Submission by the United Nations High Commissioner for Refugees (UNHCR)

For the Office of the High Commissioner for Human Rights' Compilation Report

– Universal Periodic Review:

REPUBLIC OF CONGO

I. BACKGROUND AND CURRENT CONDITIONS

The Republic of Congo (RoC) is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* with no reservations. The Republic of Congo is also a State party to the *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa* (OAU Convention). Most refugees in the Republic of Congo have been recognized on a *prima facie* basis pursuant to Article 1.2 of the OAU Convention.

The Republic of Congo is not a State party to either the *1954 Convention relating to the Status of Stateless Persons*, or the *1961 Convention on the Reduction of Statelessness*. Congo signed the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), but has not yet ratified it.

The Congolese Constitution of 20 January 2002 recognizes the right to seek asylum in its Article 15. It also recognizes the supremacy of the legal instruments adopted at the international and regional levels over any laws of the country (Article 184). Act No. 23-96 of 06 June 1996 lays down the conditions for entry, stay, and exit of foreigners in the Republic of the Congo and contains general provisions on refugees in its chapter III.

The current asylum system was established through three official decrees and orders. The Presidential Decree No. 99-310 of 31 December 1999 creates the National Refugee Assistance Committee, *"Comité National d'Assistance aux Réfugiés"* or CNAR; the Minister of Foreign Affairs created an inter-ministerial Eligibility Commission, *"Commission d'Eligibilité au Statut de Réfugié" or* CE by Order No. 8041 of 28 December 2001, as well as a Refugee Appeals Commission, *"Commission des Recours des Réfugiés" or* CR by Order No. 8040 of 28 December 2001.

The Republic of Congo however has no comprehensive refugee and asylum law. This concern was raised on various occasions with the Congolese Government which subsequently pledged, during the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011, to finalize the drafting of the national bill on refugees.[1]

[1] UN High Commissioner for Refugees, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, pages 63 & 64, available at: http://www.unhcr.org/refworld/docid/50aca6112.html

Inter-ethnic clashes started in March 2009 in Equateur Province in northwest Democratic Republic of Congo (DRC), resulting in an outflow of Congolese seeking protection in the Republic of Congo. Due to the large number of persons who fled from this conflict, UNHCR recommended the adoption of the *prima facie* approach in the determination of their refugee status and advised the RoC Government accordingly.

As of January 2013, the total number of asylum-seekers and refugees registered in the Republic of Congo amounted to 102,754 persons. The majority of refugees originate from the DRC and Rwanda, while a smaller number are from Angola, Burundi and other countries. Approximately 51% of the refugee population are women and girls.

Following the signature in June 2010 of a revised tripartite agreement between the Republic of Congo, DRC and UNHCR, several technical tripartite meetings have been organized to establish the modalities for the voluntary return of all DRC refugees hosted in the country. The repatriation operation started on 5 May 2012. Thus far, more than 55,000 refugees originating from DRC have returned to the Equateur Province.

The RoC made substantial progress in the implementation of policies and programmes that contribute to the strengthening of social services. However, to date more than half of the RoC population lives below the poverty line, faces high unemployment, and lacks adequate health care and educational services. This situation equally affects refugees and asylum-seekers who often have to rely on the limited assistance extended to them by UNHCR.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends the Government and the people of the Republic of Congo for their hospitality towards refugees, in particular in the North of the country. The good co-operation and close working relationship with the Government of the Republic of Congo contributed to a favourable protection environment for refugees hosted in the country.

In 2011, the Republic of Congo became a member of UNHCR's governing body, the Executive Committee (ExCom), demonstrating the State's commitment to refugee issues. Moreover, during the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011, the Republic of Congo pledged to complete the drafting of the national bill on refugees, to ratify the Kampala Convention and to adopt national legislation to strengthen the protection of IDPs. [2]

The Republic of Congo enacted the Law on the Protection of Children, Law no 4-2010, on 14 June 2010. The Government is also to be commended for enacting Law n° 5-2011 of 25 February 2011, relating to the promotion and protection of the rights of the indigenous population.

[2] UN High Commissioner for Refugees, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, page 64, Opcit

III. KEY PROTECTION ISSUES AND RECOMMENDATIONS

Issue 1: Asylum legislation

In the absence of a national legal framework, refugee status determination procedures do not yet meet international standards. The Committee on the Elimination of Discrimination Against Women (CEDAW) has expressed concerns about "the absence of a legal framework for the refugee-status determination."[3] Moreover, the Committee on the Elimination of Racial Discrimination (CERD) suggested that Congo should "*contemplate the adoption of a law on asylum*"[4] and that it should "*redouble its efforts to improve the situation of refugees and asylum-seekers, in particular by strengthening its asylum system and the national institutions working in this area, including the National Refugee Assistance Committee (CNAR), the Refugee Status Eligibility Commission and the Refugee Appeals Commission.*"[5]

Reinforcing the national legal framework would create a more suitable basis for the Government to provide refugees with international protection. In this context, UNHCR welcomes the pledge made by the Government of ROC at the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011 to complete the drafting of the national refugee law.

Recommendation:

- Complete the drafting of the refugee law with the technical support from UNHCR, in line with its pledges made during the December 2011 Ministerial meeting.

Issue 2: Adjudication of asylum claims

The Eligibility Commission was set up in 2002, followed in 2005 by the creation of a Refugee Appeals Commission. Both Commissions are composed of high level Government Officials and representatives of several key ministries including Foreign Affairs, the Interior, and Social Affairs. Interviews for the determination of refugee status are conducted by the National Refugee Assistance Committee (CNAR), which submits recommendations to the Eligibility Commission. Rejected asylum-seekers can present a rebuttal before the Refugee Appeals Commission within 30 days. However, the assessment of asylum claims needs to be enhanced in terms of the substantive evaluation of the merits of the claim, as well as procedural standards. Sessions of the Eligibility Commissions are not held on a regular basis, which results in long delays, with thousands of asylum-seekers awaiting a decision on their asylum application. These delays also affect the enjoyment of their economic, social and cultural rights. The Committee on the Elimination of Racial Discrimination (CERD) recommended that Congo should "establish an effective procedure for determining refugee status." [6]

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[3] Committee on the Elimination of Discrimination Against Women, CEDAW/C/COG/CO/6, 51st Session, Concluding Observations on Congo, 1 March 2012, paragraph 39, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/413/99/PDF/G1241399.pdf?OpenElement

[4] Committee on the Elimination of Racial Discrimination, CERD/C/COG/CO/9, 74th Session, Concluding Observations on Congo, 23 March 2009, paragraph 18, b), available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/412/69/PDF/G0941269.pdf?OpenElement

[5] Committee on the Elimination of Racial Discrimination, CERD/C/COG/CO/9, 74th Session, Concluding Observations on Congo, 23 March 2009, paragraph 18, Opcit

[6] Committee on the Elimination of Racial Discrimination, CERD/C/COG/CO/9, 74th Session, Concluding Observations on Congo, 23 March 2009, Opcit, paragraph 18, a),

Recommendations:

- Consider amending domestic legislation, in particular Order No.8041 of 28 December 2001 creating the Refugee Status Eligibility Commission, as well as Order No. 8040 of 28 December 2001 establishing the Refugee Appeals Commission, by incorporating provisions that would prevent delays in processing refugee claims;
- Further strengthen the capacity of the CNAR to enable it to process the backlog of pending asylum applications.

Issue 3: <u>Detention of refugees and asylum-seekers</u>

Refugees and asylum-seekers are often victims of arbitrary arrests and detention in the context of identity checks, regardless of their identification documents issued by the CNAR. They are frequently obliged to pay fines in order to be released. UNHCR is concerned about the indiscriminate, prolonged and arbitrary detention of persons in need of international protection. Moreover, UNHCR also encountered refugees detained without access to basic needs or cases of refugees and asylum-seekers having been detained in unofficial detention centers.

Recommendations:

- Ensure that the detention of asylum-seekers and refugees is only used as a last resort, and where necessary, for as short a period as possible and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention;[7]
- Incorporate human rights and refugee protection in the curriculum of law enforcement officers' training schools.

Issue 4: <u>Protection of refugee women and girls</u>

It should be noted that refugee women and girls are often suffering discriminatory practices within their communities and are at risk of becoming victims of sexual and gender-based violence (SGBV), in particular in the Likouala department, where violence against women has been widely reported.

In the Likouala department, where the majority of refugees are staying, the Congolese authorities should intensify their efforts to prevent and respond to incidents of SGBV. The continued impunity of these crimes creates a vicious circle encouraging the trivialization of violence against women. This situation has also reduced the impact of UNHCR's efforts to provide effective protection to refugee women and girls.

The Committee on the Elimination of Discrimination Against Women has raised concerns about "*reports that some refugee women and girls are subjected to sexual and gender-based violence and abuse, and victims have limited access to law enforcement mechanisms and justice*."[8] It has therefore recommended that Congo "*address the situation of refugee women […] in particular with respect to the means used to protect these women from all forms of violence and the establishment of*

[7] UN High Commissioner for Refugees, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline No 1, paragraph 11, available at: http://www.unhcr.org/refworld/docid/503489533b8.html

Committee on the Elimination of Discrimination Against Women, CEDAW/C/COG/CO/6, 51st Session, Concluding Observations on Congo, 1 March 2012, Opcit, paragraph 39.

mechanisms for redress and rehabilitation, take steps to investigate, prosecute and punish all perpetrators of violence against refugee women, and continue to collaborate with the international community, especially UNHCR, in these efforts."[9]

Recommendations:

- Take measures to ensure the access of refugee women and girls to effective legal remedies (among others) to respond to SGBV incidents;
- Increase the number of mobile courts in remote districts, in particular in the Likouala department and waive fees to facilitate refugee women's and girls' access to justice;
- Enhance the capacity of law enforcement officers in preventing and investigating cases of gender-based violence.

Issue 5: <u>Accession to the International Statelessness Conventions</u>

Congo is not a State party to either the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Accession to the 1954 Convention would establish a framework to protect stateless persons or persons at risk of statelessness and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are meet.

Furthermore, the *1961 Convention* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. Articles 1 and 7 of the 1961 Convention contain safeguards to ensure that these risks are mitigated. The 1961 Convention is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthen international efforts to prevent and reduce statelessness. The Committee on the Elimination of Discrimination Against Women has recommended that Congo "*accede to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention on the Status of Stateless Persons.*"[10]

Recommendations:

- Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- Take all possible measures pending such accession to identify and protect the rights of stateless persons and those who are at risk of statelessness, as well as to reform nationality legislation to ensure that safeguards are in place to prevent statelessness.

Issue 6: <u>Access to birth registration and issuance of birth certificates</u>

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. The

[9] Committee on the Elimination of Discrimination Against Women, CEDAW/C/COG/CO/6, 51st Session, Concluding Observations on Congo, 1 March 2012, Opcit, paragraph 40 b).
[10] Committee on the Elimination of Discrimination Against Women, CEDAW/C/COG/CO/6, 51st Session, Concluding Observations on Congo, 1 March 2012, Opcit, paragraph 40 c).

Committee on the Rights of the Child has expressed "*concern at the fact that a large number of children have still not been registered. The Committee is also concerned at registration fees and penalties attached to late birth registration, which may hinder the process, […] the lack of civil registry offices in remote areas and the insufficient awareness of the importance of registration.*" It has therefore recommended that Congo "*establish an efficient and accessible birth registration system, including for non-citizens, which covers its entire territory.*"[11]

Recommendation:

- Ensure the registration of all births, including children of asylum-seekers and refugees, in the country to prevent statelessness, in line with Article 7 of the Convention on the Rights of the Child.

Issue 7: <u>Legal framework for the protection of internally displaced persons</u>

UNHCR welcomes the pledge made by the Government of ROC at the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in December 2011 to ratify the Kampala Convention by 2013, to adopt and implement the Guiding Principles on Internal Displacement and to adopt a national legislation for the implementation of the Kampala Convention.[12]

Recommendation:

- Ratify the Kampala Convention and enact national legislation on internal displacement.

Human Rights Liaison Unit
Division of International Protection
UNHCR
March 2013

[11] Convention on the Rights of the Child, Committee on the Rights of the Child, 43rd session, Concluding observations: THE REPUBLIC OF THE CONGO, paragraphs 33 and 34, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/449/09/PDF/G0644909.pdf?OpenElement

[12] UN High Commissioner for Refugees, *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, Opcit, page 64.

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies

- Universal Periodic Review:

Congo

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to the Congo.

1. **Treaty Body Reports**

Committee on the Elimination of Discrimination Against Women
CEDAW/C/COG/CO/6, 51st Session
1 March 2012

Trafficking and exploitation of prostitution
27. The Committee welcomes the cooperation agreement signed on 20 September 2011 with Benin to combat trafficking. However, it is concerned about the lack of data on trafficking in women and girls in the State party. Given the high rates of prostitution of women and girls in the country, the Committee is particularly concerned about the lack of information on exploitation of women in prostitution. The Committee is further concerned about the absence of a comprehensive law and strategy aimed at combating trafficking in human beings.

28. The Committee recommends that the State party:

- **(a) Carry out a study to investigate the scope, extent and causes of human trafficking and forced prostitution, particularly of women and girls, including through the collection and analysis of data on trafficking and exploitation of women in prostitution, and provide information on the results of the study, along with sex-disaggregated data, in its next periodic report;**
- **(b) Adopt a comprehensive law on trafficking which fully complies with article 6 of the Convention to strengthen mechanisms for the investigation, prosecution and punishment of trafficking offenders;**
- **(c) Increase international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and to harmonize legal procedures aiming at prosecution and punishment of traffickers;**
- **(d) Carry out a comprehensive approach in addressing the question of prostitution, including exit programmes for women and girls who wish to leave prostitution;**
- **(e) Address the root causes of prostitution of women and girls, including poverty, in order to eliminate the vulnerability of women and girls to sexual exploitation and trafficking and undertake efforts for the rehabilitation and social reintegration of victims;**
- **(f) Ratify, without delay, the United Nations Convention against transnational organized crime and the Palermo Protocol to prevent, suppress and punish trafficking in persons, especially women and children; and**

(g) Ratify the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

Refugee women

39. While welcoming the good cooperation between the State party and Office of the United Nations High Commissioner for Refugees (UNHCR), the Committee is concerned about the absence of a legal framework for the refugee status determination process; the lack of recognition of gender-related forms of persecution as a basis for refugee status and the absence of a gender-sensitive procedure. The Committee is further concerned about reports that some refugee women and girls are subjected to sexual and gender-based violence and abuse, and victims have limited access to law enforcement mechanisms and justice.

40. The Committee recommends that the State party:

(a) Establish, within a clear timeframe, a national legislative framework that improves the effectiveness and accuracy of the refugee status determination process, recognize gender-related forms of persecution as a basis for refugee status, and ensure that women or girls seeking asylum alone or as part of a family are given an equal opportunity to present their asylum claim in a gender-sensitive procedure;

(b) Address the situation of refugee women in the Republic of the Congo in particular with respect to the means used to protect these women from all forms of violence and the establishment of mechanisms for redress and rehabilitation, take steps to investigate, prosecute and punish all perpetrators of violence against refugee women, and continue to collaborate with the international community, especially UNHCR, in these efforts; and

(c) Accede to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention on the Status of Stateless.

Committee on the Elimination of Racial Discrimination

CERD/C/COG/CO/9, 74th Session

23 March 2009

17. The Committee notes with concern that the level of registration of births among indigenous people is low and that some indigenous people lack identity documents.

The Committee recommends that the State party redouble its efforts to ensure that all births among indigenous peoples are registered and that such registered individuals are provided with personal identity documents. The Committee encourages the State party to bring civil status registration centres closer to the communities where indigenous people live (art. 5 (d)).

18. The Committee notes with concern the unequal enjoyment of economic, social and cultural rights by citizens and non-citizens, in particular refugees and asylum-seekers from, the Democratic Republic of the Congo and Rwanda, and the difficulties they encounter in acquiring refugee status.

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee invites the State party to redouble its efforts to improve the situation of refugees and asylum-seekers, in particular by strengthening its asylum system and the national institutions working in this area, including the National Refugee Assistance Committee (CNAR), the Refugee Status Eligibility Commission and the Refugee Appeals Commission. The State party is invited to:

(a) Establish an effective procedure for determining refugee status;
(b) Contemplate the adoption of a law on asylum; and
(c) Take all necessary and effective steps to ensure the successful integration of refugees in the Congo (art. 5 (e)).

The Committee invites the State party to step up its efforts to promote harmonious relations between refugees and the various ethnic and cultural groups living in the north of the Congo, specifically through campaigns to foster awareness of tolerance and inter-ethnic understanding (art. 7).

Committee on the Rights of the Child
CRC/C/COG/CO/1, 43rd Session
20 October 2006

Non discrimination
26. While noting with appreciation that the Constitution prohibits discrimination, the Committee is concerned at the fact that those dispositions do not cover the full scope of article 2 of the Convention, inter alia birth and disability. The Committee is also concerned at the inadequate enforcement of the Constitution with respect to non-discrimination. It is further concerned in particular at the widespread ethnic-based discrimination against indigenous people. Furthermore, the Committee is concerned at the visible gender-based discrimination in education, clearly reflected in the ratio boys/girls in schools, and the trivialization of rape. Finally, the Committee is concerned at the discrimination against HIV/AIDS infected children, street children and refugee children.
27. The Committee recommends that the State party:
(a) Ensure that the Constitution is amended to prohibit discrimination on any grounds covered by the Convention;
(b) Intensify its efforts to ensure that existing legislation guaranteeing the principle of non-discrimination is fully implemented, in accordance with article 2 of the Convention;
(c) Adopt a comprehensive strategy, including comprehensive public education campaigns, and take appropriate legislative and administrative measures to ensure the actual elimination of discrimination based on any grounds against vulnerable groups, including indigenous populations, girls, HIV/AIDS infected children, street children and refugee children;
(d) Provide specific information in its next periodic report on measures and programmes relevant to the Convention taken with a view to eliminating discrimination against any group of vulnerable children; and
(e) Provide specific information in its next periodic report on the measures and programmes relevant to the Convention adopted by the State party to follow up on the Declaration and Programme on Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001, taking into account the Committee's general comment No. 1 (2001) on the aims of education).

Birth registration and identity
33. While welcoming the law in which birth registration has become compulsory, the Committee expresses concern at the fact that a large number of children have still not been registered. The Committee is also concerned at registration fees and penalties attached to late birth registration, which may hinder the process. The Committee is

also concerned at the lack of civil registry offices in remote areas and the insufficient awareness of the importance of registration.

34. In the light of article 7 of the Convention, the Committee recommends that the State party establish an efficient and accessible birth registration system, including for noncitizens, which covers its entire territory, including through inter alia:

- **(a) Promoting awareness and appreciation of the importance of birth registration through mass campaigns by providing information on the procedure of birth registration, including the rights and entitlements derived from the registration, through television, radio and printed materials or other means;**
- **(b) Ensuring that birth registration is free of charge;**
- **(c) Introducing mobile birth registration units in order to reach remote areas;**
- **(d) Taking appropriate measures to register those who have not been registered at birth, including indigenous children and refugee children; and**
- **(e) Enhancing its cooperation with relevant United Nations programmes, funds and specialized agencies such as UNICEF and the United Nations Population Fund (UNFPA).**

Refugee children

73. […] However, the Committee is concerned that access to education and health is not fully guaranteed for refugee children. The Committee is also concerned at reports of increased violence and discrimination against refugee children, especially from Rwanda, and at the fact that Rwandan children are not integrated in the regular educational system.

74. The Committee recommends that the State party ensure access to health and education to all refugee children in the country and that it take all appropriate measures to protect refugee children, in particular girls, from physical or mental violence, including sexual abuse, maltreatment, exploitation and neglect. In this respect, the Committee further recommends that the State party seek the technical assistance of the Office of the United Nations High Commissioner for Refugees.

Economic exploitation, including child labour

79. While noting with appreciation the ratification by the State party of relevant ILO Conventions, as well as the adoption of an appropriate legislative framework, the Committee is concerned at the lack of data on the issue of economic exploitation of children. The Committee is also concerned at information according to which children, in particular indigenous children, are exploited economically. Finally, the Committee is concerned at reports that children, in particular from the Democratic Republic of Congo and indigenous children, are recruited to clean sewers and latrines manually, which is extremely hazardous to their health.

80. The Committee urges the State party to develop and implement, with the support of ILO, UNICEF, and NGOs, a comprehensive plan of action to prevent and combat child labour, in full compliance with ILO Conventions No. 138 and No. 182, which the State party has ratified, and to pay special attention in this regard to vulnerable and migrant children.

Trafficking

83. While noting that the State party has ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others on 25 August 1977, the Committee is concerned at the absence of legislation prohibiting trafficking in persons, particularly children.

84. The Committee recommends that the State Party take the necessary measures to criminalize trafficking in persons, particularly children, by enacting legislation in conformity with the Convention on the Rights of the Child and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Committee also recommends that the State party ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which supplements the United Nations Convention against Transnational Organized Crime.

85. The Committee further recommends that the State party provide information in its next report on:

- **(a) Programmes and activities aiming at the psychological recovery of children victims of trafficking;**
- **(b) Existing bilateral or multilateral agreements on the issue of trafficking ensuring that special attention is paid to the needs of children who are returned to their country of origin; and**
- **(c) Progress made in relation to a study which the State party should conduct on the root causes and implications of trafficking.**