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DEMOCRATIC REPUBLIC OF CONGO

Memorandum to the DRC Government: Amnesty International's recommendations for legal reform

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Before and after the government led by the *Alliance des forces démocratiques pour la libération du Congo* (AFDL) came to power on 17 May 1997, its officials have said on a number of occasions that they wished to break with the past characterised by a cycle of mismanagement of the country, formerly known as Zaire. It is in the spirit of contributing to the Democratic Republic of Congo (DRC) Government's efforts to make a clean break with the past of widespread human rights violations and impunity that in August 1997 Amnesty International submitted to the DRC authorities recommendations for measures to ensure the promotion and protection of human rights for all the people in the DRC. The authorities had not responded by November 1997.

For many decades, people in the Democratic Republic of Congo (ex-Zaire) have suffered a seemingly unbreakable cycle of human rights abuses by agents of the government and armed groups. Most of the abuses, particularly extrajudicial executions and other deliberate and arbitrary killings, "disappearances", arbitrary arrests, unlawful detentions and torture and other forms of cruel, inhuman or degrading treatment or punishment, have continued largely because they were ordered or condoned by political or security force leaders with responsibility to prevent them.

Amnesty International recommends the following measures to the DRC Government as necessary to help prevent such violations taking place in the future and, when they do occur, to identify and bring those responsible to justice:

I. ensure that the country has a competent, independent and impartial judiciary.

II. create an effective police force with knowledge of the rights it is its duty to protect.

III. establish a fully independent and impartial body empowered to investigate reports of human rights violations or failure by the judiciary to award redress to victims.

IV. desist from using the death penalty and commute death sentences already imposed by the courts. Adopt and implement Amnesty International's 14-Point Program for the Prevention of Extrajudicial Executions and officially condemn such killings. Ensure control over the armed forces' chain of command and restrict use of lethal force to situations only where lives are at risk.

V. adopt and implement Amnesty International's 14-Point Program for the Prevention of "Disappearances" and publicly condemn "disappearances". Set up or support and cooperate with investigations into reports of "disappearances" which have already occurred.

VI. implement the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment which Zaire acceded to in March 1996, and implement Amnesty International's 12-Point Program for the Prevention of Torture.

VII. curtail the detention powers of branches of the security forces to conform with international standards.

VIII. ensure that national legislation and practices provide safeguards for all persons deprived of their liberty.

IX. abrogate and amend laws and their interpretation by the authorities which authorise imprisonment for activities which constitute peaceful exercise of human rights.

X. respect and ensure to all individuals within the DRC the rights recognized in the International Covenant on Civil and Political Rights, without distinction of any kind.

XI. protect the freedom of thought, conscience and religion.

XII. protect from derogation the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

XIII. renounce *refoulement* and abide by the 1951 Convention relating to the status of refugees, to which Zaire acceded in 1965, and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, which Zaire ratified in 1973.

Amnesty International looks forward to sending a delegation to the DRC to discuss the concerns and recommendations in this memorandum with Congolese authorities with responsibility for the protection and promotion of human rights.

KEYWORDS: AI AND GOVERNMENTS1 / RECOMMENDED ACTIONS1 / LEGISLATION / DEATH PENALTY / INDEPENDENCE OF JUDICIARY / MSP / HUMAN RIGHTS EDUCATION / INVESTIGATION OF ABUSES / ARMED CONFLICT / CENSORSHIP / REFOULEMENT / DISAPPEARANCES / EXTRAJUDICIAL EXECUTION / TORTURE/ILL-TREATMENT / ARBITRARY ARRESTS / UNLAWFUL DETENTION / POLITICIANS / ETHNIC GROUPS / FORMER GOVERNMENTS /

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TABLE OF CONTENTS

DEMOCRATIC REPUBLIC OF CONGO

Memorandum to the DRC Government: Amnesty International's Recommendations for legal reform

1. Introduction

Amnesty International regularly submits recommendations to governments involved in preparing constitutional and other legal reforms in order to ensure that provision is made for the safeguard of human rights, in particular those that fall within Amnesty International's mandate. The organization has sometimes acted at the request of the authorities concerned and at other times on its own initiative. For example, we made recommendations for the constitutional protection of human rights to the Burundi Government in 1991 and submitted observations and comments on a draft Namibia Constitution in 1990. We made recommendations in respect of the Draft Basic Law of the Hong Kong Special Administrative Region in 1988, as well as the draft Bill of Rights in 1990. Before that, we submitted recommendations to the government of the Philippines in 1986. Between 1988 and 1990 we also submitted legal reform recommendations to the governments of the former German Democratic Republic and the Federal Republic of Germany, Jordan, Viet Nam, Pakistan, South Korea and Nepal. In 1994 we recommended to the South African Government to maintain the unqualified right to life in the country's Constitution. During 1994 and 1995 we submitted recommendations to the South African Government to ratify human rights treaties and to ensure that the treaties are fully implemented in the country.

Amnesty International seeks the release of prisoners of conscience. These are people imprisoned, detained, or otherwise physically restricted on account of their political, religious or other conscientiously-held beliefs, ethnic origin, sex, colour or language, provided they have not used or advocated violence. The organization works for fair and prompt trials for all political prisoners, including those who may have used or advocated violence, and on behalf of such people detained without charge or trial. It opposes the death penalty, extrajudicial executions, "disappearances" and torture and other cruel, inhuman or degrading treatment or punishment without reservation. Amnesty International condemns torture, deliberate and arbitrary killings and "disappearances" by anyone, including armed political groups.

Amnesty International bases its work on the principal foundations of international human rights law - the Universal Declaration of Human Rights (1948) and other international standards which have developed from the provisions enshrined in the Universal Declaration, including, in particular, the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). The Democratic Republic of Congo (DRC) is party to these particular

treaties and is bound by their provisions. The organization carries out human rights work with complete impartiality as regards political ideologies or groupings.

Before and after the government led by the *Alliance des forces démocratiques pour la libération du Congo* (AFDL) came to power on 17 May 1997, its officials have said on a number of occasions that they wished to break with the past characterised by a cycle of mismanagement of the country, formerly known as Zaire. Amnesty International believes that the political, social and economic mismanagement under former President Mobutu Sese Seko went on for so long because institutions intended to hold leaders accountable were in many cases not allowed to function or in other cases were simply non-existent. Institutions such as the judiciary and law enforcement were largely neglected and misused to perpetrate or perpetuate human rights violations. We believe that unless these and other institutions are allowed to exercise their mandate and obligation to promote and protect human rights, the cycle of impunity will not be broken and mismanagement of public affairs will continue. It is in the spirit of contributing to the DRC Government's efforts to make a clean break with the past of widespread human rights violations and impunity that Amnesty International is now submitting recommendations for measures to ensure the promotion and protection of human rights for all the people in the DRC.

2. Background

For many decades, people in the Democratic Republic of Congo (ex-Zaire) have suffered a seemingly unbreakable cycle of human rights abuses by agents of the government and armed groups. Most of the abuses, particularly extrajudicial executions and other deliberate and arbitrary killings, "disappearances", arbitrary arrests, unlawful detentions and torture and other forms of cruel, inhuman or degrading treatment or punishment, have continued largely because they were ordered or condoned by political or security force leaders with responsibility to prevent them.

Amnesty International has been monitoring and campaigning against human rights abuses in the DRC for more than 20 years. The organization has concluded that most of the abuses were politically-motivated and targeted at political opponents and their known or suspected supporters. Other abuses that were not politically-motivated were committed in a context where the perpetrators expected the same impunity they enjoyed for political crimes. Occasions when action has been taken against perpetrators have tended to be the exception and occurred mainly when the offences threatened the power or affected friends or relatives of those in authority.

Under colonial rule, then Congo experienced one of the most brutal regimes characterised by thousands of extrajudicial executions, mutilations, "disappearances", arbitrary arrests, detention of prisoners of conscience, torture and other forms of cruel, inhuman or degrading treatment or punishment. The first five years of Congo's independence were some of the most violent in the country's history. Again political leaders were responsible for ordering or condoning most of the politically-motivated killings, torture and other human rights crimes. No one responsible for these abuses was ever brought to justice. On the contrary, some of the leaders, such as former President Mobutu, who is widely believed to have ordered or condoned some of the worst human rights violations, went on to take their place as respectable "statesmen" on the international stage. He and other leaders persecuted their opponents, including by publicly or secretly extrajudicially executing many of them. Some were executed after summary and unfair trials. These included former government ministers Evariste Kimba, André Mahamba, Jérôme Anany and Emmanuel Bamba who were publicly executed in June 1966. Victims or their relatives were powerless to bring cases before a competent, independent and impartial judicial authority. The willingness of the Congolese political leaders and the international community to ignore the violations and forget the victims became the linchpin for the continuing cycle of impunity throughout the colonial and post-colonial eras of Congo.

i. Human rights violations under President Mobutu

Within months of coming to power, former President Mobutu banned political parties and severely restricted the right to freedom of expression and association under the guise of national unity. Those who tried to express views contrary to those of the government or the ruling party were subjected to severe human rights violations. Scores of army officers and political opponents were subjected to extrajudicial executions, public executions following unfair trials, banishment, "disappearances", long-term detention without charge or trial, torture and other human rights violations. Many in the international community supported or condoned these abuses claiming that unbridled political freedom had caused the civil wars in the early 1960s. In some cases, people now acknowledge that unacceptable civil, political and other human rights violations had been allowed to continue unchecked for more than 30 years.

In March 1996, the African Commission on Human and Peoples' Rights, a body created to monitor compliance with the African Charter on Human and Peoples' Rights (ACHPR), decided that the facts presented to it in several complaints filed before it between 1989 and 1993 constituted a situation of serious or massive violations of human rights in then Zaire.

While much of the world ignored human rights violations under President Mobutu, particularly in the context of the "cold war", Amnesty International continued to report on and campaign against human rights violations in ex-Zaire[1]. In 1986, the organization reported that between July 1984 and July 1985 Zairian government forces had extrajudicially executed, tortured and "disappeared" hundreds of unarmed civilians in and around Moba in northeastern Shaba region. The human rights violations followed armed clashes between government troops and members of the *Parti de la révolution populaire* (PRP), Party of the Popular Revolution. The government initially denied the reports but admitted a few months later that human rights violations had occurred.

More recently, in a report entitled, *Zaire: Lawlessness and insecurity in North and South-Kivu* (AI Index: AFR 62/14/96), published in November 1996, Amnesty International highlighted human rights violations that had occurred in North and South-Kivu regions in the context of politically-motivated armed ethnic conflict. In an earlier report entitled, *Zaire: Violence against democracy* (AI Index: AFR 62/11/93), published on 16 September 1993, the organization highlighted politically-motivated human rights abuses that had occurred in North-Kivu and Shaba regions. In North-Kivu the initial main targets of the conflict were members of the Hutu and Tutsi ethnic groups, while in Shaba it was members of the Luba ethnic group from Kasai. In these and many other reports, Amnesty International appealed to the authorities to end human rights violations and to ensure that abuses were independently and impartially investigated, and that the perpetrators were brought to justice. However, the cycle of impunity continued unabated, showing high-level political complicity in the abuses.

ii. Reports of human rights abuses by the AFDL and its allies

When in September 1996 the AFDL launched an armed offensive against former President Mobutu's forces, the armed group said it sought to defend the rights of Banyamulenge to Zairian citizenship. Amnesty International has received numerous testimonies from Rwandese and Burundian refugees, Congolese nationals and human rights and humanitarian organizations that thousands, or even tens of thousands of refugees and Congolese nationals were massacred by various fighting groups, including former President Mobutu's forces, members of the AFDL and their allies. These reports have been consistently denied by AFDL and other DRC government officials. There is

[1] Reports published by Amnesty International include: *Human rights violations in Zaire*, May 1980; *The ill-treatment and torture of political prisoners at the detention centres in Kinshasa*, September 1980; *Zaire - Reports of torture and killings committed by the armed forces in Shaba region*, March 1986; *Outside the law - Security force repression of government opponents, 1988-1990*, September 1990.

an urgent need for a full investigation to establish the truth about these reports, identifying the perpetrators and victims, with a view to bringing to justice those responsible. Amnesty International urges the government to cooperate fully with the UN investigation into these reported abuses.

Hundreds or more Hutu refugees are reported to have been deliberately and arbitrarily killed along the Bukavu - Shabunda axis in South-Kivu region. Large numbers of skeletons have been reported on the Kingulube - Shabunda road. Sources in the area report that what is left to indicate that people were killed in several places on the axis are bits of their property and mass graves. For example, credible sources have informed Amnesty International that scores of refugees were killed at Mpwe, about 12 kilometres west of Shabunda.

As many as 200 Rwandese refugees, including children, were reportedly killed on 13 May 1997 by members of the AFDL in and around Mbandaka, the capital of Equateur region in western Democratic Republic of Congo. Most were reportedly killed around the *Office national des transports* (ONATRO) building, while dozens were killed on the road to Mbandaka airport. The Red Cross reportedly buried 116 bodies on 13 May, 17 on 14 May and 17 in subsequent days. Witnesses said a further 140 refugees were killed by the AFDL at Wenji.

On 29 May four Rwandese refugees, including a child, and a Congolese Save the Children Fund (SCF) worker, were reportedly shot dead when members of the AFDL at Karuba, 45 kilometres west of Goma, opened fire on them.

Some of the people extrajudicially executed by the AFDL were reportedly unarmed members of the former Zairian security forces. For example, on 27 May a former army sergeant known as Pele was killed when AFDL soldiers stabbed him in the ribs and shot him nine times, including in the head. Sergeant Pele had been in a group of other former soldiers who were moving to new homes. They were intercepted by three AFDL soldiers near Bois Mazal, Kinsuka-cimetière. The AFDL soldiers then subjected the former soldiers to severe torture, which reportedly included electric shock and whipping. Sergeant Pele was killed when he reportedly told the AFDL that he preferred death to torture.

Many people who have been arrested by the AFDL are reported to have been subjected to torture and other forms of cruel, inhuman or degrading treatment. Ill-treatment has consisted of women being beaten across the breasts or even raped. Men have been beaten, including on their genitals. Some of the detainees are reported to have received as many as 40 lashes twice daily. Some members of the AFDL are reported to have spat in the mouths of their victims, a practice that many say is meant to humiliate the victims. Detention

centres notorious for torture in eastern DRC include Katindo military barracks, in a cell known as "Israel", and at the headquarters in Goma of the *Agence nationale de renseignements* (ANR) security service.

Another detention centre notorious for reports of torture is the Goma Gendarmerie headquarters *(8ème Circonscription militaire)* where at least nine men were reportedly tortured by members of the AFDL in late May and early June 1997.The victims, Kamanzi Moshe, Lubenga Alimasi, Kalwira Shindano, Thomas Ezolanga, Jean-Pierre Habimana, Faustin Birindwa (not a former Zairian Prime Minister), Tshiza Yaya Bahati, Tulinabo Tembo and Anzosoni Nombi, were arrested on 29 May 1997 in Goma after they were accused of armed robbery. At the time of their arrest they were reportedly beaten with batons and rifle butts. While in custody they were reportedly burnt with red-hot iron bars on the arms and legs (a form of torture frequently used by former Zairian security forces in eastern Zaire), apparently on the orders of an AFDL government official. Several of the victims have reportedly developed severe infections because of untreated wounds and risk having their limbs amputated. Although it is unclear whether the nine men have been released, Amnesty International is concerned they and other detainees continue to be at risk of torture and other forms of cruel, inhuman or degrading treatment.

Amnesty International has published a number of reports highlighting many of the abuses allegedly committed by members of the AFDL and their allies, including members of the Rwandese Patriotic Army. These reports include *Zaire: Violent Persecution by state and armed groups* (AI Index: AFR 62/26/96), published on 29 November 1996, and a memorandum the organization submitted to the UN Security Council on 24 March 1997. The organization has also issued news releases in response to major incidents of human rights abuses by members of the AFDL. These include one issued on 26 November 1996 protesting against reports of a massacre on or around 18 November 1996 of as many as 500 unarmed Rwandese refugees at Chimanga, south of Bukavu, and another one issued on 23 April 1997 condemning an AFDL blockade of humanitarian access to Rwandese refugees at Kasese and Biaro camps, south of Kisangani.

3. Recommendations for legal reform

As highlighted in the "Background" above, civil, political and other human rights have for many decades been systematically violated on the orders of, or tolerated by, government and security officials legally charged with the responsibility to protect the population. Amnesty International recommends the following measures as necessary to help prevent such violations taking place in the future and, when they do occur, to identify and bring those responsible to justice.

I. The Judiciary

If the rule of law is to be established and maintained in the DRC, it must be based on the reform of the judiciary. Although the DRC is known to have many trained lawyers, magistrates and judges, the judiciary has become ineffectual as a result of government policies and practices, as well as neglect. Significant political, human and material resources will have to be invested to ensure that the country has a competent, independent and impartial judiciary.

The independence of the judiciary is a vital element in the protection of human rights in general and, in particular, to ensure respect of certain specific rights including the right of everyone to be treated equally before the law. All those accused of crimes should have an unequivocal right to be presumed innocent until proven guilty and the right to a fair trial. Legal provisions governing the selection, appointment, tenure and dismissal of judges in a country are among the significant factors which determine their independence. Such provisions are contained in the UN Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1985 (hereafter referred to as the "Basic Principles").

In the past political leaders have exerted intense pressure, including threats of or actual detention or dismissal, on members of the judiciary to issue arrest warrants against political opponents or to convict them. This has had an immensely demoralizing and corrupting effect on the judiciary. The same pressure has been exerted on the judiciary not to arrest, or to release without trial, people suspected of criminal offences. These are practices that the new DRC Government needs to end with immediate effect.

In the past, there have been allegations that some judicial officials may have been appointed or promoted on the basis of their ethnic or political affiliation. It was a common practice, particularly before 1990, for members of the judiciary to be also senior members of the *Mouvement populaire de la révolution* (MPR). This was clearly a violation of Principle 10 of the Basic Principles which states that "Any method of judicial selection shall safeguard against judicial appointments for improper motives". This requires that the authorities responsible for the appointment be institutionally free of the substance or even the appearance of any such improper motive. Similarly judges should enjoy a sufficient degree of security of tenure in order to maintain their independence.

Current practices and the future constitution should ensure guarantees in line with those contained in Principle 10 of the Basic Principles. Persons selected for judicial office should have integrity, ability and appropriate legal qualifications or training. Amnesty International is aware that there are many well-trained Congolese judicial

experts, both in the country and abroad. However, during the initial reform phase, we urge the authorities to request and accept foreign experts and material resources when and where they are required. Amnesty International is ready to assist the DRC Government by lobbying foreign governments and organizations to provide the resources.

Any proceedings to remove or discipline judges will require special safeguards including a fair hearing and an independent review of any decisions to remove them (Principles 17 and 20). Judges may only be removed for reasons of incapacity or "behaviour that renders them unfit to discharge their duties" rather than for any form of misconduct irrespective of its effect on their fitness for office (Principle 18). We would also urge that judges of the lower courts benefit from the same measures aimed at preserving their independence.

In order to ensure that the integrity of the judicial system and the independence of the judiciary are fully protected by the constitution, the government and future constitution should prohibit the creation of courts which would displace the jurisdiction of ordinary courts or tribunals using established procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals. This is in accordance with the obligations of the DRC under Article 7 of the African Charter on Human and Peoples' Rights (ACHPR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

II. Law enforcement forces

An effective judiciary requires an effective police force or law enforcement body. The creation of numerous paramilitary police forces in former Zaire was largely responsible for human rights violations. This was compounded by the fact that the forces were virtually never accountable to the judiciary. In many cases members of the police forces were serving private as opposed to public interest in the persecution of political opponents and the victimization of personal rivals or enemies. As a result, private or unofficial detention centres proliferated around the country, particularly in Kinshasa. These practices should be exposed and ended.

Human rights violations are less likely to occur if law enforcement agencies - the army, the police and the prison services - are made accountable for their actions to the people whose rights it is their duty to protect. Over the years, the UN has adopted a number of treaties, codes and declarations to prevent the kind of human rights

violations mentioned in this memorandum - arbitrary arrest, detention without trial, ill-treatment and torture, extrajudicial executions and excessive use of force and firearms. These include:

- The Standard Minimum Rules of the Treatment of Prisoners and Procedures for the Effective Implementation of the Rules;
- The Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment;
- The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- The Code of Conduct for Law Enforcement Officials and the Guidelines of the effective implementation of the Code of Conduct for Law Enforcement Officials;
- The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and
- The Rules for the Protection of Juveniles Deprived of their Liberty.

In addition, specific provisions of the ICCPR and the ACHPR prohibit arbitrary arrest, detention without trial, torture and extrajudicial executions.

Soon after taking power, officials of the AFDL-led government have indicated that the government intends to train a new police force. In order to attain a capability to protect and promote human rights, the training of a new police force should include human rights training. Concern for victims of human rights abuses should be a basic requirement for recruitment into the police force. All law enforcement officials should have a basic knowledge of the rights it is their duty to protect. Middle and senior ranking officials should be given a thorough understanding of human rights standards and ensure that they are scrupulously met.

The performance of the security forces has in the past been undermined by government failure to pay them adequately. Many of them spent many months without pay, leading them to resort to criminal activities. Many members of the security services arrested, tortured or even killed civilians who failed to give them money or property. In September 1991 members of the security forces protesting against inadequate and irregular pay killed several hundred unarmed civilians and looted property in several cities, including Kinshasa. This should change if a future DRC police force is to feel that it is valued by the society which it is mandated to protect. The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials

requires that law enforcement officials should be "adequately remunerated and provided with appropriate conditions", that "effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials" and that "particular provisions shall be made ... for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of the provisions shall be made known to the public".

In the immediate term, it is essential that Congolese law enforcement officials be required to observe the country's own laws. The DRC's Code of Penal Procedure and other laws are quite specific about powers of arrest and detention of law enforcement personnel. Individuals suspected of committing serious offences may be arrested without warrant by anyone who has the status of *Officier de police judiciaire* (OPJ). Senior officers of all branches of the security forces have this status, while junior members of the forces have the status of *Agent de police judiciaire* (APJ).

Those with OPJ status may arrest anyone suspected of committing an offence punishable by more than six months imprisonment and place them in custody. They are required by Article 4 of the Code of Penal Procedure to take them directly to a judicial authority ("... *le conduire immédiatement devant l'autorité judiciaire compétente* ..."). Because of practical requirements of police inquiries, suspects may be detained for up to 48 hours on the orders of an OPJ before they are either released or referred to a representative of the Procuracy (*Ministère public*). Before the AFDL-led government came to power, the procedures for detaining suspects in order to carry out police inquiries (*garde à vue*), including the legal limits on such detentions, appeared to be those set out in Articles 73 to 81 of Ordinance 78/289 of 3 July 1978 (*l'Ordonnance no. 78/289 du 3 juillet 1978 relative à l'exercice des attributions d'officiers et d'agents de police judiciaire*). This ordinance stipulates, among other things, that detainees must be examined by a doctor if they so request and that detainees' families must be informed of their arrest. The legal status of this and other ordinance laws is unclear under the new government. However, there is no legal justification for the prolonged detention without charge or trial.

After a maximum of 48 hours, suspects are required to be either released or referred to a representative of the Procuracy. Procurators (*Officiers du ministère public)* can order their continued detention, but are required by Article 28 of the Code of Penal Procedure to refer all detainees to court within five days so that they may, if necessary, be remanded in custody by a judge. Court remand orders are valid initially for 15 days, but may be renewed for further successive periods of 30 days. From these legal provisions, it is clear that virtually all those held since the AFDL-led government came

to power are unlawfully detained in violation of both international standards and Congolese national laws.

The armed forces' powers of arrest and detention are also circumscribed by law. The procedures followed by the *Auditorat militaire*, Military Procuracy, for imprisoning members of the armed forces are similar to those applicable in civilian cases. The circumstances in which soldiers may arrest and imprison civilians are extremely limited except during times of international conflict and when a state of emergency has been declared. Military courts may also try members of insurrectionist groups ("*des bandes insurrectionelles*"). This is regardless of whether or not such groups are operating in areas where a state of emergency has been declared.

In general, the law places strict limits on the powers of the security forces to detain prisoners and provides for suspects to be referred promptly to a judicial authority. The judicial authorities, officials of the Procuracy and the *Auditorat militaire*, are responsible for ensuring that detentions are carried out in conformity with the law and that legal limits on periods of *garde à vue* are not exceeded. In practice, members of the AFDL, and those of the *Forces armées zairoises* (FAZ) before them, have often carried out arrests and detentions in total disregard of these laws.

In many countries, security services such as the ANR have no powers of arrest. Information about crimes detected by security services is passed on to the regular police for further investigation and possible action. The functions and powers of the ANR and any other security services created by the AFDL are yet to be clarified. Amnesty International recommends that a statute setting up the ANR be made public, ensuring that its powers of arrest and oversight by the judiciary conform to international human rights standards and Congolese national laws.

III. Human rights body or "ombudsman"

In order to ensure that institutions created to protect and promote human rights do so effectively, the government should establish a fully independent and impartial body, consisting of people chosen for their integrity and trusted by all sections of the community, empowered to investigate reports of human rights violations or failure by the judiciary to award redress to victims. The body, known as "ombudsman" in some countries, should be empowered to investigate substantive allegations of extrajudicial executions, torture, "disappearances", claims that detainees are kept in unacknowledged detention or may have been killed in custody, and all killings in disputed circumstances by the security forces.

In order to be effective, such a body should have full and effective powers to take interim measures to prevent or halt impending or ongoing human rights violations and to compel attendance of witnesses, including government and security force officials, and production of relevant documents and other evidence required for the inquiry. It should be empowered to take effective measures to protect witnesses and potential witnesses from all forms of threat and intimidation.

This body, or another competent, independent and impartial body, should have full and effective powers to make unannounced visits to places where people are believed to be held in unacknowledged detention. The findings of the investigations of these bodies should be published in full. In the cases of deaths in custody or of people who have died in suspicious circumstances in confrontations with the security forces, the relatives should have access to the post-mortem report and be allowed to have a qualified representative attend the post-mortem examination.

An investigative body needs political support and resources, but not interference. After admitting that members of the security forces had committed atrocities in and around Moba in 1984 and 1985, former President Mobutu created an investigative body known as the *Département des droits et libertés du citoyen* (DLC). Whereas the DLC helped to release political detainees, it failed to prevent arbitrary arrests and unlawful detentions. It also failed to investigate reports of torture, "disappearances", extrajudicial executions and other violations or to ensure that those responsible were brought to justice. Lacking the political support it needed to be effective, the DLC was abolished in 1990.

The recommendations above are based on the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (see Section V below). Principle II provides for an independent commission of inquiry with effective powers of investigation in cases of an "apparent existence of a pattern of abuse". Principles 15, 16 and 17 state respectively that all those involved in any investigation should be protected from violence and intimidation; that the families of those alleged to have been extra-legally killed should have access to all information relevant to any investigation and have a right to insist that a qualified representative be present at the autopsy; and that the methods and findings of any investigation be made public in a report. Finally, Principle 7 states:

> "Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to their records."

In making this recommendation, Amnesty International recognizes the important role that the courts should be empowered and enabled to play in ordering court appearance or release of detainees kept in unacknowledged detention and at risk of torture or "disappearance". Courts can also order investigation of human rights violations and bringing the perpetrators to justice. However, in many countries, court orders are frequently flouted by police and other members of the security forces, and access to the courts is often restricted to those who are able to find a lawyer willing to represent them. In cases of such difficulties, a body such as an ombudsman would be crucial in the disclosure of the truth and administration of justice.

IV. Protection of the right to life

The right to life, guaranteed by Article 3 of the Universal Declaration of Human Rights and Article 6 of the ICCPR, is one of the most fundamental of all human rights. Tens of thousands of people in the territory covered by the DRC have been deprived of their right to life, some after being sentenced to death, but most as victims of extrajudicial executions by government forces or of deliberate and arbitrary killings by armed groups.

i. The death penalty

Amnesty International is unconditionally opposed to the death penalty, considering it to be a violation of the ultimate right to life. It is not only the ultimate form of cruel, inhuman or degrading punishment, it is also irrevocable and always carries the risk that the innocent may be put to death. Over the past decade we have regularly opposed the use of the death penalty in former Zaire and campaigned against all death sentences and executions in many other countries around the world, including the United States of America and China.

There has been significant progress towards ending the use of the death penalty in Africa in the six years since 1991. During this period, Angola, Guinea-Bissau, Mauritius and South Africa abolished the death penalty in law, joining Cape Verde, Namibia, Sao Tomé and Principe and Mozambique which had abolished it as of 1991. By the end of 1996, 13 African countries were de facto abolitionist. These countries had not carried out executions for 10 or more years, bringing the number of countries which have abolished the death penalty in law or practice in Africa to 23.

As the DRC Government looks ahead to establishing a new Constitution and other legal reforms, Amnesty International recommends that the government desists from using the death penalty. Death sentences already imposed by the courts should be

commuted. The organization urges President Laurent-Désiré Kabila to emulate the example of Malawian President Bakili Muluzi who told an Amnesty International delegation visiting Malawi on 22 July 1997 that he will commute the death sentences of all prisoners currently sentenced to death and pledged not to sign any further orders of execution while President. To avoid situations where the government may come under pressure to use the death penalty, it is important to pass legislation abolishing the death penalty. The government should go further to ratify the Second Optional Protocol to the ICCPR which imposes an international obligation on States Parties not to use the death penalty. Three African countries, Mozambique, Namibia and Seychelles, have ratified this treaty, out of a world total of 29.

ii. Extrajudicial executions

Amnesty International estimates that since the early 1960s, several hundred thousand unarmed civilians have been arbitrarily and deliberately killed by combatants belonging to Congolese governments and armed opposition groups. Victims have included women, children and the physically infirm. Virtually no perpetrators or those who ordered the killings have been brought to justice. Governments and armed groups have consistently denied responsibility and failed to order or cooperate with any independent investigation.

With a view to preventing extrajudicial executions and other unlawful and deliberate killings, Amnesty International has drawn up a 14-Point Program for the Prevention of Extrajudicial Executions (see Appendix I) and called on governments to implement it, and on individuals and organizations to promote it. On the responsibility of governments, Amnesty International says:

> "The accountability of governments for extrajudicial executions is not diminished by the commission of similar abhorrent acts by armed opposition groups. Urgent action is needed to stop extrajudicial executions and bring those responsible to justice".

This statement is equally true and applicable to leaders of armed opposition groups, such as the AFDL before the current government came to power in May 1997.

Over the last three decades thousands of unarmed civilians have been killed by former President Mobutu's forces. One such case was the killing of students at Lubumbashi university campus in May 1990. The government failed to allow a full investigation of the incident and its military and government officials refused to cooperate with a parliamentary inquiry. The government also obstructed an investigation by the UN Special Rapporteur on extrajudicial, arbitrary and summary executions. A trial in early 1993 in connection with the attack on Lubumbashi university students resulted in the conviction of the then governor of

Shaba. However, the trial was seen by many in Zaire as cover up for high-level political responsibility for the attack.

Amnesty International has received numerous testimonies and reports of deliberate and arbitrary killings by AFDL troops in eastern DRC since September 1996. Most of the victims are reportedly members of the Hutu ethnic group. They were shot, bayonetted or beaten to death. Tens of thousands of refugees were forced to flee into the forests where many later reportedly died from disease, starvation or exhaustion. Many former members of the FAZ and unarmed civilians are reported to have been summarily executed on and shortly after 17 May 1997 by members of the AFDL in Kinshasa. On 26 May 1997 as many as 120 unarmed civilians were reportedly extrajudicially executed by the AFDL in Uvira town. None of these reports has been subjected to an independent and impartial investigation to identify the perpetrators with a view to bringing them to justice.

Amnesty International is urging the DRC Government to adopt and implement the organization's 14-Point Program for the Prevention of Extrajudicial Executions. The Program calls on the government to demonstrate its opposition to such killings by officially condemning them. The government should ensure control over the armed forces' chain of command and restrict use of lethal force to situations only where lives are at risk. Death squads should be prohibited and secret detention centres abolished.

The government should ensure unrestricted access to detention centres and prisoners by judicial officials, human rights and humanitarian organizations. In particular, the International Committee of the Red Cross should be allowed full access to all prisoners without further delay.

The DRC authorities should cooperate with the UN and other competent, independent and impartial investigations into allegations of mass killings and ensure that the investigations' recommendations are fully implemented. Perpetrators of such killings should be given a fair trial without recourse to the death penalty.

V. Safeguards against "disappearances"

"Disappearances" violate some of the most fundamental human rights protected under international law. Victims are removed from the protection of the law and are subjected to torture or even extrajudicial execution. Many are never seen again and their relatives are left in anguish without knowing whether their loved ones are alive or dead. The UN has said that the systematic practice of "disappearances" is of a nature of a crime against humanity.

Many opponents of the former Zairian Government were "disappeared" in circumstances where it was virtually impossible to identify the culprits or the places to which the victims were taken. From the start of the 1990s, people believed to be members

of the security services in Kinshasa snatched dozens of people from their houses or other places, usually at night but also in broad daylight, and the victims were never seen again. The perpetrators, locally known as *hiboux* (owls), often travelled in unmarked vehicles without number plates. Witnesses were generally unable to identify the perpetrators who were usually armed. In early 1996, Amnesty International received reports of the "disappearance" of Tutsi in South-Kivu region. Many remain unaccounted for and it is believed that they were secretly executed by members of the former Zairian security forces and their allied militia.

More recently, Amnesty International has received reports of "disappearance" of possibly tens of thousands of civilians in the context of the armed conflict between members of the AFDL and the FAZ. Thousands of unarmed civilians, most of them Rwandese refugees, have "disappeared" as a result of operations by the AFDL. It is feared that many of them may have been deliberately and arbitrarily killed or have died from starvation, exposure or curable illnesses. For example, as many as 40,000 refugees from Kasese and Biaro camps, south of Kisangani, "disappeared" after being reportedly attacked by AFDL combatants and Zairian civilians. There was concern in April 1997 that 52 Hutu refugee children abducted by the AFDL from Lwiro hospital, 30km west of Bukavu, and kept in a closed container, beaten up and denied food and drink for three days could have been "disappeared" if there had not been international outcry.

Amnesty International has drawn up a 14-Point Program for the Prevention of "Disappearances" (see Appendix II) which, if implemented, the organization believes would help eliminate "disappearances" in the DRC. As in the case of other human rights violations, the government should publicly condemn "disappearances" and announce that it will not tolerate them. Relatives, lawyers and the courts should be promptly informed of a suspect's place of detention. The authorities should set up or support and cooperate with investigations into reports of "disappearances" which have already occurred. The government should ensure that the judiciary and security agencies with arrest powers have a central and a local registry of all arrests. Members of the security forces or other officials failing to register suspects in custody should be brought to justice. Before any arrest takes place, the arresting officer should be routinely required to reveal his identity to the suspect and relatives or a local government official. Except in situations where a security officer is obliged to intervene to stop a crime, arrests without a warrant issued by the court should be strictly prohibited.

VI. Safeguards against torture

Torture is a fundamental violation of human rights, condemned by the General Assembly of the United Nations as an offence to human dignity and prohibited under national and international law. Immediate steps are needed to confront torture and other

cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

During former President Mobutu's regime Amnesty International received countless testimonies of torture which usually consisted of systematic beatings of criminal suspects or political opponents. Many were stabbed with bayonets or beaten with military belts (*cordelettes*) and gun butts. There were also a number of detainees who reported having been subjected to electric shocks. In recent months, the organization has received numerous reports of beatings of criminal suspects or political opponents by members of the AFDL or the ANR. Amnesty International is concerned that some of those subjected to severe ill-treatment amounting to torture reported being beaten on the stomach and genitals for men and on the breasts or raped for women. In some cases, particularly in eastern DRC, it has been reported that members of the security forces often order victims to open their mouths and spit in them. Torture has also been reported in Kinshasa. For example, Richard Mpiana Kalenga, a university student, was reportedly severely beaten with military belts (*cordelettes*) and truncheons (*matraques*) and trampled on by members of the AFDL at a detention centre at Mont Fleury in Kinshasa's Ma Campagne district, soon after his arrest on 26 June 1997. He was also reportedly subjected to submersion in an abandoned swimming pool full of dirty water.

Amnesty International is urging the DRC Government to implement the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment which Zaire acceded to in March 1996, and to make a declaration under Article 22 of the Convention against Torture which provides for individual complaints. It should also implement Amnesty International's 12-Point Program for the Prevention of Torture (see Appendix III). The organization believes that implementation of this program and of the Convention against Torture will illustrate the government's commitment to abolish torture in the DRC and worldwide.

In order to abolish torture in the DRC, the government should ensure that all reports of torture are investigated by an independent body. Detainees should be brought before a judicial authority soon after their arrest and be allowed to freely inform the authority about their treatment in custody. Detaining authorities should be ordered to ensure that detainees have prompt and regular visits by their relatives, lawyers and doctors. The courts should order investigations of allegations of torture and those found responsible should be brought to justice. The DRC Government should issue clear public instructions to its security forces that torture will not be tolerated and action will taken against those responsible.

VII. Safeguards against arbitrary arrests and unlawful detentions

Since the Universal Declaration of Human Rights was adopted by the United Nations General Assembly in December 1948 the individual's right not to be subjected to arbitrary arrest or detention has been recognized by the international community. International standards have evolved which indicate clearly when detention can be considered to be arbitrary and also suggest measures to be taken to ensure that arbitrary detention does not occur. The DRC through its predecessor, the Republic of Zaire, has committed itself to these standards by acceding to several important international treaties concerning human rights, notably the ICCPR (ratified in 1976) and the ACHPR (ratified in 1987).

The Universal Declaration of Human Rights is relatively brief in guaranteeing in its Article 9 that:

> "No one shall be subjected to arbitrary arrest, detention or exile."

However, Article 9 of the ICCPR goes into significantly more detail about the State's obligations when someone is detained. It states:

> "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by the law.
>
> 2. Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
>
> 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

Although the Covenant itself does not specify the time limit within which anyone who is arrested or detained is to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power, the Human Rights Committee which is established under the terms of the Covenant has specified that this "must not exceed a few days".

The ACHPR also prohibits arbitrary detention and guarantees certain rights for those who have been detained. Article 6 of the African Charter protects the right to liberty and security of person and prohibits arbitrary arrest and detention. Article 7 states:

> "1.Every individual shall have the right to have his cause heard. This comprises:
>
> a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
>
> b) the right to be presumed innocent until proven guilty by a competent court or tribunal;
>
> c) the right to defence, including the right to be defended by counsel of his choice;
>
> d) the right to be tried within a reasonable time by an impartial court or tribunal."

Most recently, the international community has reaffirmed the importance it attaches to specific measures to prevent arbitrary detention in the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, which was adopted by the UN General Assembly on 9 December 1988. It is clear that the Body of Principles seeks to prevent any cases in which prisoners are held for long periods by branches of the security forces without having their cases reviewed by an independent authority. Principle 4 states:

> "Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority."

The Body of Principles states that the words " a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the

strongest possible guarantees of competence, impartiality and independence. Furthermore, Principle 11 states:

> "1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or be assisted by counsel as prescribed by law.
>
> 2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
>
> 3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention."

Amnesty International has received numerous reports of arrests of people suspected of committing crimes during former President Mobutu's regime or of opposition to the AFDL. Virtually none of those detained is known to have had their arrest ordered or reviewed by an independent judicial official. Some have been released but many remain in custody. Opponents of the AFDL who have been targeted in recent weeks for arrest include students. For example, Richard Mpiana Kalenga, a law student, was arrested on 30 June and severely ill-treated following a student demonstration at Kinshasa University on 26 June 1997 in support of opposition leader Etienne Tshisekedi who had been addressing the students. Etienne Tshisekedi and a number of his supporters had themselves been held for several hours on the night of 26 June. Richard Mpiana Kalenga, who was released on 2 July, and at least six other students believed to be sought by members of the ANR were reported in July to be in hiding. Dozens of suspected supporters of former President Mobutu have been arbitrarily arrested and unlawfully detained, some in conditions amounting to cruel, inhuman or degrading treatment, such as at Ndolo military detention centre.

It is clear that most of the detentions carried out by the ANR or the AFDL without the authorization of the judiciary or any other independent authority do not conform to many of the principles and standards which have received international recognition, nor to international treaties which the DRC is obliged to abide by.

There appears to be a widely held misconception, particularly among the security forces, that government agents have a right to carry out arrests and detentions without reference to the judiciary. As in previous years, there appears to be a belief among political and security force leaders that they have every right to detain suspects indefinitely while their cases are investigated by members of these services.

The long-term detention of prisoners for investigation by the security forces without the authorization of a judicial or other independent authority constitutes in itself a violation of human rights. Such detentions are even more serious when, as has been the case in the DRC for many years, detainees have been held incommunicado; incommunicado detention in itself creates conditions in which detainees may be ill-treated or tortured, "disappeared" or extrajudicially executed without their relatives or legal counsel being aware of it or able to seek redress.

Amnesty International recommends that the detention powers of branches of the security forces should be curtailed to conform with international standards and the requirements of international treaties to which the DRC is party. Amnesty International recommends the detention powers of each branch of the security forces, if they differ in any way from those accorded to officials with the status of *Officier de police judiciaire* (OPJ) under the terms of the Code of Penal Procedure and other relevant legislation, should be made more explicit in law, so that the legality of detentions does not depend on interpretation given to laws establishing particular branches of the security forces or governing the status of their officers.

VIII. Safeguards for those deprived of their liberty

It is essential that national legislation and practices provide certain safeguards for all persons deprived of their liberty. These include: the right to be informed of their rights, prompt notification of their families, prompt access to families, lawyers, independent medical attention and a court and the right of *habeas corpus*.

Offering a possibility to detainees or their families to challenge in court the authorities responsible for unlawful detentions would be an important safeguard against violations of detainees' rights. In the past, families of detainees in the DRC have virtually never dared to challenge detentions in this manner. Nevertheless, elsewhere in the world, countries with different judicial systems have established mechanisms which allow families of detainees or their legal representatives to demand the appearance of a detainee before a magistrate and to require the authorities responsible for their detention to explain the basis in law of the arrest and detention.

The judicial authority before whom the detainee appears must have the power to release any person whose detention it deems unlawful or unnecessary.

In English and Portuguese-speaking countries, this mechanism is known as *habeas corpus*. In Spanish-speaking countries the mechanism is known as *amparo*. It is used not only to prevent arbitrary detentions, but also to prohibit torture and "disappearances": security forces responsible for detentions and interrogations would have less recourse to torture if they could be obliged, at any moment, to bring a detainee before a court of law.

In countries where prisoners "disappear" or are secretly killed, as has been the case in the DRC, this procedure allows relatives to oblige the security forces to produce information to the judge, indicating whether a person is or has been detained by the security forces.

Although this system has not been used in the DRC up to now, we believe that the DRC should adopt it and include it in its national laws and Constitution. The government is obliged under Article 9 (4) of the ICCPR to allow those deprived of their liberty to question the lawfulness of their detention before the court.

A fundamental principle is that to be able to exercise one's rights effectively one must know that these rights exist; Principle 13 of the Body of Principles provides prompt notification of one's rights:

> "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation of his rights and how to avail himself of such rights."

In particular, both the ICCPR and the Body of Principles require notification of the right to counsel. Article 14 (3) (d) requires the accused "to be informed, if he does not have legal assistance" of the right "to defend himself in person or through legal assistance of his choosing" and Principle 17 (1) requires that the detained person be informed promptly after the arrest of this right.

International standards require governments to provide immediate notice of detention to families of detainees and prompt access by detainees to their families. Rule 92 of the Standard Minimum Rules provides:

> "An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution".

Similarly, Principle 16 (1) of the Body of Principles provides that detainees are entitled to notify members of their families about their detention promptly after they are placed in custody. Even in exceptional circumstances, Principles 15 and 16 (1) of the Body of Principles make clear that notice may not be delayed more than a matter of days. Principle 19 guarantees detainees the rights of access to their families.

Article 14 (3) of the ICCPR provides that everyone charged with a criminal offence is entitled "to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing". The Body of Principles states that even in exceptional circumstances a detainee's right to adequate time and facilities for defence preparation and to communicate with counsel "shall not be denied for more than a matter of days".

The Standard Minimum Rules and the Body of Principles provide that pre-trial detainees must have access to a doctor promptly after they have been detained. The Standard Minimum Rules provide in Article 24 that the detention facility's "medical officer shall see and examine every prisoner promptly after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures". Rule 91 provides that prisoners in pre-trial detention are entitled to see their own doctors and dentists. Similarly, Principle 24 of the Body of Principles requires that "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.

Article 9 (3) of the ICCPR guarantees that "anyone arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise judicial power ...". The Human Rights Committee has explained in its General Comments 8 paragraph 2 that Article 9 (3) requires that delays in being brought before a judge "must not exceed a few days". Article 9(4) of the ICCPR guaranteeing the right to *habeas corpus* or *amparo*, states that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The Body of Principles has a similar guarantee, in Principle 37, of prompt access to a judicial or other authority which "shall decide without delay upon the lawfulness and necessity of detention." Moreover, under Principle 32 (1) "[a] detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful".

IX. Protection of the right to freedom of expression and other rights

Amnesty International bases its action on the Universal Declaration of Human Rights and other human rights instruments such as the ICCPR and the ACHPR. The organization adopts as prisoners of conscience persons imprisoned for exercising their fundamental rights without using or advocating violence. These rights include freedom of movement, freedom of thought, conscience and religion, freedom of opinion and expression and freedom of assembly and peaceful association, guaranteed by articles 18, 19, 21 and 22 of the ICCPR and articles 8, 9, 10 and 11 of the ACHPR.

For several decades there have existed in the DRC legislation and practices which impose prison sentences for the non-violent exercise of human rights and which, when applied by the authorities, result in the imprisonment of people whose only offence is to have exercised fundamental human rights proclaimed by the Universal Declaration of Human Rights. Amnesty International adopts such persons as prisoners of conscience and demands their release, even if they are accused of or convicted on charges recognized by national legislation.

Amnesty International is concerned that in recent months the AFDL has effectively banned opposition political parties, leading to the arrest, detention and ill-treatment of people unwilling to join or opposed to the AFDL. Amnesty International is concerned that members of opposition political parties have been subjected to human rights violations for exercising their right to freedom of expression and association, following an announcement by the new government that political activity outside the AFDL had been banned. Supporters or members of political parties, such as the *Union pour la démocratie et le progrès social* (UDPS), Union for Democracy and Social Progress, which have decided to remain independent of the AFDL, have been arrested and ill-treated by AFDL soldiers.

Action by the AFDL to prohibit peaceful assembly has in some cases resulted in serious injury and loss of life. For example, at least one person reportedly died from bullet wounds on 25 July 1997 when members of the AFDL in Kinshasa opened fire on demonstrators belonging to the *Parti lumumbiste unifié* (PALU). Several dozen other victims sustained injuries caused by gunshots, and rifle butt and baton beatings.

The AFDL-led government has also clamped down on activities by human rights groups. Many human rights activists have had to stop their public human rights activities following death threats and intimidation. Others are continuing human rights work at great risk to themselves. For example, a member of the *La voix des sans voix* human rights group was briefly detained when he tried to investigate the case of a political detainee.

Fundamental human rights, such as those mentioned above, must be protected by national legislation and the future constitution without restrictions, other than those provided for by the ICCPR. Outside or before the appropriate constitutional framework, it is necessary to urgently review current legislation and its interpretation by judicial, security or government authorities, in order to ensure that laws which authorise imprisonment for activities which constitute peaceful exercise of human rights are abrogated or amended.

X. Safeguards against discrimination

The AFDL has publicly stated that one of the main reasons for taking up arms against the government of former President Mobutu was the discrimination exercised by the former government against members of the Tutsi ethnic group in South and North-Kivu. Indeed, Amnesty International has published reports expressing concern about the persecution in Kivu of Tutsi and Hutu, and in Shaba region of members of the Luba ethnic group originating from Kasai. While Amnesty International does not take a view on whether or not people whose human rights are violated should take up arms to recover or protect their rights, it has expressed concern about discrimination targeting particular ethnic or political groups. The principle of non-discrimination is guaranteed by Article 2 of the ICCPR which requires states parties "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Article 14 (1) of the ICCPR provides that:

> "(a) all persons shall be equal before the courts and tribunals"

Article 14 (3) identifies a number of minimum guarantees concerning fair trial to which everyone charged with a crime is entitled "in full equality".

Article 2 of the ACHPR also guarantees the principle of non-discrimination and states:

> "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political and any other opinion, national and social origin, fortune, birth or other status."

Amnesty International is concerned that the AFDL-led government has failed to condemn reports of, and take action to prevent, human rights violations, including massacres, against members of the Hutu and other ethnic groups which are alleged to have occurred since September 1996. Human rights abuses against Tutsi and against all other ethnic groups should be subjected to the same standards of investigation and legal recourse and the respective perpetrators of the abuses brought to justice.

Discrimination by the AFDL has also been carried out against some women. Women dressed in mini-skirts, trousers or leggings have been publicly undressed, beaten and tortured by the AFDL. Although some members of the government have denied that this is government policy, they are not known to have taken measures to stop the practice and to bring the perpetrators to justice.

XI. Freedom of conscience, religion and movement

Any future Constitution of the DRC should incorporate all the rights and freedoms recognized by universally accepted international human rights instruments such as the Universal Declaration of Human Rights. The fundamental freedom of thought, conscience and religion, as guaranteed by Article 18 of the Universal Declaration and also by Article 18 of the ICCPR, should be explicitly included in the Constitution. In this respect, international standards permit no restrictions on this right (except in respect of the freedom "to manifest" one's religion) and state that it is one of the rights that are non-derogable and may not be suspended in any circumstances.

XII. Non-derogation of fundamental rights

While some derogation from certain provisions of the ICCPR is permitted in times of public emergency, there are some rights which are so fundamental that they may never be derogated from in any circumstances. These non-derogable rights include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion.

Amnesty International urges the DRC Government to ensure that the country's laws and practices contain guarantees to ensure that even in times of emergency certain fundamental rights, in particular the right to life and prohibition of torture, may never be suspended in any circumstances.

Any derogation provisions should be clearly defined and restricted to the most exceptional circumstances. Article 4 of the ICCPR provides that states may only derogate from the provisions of the Covenant "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed", and even then permissible measures of derogation may only be those "strictly required by the exigencies of the situation".

XIII. Safeguards against *refoulement*

Amnesty International opposes the forcible return of any person to a country where he or she may reasonably expect to be subjected to human rights violations such as extrajudicial execution, torture, "disappearance", the death penalty or imprisonment as a prisoner of conscience. As a minimum, the DRC's future constitution should include the guarantees against *refoulement* included in the 1951 Convention relating to the status of refugees and its 1967 Protocol, and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

During 1995 and 1996 the then Zairian Government arrested several dozen Rwandese Hutu refugees and handed them over to the Rwandese government authorities. Those returned faced an uncertain future and many were subjected to arbitrary arrests and unlawful detention in conditions amounting to cruel, inhuman or degrading treatment. In November 1996, several hundred thousand Rwandese and Burundi refugees were forcibly returned to Rwanda after their camps were systematically attacked by members of the AFDL. Many of those who returned were arbitrarily arrested and unlawfully detained, and others have been extrajudicially executed by Rwandese Government forces or arbitrarily and deliberately killed by armed opposition Hutu groups and Tutsi civilians. In May 1997, the AFDL instructed the United Nations High Commissioner for Refugees (UNHCR) to repatriate all Rwandese refugees within 60 days. All these expulsions of Rwandese refugees were clear cases of *refoulement* and violated international law for the protection of refugees.

We urge the DRC Government to renounce *refoulement* and to abide by the 1951 Convention relating to the status of refugees, to which Zaire acceded in 1965, and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, which Zaire ratified in 1973. In cases where refugees or asylum-seekers are accused of recognizably criminal offences in their countries of origin, they should have their cases heard by an independent court to decide whether there is sufficient evidence to justify extradition. In no case should refugees be forcibly returned to a country where the court cannot obtain a verifiable assurance that the refugee will not be subjected to human rights violations, including the death penalty.

4. Conclusion

Amnesty International is confident that the Government of the Democratic Republic of Congo and those charged with responsibility for drafting, reviewing or implementing laws will find the recommendations in this memorandum useful for their work in the protection and promotion of human rights. We urge that those concerned give these recommendations serious consideration and implement them. Amnesty International intends to send a delegation to Kinshasa to discuss the concerns and recommendations in this memorandum with government officials and departments with responsibility for the protection and promotion of human rights. We are committed to supporting the reform process. We will do so particularly by continuing to actively monitor the human rights situation in the DRC and through dialogue with the country's authorities. Furthermore, we will encourage governments and organizations with human and material resources to assist the DRC in its commitment to the creation of a social and political environment in which all Congolese will feel that the cycle of human rights violations and impunity has been broken for ever.

APPENDIX I

Amnesty International

14-POINT PROGRAM FOR THE PREVENTION OF EXTRAJUDICIAL EXECUTIONS

Extrajudicial executions are fundamental violations of human rights and an affront to the conscience of humanity. These unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence, have been condemned by the United Nations. Yet extrajudicial executions continue, daily and across the globe.

Many of the victims have been taken into custody or made to "disappear" before being killed. Some are killed in their homes, or in the course of military operations. Some are assassinated by uniformed members of the security forces, or by "death squads" operating with official connivance. Others are killed in peaceful demonstrations.

The accountability of governments for extrajudicial executions is not diminished by the commission of similar abhorrent acts by armed opposition groups. Urgent action is needed to stop extrajudicial executions and bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of Extrajudicial Executions. It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop extrajudicial executions and to work for their eradication worldwide.

1. Official condemnation

The highest authorities of every country should demonstrate their total opposition to extrajudicial executions. They should make clear to all members of the police, military and other security forces that extrajudicial executions will not be tolerated under any circumstances.

2. Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions. Officials with chain-of-command responsibility who order or tolerate extrajudicial executions by those under their command should be held criminally responsible for these acts.

3. Restraints on use of force

Governments should ensure that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable in order to protect life.

4. Action against "death squads"

"Death squads", private armies, criminal gangs and paramilitary forces operating outside the chain of command but with official support or acquiescence should be prohibited and disbanded. Members of such groups who have perpetrated extrajudicial executions should be brought to justice.

5. Protection against death threats

Governments should ensure that anyone in danger of extrajudicial execution, including those who receive death threats, is effectively protected.

6. No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention and that accurate information about the arrest and detention of any prisoner is made available promptly to relatives, lawyers and the courts. No one should be secretly detained.

7. Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8. Prohibition in law

Governments should ensure that the commission of an extrajudicial execution is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of extrajudicial executions and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9. Individual responsibility

The prohibition of extrajudicial executions should be reflected in the training of all officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force, and in the instructions issued to them. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in an extrajudicial execution. An order from a superior officer or a public authority must never be invoked as a justification for taking part in an extrajudicial execution.

10. Investigation

Governments should ensure that all complaints and reports of extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. The body of the alleged victim should not be disposed of until an adequate autopsy has been conducted by a suitably qualified doctor who is able to function impartially. Officials suspected of responsibility for extrajudicial executions should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation, should be entitled to appoint their own doctor to carry out or be present at an autopsy, and should be entitled to present evidence. Complainants, witnesses, lawyers, judges and others involved in the investigation should be protected from intimidation and reprisals.

11. Prosecution

Governments should ensure that those responsible for extrajudicial executions are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

12. Compensation

Dependants of victims of extrajudicial execution should be entitled to obtain fair and adequate redress from the state, including financial compensation.

13. Ratification of human rights treaties and implementation of international standards

All governments should ratify international treaties containing safeguards and remedies against extrajudicial executions, including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14. International responsibility

Governments should use all available channels to intercede with the governments of countries where extrajudicial executions have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate extrajudicial executions. No one should be forcibly returned to a country where he or she risks becoming a victim of extrajudicial execution.

This 14-Point Program was adopted by Amnesty International in December 1992 as part of the organization's worldwide campaign for the eradication of extrajudicial executions. Similar programs are available on the prevention of torture and "disappearances". For further information contact Amnesty International, International Secretariat, 1 Easton Street, London WC1X 8DJ, UK, or, in your country:

APPENDIX II

Amnesty International

14-POINT PROGRAM FOR THE PREVENTION OF "DISAPPEARANCES"

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied. "Disappearances" cause agony for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; often they are tortured; many are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead.

The United Nations has condemned "disappearances" as a grave violation of human rights and has said that their systematic practice is of the nature of a crime against humanity. Yet thousands of people "disappear" each year across the globe, and countless others remain "disappeared". Urgent action is needed to stop "disappearances", to clarify the fate of the "disappeared" and to bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of "Disappearances". It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop "disappearances" and to work for their eradication worldwide.

1. Official condemnation

The highest authorities of every country should demonstrate their total opposition to "disappearances". They should make clear to all members of the police, military and other security forces that "disappearances" will not be tolerated under any circumstances.

2. Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit "disappearances". Officials with chain-of-command responsibility who order or tolerate "disappearances" by those under their command should be held criminally responsible for these acts.

3. Information on detention and release

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

4. Mechanism for locating and protecting prisoners

Governments should at all times ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained.

5. No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.

6. Authorization of arrest and detention

Arrest and detention should be carried out only by officials who are authorized by law to do so. Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event. Governments should establish rules setting forth which officials are authorized to order an arrest or detention. Any deviation from established procedures which contributes to a "disappearance" should be punished by appropriate sanctions.

7. Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8. Prohibition in law

Governments should ensure that the commission of a "disappearance" is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of "disappearances" and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9. Individual responsibility

The prohibition of "disappearances" should be reflected in the training of all officials involved in the arrest and custody of prisoners and in the instructions issued to them. They should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance". An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance".

10. Investigation

Governments should ensure that all complaints and reports of "disappearances" are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. Officials suspected of responsibility for "disappearances" should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence. Complainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals. The investigation should not be curtailed until the fate of the victim is officially clarified.

11. Prosecution

Governments should ensure that those responsible for "disappearances" are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction.

12. Compensation and rehabilitation

Victims of "disappearance" and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation.

13. Ratification of human rights treaties and implementation of international standards

All governments should ratify international treaties containing safeguards and remedies against "disappearances", including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Declaration on the Protection of All Persons from Enforced Disappearance, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14. International responsibility

Governments should use all available channels to intercede with the governments of countries where "disappearances" have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate "disappearances". No one should be forcibly returned to a country where he or she risks being made to "disappear".

This 14-Point Program was adopted by Amnesty International in December 1992 as part of the organization's worldwide campaign for the eradication of "disappearances". Similar programs are available on the prevention of torture and extrajudicial executions. For further information contact Amnesty International, International Secretariat, 1 Easton Street, London WC1X 8DJ, UK, or, in your country:

APPENDIX III

Amnesty International

Twelve-point program for the prevention of torture

(The 12-Point Program was adopted by Amnesty International in October 1983 as part of the organisation's Campaign for the Abolition of Torture).

Torture is a fundamental violation of human rights condemned by the General Assembly of the United Nations as an offence to human dignity and prohibited under national and international law.

Yet torture persist, daily and across the globe. In Amnesty International's experience, legislative prohibition is not enough. Immediate steps are need to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Amnesty International calls on all governments to implement the following 12-Point Program for the Prevention of Torture. It invites concerned individuals and organisations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to abolish torture and to work for its abolition worldwide.

1. Official condemnation of torture.

The highest authorities of every country should demonstrate their total opposition to torture. They should make clear to all law-enforcement personnel that torture will not be tolerated under any circumstances.

2. Limits on incommunicado detention.

Torture often takes place while the victims are held incommunicado - unable to contact people outside who could help them or find out what it happening to them. Governments should adopt safeguards to ensure that incommunicado detention does not become an opportunity for torture. It is vital that all prisoners be brought before a judicial authority promptly after being taken into custody and that relatives, lawyers and doctors have prompt and regular access to them.

3. No secret detention.

In some countries torture takes place in secret centres, often after the victims are made to "disappear". Governments should ensure that prisoners are held in publicly recognized places, and that accurate information about their whereabouts is made available to relatives and lawyers.

4. Safeguards during interrogation and custody.

Governments should keep procedures for detention and interrogation under regular review. All prisoners should be promptly told of their rights, including the right to lodge complaints about their treatment. There should be regular independent visits of inspection to places of detention. An important safeguard against torture would be the separation of authorities responsible for detention from those in charge of interrogation.

5. Independent investigation of reports of torture.

Governments should ensure that all complaints and reports of torture are impartially and effectively investigated. The methods and findings of such investigations should be made public. Complaints and witnesses should be protected from intimidation.

6. No use of statements extracted under torture.

Governments should ensure that confessions or other evidence obtained through torture may never be invoked in legal proceedings.

7. Prohibition of torture in law.

Governments should ensure that acts of torture are punishable offences under the criminal law. In accordance with international law, the prohibition of torture must not be suspended under any circumstance, including states of war or other public emergency.

8. Prosecution of alleged torturers.

Those responsible for torture should be brought to justice. This principle should apply wherever they happen to be, wherever the crime was committed and whatever the nationality of the perpetrators or victims. There should be no "safe haven" for torturers.

9. Training procedures.

It should be made clear during the training of all officials involved in this custody, interrogation or treatment of prisoners that torture is a criminal act. They should be instructed that they are obliged to refuse to obey any order to torture.

10. Compensation and rehabilitation.

Victims of torture and their dependants should be entitled to obtain financial compensation. Victims should be provided with appropriate medical care and rehabilitation.

11. International response.

Governments should use all available channels to intercede with governments accused of torture. Intergovernmental mechanisms should be established and use to investigate reports of torture urgently and to take effective action against it. Governments should ensure that military, security or police transfers or training do not facilitate the practice of torture.

12. Ratification of international instruments.

All governments should ratify international instruments containing safeguards and remedies against torture, including the International Covenant on Civil and Political Rights and its Optional Protocol which provides for individual complaints.