was talk of missing persons when the families began to come forward and complain.

Question: Once the families came forward with complaints and the army was accused of involvement, particularly the Republican Guard, elements of the DCRM and the DSM, based on testimony concerning persons detained on their premises, why was there still no inspection assignment for which you would have been responsible?

Answer: When people act like that I do not think that it is the military commanders who gave orders. I repeat that I cannot act on my own initiative.

Question: In the context of your enquiry into the events at the Academy and the looting, why did you conduct no investigation into the Brazzaville Beach disappearances, since you yourself say that you were informed of a range of abuses committed during that period, including cases of disappearance?

Answer: If these things were talked about within the commission, they are covered by the requirements of military secrecy. When I am entrusted with an investigation, I refer to the Minister of Defence and at that point it is covered by such secrecy. Only he can talk about it.

Question: In the context of your duties, did you hear about kidnappings, tortures and executions carried out at Brazzaville Beach by military personnel of the Republican Guard and other services, acts for which you today intend to invoke military secrecy?

Answer: During that same period, there was the attack on the Academy, as well as looting and kidnappings. I reported on that investigation to the Minister of Defence. It is for him to reply.

Question: Did you hear of kidnappings and executions by the armed forces at Brazzaville Beach between April and July 1999? Were those events dealt with in your report?

Answer: Normally, these are military secrets. Regarding the problems at the Beach specifically, no enquiry was opened. I was alerted to the situation because Touanga lost his son. The 350 dead are being talked about here. At the time, I was not in the know.

Question: You have told us that, during that same period, you were investigating acts of looting or the settling of scores by individuals. However, as regards the missing persons from Brazzaville Beach, not only were they “protected” by a political agreement which provided for their repatriation, but in addition, they were arrested by regular army forces outside wartime, and the persons who carried out the executions stated that they acted on the instructions of their superiors (see the statements of Mr. Touanga, documents D 50 and D 53).

Answer: First of all, I am not the Government Minister. I believe that I was not even in the know when the Government brought those people from the Democratic Republic of the Congo. The question should be put to the Minister of Defence or the Minister of the Interior. A commission of enquiry should be set up. As things stand, if I have a role, it is that of the weak link. I do not understand why I am being attacked.

Question: The civil war of December 1998 led in 1999 to numerous abuses, arrests and executions involving the militias, including the Cobra militias (concerning which you explained that you were one of the organizers in 1997). The Cobra militias are named by external observers, such as “Doctors Without Borders” in October 1999 (cf. D 6), as having been involved in the execution of civilians and persons suspected of being Ninja or Cocoye. More precisely, with regard to the facts that interest us, the Cobra are implicated, as are the armed elements referred to earlier, in the events of Brazzaville Beach. What do you have to say about the involvement of the Cobra in the events at the Beach and the continuation of their activities up to the present time in 2002?

Answer: In October 1997, the President of the Republic, Sassou Nguesso, dissolved all the militias, including the Cobra, by means of a written instrument. Subsequently, the opponents of Sassou Nguesso continued to call the regular armed forces “Cobra”. This was a way of not recognizing the existence of the regular army. In 1999, I had no further links with the Cobra. The war was over and I had returned to my job as Inspector General. I was never a Cobra “chef d’écurie” (commander). An “écurie” is a group of 200-300 persons, or more, or less, to whom orders are issued.

Question: Mr. Touanga provided us with the letter you wrote to him on 13 July 1999, that is to say two months after the disappearance of his son, and in that letter you state that you had been assigned to carry out an investigation of “abuses by the law enforcement authorities and other functional shortcomings in our country’s system of defence and security”. Why, in that case, did you not investigate the Brazzaville Beach disappearances?

Answer: When Mr. Touanga approached me, he had already brought a complaint. I believe that I mentioned Mr. Touanga’s case to the Minister of Defence. The Minister said that he had never sent military personnel to commit acts of that type. He said that the police and armed forces disavowed such acts.

Question: Why did you tell him in that letter “not to be influenced by the terrible rumours that are circulating in the city”?

Answer: It is as you say. At the time, there were many parents who said that they had lost their children. When there is talk of dead people, it is terrible.

Question: When we interviewed Mr. Touanga, he stated that you could not have been unaware of the arrests taking place at Brazzaville Beach since at that time he had twice met you when you were having conversations with Lieutenant Colonel Alakoua, the Beach Commissioner. Do you know Mr. Alakoua?

Answer: It is a pity that Touanga has invented a story like that. I know Commissioner Alakoua. I know him as a military man like any other. He never spoke about the events at the Beach. We had no conversation about the events at the Beach.

Question: Mr. Touanga also stated in the same police report that he had met you in 2001 because you were worried about the media coverage being given to the case of the missing persons from the Beach as a result of his involvement.

Answer: I met Touanga because one of my friends had lost his girlfriend. We did not even speak about his involvement.

Question from Maître Verges: Is Mr. Dabira aware that a parliamentary commission of enquiry is looking into these events?

Answer: Yes.

Question from Maître Verges: Is Mr. Dabira aware that legal proceedings have been instituted in Brazzaville?

Answer: We were aware that Touanga had filed a complaint in Brazzaville.

Question from Maître Verges: In the Congo, do cases of torture committed by military personnel subject to the French system of justice come within the purview of the Inspectorate General of the armed forces?

Answer: No, not at all. It is the same as in France.

It should be noted that we informed Mr. Dabira that he would be summoned to appear again with a view to his being placed under judicial examination on Wednesday 11 September 2002, at 9.30 a.m.

Having read through his statement, the legally-represented witness stood by what he had said and signed with us and the clerk.

ANNEX VII

**LETTER OF 9 SEPTEMBER 2002 FROM THE PROCUREUR DE LA REPUBLIQUE
AT THE *TRIBUNAL DE GRANDE INSTANCE* OF BRAZZAVILLE, REPUBLIC OF
THE CONGO, TO THE PROCUREUR DE LA REPUBLIQUE AT THE
TRIBUNAL DE GRANDE INSTANCE OF MEAUX, FRANCE**

Having been informed that, pursuant to your originating application of 23 January 2002, a judicial investigation is currently in progress, before the investigating judge at the *Tribunal de grande instance* of Meaux (case No. *parquet* 25146/01, *instruction* 3/02/40) against Mr. Norbert Dabira, general officer in the Congolese army, on account of crimes against humanity (massive and systematic abduction of individuals followed by their disappearance, torture or inhuman acts, for ideological reasons and to implement a concerted plan against a civilian population group), I hasten to provide you with the following information, in the context of the good relations of judicial co-operation between your country and ours:

During the year 2002, the Congolese Organization for Human Rights (OCDH), affiliated to the International Federation for Human Rights (FIDH), was claiming in the Brazzaville press that, in May 1999, thousands of Congolese who had left the city of Brazzaville to seek refuge from the fighting then taking place there, decided to return home, under the auspices of the Office of the High Commissioner for Refugees (UNHCR), which for that purpose set up a humanitarian corridor.

The Congolese Organization for Human Rights moreover alleged that, in the course of that return, there had been over 350 disappearances which could be attributed to certain incumbent authorities, including Mr. Norbert Dabira, brigade general exercising the duties of Inspector General of the Congolese armed forces. It should however be pointed out in this respect that, according to the statements made to the investigating judge by Mr. Ibrahima Traore, responsible for the UNHCR liaison office in Brazzaville, the number of disappearances is more likely to be around 70.

Following the publication of that information, the Minister of Justice requested the judge responsible for matters of human rights at the Ministry of Justice to carry out an enquiry including the taking of evidence, with a view to providing the authorities with further information as to the veracity, and possibly the extent, of the alleged facts. An article in *Le Monde* dated 26 February 2002, concerning that enquiry, was already reporting the feelings expressed to its special correspondent by a relative of one of the individuals said to have disappeared: “high-ranking officials and Ministers are sensitive to our problem and want to understand like us . . .”, and later in the same article: “the Minister of Justice has set up a special unit to look into these disappearances, led by a judge . . .”.

Following that enquiry, the Minister of Justice, considering that the statements of certain persons interviewed could contain facts capable of being characterized as offences under the criminal laws of the Republic, requested the Public Prosecutor to apply for the opening of a judicial investigation against persons unknown on account of abductions and disappearances of persons. By an originating application of 29 August 2000, the Public Prosecutor thus requested the opening of a judicial investigation on the above grounds. The senior investigating judge at the Brazzaville *Tribunal de grande instance* was thus seised of the facts and has already carried out a number of acts of investigation.

That particular diligence shown by the Minister of Justice and the appropriate intervention of the Public Prosecutor indicates the specific interest shown by the Congolese Government and judicial authorities with respect to this case, that they are seeking to

elucidate in the best interests of the Republic and its citizens, as well as in the interest of peace, reconciliation and national unity.

The initiation by your office, further to a civil-party complaint, of a judicial investigation which is currently in progress, thus raises a serious problem of conflict of jurisdiction between two courts belonging to two sovereign States. That conflict can only be settled by the withdrawal of the case for lack of jurisdiction and, on a highly subsidiary basis, to ensure the proper attribution of international criminal justice, by entrusting the case to one of the two courts seised. In this respect, we are convinced that the Congolese courts alone should have jurisdiction, for the reasons stated below:

1. The first reason is that the jurisdiction of each Member State of the international community to try the perpetrators, co-perpetrators and accomplices of acts characterized as indictable offences committed on national territory is an attribute of national sovereignty and a principle of international public order which cannot in any way be denied, save insofar as the international community is entitled to entrust such jurisdiction to a specially created court (for example, the Military Tribunals of Nuremberg and Tokyo, and not so far from us, the International Criminal Tribunal for Rwanda, as well as the similar Tribunal for the former Yugoslavia).
2. The second reason is that two investigating judges belonging to two different States, even if one or the other were to have a basis of jurisdiction (which is far from true in the present case), cannot be concurrently seised of the same facts. The proceedings pending before the French court, being subsequent to those before the Congolese court, must be discontinued in favour of those conducted by the latter judge, who benefits for purposes of his investigation from the following advantages:
 - (a) The alleged facts are said to have taken place in the Congo.
 - (b) According to the complainants they were committed by Congolese against Congolese.
 - (c) Almost all the parties (perpetrators and victims), as well as potential witnesses, reside in the Congo.

It should also be pointed out in this context that it is difficult to see how the French Court can make the necessary arrangements to summon to Meaux all the parties (alleged perpetrators, their accomplices, victims and witnesses) unless it issues an international letter of request, which would obviously be hindered by the fact that our Court has already been seised and that, accordingly, we will not be able to respond to that letter of request.

The Congolese investigating judge is thus in the best position to carry out the judicial investigation, with due impartiality and rationality.

3. The third reason concerns the applicability to the present case of Article 689-1 of the French Code of Criminal Procedure. Article 689-1 of the Code of Criminal Procedure does not grant universal jurisdiction to French courts. In the case at issue, Mr. Norbert Dabira, general officer, exercises his duties in the Republic of the Congo — his country — as Inspector of the Congolese armed forces. In our view, Article 689-1 of the French Code of Criminal Procedure can only apply if the necessary proceedings have not been taken by the State in which the alleged offences took place. But in the present case the Congolese judicial authorities, as stated above, have taken all the necessary and appropriate action in connection with the facts denounced. That action is currently being pursued by the investigating judge seised of the matter. Under these circumstances, Article 689-1 of the Code of Criminal Procedure cannot be applicable.

The proceedings undertaken by the investigating judge of the Meaux *Tribunal de grande instance* thus lacks any serious legal basis. It is for this reason that the termination of those proceedings by the French Court, for lack of jurisdiction, would appropriately bring to an end this regrettable dispute, which could constitute a serious impediment to the proper administration of international criminal justice.

ANNEX VIII

LETTER FROM GENERAL NORBERT DABIRA TO HIS LAWYER, MAÎTRE VERGES

Brazzaville, 1 September 2002

I have just received a Summons for First Appearance before the Meaux *Tribunal de grande instance*. Despite the fact that your address had been accepted as a mail box, they saw fit to send the summons to my home address. Although aware that you have been appointed as my lawyer, they are asking me again to choose counsel and to let them know in a prompt manner.

We had agreed together on 13 September 2002 and they have summoned me for 11 September 2002; however, I wish to inform you that the Government of the Republic of the Congo has just formally indicated to me that as an officer of the Congolese armed forces, I do not have to appear before that court.

According to the Government, in this case there is clearly a positive dispute as to jurisdiction which should be settled according to the procedure contemplated by Article 657 of the French Code of Criminal Procedure. An application for the withdrawal of the case from the Meaux investigating judge in favour of the Brazzaville investigating judge, who was seised previously, should be submitted, in accordance with the above-mentioned provision, in the interest of the sound administration of international criminal justice and for three reasons:

- (1) Two investigating judges cannot be seised of the same offence. The Meaux proceedings were brought subsequent to those before the Congolese investigating judge and are therefore inevitably precluded by the “*non bis in idem*” rule. The alleged perpetrators of the offences in question all reside in Brazzaville and the said offences are presumed to have been committed in Brazzaville, so the jurisdiction of the Brazzaville investigating judge seems to be the most extensive in the present case.
- (2) Article 689, paragraph 2, of the French Code of Criminal Procedure pertains to the principle of universal jurisdiction, on which the French judge has laid claim to jurisdiction. Such jurisdiction only concerns crimes committed by private individuals, but not by Governments and their officials, who are presumed to have acted with the authority vested in public administration. For this reason, France cannot assume jurisdiction over serious offences which do not fall within its sovereign power of discretion. Consequently, a State cannot claim to have jurisdiction under international criminal law to try government officials of another country, certainly not by invoking universal jurisdiction.
- (3) The international community, for its part, cannot directly bring alleged criminals before international courts or tribunals; it delegates its power of repression to States. However, it is only by such delegation that a State is entitled to prosecute or to punish the heads and officials of another State, without disregarding the principle of legal sovereignty, which is a matter of public order in international criminal law. The French Court of Cassation has opposed international custom to the principle of universal jurisdiction; that custom precludes a head of State or his officials from being brought before the criminal courts of a foreign State, in the absence of any United Nations resolution. France did entertain the serious crimes committed during the Rwandan genocide, but that was pursuant to United Nations resolution No. 955 of 8 November 1994. However, the international community has only produced three resolutions to date attributing repressive jurisdiction to States. After the Moscow Declaration for the punishment of crimes committed during the Second World War, the second attribution of jurisdiction was made by United Nations Security

Council resolution 827 of 25 May 1993 for the punishment of crimes committed in the territory of the former Yugoslavia, and the third was Security Council resolution 955 of 8 November 1994 for the punishment of crimes committed in Rwanda. France, which for historical reasons is our second fatherland, has never been delegated by the international community to try alleged crimes committed during the Congolese political crises of 1993, 1997 and 1998. The proceedings pending before the judge in Meaux are devoid of any legal basis. It now appears necessary to file a petition for the withdrawal of the case from that Meaux judge, to put an end to this regrettable dispute as to jurisdiction, which is capable of seriously undermining the sound administration of international criminal justice.

I wish moreover to inform you that, during the five years of Lissouba's reign, having become undesirable in Brazzaville for political reasons, I found myself obliged unwillingly to go into political exile and to obtain a resident's permit in France, which has of course given me the status of French resident. However, I nevertheless continue to serve in my country's armed forces and to obey orders from the Republic of the Congo.

I am an officer-general of the Congolese armed forces and the alleged offences were committed in the Congo where I hold the administrative post of Inspector-General of the Congolese armed forces and of the Gendarmerie Nationale.

The judges themselves have acknowledged that I am not personally implicated in the alleged killings. It is thus in my capacity as Inspector-General of the Congolese armed forces and of the Gendarmerie Nationale that they have examined me to date, and the Government that I represent has given formal orders to the Minister for Defence not to authorize me to leave the country. I have been forbidden from appearing before any courts other than those of the Congo, before which I have even been examined already, on several occasions.

(Signed)

SUMMONS FOR FIRST APPEARANCE

PARIS COURT OF APPEAL

MEAUX *TRIBUNAL DE GRANDE INSTANCE*

INVESTIGATING JUDGE JEAN GERVILLIE

**from the investigating judge to Mr. Norbert Dabira
54 rue des Tilleuls, 77270 Villeparisis
born 24 June 1949 at Nboma Boundji, in the Congo,
son of David and of Jeanne Somboko**

Registered letter

Meaux, 23 August 2002

Sir,

Pursuant to Article 80-2 of the Code of Criminal Procedure, I hereby inform you that I envisage your formal placement under judicial examination. For such purpose, I hereby summon you for your first appearance in the context of a judicial investigation opened for:

- crimes against humanity, massive and systematic abduction of individuals followed by their disappearance, torture or inhuman acts, for ideological reasons and to implement a concerted plan against a civilian population group, between April 1999 and July 1999, in Brazzaville (Republic of the Congo)
- offences provided for and punished under Articles 212-1 of the Criminal Code and 689-1 of the Code of Criminal Procedure

by virtue of an application from the *Procureur de la République* dated 23 January 2002.

You are summoned to appear on 11 September 2002 at 10 a.m.

in my office, at the *Tribunal de Grande Instance* of Meaux, 44 Avenue Salvador Allende, 77109 Meaux, Room No. 210.

VERY IMPORTANT

You are entitled to be assisted by counsel.

You may choose a lawyer to assist you or request that one be assigned by the Chairman of the Bar Council, from among the lawyers registered with the Bar.

You are required to inform me of your choice in a prompt manner.

(Signed)

On behalf of the Vice-President for Judicial Investigations,
Mrs. Odette Luce-BOUVIER.

ANNEX IX

LETTER FROM GENERAL NORBERT DABIRA TO HIS LAWYER, MAÎTRE VERGES

Brazzaville, 25 September 2002

Dear Maître Verges,

As you and I know, the Congolese Government had decided that I should no longer be allowed to appear before the Meaux *Tribunal de grande instance*. Knowing that I am totally innocent in this “Beach Disappearances” case, I was prepared to appear for the second time before the judges and I had every faith in French justice, which I know to be unbiased and fair.

Unable to return to France, I had made a point of informing both you and the French Embassy in Brazzaville, who informed the court. I also know that you have justified my absence to the judge in Meaux. I do not see why these same judges, having all this information, have undertaken to traumatize and attack my family.

The President of the Republic has, however, publicly announced on the radio and on French television that he had taken the decision to prevent me from appearing due to the lack of jurisdiction of the Meaux court.

On Tuesday 24 September 2002, my next-door neighbour told my wife that on Monday 23 September some French television journalists, in particular from France 2, came and asked him where number 54 rue des Tilleuls was. Not knowing what they were intending to do, the neighbour pointed out our house. When he saw them setting up the filming equipment, he realized what they were planning. He was shocked, and explained to them that they had no right to film a house without the approval of the owner, especially as he was not there. They paid no attention and said that “the owner and the President of the Republic are in trouble with the law”. My wife says that the neighbour was outraged, thinking about our girls, who usually play and run around in the garden with the dog. Thank God the little girls were not there that day, because they would have been truly traumatized.

The neighbour (a Frenchman), still very angry, pointed out to my wife that these gentlemen had no right to do what they did. It is an invasion of privacy and the accusation against her husband by the journalists violated the presumption of innocence. The neighbour will be prepared to act as a witness if necessary.

Later on, in the evening, my wife watched the news on France 2. Shocked, she learned that our house has in fact become notorious to the French television public. It is the home of the man presumed guilty in the “Beach Disappearances”. In this news bulletin I was even described as the Commander of the Congolese Armed Forces. My wife called me and told me how angry she was and asked me to watch the news at 12.15 a.m. on that channel. We receive French television by satellite.

I took advantage of the opportunity to record the programme. The serious thing is that everybody now knows where I live and can intrude on my family life more easily than before and it almost seems like an invitation. It is as if the journalist is saying, “this is where the criminal lives, he is all yours, it is up to you to finish him off as revenge for what I have supposedly done, but which cannot be proven”. You yourself followed my court hearing in Meaux. I still remember what the judge said to me “off the record”: that I was unlucky to be a French resident living in Meaux. He has never produced any evidence or support for the

idea or argument that I ordered or personally perpetrated the crimes of which I have been accused.

Despite the fact that the judges knew I was not at home on 25 September, they sent four police officers to my home in Villeparisis around 9.15 or 9.20 a.m. Having rung the bell at the gate, the four police came into the courtyard without waiting to be let in and rang the doorbell. Then my daughter, only just 10 years old, came to open the door. They asked her if her father was there. She told them I was not there, and they asked to see my wife. She was in the shower, still with shampoo in her hair, when the frightened child came and told her that there were some police officers outside wanting to see her. Soaking wet, she quickly got out of the shower wrapping herself in her bath towel, as the child was so terrified. She immediately thought it was something serious. Going down the stairs, my wife asked what they wanted and they asked her again if I was there. Of course, she told them that I was in Brazzaville and they immediately said: "As your husband is not here, we want you to answer some questions."

My wife told them she was in the middle of showering and she still had shampoo in her hair. They told her to go and finish showering and get changed. She had still not finished when they sent our youngest daughter aged 5 to tell her to hurry up. It was then that she let them into the house. She came down and they showed her the search warrant for the house telling her that they had a warrant to bring me before the public prosecutor immediately. All this was done in front of my children. A little annoyed, my wife asked them why they wanted to search the house, especially as I was not there and my lawyer had already informed the judges that I was not able to appear again and I had already told them myself via the Embassy in Brazzaville. The police said that they were obeying orders. They started searching the house in the basement accompanied by my wife. They opened all the bedroom doors and woke my son, asking who he was. They asked for his identity card, which was shown to them. Then they went upstairs and searched the bedrooms and the showers and then wrote their report, which they read to my wife and asked her to sign. My wife was annoyed and told them that she did not understand why they were putting her husband and her family through all this when it has been established that her husband is innocent and that the President of the Congo Republic was in France and they could have gone after him, because he is the one they want. She still did not understand why the judges were pursuing an innocent man. Even if the Inspector General of the Armed Forces had decision-making powers, that is not to say that he ordered the crimes.

The lesson to be learnt from all this is that everyone in the area now knows that there is a criminal living at 54 rue des Tilleuls. The children have been really traumatized and are having to answer questions from their friends at school all about the problems they are facing. Filming my house and showing it on France 2 and France 3 is an invasion of my private life and is exposing my family to those who are seeking revenge for crimes of which I am in no way guilty. My family now lives in fear and does not feel safe. In fact, they have been exposed to public condemnation.

I am furious about this. My family, who are living in Paris, should not be subjected to such pressure, which is making their lives hell. My daughter, who had undergone a marrow transplant, is suffering enough already; they are deliberately trying, through political manipulation, to finish her off. I am asking you to take the necessary steps to put an end to the harassment to which my family is being subjected.

Yours sincerely,

(Signed)
