

# **THE DEMOCRATIC REPUBLIC OF THE CONGO**

## **UNCERTAIN COURSE:**

### **Transition and Human Rights Violations in the Congo**

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## ABBREVIATIONS

ADFL:	Alliance des Forces Démocratiques pour la Libération du Congo, Alliance of Democratic Forces for the Liberation of Congo
ANR:	Agence Nationale de Renseignements, National Intelligence Agency
AZADHO:	Association Zaïroise de Defense Des Droits de l'Homme, Zairian Association for the Defense of Human Rights
BEI:	Bureau d'Etude et d'Investigation, Office of Study and Investigation
CDH:	Centre des Droits de l'Homme et du Droit Humanitaire, Center for Human Rights and Humanitarian Law
DEMIAP:	Détection Militaire des Activités Anti-Patrie, Military Detection of Anti-Motherland Activities
DGM:	Direction Générale de Migration, DGM
DGSE:	Direction Générale de Sécurité Extérieur, General Direction of External Security
DSIR:	Direction Spéciale d'Investigations et de Renseignements, Special Investigations DSP: Division Spéciale Présidentielle, Special Presidential Division
Ex-FAR:	Forces Armées Rwandaises, former Rwandan Armed Forces
FAZ:	Les Forces Armées Zaïroises, Zairian Armed Forces
MPR:	Mouvement Populaire de la Révolution, Popular Movement for the Revolution, Mobutu's party
PALU:	Parti Lumumbiste Unifié, Unified Lumumbist Party
RPA:	Armée Patriotique Rwandaise, Rwanda Patriotic Army
SARM:	Service d'Action et de Renseignements Militaires, Service for Action and Military Intelligence
SNIP:	Service Nationale d'Intelligence et de Protection, National Service of Intelligence and Protection.
UDPS:	Union pour la Démocratie et le Progrès Social, Union for Democracy and Social Progress
UFERI:	Union des Fédéralistes et Républicains Indépendents, Union of Independent Federalists and Republicans
USORAL:	Union Sacrée de l'Opposition Radicale et Alliés, Sacred Union of the Opposition and its Allies
VSV:	La Voix Des Sans Voix Pour Les Droits de l'Homme, Voice of the Voiceless for Human Rights

## SUMMARY

Barely seven months after the establishment in October 1996 of the Alliance of Democratic Forces for the Liberation of Congo (ADFL), its troops toppled the corrupt and dictatorial rule of President Mobutu Sese Seko over what was then known as Zaire. Moves by the Mobutu government to strip of their nationality the Banyamulenge, ethnic Tutsi with deep roots in the province of South Kivu, and to deport them triggered the conflict which gathered momentum as other groups joined in. Violence became a means of political change only after people's expectations for a peaceful transition to democracy withered away while Mobutu, a consummate manipulator, stalled for seven years on convening elections. Mobutu also excelled in inciting ethnic strife to divide his opponents and to deflect popular pressure for change.

The ADFL established a new order by formally taking power and appointing its president as head of state. A constitutional decree gave the new president sweeping legislative, executive and judicial powers reminiscent of the Congo's authoritarian past. He is empowered to legislate by decree, to head the council of ministers, whose members he appoints and is empowered to dismiss. Although the decree provides for the independence of the judiciary, the president can dismiss judges, magistrates and the public prosecutor.

Upon taking office, in late May 1997, President Laurent Kabila promised a transitional agenda that would lead to legislative and presidential elections in two years. While his governing Alliance undertakes in its charter to be open to the affiliation of other political parties, organizations of civil society, as well as individuals who would adhere to its ideological base, in practice the ADFL enforced a strict ban on political activities. The ban affects both political parties friendly to the ADFL, and those opposed to its exclusive hold on power. The appointment in October 1997 of a constitutional commission which excluded non-ADFL members, in a first move towards the implementation of the electoral calendar, was an indication of this exclusiveness.

In its bid to monopolize power, the government of the Congo severely cracked down on those political parties with any credible claim of popularity and national presence. Police and a plethora of security agencies attacked their meetings, public and private, and arrested their supporters and often subjected them to torture and ill-treatment. The attacks were strategically targeted to cripple the infrastructure of these parties, and frighten away their militants, particularly those in the youth branches and the student movement who to a large extent give the opposition its vitality and credibility. Human rights defenders who stepped forward to denounce the abuses themselves became the targets of arbitrary detentions and ill-treatment.

The bustling private press of Kinshasa maintained the critical stance to government that it had under Mobutu. Authorities showed some tolerance of criticism, as long as issues they deemed sensitive, such as corruption in high circles of government, were not raised. Premises of newspapers which crossed the line were raided and ransacked and their journalists were detained for weeks at length.

*THE POLITICAL AND CIVIL SITUATION IN THE CONGO IS ALSO DANGEROUS FOR AVERAGE CONGOLESE. MEMBERS OF THE OLD ARMY CONTINUE TO OPERATE WITHIN THE CONGO AS SEPARATE GANGS, BUT ALSO WITHIN THE NEW ARMY AND NEW SECURITY AGENCIES. THE GOVERNMENT HAS YET TO INTEGRATE SOLDIERS FROM DIFFERENT REGIONS, ETHNIC BACKGROUNDS, OR FROM NEIGHBORING COUNTRIES, UNDER A UNIFIED COMMAND STRUCTURE. TENSIONS BETWEEN COMPETING MILITARY UNITS LED TO SEVERAL SHOOTOUTS IN WHICH CIVILIAN BYSTANDERS WERE KILLED. THE NEW AUTHORITIES FAILED TO ADDRESS THE MUCH NEEDED REFORM OF THE FAINTED AND INEFFECTIVE JUDICIAL SYSTEM THEY INHERITED FROM THE MOBUTU ERA SO THAT THE JUDICIAL PROTECTION OF RIGHTS REMAINS A DEAD LETTER.*

Ironically, the transition process initiated and then strangled under Mobutu, which was encouraged by civil society groups and churches, had generated solid building blocks of democratic achievements. These included relative progress in respect for freedom of expression, association and assembly, and a measure of multipartyism. The process of popular consultation that launched the democratization process under Mobutu had generated broadly accepted national guidelines and constitutional drafts that offered some promise of a peaceful transition.

These attainments appeared threatened by the severe restrictions introduced by the new rulers on the exercise of civil and political rights. The transition to democracy presupposes at the minimum the respect of these democratic rights and liberties throughout the process:

- the right of access to alternative sources of information, independent from the government;
- freedom of opinion, expression;
- freedom to organize in political parties and to vote and to be elected in periodic elections;
- equal protection of the law.

Free and fair elections can only be the culmination of a transition process in which the enjoyments of these rights has become a reality.

The Congolese had to contend, as of this writing, with vague promises that the ban would be lifted after the elections. Typical of the government's lack of clarity as to when multiparty politics would be restored is the following statement by President Kabila:

We agree that at the end of this period, two years, not a year more, political parties will be created, they will resume their lives. A Constitutional Commission has been created, we will go to elections, we can't do that without political parties.<sup>1</sup>

The president's statement appeared contradictory, suggesting a resumption of multiparty politics both "after" the elections, as well as just before them. The Congo's ambassador to the U.N. was, however, more explicit when he told an audience of Congo observers and nongovernmental organization (NGO) workers in Washington that "parties can resume activities after the constitution is submitted to the people. Anyone can stand for election. For now, security and law and order are more important."<sup>2</sup>

According to the current electoral calendar, which was six months behind schedule as of this writing, the draft constitution will be submitted to the people in December 1998, only four months prior to elections slated for April 1999. In the event that parties will be allowed to "resume their lives" at that moment, the Congolese people will not have had the opportunity to organize in political parties of their choice, to receive and impart information independently from the government, and to properly prepare for elections. It is inconceivable that political parties, and the Congolese population as a whole, can prepare for the promised elections without the enjoyment of fundamental rights.

The ADFL, in the meantime, will have been the only political actor allowed to operate, to propagate its political ideology, and to prepare for the elections. The political field in the Congo has been tilted to the advantage of the ADFL from the advent of that political force to power, and will stay tilted to the end of the "transition," if the ban is maintained.

The Congolese government's promise to organize elections within two years appears to have been accepted uncritically by certain members of the international community as democratic credential, deserving immediate international recognition. The actual practices of the government in suppressing peaceful dissent and subordinating the rule of law to political expediency, documented in this report, do little to encourage confidence in the new government's commitment to abide by these promises.

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<sup>1</sup>"Kabila Says He Will Respect Democracy Timetable," Reuter, Kinshasa, November 19, 1997.

<sup>2</sup>Statement by Andre Kapanga, the Congo's Ambassador to the U.N., Carnegie Foundation, November 20, 1997.

Earlier reports by Human Rights Watch and others have amply indicated that all parties to the war that led to the installation of the ADFL as the governing coalition in the Congo perpetrated deliberate killings of civilians. In particular, these reports indicated that the ADFL had engaged in systematic and indiscriminate killings of refugees during its campaign. These revelations warranted an investigation by the United Nations. The ADFL first denied the U.N. investigators access to areas it controlled during the war. Later, the ADFL-controlled government of Congo stalled the U.N. probe for three months before allowing it, under intense international pressure, to start in early December 1997.

## RECOMMENDATIONS

### **Human Rights Watch Calls on the Government of the Democratic Republic of the Congo (DRC) to:**

1. Guarantee the full respect of human rights and fundamental liberties in accordance with the provisions of international and regional instruments for the protection of such rights and liberties to which the Democratic Republic of the Congo is party, notably the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, taking action to this effect to:

- establish an independent judiciary in accord with the U.N. Basic Principles on the Independence of the Judiciary, institute safeguards against torture and ill-treatment, including by bringing all detainees before a judicial authority without delay; ending routine incommunicado detention; and providing for prompt and regular access to detainees by relatives, doctors and legal counsel;
- institute further safeguards against "disappearance" and extrajudicial execution, including provisions that no one ever be held in secret detention, prisoners only be held in places publicly acknowledged as places of detention, relatives be promptly informed of the whereabouts of prisoners, and prisoners be held only under the supervision of the courts;
- carry out a thorough and independent inquiry into cases of arbitrary detention, beatings, and torture of human rights defenders, journalists, and political activists documented in this and other reports, and bring the perpetrators to justice;
- respect freedom of expression, lift arbitrary restrictions on the print media and public broadcasting and cease harassment and arbitrary detention of journalists, political commentators and others solely for the expression of their opinions;
- uphold the right of people to form political parties by lifting the ban on political activity and guaranteeing the freedom of people to participate in the political process;
- respect freedom of assembly by lifting the arbitrary ban imposed by law and in practice on public meetings and halting arbitrary police actions to ban or disperse such meetings and demonstrations;
- recognize the right of Congolese to form nongovernmental organizations and their right to freedom of association and expression;
- halt arbitrary arrests, intimidation and acts of violence targeting participants in nonviolent civil organizations;
- release all those imprisoned on strictly political grounds or who have not been charged with a recognizable criminal offense;

- recognize the rights of human rights defenders in Congo to monitor, investigate, and speak out on human rights concerns and to associate freely with others nationally and internationally in the promotion and protection of human rights;
  - create an independent electoral commission to ensure an accurate and credible registry of voters and the development of an open and fair process for the registration of political parties and candidates;
  - reform the army and other security institutions as non-partisan, professional and nationally-representative forces under civilian control. All security forces should be trained regarding the relevant international standards and national laws that govern arrest, the use of force, and the rights of suspects.
2. Uphold the binding norms of international humanitarian law, in particular:
- investigate the violation of international humanitarian law by members of the government's military and security forces and hold them criminally accountable for such abuses;
  - cooperate with United Nations Secretary-General's Investigative Mission which is investigating violations of international humanitarian law;
  - permit and facilitate access by humanitarian organizations to civilian populations, including to refugees and the internally displaced, in areas affected by conflict and other emergencies. Provide safe land, river and air access for the provision of humanitarian aid.

**Human Rights Watch urges all members of the International Community, including the United Nations, the European Union and its member states, the Organization of African Unity, the World Bank, Canada, Japan, and the United States to:**

- make bilateral and multilateral assistance to the central government of the Congo contingent upon the government's meeting a series of calibrated benchmarks over time. Minimum conditions for aid to the government should be: 1) demonstrable and tangible progress in the field investigative phase of the U.N. Secretary-General's Investigative Mission; and 2) improved respect for the rule of law, human rights, and democratic principles by the Congolese government.
- vigorously and publicly call on the government of the Congo to improve its human rights record and ensure that accountability for human rights abuses in the Congo is not sacrificed for economic or political expediency;
- immediately reinforce the flow of aid for the Congolese people through organizations of Congolese civil society, international NGOs, United Nations agencies, and channels other than the central government. This aid should focus on humanitarian needs and development projects, as well as human rights and pro-democracy initiatives that focus on key areas such as health, education, infrastructure, and the rule of law;

Respect for these basic rights includes:

- lifting the ban on non-ADFL political activity;
- ceasing its ongoing intimidation and harassment of independent voices, including the political opposition, the nongovernmental community, and the media;
- extending guarantees of freedom of assembly, association, and expression to these groups. Encouraging the participation of civil society in reconstruction initiatives, and including non-ADFL voices in decision-making processes, such as the development of a new constitution, that will shape the new Congo;
- demonstrating a clear commitment to end impunity and to hold its security forces accountable for human rights abuses.



Further aid to the government of the Congo, including for balance of payments support, should be contingent upon the progressive implementation of institutional and legal reforms to guarantee respect for human rights and the rule of law, including:

- judicial independence, guided by the U.N. Basic Principles on the Independence of the Judiciary. Restoration of bilateral and multilateral assistance to the Congolese judiciary at all levels should be an urgent priority once the government meets the basic conditions outlined above;
- respect for the rights of human rights defenders in the Congo to monitor, investigate, and speak out on human rights concerns and to associate freely with others nationally and internationally in the promotion and protection of human rights;
- the creation of an independent electoral commission that can put into place mechanisms to ensure an accurate and credible registry of voters and the development of an open and fair process for the registration of political parties and candidates;
- the reform of the army and other security institutions as non-partisan, professional and nationally-representative forces under civilian control. All security forces should be trained regarding the relevant international standards and national laws that govern arrest, the use of force, and the rights of suspects;
- ongoing cooperation of the government with the U.N. Investigative Mission and subsequent efforts to bring the perpetrators of the massacres to justice.

Additionally, members of the international community should:

- hold regular and frank discussions with the Kinshasa government regarding the nature of their assistance and the precise outcomes of aid. Donors must be willing to monitor and progressively evaluate the impact of their assistance to ensure that aid is well spent and not reinforcing repressive practices;
- establish a special working group to coordinate aid policies and review the performance of the government of the Congo in meeting the aforementioned conditions;
- provide moral, financial, and technical support to civil society organizations to assist them in playing an active role in the transition toward a democratic society and in monitoring, lobbying and campaigning for improved human rights standards.

**Human Rights Watch calls on Canada, E.U. member states, Japan, Norway, the OAU member states, and the United States to :**

Encourage their diplomatic representatives in Kinshasa to commit to the energetic advancement of human rights in the Democratic Republic of the Congo by meeting regularly with the human rights community, publicly censuring human rights abuses, and using their bilateral relations with the DRC to achieve maximum leverage on human rights.

**BACKGROUND**

**The End of the Mobutu Era**

After a seven-month campaign, the rebel Alliance of Democratic Forces for the Liberation of Congo (Alliance des Forces Démocratiques pour la Libération du Congo, ADFL) succeeded in mid-May 1997 in ending almost thirty years of President Mobutu Sese Seko's corrupt and dictatorial rule over what was then Zaire. Mobutu's government decision to strip the Banyamulenge, ethnic Tutsi with deep roots in South Kivu, of their nationality and to drive them out of the country ultimately triggered its demise. As those targeted for expulsion took up arms, other groups joined the uprising and its agenda metamorphosed from ethnic survival to the toppling of the government in the remote capital Kinshasa.

The war had only "technically" terminated the Mobutu era: even before it erupted, in effect, the country was on the verge of disintegration. Mobutu's failure to move the country to democracy over the last seven years of his rule had left it with a collapsed economy, an unruly military, a president whose term in office had long since expired, and an unelected parliament. As detailed in a Human Rights Watch report published in April 1997, it was indeed the failures of Mobutu's successive governments, and of the ruling class in general, in living up to the promises of a peaceful democratic transition which ultimately created the climate for the eruption of violence in the process of political change in the country.<sup>3</sup>

The Congo's internal problems were further compounded by a set of intricate regional crises. In 1994, the country became the unwilling host to an estimated one million refugees who had fled neighboring Rwanda after the Rwandan Patriotic Front defeated the Rwandan government army, the Forces Armées Rwandaises (FAR). Along with the refugees came some 20,000 to 30,000 defeated soldiers, now called ex-FAR, members of armed militia, administrators and political leaders who had directed a genocide that killed at least 500,000 Tutsi and thousands of Hutu associated with Tutsi.

Through the active collaboration of Mobutu's government, the ex-FAR was able to rearm, and to recruit and train thousands of young men from the huge refugee camps along the Rwandan border. By 1995, the ex-FAR and militia were using the camps as sanctuaries from which to launch attacks into Rwanda.

Former government and ex-FAR leaders also used the camps to disseminate their propaganda of ethnic hatred. This agitation spilt over into the host provinces, whose inhabitants consist of diverse local communities, including Zairian Hutu and Tutsi, with the result that interethnic strife sharply intensified in the Kivu provinces. Mobutu's government also persistently failed to cooperate with the International Tribunal on Rwanda by apprehending and extraditing persons indicted for genocide.

Against this background, the Banyamulenge uprising offered Rwanda's government an opportunity to disband the refugee border camps and destroy the ex-FAR and Interahamwe. In the months before the uprising, Banyamulenge had gone to Rwanda for military training and, once the violence began in October 1996, Rwanda Patriotic Army (Armée Patriotique Rwandaise, RPA) troops assisted the rebel offensive. They took part in its decisive battles and aided the ADFL to consolidate its hold on power once it took over.

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<sup>3</sup>For more details, see "Zaire: Transition, War and Human Rights," *A Human Rights Watch / Africa Short Report*, Vol. 9, No. 2(A), April 1997. (available also in French).

Military and diplomatic assistance came to the ADFL also from various other governments in the region which had scores to settle with Mobutu for his role in providing rear bases and logistical support, as well as direct military assistance facilities to armed dissident groups from their countries. Uganda, for example, wanted to contain rebels of the Alliance of Democratic Forces (ADF) who, since 1996, have intensified their attacks against the Kasese area from their bases in eastern Congo. Angola's government sent troops to help the ADFL offensive and to root out the rebel National Union for the Total Independence of Angola (UNITA) from its bases in the Congo. The Angolans also sent back home their guests of almost three decades, former Katangese gendarmes and other separatists who had fled Mobutu in the 1960s and their offspring. The Katangese gendarmes had lived in that country since Mobutu's army, which received decisive mercenary and logistical support from its Western allies, defeated their bid to secede with their mineral-rich province.

The similar strategic agendas of the leaders of Eritrea and Ethiopia, who had won power after wars of liberation against despotic rulers in their own countries, helped to shore up the military and diplomatic efforts of the ADFL. Further, support was provided by Burundi, Zambia, and Zimbabwe. The most significant support, political and military, came from Rwanda.

The economic and moral bankruptcy of Mobutu's thirty-year rule left the resource-rich country derelict, but his collapse raised hopes for the rebuilding of the economy and pursuit of regional economic and political revival. Regional powers which propped Kabila's drive to topple Mobutu were also motivated by the prospects of economic revival that a revitalized the Congo would not fail to bring to the whole central and southern Africa subregions. The Congolese war thus inaugurated a new chapter in Africa's post-Cold War history, one in which leaders broke with strict adherence to the principle of nonintervention in a neighbor's internal affairs that is preached by the Organization of African Unity.

The fighting forced an estimated 600,000 refugees back into Rwanda. Hundreds of thousands of others fled further west into the Congo, including the tens of thousands of armed exiles who used the refugee camps and the largess of humanitarian aid to sustain their political ambitions and designs of military conquest. The United Nation's High Commissioner for Refugees estimated that 213,000 refugees remained unaccounted for as of the last quarter of 1997. Investigations by Human Rights Watch and others have gathered evidence that many fleeing refugees fell victim to human rights abuses committed by all parties to the conflict.<sup>4</sup>

The notoriously abusive soldiers of the former Zairian army (Forces Armées Zaïroises, FAZ) looted supplies and raped scores of civilians in their flight from the frontline as the ADFL advanced on their positions. They destroyed schools, churches, and clinics throughout the Congo. Armed soldiers from the Hutu army of the former Rwandan government and the militia also killed an unknown number of civilians during their flight in attempts to prevent other refugees from repatriating to Rwanda, and to force Congolese civilians to surrender to them food and other valuables. The troops of the former government were also reported to have used unarmed refugees as human shields in confrontations with the rebels, leading to many deaths of civilians in cross fire.

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<sup>4</sup>For more details see *Ibid*, and also the following Human Rights Watch short reports: "Attacked by All Sides": Civilians and the War in Eastern Zaire," March 1997; "Forced to Flee: Violence Against the Tutsi in Zaire," July 1997.

Human Rights Watch's report "What Kabila is Hiding: Civilian Killings and Impunity in Congo," published in October, amply documented that ADFL troops, and their Rwandan government backers, engaged in extensive and systematic massacres of refugees, many of whom were hunted down on the run and at temporary encampments.<sup>5</sup> In many instances, members of the local population, who were often unwilling witnesses to the killings, were forced to clean up massacre sites.

Civil war had returned to North and South Kivu by mid-1997. Opponents of the ADFL, arousing deeply-rooted ethnic resentments, skillfully portrayed the change of government as an occupation by "foreign forces:" the Tutsi-dominated ADFL army and its Rwandan government supporters. Remnants of Mobutu's army joined the attacks by Rwanda's Hutu exile army and local militia on both ADFL's soldiers and the local Tutsi populations.

## **The New Order**

### ***The ADFL's Charter***

The ADFL's charter was cited as the legal basis for its assumption of power, and for the transitional government of national salvation installed shortly thereafter (see below). It is therefore important to examine the ADFL's make up, basic law, and the content of the political ideology it is aggressively seeking to propagate, all being factors that may continue to influence political and human rights developments in the country for a long time to come.

Four political parties from eastern Congo formed the ADFL on October 18, 1996, at Lemera in South Kivu province. These were:

- the Popular Revolution Party (Parti de la Revolution Populaire, PRP), which Kabila founded in 1967 at the peak of the Lumumbist rebellion and then described as "Marxist-oriented." It survived in the remote eastern region of the Fizi and Barka mountains;
- the People's Democratic Alliance (Alliance Démocratique du Peuple, ADP), led by the ADFL Secretary General Deogratias Bugera, from Rutshuru, is composed mainly of ethnic Congolese Tutsis, the Banyamulenge;
- the Revolutionary Movement for the Liberation of Zaire (Mouvement Révolutionnaire pour la Libération du Zaire, MRLZ), led by Masusu Nindaga, composed primarily of Bashi in Bukavu area of South Kivu;
- the National Council of Resistance for Democracy (Conseil National de Résistance pour la Démocratie, CNRD), led by the late Andre Kisase Ngandu, composed mainly of Kasaians, of the Luba tribe of Eastern Kasai.

The charter signed by the four parties defines their alliance as a structure for politico-military action aimed at dismantling the dictatorial government then in place in the Congo, and the establishment of a genuinely democratic government, based on real, popular legitimacy. As a political movement, the alliance, according to the preamble of the charter, is "open to political parties, organizations of civil society, as well as to any Congolese determined to put in practice all the military, political, and other means so as to lead the democratic forces of change."<sup>6</sup> The charter proclaims the ADFL's adherence to all the human rights set out in the Universal Declaration of Human Rights and the Organization of African Unity's (OAU) charter.

Article 8 defines the "ideological base" of the ADFL as being its belief that all power emanates from the people and is founded on inalienable human rights. In Article 23, the ADFL gives itself the right to manage all state

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<sup>5</sup> "What Kabila is Hiding: Civilian Killings and Impunity in Congo," A Human Rights Watch Short Report, Vol. 9, No. 5 (A), October 1997.

<sup>6</sup> Alliance des Forces Démocratiques pour la Libération du Congo, Statuts, Préambule.

possessions, funds, and capital, as well as what is on the ground and under it, including mineral and natural reserves on the entire liberated territories.

### ***General Policy Directives***

Alliance members signed on October 16, 1997 a document entitled “General Policy Line of the Alliance,” which spelled out a set of policy directives to the attention of members.<sup>7</sup> The domestic policy line recommended to them was to adopt a positive attitude toward opposition political parties and individuals who advocated a radical change of regime. Those who opposed the alliance were to be considered part and parcel of Mobutu’s camp. Concerning the referendum for elections, the alliance informed its members that it did not consider itself bound by decisions of the National Sovereign Conference or the High Council of the Republic—the Transitional Parliament—whose members the ADFL said were coopted by Mobutu. Instead, the ADFL opted for free, democratic elections, to be organized outside the then existing power framework. The alliance deferred the choice between a federal or unitary state to the verdict of the people after the liberation.<sup>8</sup>

### ***ADFL’s “Takeover Declaration”***

Following the takeover of the capital, Kinshasa, in the early hours of May 17, 1997, the Alliance of Democratic Forces for the Liberation of Congo/Zaire issued a solemn “Declaration of Takeover of Power” from its temporary seat in Lubumbashi. Observing that Mobutu’s flight and the collapse of his army had left the country in a power vacuum, the “Grand Council of the ADFL” declared that it “has taken power under the leadership of its president, Laurent Desiré Kabila.”<sup>9</sup>

Citing the ADFL charter as its statutory authority, the nine-point declaration provided for:

- the nomination of the ADFL’s president as head of state;
- the formation of a transitional government of national salvation within seventy-two hours;
- the convening of a constituent assembly within sixty days to draft a provisional constitution which will govern the transitional period;
- the suspension of all existing “pseudo-constitutional” acts, and the institutions they govern;
- the recognition of all bilateral and multilateral agreements of the republic which conform with the interests of the nation.<sup>10</sup>

This declaration had the force of a constitutional text until May 28, when a constitutional decree was proclaimed. It signaled the end of Mobutu’s Second Republic and the start of a new era in the Congo’s modern history, since it brought about the following:

- the change of the republic’s name from Zaire to the Democratic Republic of the Congo, the country’s name at independence;
- revocation of the Constitutional Act of the Transition, and the distinction it established between two formal political groupings: the “presidential movement” and the opposition;

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<sup>7</sup>Alliance des Forces Démocratiques pour la Libération du Congo, “Ligne de Politique Générale de l’Alliance,” October, 1996.

<sup>8</sup>Ibid.

<sup>9</sup>“Declaration de Prise de Pouvoir,” Alliance Des Forces Démocratiques Pour la Liberation Du Congo (AFDL), Lubumbashi, May 17, 1997, News Agencies.

<sup>10</sup>Ibid.

- the dissolution of the High Council of the Republic - Transitional Parliament (Haut Conseil de la République - Parlement de la Transition, HCR-PT);
- the dissolution of Mobutu's transitional government, all courts and tribunals, and the National Commission for Elections.

Furthermore, the recognition of the republic's previous international obligations was an acknowledgement that it continued to be bound by the human rights and humanitarian laws and treaties to which Zaire was a party.

### ***Constitutional Decree No. 97-003***

On May 28, 1997, a day before stepping into his new function as head of state, Kabila signed Constitutional Decree No. 97-003, which provides for the organization and exercise of power until the adoption of a constitution by the constituent assembly. The decree entered into force on the same day. It comes in three chapters, and cites the ADFL's "Takeover Declaration" of May 17 as its frame of reference.

The first chapter, entitled General Dispositions, sets the time frame for the application of the decree: it would remain in force until the adoption of a transitional constitution by the constituent assembly. Article 2 provides: "In the Democratic Republic of Congo, the exercise of individual and collective rights is guaranteed, with the reservation of respect of law, public order, and morals."<sup>11</sup> This article offers the only reaffirmation of human rights protection, but, in contrast to the former constitution, provides no detailing of the human rights guaranteed.

Chapter two defines state institutions as being the president of the republic, the government, and the courts and tribunals, and spells out the respective powers of each in three sections. The decree gives sweeping powers to the president, who exercises legislative and executive powers, while playing a dominant role also in the judicial branch.

Article 5 vests legislative authority in the head of state when it provides that he "exercises legislative power by decree-laws discussed in the council of ministers. He is the head of the executive and of the armed forces. . . ." Article 6 empowers him to appoint and dismiss ministers, officers, functionaries, and judges, on the recommendation of the Supreme Council of the Judiciary, despite provisions for the independence of the judiciary.

The decree's "Final Provisions" stipulate that pre-existing laws and regulations that do not conflict with its provision remain in force and revoke constitutional provisions, laws, and regulations provisions that do so.<sup>12</sup>

### ***Kabila's Inauguration Statement***

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<sup>11</sup>"Decret-Loi Constitutionnel No. 003 du 27 Mai, 1997 Relatif à l'Organisation et l'Exercice du Pouvoir en République Démocratique du Congo," Art. 2.

<sup>12</sup>*Ibid.*, Chapter III, Articles 13 to 15.

In his inaugural speech Kabila underlined his determination not to preside over a continuation of Mobutu's second republic. The ADFL, he said, was not party to "the so-called National Sovereign Conference," and the Democratic Republic of the Congo that it revived could only be governed by a constitution written by a constituent assembly.<sup>13</sup> He went on to say "to start the process of democratization by legislative elections, as our detractors would have wanted us to, would have led to tragic consequences from several standpoints. This would have meant the continuation of the previous regime with all that would have meant."<sup>14</sup> An ordinary legislative assembly would have meant political chaos, argued the president, as a multitude of political groupings confronted each other. The alternative he prescribed was to start the democratization process with elections for a constituent assembly. The advantage of this option, he said, was to give to the new authorities the time they needed to establish a new administration, and to "realize the first electoral consultation, not in the confrontations and divisions, but within a concerted effort. . . All this is possible only with the ADFL as a federating framework, and receptacle of the national cohesion needed at this stage."<sup>15</sup>

The president's inaugural speech gave the first tangible indication that the ADFL would be preparing for a non-party election rather than the pluralistic contest expected by internal political groups and advocates of democratization in the country. The president referred to the "three hundred" political parties who would create chaos in the street of Kinshasa if they were to be allowed to campaign for an ordinary legislature from the onset of the ADFL's era; and dismissed the political class as "decadent" and self-serving.

Having passionately argued for the ADFL's approach to democratization, the president proposed a clearly defined calendar, that would lead up to legislative and presidential elections by April, 1999, after the adoption of a constitution in the interim:

- June 30, 1997: the president announces the coming formation of a constitutional commission for the drafting of the constitution;
- July 1997: the president appoints the chairman of the commission;
- August 1997: formation of the commission;
- September 1, 1997: formal launching of the commission;
- March 1, 1998: the commission submits a draft constitution and its report to the head of state;
- June 1998: call for the election of members of the constituent assembly;
- June 1998: installation of the constituent assembly;
- October, 1998: submission of the new constitution of the republic to the head of state and government;
- December 1998: referendum on the constitution;
- April 1999: the first legislative and presidential elections.

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<sup>13</sup>"Discours d'Investiture du Président de la République," *Le Potentiel*, No.1032, p. 2, Kinshasa, Friday, May 30, 1997.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

Kabila pledged before his nation and the world that “these dates shall be respected, and there will be no foreign influence to change anything.”<sup>16</sup> He concluded by indicating that the priorities of his government would be to reconstruct the state apparatus; rehabilitate all social and economic infrastructure, especially transportation; increase agricultural output, and build a sound agro-industry; rid the country of unemployment; and reunify the currency of the country.

The strength of the pledges the president made, and the well-defined electoral calendar he proposed, led one Kinshasa newspaper, *La Référence Plus*, to dedicate half a column in its first page to the daily reproduction of the calendar, with the closing pledge, with no added comment whatsoever. This was in fact good journalism: all the June, July, August, and September 1997 dates had come by and passed, without any of the steps leading to elections having been implemented.

On October 23, a presidential decree established the constitutional commission, with forty-two members, including a steering committee of seven. According to civil society groups and political parties, no prior consultations took place to ensure representative membership. Non-ADFL activists were excluded from involvement in the commission’s process of establishment as well as its membership. Instead, the ADFL limited the membership to its own leaders, political allies, and government ministers, including the ministers of justice and information. The fact that the fathers of the latter two were also made members surprised many. On October 24, ten human rights and development groups issued a statement inviting the government to guarantee transparency and the participation of political and social forces in the process of democratization and in the elaboration of the legislative foundations of the rule of law. The exclusive process that led to the establishment of the constitutional commission, they argued, compromised the independence of the commission and its credibility.

### **What Transition?**

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<sup>16</sup>Ibid.



The democratic movement in the Congo has deep popular roots. After repeated attempts, it succeeded in 1990 in forcing Mobutu to accept the convening of “popular consultations” to chart the country’s path to democracy.<sup>17</sup> With more pressures from the population, including the turnout of one million protesters in the street in one demonstration, he finally conceded in 1992, allowing the convening of the National Sovereign Conference (Conférence Nationale Souveraine, (CNS)). Open to representatives of all sectors of society, this forum debated past and present ills of the country and its future, and drafted the texts which were to guide the transition to democracy. The CNS’s acts and conclusions remain widely accepted as a legitimate basis for a transitional process to democracy, notwithstanding frantic efforts under Mobutu to shield them from the public eye by aggressive measures aimed at obstructing their publication and dissemination. They have drawn on the collective wisdom of the Congolese, and cannot be discounted in the new democratization process launched by the ADFL.

Out of the CNS consultations came in particular clear and detailed constitutional provisions guaranteeing basic human rights that were enshrined in the Transitional Act. These were annulled with the abrogation of the act, and in their place the ADFL has formulated the scant and restrictive reference to rights guarantees in its Constitutional Decree 003/97, Article 2. The Protocol of Agreement, another key transitional document of the Mobutu era, set forth the basic conditions to guarantee a peaceful transition to democracy. These were the reform of the armed forces, the depoliticization of state administration and the leveling of the political field for genuine political participation.<sup>18</sup> From observations on the ground, as recorded in this report, the same obstacles to genuine democratization remain firmly entrenched.

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<sup>17</sup>See Human Rights Watch’s report “Zaire: Transition, War and Human Rights.”

<sup>18</sup>*Ibid.*

Asked in February 1997, when the ADFL was still a rebel movement in eastern Congo, whether the ADFL would accept the constitution adopted following the CNS, Raphael Ghenda, the then "commissioner" and current minister of information, said there were several constitutional texts. He promised that specialized groups would be formed to study the various texts and determine which one was most suitable in the new situation.<sup>19</sup> It is not clear as of this writing whether the new constitutional commission launched in October has that mandate of building on the achievements of the CNS.

## DENIAL OF RIGHTS

### The Right to Life

#### *Legal Standards*

Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The African Charter on Human and Peoples' Rights provides similar protections in its Article 4 which states:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be deprived of this right.

In the exercise of their duties the ADFL military has shown a tendency to use excessive force, leading to many deaths. It is true that the battle for Kinshasa, much feared in the final days of the war, did not take place. It is also true, according to a broad range of testimonies received by Human Rights Watch, that the generalized insecurity that prevailed in urban centers during Mobutu's rule, due mainly to the unruly conduct of FAZ soldiers, has considerably receded since the ADFL takeover. Still, on May 22, a week after the fall of Kinshasa to the ADFL troops, the local Red Cross reported collecting 318 bodies from the streets of the capital. These were identified by the local rights groups as mainly former soldiers from the Special Presidential Division and the Civil Guard, escaped convicts, and some civilians who had allegedly been caught pillaging and immediately executed. As detailed below, the brutal suppression of a peaceful demonstration at Uvira on May 26, 1997 led to the killing of at least thirty-eight people and the injuring of scores of others. Other deaths occurred when troops resorted to gunfire in crowd control situations in which lack of training appeared to be at fault: on August 30, soldiers fired into the air to control a large crowd of teenagers in the municipal swimming pool of N'Sele, Kinshasa. In the panic that followed, twenty-four young men and women reportedly lost their lives.

Undisciplined and poorly supervised soldiers have also used indiscriminate violence with impunity in actions unrelated to their duties, resulting in the deaths of many people. On the night of July 6 to 7, 1997, an unruly patrol of ADFL soldiers went on a rampage after a night of heavy drinking, killing fifteen people at random. The frequent failure of the government to secure the timely payment of soldiers' salaries aggravated the problem of lack of discipline further. Unpaid soldiers increasingly turned to the practices of extortion and armed banditry. A press release by the Zairian Association for the Defense of Human Rights, dated August 14, 1997, listed a series of twelve incidents of armed robberies by armed soldiers from July 29 to August 11, 1997.<sup>20</sup>

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<sup>19</sup>Collette Braeckman, "Interview with Raphael Ghenda, General Information Officer of Laurent Kabila," *Le Soir*, Brussels, February 25, 1997.

<sup>20</sup>"Kinshasa: Recrudescence des Vols à Mains Armées," Communiqué de Presse No. 13/97, AZAHDO, Kinshasa, August 14, 1997.

In a few cases the government appeared to have taken drastic measures to contain the problem of indiscipline in the ranks. On September 25, 1997, Konyongo Kisase, a soldier guarding the residence of the minister of health, shot at a group of high school students, killing two of them. The shooting followed an argument between the minister's bodyguard and the students. Konyongo was immediately tried at the scene of the shooting, in the presence of court-appointed lawyers, by a military tribunal which sentenced him to death.<sup>21</sup> Human Rights Watch received reports that four or five soldiers were publicly executed in a military camp in Lubumbashi in October. We do not know if they had been tried before a military court or not, but we know that all were executed for killings. Two were executed for killing their respective commanders after having been reprimanded by them.<sup>22</sup>

## **Arbitrary Arrest and Detention**

### ***Legal Standards***

According to Article 9 of the Universal Declaration of Human Rights, "No one shall be subject to arbitrary arrest, detention or exile." Article 9 of the ICCPR is designed to give further protection against arbitrary arrest and detention. It provides in its relevant part:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; and
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.

States parties to the ICCPR are prohibited under paragraph (1) of Article 9 to deprive persons of liberty "except on such grounds and in accordance with such procedures as are established by law." This requirement that the grounds and procedures for arrest and detention be specified in legislation is in order to rule out the possibility that a policeman or other state functionary decides at his discretion who can be arrested and why.

The African Charter on Human and Peoples' Rights states in its Article 6:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Congolese criminal procedure equally places stringent limits on the powers of state officials to arrest and detain suspects. Article 27 of the code of criminal procedure requires that arresting officers bring suspects before the prosecutorial office of the magistracy (the Ministère Public) within forty-eight hours of their arrest. If preventive detention is deemed necessary, the prosecutorial office should bring the suspect before the nearest competent judge within five days of the arrest.

Authorities arrested and detained dozens of individuals in the months that followed the ADFL's takeover. Those detained on political grounds included dignitaries of the Mobutu era, locally known as "Mobutists," leaders and activists of opposition political parties, and an increasing number of student activists, human rights defenders, and journalists. Most of these detentions were arbitrary. They violated international norms and national laws and procedures regulating arrests and detentions. They were carried out in most cases without legal warrant, by soldiers who did not have the power of arrest under the laws of the Congo. Most detentions did not entail formal charges or trial. Detainees

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<sup>21</sup>"Minister's Bodyguard Kills Two, Sentenced to Death," AFP, Kinshasa, September 25, 1997.

<sup>22</sup>Human Rights Watch telephone interview, New York - Lubumbashi, November 3, 1997.

were often held in unofficial detention centers, and commonly denied access to family members, legal council and medical care. Torture and ill-treatment were frequently reported.

### ***Detention of Mobutists***

President Mobutu Sese Seko and members of his family and inner circle fled Kinshasa shortly before it fell to the ADFL troops. After three decades in power, the ousted dictator left behind a large circle of former ministers, party officials, and business associates who could not all escape in time or did not feel compelled to do so. The ADFL viewed with suspicion those who were associated with the previous government. In his speeches and other statements, President Kabila routinely recalled the role of Mobutu's entourage in pillaging the country and destroying its resources.

In its first few weeks in power, the ADFL government expropriated houses, vehicles, and other valuables of prominent Mobutists and reallocated these as official residences and vehicles to officials of the new government and commanders of its army. Scores of Mobutists who had remained behind were arrested and placed under preventive detention.

On July 28, 1997 a group of some fifteen detainees being held in the cells of the Public Prosecutor's Office of Gombe zone, Kinshasa, submitted a memorandum to the president of the republic detailing their grievances and pressing to be either charged or released. They underlined the irregularities that marked their detention, mainly: the failure of the prosecutors to bring them before a competent judge within the forty-eight hours prescribed by law and their appearance before judges well after the maximum period of preventive detention allowed by law (five days, renewable twice). Those detainees who formerly occupied cabinet positions pointed to the violation in their case of legal provisions mandating that the Supreme Court of Justice is the sole authority competent to authorize their preventive detention.

These violations seemed to have characterized most of the detentions of Mobutists. Human Rights Watch met two former ministers, two party officials, a former governor, and a director of public sector enterprise during an August visit to the headquarters of the former national gendarmerie in Kinshasa where they were held together with some fifteen other Mobutists. All said they were arrested without warrant and were not brought before a magistrate within the forty-eight hours mandated by law. Some in the group complained that their houses and vehicles were confiscated without court order, and one pointed out that two of his own vehicles were parked in the courtyard of the building and being used by the police.

The "Office of Ill-Gotten Goods," a special office created by the government to track down wealth misappropriated by former officials, itself became part of the problem when its officials used their authority to force Mobutists to give up their valuables. The extent of the abuse prompted a presidential intervention, when, on November 11, Kabila ordered the return of the property seized from former officials. The minister of information explained on national radio that the president "had forbidden all government officials to use their position to spoliat other people of their property."<sup>23</sup>

### **Torture and Cruel, Inhuman or Degrading Treatment**

#### ***Legal Standards***

International law prohibits torture and cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

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<sup>23</sup>"Kabila Orders Return of Property Seized From Mobutu Officials," AFP, Kinshasa, November 12, 1997.

Article 10 (1) states “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Article 5 of the African Charter on Human and Peoples' Rights prohibits “. . . all forms of exploitation and degrading of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.”

A few months after the fall of Kindu, Lubumbashi, Kinshasa, and many other towns and localities to the ADFL army, euphoria quickly subsided, yielding to uneasy feelings of uncertainty and resignation. The population was, in particular, shocked to witness the return in full force of public floggings and beatings, reminiscent of colonial methods of corporal punishment in the Congo which had been designed to induce feelings of collective humiliation and inferiority.

Women were particularly targeted. ADFL soldiers routinely stopped women wearing trousers and short skirts, which they deemed culturally unacceptable, and publicly whipped them. In many cases, they stripped women of their clothing, leaving them before the crowd only in underwear, if not entirely naked. When, on April 9, women activists from Lubumbashi's Center for Human Rights and Humanitarian Law (CDH) attempted to cover the naked bodies of women who had just been beaten and undressed by soldiers in the street, they were turned away at gun point.<sup>24</sup>

The outcry against the beating of young women and the formal protests of human rights groups, the press, and concerned parents led the ADFL authorities to deny that they had issued official instructions on the matter of women's dress. Incidents subsequently subsided, and women went around in the dress of their choice.

Other groups targeted for beatings and public flogging were bus and taxi drivers whom soldiers accused of loading too many passengers for the capacity of their vehicles. They were habitually stopped and beaten with a baton or a whip on their stomachs or backs. The soldiers developed a method for determining the number of blows to inflict in these arbitrary practices, based on the age of the victim.

Street children, petty thieves, and criminals caught in the act were subjected to swift “justice” that in many cases involved severe beatings and extrajudicial executions. Crowds in other cases took the law into their own hands and burned suspected criminals or those caught in the act by throwing old tires around their necks and then setting them on fire, often with no interference from onlooking soldiers.

Torture, beatings, and other forms of cruel, inhuman and degrading treatment were often used against political and other prisoners held by the various security services as demonstrated by many cases in this report.

### **Independence of the Judiciary**

Victims of abuses in the Congo cannot as yet turn to the judiciary for protection and redress. To say that courts are not properly functioning in the Congo would be an understatement. From the Congo's independence from Belgium in 1960 to this day, Congolese constitutions have always provided for the independence of the judiciary. This was reaffirmed in Constitutional Decree 003/97. This notwithstanding, independence of the judiciary has hardly ever been achieved due to the following longstanding obstacles: lack of financial autonomy of judicial institutions; the tendency of holders of executive and legislative powers to exert pressure on the judiciary in the context of generalized corruption; and widespread corruption of judges and magistrates as a consequence of their extremely low salaries or having gone unpaid altogether for long periods.

A magistrate from the office of the “Parquet de Grande Instance” at Ndjeli commune in Kinshasa explained to Human Rights Watch in August 1997 that he received a monthly salary equivalent to U.S. \$20, while his monthly rent

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<sup>24</sup>Human Rights Watch interview, Lubumbashi, August 1997.

alone was \$120. He claimed he was “forced to become a beggar,” mainly from people whose cases he was supposed to arbitrate.

This echoed earlier findings about the constant level of corruption in the judiciary during Mobutu’s time. During a visit to the southern province of Katanga (then Shaba), Human Rights Watch asked a number of judges and lawyers how courts could be equitable if judges depended on payments from litigants. The president of one court responded, “we examine the file and determine who is right. That is the one we bother a bit.”<sup>25</sup> “Judges come to see me, often,” said one lawyer, “saying, ‘Maitre, your client has an excellent case. Tell him to come see me.’”<sup>26</sup> In the legal jargon of the province, a bad judge “eats off of both plates,” or puts the case up for auction, as they say locally, “and renders a judgment for the one that feeds him best.”<sup>27</sup> Corruption alone, concurred a lawyer, was a serious impediment to the independence of the judiciary.

Since the ADFL takeover, a marked tendency by ADFL military and political officials to directly interfere in the administration of justice has put the theoretical independence of the judiciary to a rude test. Arrests have been carried out by ADFL soldiers who were not trained to exercise the powers of Judicial Police officers, the only ones empowered under Congolese law to arrest and interrogate suspects. Because they were not trained, a lawyer noted, soldiers ignored the written law and broke it routinely during arrests, interrogations and detentions. The routine practice of beatings and ill-treatment of detainees in detention centers also violated legal protections of the rights of detained persons.

On July 9, 1997, the ministers of justice and internal affairs took the unusual step of signing a joint open letter, addressed to all members of the military and the ADFL political apparatus, reminding them of the obvious: justice should only be rendered by magistrates and judges. This pertinent reminder came after a spate of incidents in which judges and magistrates were detained, and sometimes beaten up, by soldiers siding with one side in a case the magistrates were hearing.

A one day visit, on August 13, 1997 by a Human Rights Watch monitor to the office of the “Parquet de Grande Instance” in Kinshasa’s Ndjeli commune, offered a picture of total disregard for the independence of the judiciary by soldiers. Koko Temissa, a magistrate, told us that a local army commander, going by the name of Shaddar, ordered his arrest to preempt a decision he was about to take in a robbery case. He said soldiers abducted him from the office and detained him for days. Three magistrates from the same office told about a July beating incident of which they were the victims. They were in a bus when it collided with a military vehicle. Soldiers on the vehicle took all the male passengers to an unofficial detention center, Villa Ma Campagne, and gave them a thorough beating with iron bars and military belts. A colonel witnessed the beating and did not intervene to stop it, they said. The magistrates showed their professional cards, but they were not spared the punishment and humiliation.

Magistrate Cinanca Roger ordered the arrest of a suspect, a teenager who took a taxi ride and refused to pay the fare. The magistrate requested the boy’s family to come post bail for his release, but the family instead complained to a group of ADFL soldiers about the arrest. When they failed to find the magistrate at the office, the soldiers asked for his address and promised that they would pass again to “teach him a lesson.” The soldiers released the suspect without the authority to do so.<sup>28</sup>

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<sup>25</sup> Human Rights Watch interview, Likasi, December, 1996.

<sup>26</sup> Human Rights Watch interview, Lubumbashi, December, 1996.

<sup>27</sup> Ibid.

<sup>28</sup> Human Rights Watch interview, Kinshasa, August 13, 1997.

## Freedom of Association

### *Legal Standards*

The government's suspension of political parties and ban on their activities clearly contravenes Article 22 (1) of the ICCPR which provides:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

This right to free association also appears in the African Charter on Human and Peoples' Rights, Article 10 (1): "Every individual shall have the right to free association provided that he abides by the law."

The right to freedom of association covers the right to join together with others for social, cultural, economic or political purposes, in formal or informal associations. Specifically, it protects the right to associate in political parties. Permissible restrictions on this right are set out in Article 22 (2). They must be prescribed by law and "necessary in a democratic society," and "in the interests of national security or public safety, public order (*ordre public*), the protection of the public health or morals or the protection of the rights and freedoms of others." The right to organize political parties is also derived from the right to participate in government and in free elections, recognized in Article 25 of the ICCPR.<sup>29</sup> The "suspension" of political parties and the ban on their activities decreed by Congo authorities could scarcely be considered as a measure "necessary in a democratic society" since the democratic exercise has historically been linked to the contest of power by political parties in an atmosphere of free association and free expression.

During its swift campaign across the country, the ADFL decreed, in several places which fell to its control, the freezing of activities of opposition political parties "until the end of the war," arguing that all energies needed to be directed toward the attainment of the immediate objective of liberating the country from Mobutu's rule.

The alliance, however, allowed a measure of popular participation in choosing local government officials. The mayor and six borough heads of the third largest city in the Congo, Kisangani, for example, were "elected" in March by an electoral college chosen from the intellectual elite and community leaders in the city. In some other localities, officials were chosen in stadium meetings by raised hands. In Kisangani, and Mbuji Mayi, capital of the mineral-rich Kasai province, the population used these openings to vote in Union for Democracy and Social Progress (Union pour la Démocratie et le Progrès Social, UDPS) members to lead the local governments.

The ADFL departed from this form of popular participation when Lubumbashi fell to its troops in early April. It apparently viewed the strong popular base of the regional party, the Union of Federalists and Independent Republicans (L'Union des Fédéralistes et Républicains Indépendants, UFERI), as a potential political threat. The ADFL therefore nominated its deputy secretary-general as governor.

Upon taking office, Kabila's government extended the ban on all political activities and public demonstrations to the capital. The population in the capital ignored the ban in the first weeks of the new government and repeatedly staged street demonstrations to press for the opening of the government to representatives of the civilian opposition to

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<sup>29</sup>Article 25 of the ICCPR provides in part that everyone shall have the right: "(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors . . . ."

Mobutu and for greater political participation. On May 26, the government reiterated its ban in a five-point communique reminding the restive population that “all political parties in the territory of Kinshasa are suspended until further notice.”<sup>30</sup>

The ADFL claimed that the ban would be a temporary measure until the stabilization of the situation in the post-war period and that only political activities were prohibited, not the political parties themselves. At the same time, the ADFL leadership has claimed that its popularly-supported military struggle to uproot Mobutu’s dictatorship gives it the right to determine the shape and timing of political developments in the post-Mobutu era. The ban on party politics is based on the ADFL leadership’s distrust of the political class involved in the transitional process under Mobutu, which they view as tainted by corruption and opportunism, as well as disdain for the remnants of Mobutu’s own political apparatus.

The ADFL’s rhetoric on the civilian opposition could best be represented by a statement by Bizima Karaha, the minister of foreign affairs:

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<sup>30</sup>“Zaire: Zaire Government Reiterates Ban on Parties, Demonstrations,” AFP, Kinshasa, May 26, 1997, in FBIS-AFR-97-147, May 27, 1997.



We cannot have democracy if there's no peace. We cannot have development if there's no peace. So anybody who wants to create instability is an enemy of democracy, is an enemy of development, is an enemy of progressive forces. And those are reactionary forces, and we shall not allow anybody to create chaos.<sup>31</sup>

The government applies the ban selectively. The ban, however, affects all the political groupings, whether friendly or not to Kabila. Below is an overview of the political horizon in the Congo, examining the situation of each of the main independent parties.

A small group of parties which showed readiness to accommodate the ADFL, or which were not vocal in their criticism of it, such as the Patriotic Front (Front Patriotique), the Democratic and Social Christian Party, and Katanga's Union of Independent Federalists and Republicans (UFERI), were spared government attacks. Some were rewarded for their loyalty: Kabila's first cabinet included two members of the Patriotic Front. Still, this party appeared to have agreed to dissolve itself into the ADFL as the price of accommodation.

The opposition to the ADFL consists of the main parties which under Mobutu were also in the opposition, namely the Union for Democracy and Social Progress (Union pour la Democratie et le Progrès Social, UDPS), the Unified Lumumbist Party (Parti Lumumbiste Unifié, PALU), and the Innovational Forces for Unity and Solidarity (Forces Novatrices pour l'Union et la Solidarité, FONUS). As they insisted on preserving their independent identities and on exercising the basic democratic freedoms of association, assembly, and expression, they became targets of government crackdowns. These crackdowns were proving so effective that they amounted to a de facto outlawing of the parties themselves. The ADFL has, however, worked with personalities from these parties, and even appointed a few UDPS leaders to government posts on an individual basis. As of this writing, the ban continued to be enforced with increasing rigor throughout the country.

### ***Rewarding Accommodating Parties***

#### ***A. The Patriotic Front (Front Patriotique, FP)***

The Patriotic Front, a progressive party with a solid, though minority following in Kinshasa and a member of the radical opposition to Mobutu since the seventies, was the only party to have been offered two ministerial positions in Kabila's cabinet in June. The price apparently was the Patriotic Front's willingness to dissolve itself. On whether he was ready to abandon his leadership post and to dissolve his party, Paul Kinkela, chairman of the Front, and Kabila's minister of post and telecommunications, allowed,

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<sup>31</sup>Lynne Duke, "Protesters in Kinshasa Defy Kabila's Ban, Troops Disperse demonstrators, but Tensions Persist Between New Order, Old Opposition," *Washington Post*, May 29, 1997, p. A25.

I would not do so light-heartedly, but I would do so simply because it is good for my party and for myself to transcend our aspirations and ideals for something greater, nobler, and more significant, which does not divide us, and for which we shall melt our differences to advance our country's revolution. I think this is valid.<sup>32</sup>

Jean-Baptist Sondji, one of the FP founders and now Congo's health and social affairs minister, explained how the Front gained the ADFL's confidence.

[W]e contacted the ADFL and offered our assistance [at the beginning of its campaign to topple Mobutu]. . . . [O]n the eve of the fall of Kinshasa, the members of the FP carefully paved the way for the entry of the ADFL into a city whose layout was unknown to most of its troops.<sup>33</sup>

Sondji, however, contradicted the chairman's apparent acceptance of dissolving the FP. He claimed "the FP refuses to be drowned as an independent party. We are going about our normal business, even though there are no public rallies. . . ."<sup>34</sup>

### ***B. Democratic and Social Christian Party (Parti Démocrate et Social Chrétien, PDSC)***

Together with the UDPS and the UFERI, the Democratic and Social Christian Party (PDSC) was one of the main founders and constituents of the opposition block during Mobutu's stalled transition. Asked about the PDSC's attitude towards the ADFL's takeover and monopoly on political activities, the secretary of the party said it was one of "openness and collaboration."<sup>35</sup> The PDSC voluntarily observes the ADFL's ban on political activities by not demonstrating in the streets, but, he said, a ban on political parties per se is "out of question." He underlined the fact that the ban was announced in a radio statement, not by decree, and, as a party, the PDSC did not receive a formal letter from the government about it. The PDSC interpreted it as a ban on public activities, not of political parties.

He contradicted himself, however, when he described how the party was received in its attempts to contact the ruling ADFL. According to him, the party was engaged in two types of dialogue with the government. They were received at the Ministry of Internal Affairs, which oversees political parties, and held three working sessions with the general secretariat of the ADFL. The latter received them each time with an attitude of ". . . false opening. They would listen to you, would tell you that they took note of your comments, but that the ADFL can only work with individuals. The ADFL does not work with organizations."<sup>36</sup>

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<sup>32</sup>"Zaire: Patriotic Front Says Ready to Work With Kabila," Radio France International, May 20, 1997, in FBIS-AFR-97-140, May 22, 1997.

<sup>33</sup>Colette Braeckman, "Health Minister Views Political, Social Situation," *Le Soir*, July 23, 1997.

<sup>34</sup>Ibid.

<sup>35</sup>Human Rights Watch interview, Kinshasa, August 15, 1997.

<sup>36</sup>Ibid.

The PDSC wants the democratization process to continue and preparation for elections to proceed from where it stopped under Mobutu. It also wants to see all political parties participate in the new transitional structures, such as the constitutional commission. Until that happens, the PDSC's secretary said, their party will continue to raise public awareness by distributing its literature in churches and parishes and will maintain its self-imposed restraint on street activities.

In mid-July, Andre Bo-Boliko, PDSC chairman, launched a strong appeal to President Kabila and the ADFL calling on them to allow genuine participation and warning that "the great enthusiasm generated by . . . liberation, which should have galvanized everyone's energy for the work of reconstructing our country, is fading with time, gradually giving way to skepticism, demobilization, and even to revolt with regard to certain not very democratic practices."<sup>37</sup>

### ***C. UFERI - Katanga***

Asked what he thought of the ADFL's ban on political activities by other parties, Gabriel Kyungu wa Kumwanza, the popular former governor of Katanga and the federal leader of the main UFERI faction, told Human Rights Watch that he had no problem with it. The UFERI, he said, was willing to give the new authorities "the benefit of doubt," agreeing with them that some time was needed to stabilize the country and to allow an orderly return to party politics.<sup>38</sup> He was confident, he said, that his party would easily make up for the lost time when the ADFL ultimately allowed political activities to resume. The UFERI would catch up with whatever head start the ADFL would have gained by being the only group allowed to operate in Katanga and nationally during the ban. Indeed, he added, the UFERI was ready to wait out the ban, even if it took the ADFL three years to lift it, "because we know the aspirations of the people."<sup>39</sup>

In obvious reward for this stance, the government authorized the former governor to hold a press conference in Lubumbashi on September 29. He was later reportedly allowed to travel to Kinshasa to meet the president and join his "entourage."<sup>40</sup> Both activities would constitute, in other cases, serious breaches of the ban on political activities. The preferential treatment apparently extended to the UFERI appeared to be motivated by political opportunism. The ADFL had found a natural popular base in Katanga. To extend and consolidate that base, it had to appeal to the followers of the UFERI. Only time would determine which of the two political forces engaged in this bidding for the support of the Katangese would win.

## ***Crippling Opposition Parties***

### ***A. Unified Lumumbist Party (Parti Lumumbist Unifié, PALU)***

PALU is considered one of the largest opposition parties, and the largest of the political groupings claiming as its heritage the political teachings of Patrice Lumumba, the first elected prime minister of the Congo who was slain in the early days following the country's independence. The party's secretary general, Antoine Gizenga, chaired one of the four leftist formations that had constituted Lumumba's government. Sensing opposition from the rightist president Kasavubu and a web of international conspiracies orchestrated by the Central Intelligence Agency, which used the rising soldier Mobutu to curb a perceived communist threat in central Africa, Gizenga told us that he had initially suggested the unification of the four groups into one party. Lumumba signed on to a protocol of agreement to that

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<sup>37</sup>Marie-France Cros, "The Democratic and Social Christian Party wants to Avoid a Crisis," Brussels, *La Libre Belgique*, July 14, 1997.

<sup>38</sup>Human Rights Watch interview, Lubumbashi, August, 19, 1997.

<sup>39</sup>Ibid.

<sup>40</sup>Human Rights Watch telephone interview, November 3, 1997.

effect, but would not survive long enough to witness the actual proclamation of the new party in Stanleyville, under the leadership of Gizenga. Since then, Gizenga has claimed to be the only legitimate heir to Lumumba.<sup>41</sup>

In an interview with Human Rights Watch, Gizenga accused the ADFL of having usurped the symbols of PALU to gain popular support in its campaign across the country, starting with the Lumumbist banner they carried and extending to the restoration of the country's former name. On the day Kabila installed himself as president, a PALU leaflet was reportedly distributed in Kinshasa. It blamed the new ruler for establishing a fictitious twenty-four-month electoral calendar and accused him of having silenced political parties to allow the installation of the ADFL and of having used state resources to accelerate that installation. PALU also rejected the three-year economic plan as having been defined by the ADFL alone without democratic consensus. When it took its dissenting views to the streets in a peaceful protest march, PALU's premises were ransacked and its militants were severely beaten, as reported below.

### ***B. Other Lumumbist Factions***

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<sup>41</sup>Human Rights Watch interview with Antoine Gizenga, Kinshasa, August 16, 1997.

By the last quarter of 1997, observers in Kinshasa and media reports had identified “Lumumbists” who had been comrades in President Kabila’s struggle during the last three decades as his most influential circle of collaborators and advisors.<sup>42</sup> This notwithstanding, and as the case of PALU demonstrates, the “Lumumbist” label appears to fail to offer sufficient protection when its holder adopts a dissenting stance. Ismail Tutw’Emmoto and Dunia Lumingangulu, two leaders of the Congo Lumumba National Movement (MNC - Lumumba Cohcolico), reportedly were abducted in Kinshasa and detained at the National Intelligence Agency (Agence Nationale de Renseignements, ANR) on July 1, 1997, reportedly on the personal orders of President Kabila.<sup>43</sup> The two had returned to the country two weeks earlier after a short stop in Belgium where they had lived in exile for many years. From their exile they had initially joined the ADFL rebellion and returned to fight in its ranks during its difficult beginnings in 1996-1997. Reportedly, they angered the president by criticizing him on June 30, the anniversary of the Congo’s independence from Belgium, for appointing too many of his family members and personal friends to positions of responsibility and for continued dependence on soldiers of Tutsi origin. Ismael Tutw’Emmoto was reportedly released on August 24, 1997. His colleague remained behind at the National Intelligence Agency.<sup>44</sup>

### ***C. Innovative Forces for the Sacred Union (Forces Novatrices Pour l’Union et la Solidarité, FONUS)***

Joseph Olenghankoy, chairman of FONUS and former opposition parliamentary group chairman, who is considered a close ally of Etienne Tshisekedi, was a frequent target of arrest under Mobutu, his parliamentary immunity notwithstanding. Under the former government, he was released from incommunicado detention on December 13, 1996 after parliament intervened and pressed for his release. In early February 1997, Mobutu’s authorities, accusing him of inciting civil disobedience by calling on Kinshasa inhabitants to observe a “ghost-town” operation (general strike), wrote to parliament demanding authorization for his arrest. Although parliament did not lift his immunity, soldiers from the SARM, Mobutu’s Service for Action and Military Intelligence,<sup>45</sup> descended on his home in Kinshasa, by which time he had fled the city to neighboring Brazzaville to escape arrest. He told a journalist that he fled soldiers who had surrounded the parliament building to arrest him and commented, “Each time you defend the people’s interests, they send soldiers to pick you up. With such moves, the crisis will deepen in the country.”<sup>46</sup>

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<sup>42</sup>Colette Braeckman, “Congo: un Homme et Trois Cercles de Pouvoir,” *Le Soir*, November 7, 1997.

<sup>43</sup>Colette Braeckman, “Criticize Kabila in Kinshasa and Disappear,” *Le Soir*, July 15, 1997.

<sup>44</sup>“Congo - Kinshasa: Enlèvements Comme Signes Inquiétants de Manque de Maîtrise des Rênes du Pouvoir,” Communiqué de Presse No.019/C/VSV/CD/97, V.S.V., Kinshasa, September 15, 1997.

<sup>45</sup>Service d’Action et de Renseignements Militaires, SARM.

<sup>46</sup>“Parliamentary Leader Escapes Arrest, Takes Refuge in Congo,” Radio Africa No. 1, Libreville, February 16, 1997, in FBIS- AFR-97-032, February 19, 1997.

“Such moves” were not about to disappear from the country, even after the fall of Mobutu. On Monday September 8, 1997, ADFL security forces detained him. An aide, describing the arrest to reporters, said that about twenty armed troops “burst into our offices and took our president” to the headquarters of military intelligence.<sup>47</sup> He was rushed to the Tshatshi military camp. From there soldiers took him to the residence of commander Masasu Nindaga, the unofficial chief of staff of the Congolese army. According to the monitoring group Voice of the Voiceless, the commander subjected him to “tough questioning” on why his group, FONUS, had put its flag at half mast when Mobutu’s death was announced two days earlier. Olenghankoy was released in the evening of the same day.

Following his release from another overnight detention the following month (see below), the FONUS leader lodged a complaint against the minister and deputy minister of the interior in which he asserted that he had been “subjected to deliberate assault and battery, arbitrary arrest, burglary, slanderous denunciation, and violation of the rights of the citizens guaranteed under the Constitution.”<sup>48</sup>

Olenghankoy’s reference to slanderous denunciation reportedly was motivated by a statement by the deputy minister of internal affairs following his release in which he accused the FONUS leader of recruiting 40,000 youths for training in a UNITA camp. The deputy minister also claimed that weapons of war were seized at two Olenghankoy residences searched by the police. Human Rights Watch was not able to independently investigate either claim. The complaint of the FONUS chairman remained pending as of this writing.

***D. The Union for Democracy and Social Progress (Union pour la Démocratie et le Progrès Social, UDPS)  
-Katanga***

According to its leaders, the UDPS chapter in Lubumbashi prepared the population in advance of the fall of the city to the ADFL in order to facilitate the takeover and to welcome the ADFL troops as “liberators.”<sup>49</sup> UDPS members showed up in large numbers at a rally that the ADFL convened at the city’s stadium on April 19, 1997 expecting to take part in the election for the province’s governor. Instead, security agents at the meeting confiscated UDPS banners, and the expected popular vote did not take place.

On May 27, 1997 the new authorities ordered the arrest of Antoine Kazadi, a former mayor of the city and prominent UDPS leader. Agents of the newly founded political police, the ANR, interrogated him twice, on May 27 and 28. During the first session he was asked to explain why he remained popular in Katanga, whether he would collaborate with the ADFL, and what the national leader of the UDPS, Tshisekedi, thought of the suppression of political parties. He remained in detention for three months.

When the Center for Human Rights and Humanitarian Law (CDH), a leading Lubumbashi-based human rights group, unofficially visited the detention center where he was held and denounced in a public letter to the authorities the harsh detention conditions, he said, other political prisoners were brought to his cell, including Kapapa, former vice-governor and president of Mobutu’s party, the Mouvement Populaire pour la Révolution (MPR), and Mujeddo, president of the MPR.

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<sup>47</sup>“DR Congo Authorities detain Opposition Figure: Claim..,” AFP, Kinshasa, September 8, 1997.

<sup>48</sup>“Congo-Kinshasa: DR Congo—Opposition Leader Sues Ministers for Assault,” AFP, Kinshasa, October 17, 1997.

<sup>49</sup>Human Rights Watch interviews with the UDPS leadership in Lubumbashi, August 19, 1997.

Largely as a result of the campaign by the rights groups in Lubumbashi, these and other political prisoners, including former governor Kyungu who was placed under house arrest from May 15, were released in early August 1997.

As a condition for his release, Kazadi told Human Rights Watch, he was made to sign an undertaking in which he agreed to stop his involvement in politics, appearing in public places, and being in one place with more than three persons at a time. He was also ordered not to leave Lubumbashi for a month. In early June, the ANR also arrested and briefly detained other committee members of the UDPS - Katanga, and warned them not to hold meetings at any level, or risk renewed arrest. The threats were effective in freezing all UDPS activities in the city.<sup>50</sup>

### ***E. Forces for the Future (Forces du Future)***

In the early afternoon of November 25, 1997, a team of the Rapid Deployment Police surrounded the Kinshasa home of Arthur Z'Ahidi Ngoma, leader of the Forces of the Future opposition party, after he defied the ban on political activities by calling a press conference there. Z'Ahidi was forced to hold the press conference at his home after soldiers had prevented the annual conference of his party that morning from proceeding at the Memling Hotel as scheduled from November 24 to 28.<sup>51</sup>

Soldiers fired in the air as they jumped over the wall to arrest the politician and about ten of his followers. A group of ten journalists, who apparently had attended the press conference, were also arrested. At the headquarters of the Rapid Deployment Police, journalists and politicians were stripped, forced to lie on the ground, and given up to forty lashes of the whip each. Soldiers walked on their stretched bodies and kicked them on the neck and the head. Around 8 p.m. the journalists and a few other detainees were released. Ten members of the Forces of the Future were released from detention during the following days, but Ngoma remained detained as of this writing with no specific charges. Police questioned members of the Forces of the Future mainly about the ban on political activities and the suspension of political parties, two government decisions which they were obviously being punished for defying.

### ***Human Rights Activists and Organizations***

A strong civil society had emerged under Mobutu after kleptocracy led to the collapse of the formal economy and the institutions of the state. Community-based organizations, churches, and development and humanitarian groups filled that void by sustaining the education and health sectors and leading local development efforts. Human rights organizations emerged in the early nineties when a strong popular democratic movement forced Mobutu to concede a transitional program to democracy. They developed a wide presence throughout the country as they pushed to defend the population against Mobutu's military, the main perpetrators of violence, and to publicly denounce corruption and the ineffective judiciary. Civic education groups strived to prepare the population for elections which Mobutu promised, but did everything possible to delay, and helped to increase public awareness about rights.<sup>52</sup>

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<sup>50</sup>Human Rights Watch interviews, Lubumbashi, August 19, 1997.

<sup>51</sup>"Bastonnade Contre Forces du Futur et Journalistes," *Voix des Sans Voix*, Communiqué de Presse No. 024/C/VSV/CD/97, Kinshasa, November 27, 1997.

<sup>52</sup>For more details, see: Human Rights Watch, "Zaire: Transition, War and Human Rights," *A Human Rights Watch Short Report*, vol. 9, no. 2(A), April 1997.

Relations between the new authorities and the civil society sector were not adversarial or tense in nature from the onset. On the contrary, the ADFL attempted to draw to its ranks elements from civil society groups, and often succeeded. Thus, when in mid-May the alliance made its final move from Lubumbashi to take over the government in Kinshasa, it invited several rights activists from the city to join it. The vice-chairman and chairman of the Zairian Association for the Defense of Human Rights (AZAHDO / Lubumbashi) were recruited as minister of transport and chairman of the main public sector transport corporation respectively. Two of the founding members of the Center for Human Rights and Humanitarian Law (CDH) became, respectively, legal advisors to the ministers of mining and internal affairs. Both organizations maintained their independence, however, and continued to monitor abuses, to denounce them publicly, and to demand that ADFL soldiers and officials implicated in violations of human rights be made accountable before the law.<sup>53</sup> They continued to keep the pressure on the timid and ineffective judiciary to protect rights which have been guaranteed, but not granted, to the population.

In mid-October Information Minister Raphael Ghenda made a proposal to outlaw the channeling of external aid to the Congo through NGOs. He stated on Congolese television the government's intention to no longer cooperate with "intermediaries" such as NGOs. In matters of economic cooperation, he said, the government will deal directly with other governments and international organizations. No official statement on this matter followed.

André Kapanga, the Congo's ambassador to the United Nations, later explained the rationale behind this orientation. He argued that aid only to NGOs and civil society delegitimizes the state, and challenges donors' assumption that NGOs are better qualified to serve the citizens than the state. He charged that NGOs are externally driven and would risk creating a political vacuum were they to seek to appropriate powers of the state.<sup>54</sup> This and similar statements by other Congolese officials failed to recognize that development organizations and rights groups emerged in the country in a situation of total paralysis of the state in meeting its developmental role, and after it excelled only in repressing the population. The need for the NGO sector would remain crucial today as in the Congo's recent past.

An NGO activist from South Kivu claimed that in early May he was coerced into joining the Bureau of Studies and Investigations (Bureau d'Etude et Investigations, BEI), one of the new security services, when ADFL authorities made this a condition for his release from detention. In a telephone interview, Ambroise Bulambo Katambu, the chairman of the Collective of Actions for Human Rights Development (Collectif d'Action pour le Développement des Droits de l'Homme, CADDHOM), claimed that his position in the BEI had quickly become untenable.

He said one of his first assignments came in response to pressures by a foreign mining company to be allowed access to two gold mines in Mabale and Lujushwa in its South Kivu concession and security guarantees to operate them. In an internal mission report he submitted in mid-June to a superior, he said he documented an elaborate scheme of embezzlement of gold from the two mines by local ADFL military and civilian officials operating in concert to divert gold from the mines for their own personal benefit and that of unspecified officials back in Kinshasa. Shortly after that, he allegedly received threats on his life from ADFL officials infuriated by the denunciation. These were serious enough to have forced him, he said, to flee the town of Bukavu and the country in early July.<sup>55</sup> This incident and the publication by CADDHOM of an "uncensored" monitoring report on the human rights situation in the province<sup>56</sup> were

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<sup>53</sup>See namely: "La Voix du C.D.H.," No. 13 Spécial, June 1997, and "Violations et Insécurité," Supplément au Périodique des droits de l'Homme, AZAHDO/Katanga, April - July, 1997, and

<sup>54</sup>Speech by Ambassador Kapanga at the Carnegie Foundation, Washington, November 20, 1997.

<sup>55</sup>Human Rights Watch telephone interview, New York - Lusanne, 11/13/97.

<sup>56</sup>Also see: "Déclaration du CADDHOM à la Suite du Sèllage de ses Bureaux et de l'Arrestation de ses Activists dans 'Est de la R.D. du Congo Depuis le 23/08/1997," CADDHOM, September 10, 1997.



apparently at the root of troubles that the organization went through in late August 1997 when it was closed down and three of its activists were arrested and ill-treated (see below).

Authorities of the government of the Congo have perpetrated a series of acts of intimidation against human rights defenders and associations in Kinshasa and in various regions of the country. When in June 1997 the government unleashed a wave of arrests against the dignitaries of the old regime, the combative human rights community in the capital mobilized its member organizations to ensure that the rights of the detainees were respected and that they were accorded humane treatment. Several rights groups conducted coordinated tours of detention centers to document the names of the detainees and inquire about their treatment and legal proceedings against them or the lack thereof.

On June 28, activist William's Kalume of the Voice of the Voiceless (*Voix des Sans Voix pour les Droits de l'Homme*, VSV) was himself arrested while paying an unofficial visit to a detained former official from the Mobutu era held at the head office of the National Intelligence Agency. During the interrogation, the line of questioning was about the VSV, its finances, management structure, personnel, and regional offices.<sup>57</sup> Kalume was released without charge after two days.

On July 4, 1997, it was the turn of activist Laurent Kantu, of the Correction Officers Association (*Association des Cadres Pénitentiaires*), to be arrested in similar circumstances at military camp Kokolo, in Kinshasa, where he went to inquire about detainees from the UDPS. Both Kantu and Kalume were subjected to harsh interrogation coupled with threats for interfering in "affairs of the state." Kantu spent twelve hours under questioning before he was released late in the evening.<sup>58</sup>

Roger Sala Nzo Badila, secretary-general of the Kinshasa-based rights group the National Human Rights Center (CENADHO), was arrested on November 23, 1997 and remained in detention as of this writing. He has been followed around and threatened by security agents since the July publication of CENADHO's newsletter *Le Messager* which discussed the human rights record of the government. According to VSV, armed soldiers conducted a thorough search of his house for "seditious documents" before taking him away. Two other members of a voter education organization were freed on November 10, after spending two weeks in detention in Kinshasa for their human rights activities.<sup>59</sup>

In the more remote regions of the Congolese interior officials ordered the closure of human rights organizations, the arrest of activists, and their beating and torture. On August 6, armed soldiers arrested Bertin Lukanda, president of the Maniema branch of an umbrella organization of national nongovernmental organizations, the *Conseil Régional des Organisations Non-Gouvernementales du Développement* (CRONGD), and a colleague, Diomba Ramazani. Both were taken to Lwama military camp in Kindu. After a few days of severe beatings, Ramzani was taken to the town's hospital in a near-coma. Soldiers in the camp reportedly accused the two activists of "spying" for a U.N. investigative mission on the alleged refugee massacres in eastern Congo and of activism on behalf of the main opposition party, the UDPS.

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<sup>57</sup>Human Rights Watch interview, Kinshasa, August 8, 1997.

<sup>58</sup>Human Rights Watch interview, Kinshasa, August 7, 1997.

<sup>59</sup>See "A la Recherche de 'Documents Séditeux' au Sein des ONG des Droits de l'Homme," VSV, Communiqué de Presse No. 23/C/VSV/CD/97, Kinshasa, November 24, 1997.

The arrest of Bertin Lukanda, who was also a leading member of the local human rights organization Haki Za Binadamu (HZB), appeared to have taken place in retaliation for a letter that HZB had addressed to the authorities denouncing the illegal detention and harsh treatment of scores of suspects in ordinary criminal and civil cases in the Kindu military camp. Five days before his arrest, on August 1, the military commander had ordered HZB to cease its activities and sent soldiers to close down its office.<sup>60</sup> Soldiers also searched the office of CRONGD/Maniema in Kindu without a warrant and arrested, on August 14, Asumani Dieudonné, a secretary at CRONGD.<sup>61</sup> He was suspected of having alerted the international community by radio about the plight of his two colleagues.

In a sequence of events similar to the arrest and beating of rights activists in Kindu, ADFL soldiers on August 23 arrested Didi Mwati Bulambo, the general coordinator of the local rights group the Collective of Actions for Human Rights Development (Collectif d'Action pour le Développement des Droits de l'Homme, CADDHOM), in Kamituga, Mwenga district, South Kivu province. This was Bulambo's second arrest by the ADFL. He was first detained in July 1997 for the publication of a series of articles on the corruption of the local procuracy in Kamituga and was subjected to whippings and denied medical care when he fell ill.<sup>62</sup> On August 26, soldiers arrested Kylosho Kyalondawa, another CADDHOM activist, and two days later Donatien Mazombi, the secretary of the organization. The three rights defenders were detained in the military camp and were reportedly subjected to a form of daily beatings known as the "Morale." This consisted of 100 to 200 whippings administered three times daily until the victim acknowledged the authority of the ADFL.<sup>63</sup> The three had been accused of inciting the local population against the ADFL. However, it is evident from the threats addressed to the chairman of the association, as detailed above, that they were being punished for their human rights activism.

The three were transferred to Bukavu, capital of South Kivu province, and granted a provisional release on October 27, 1997. They were ordered not to leave Bukavu and to report each Monday to the headquarters of the ADFL there. They were also informed of their placement under the "supervision" of the National Intelligence Agency.

Congolese authorities showed no eagerness to promptly intervene, as they were requested to do by local rights groups in Kinshasa and international agencies, to put an end to the detention and ill-treatment of rights defenders in outlying areas in the country.

## **Freedom of Assembly**

### ***Legal Standards***

Article 21 of the ICCPR states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with law and which are necessary in a democratic society in the interests of national security or public safety, *ordre public*, the protection of public health or morals or the protection of the rights and freedoms of others.

The African Charter, which similarly recognizes the right of peaceful assembly in Article 11, provides:

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<sup>60</sup>Human Rights Watch interview of a HZB official, Kinshasa, August 11, 1997. See also: Amnesty International, "Torture / Fear of Torture, Democratic Republic of Congo (DRC)," Urgent Action, August 13, 1997, AI Index: AFR 62/24/97.

<sup>61</sup>See: "Human Rights Defenders in Congo (Zaire)," the Observatory for the Protection of Human Rights Defenders, Urgent Action, RDC / 001/ 9708 / OBS 007, Paris, August 28, 1997.

<sup>62</sup>See AI's Urgent Action on his case, dated September 9, 1997, AI Index: AFR 62/27/97.

<sup>63</sup>"Déclaration du CADDHOM à la Suite du Sèllage de ses Bureaux et de l'Arrestation de ses Activists dans 'Est de la R.D. du Congo Depuis le 23/08/1997," CADDHOM, September 10, 1997.

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Most attacks on political parties in the Congo were aimed at crippling their capacity to exercise the right to freedom of assembly, either in public political meetings, or when they organized street demonstrations. Contrary to the obligations of the Congo under the ICCPR and its own constitutional decree which sets out the broad guarantee of the exercise of “individual and collective rights,” Congolese authorities imposed a strict ban on the exercise of freedom of assembly. When unauthorized peaceful meetings and demonstrations took place, authorities sent soldiers to disperse them. Law enforcement officials often used firearms against unarmed demonstrators, leading to the death of dozens of people whose only crime was to have sought to exercise their freedom to assemble peacefully.

### ***The Uvira Demonstration, June 1997***

During the night of Sunday to Monday, June 26, 1997 security forces operating in the eastern city of Uvira, in South Kivu province, reportedly abducted ten individuals and extrajudicially executed them. The discovery of their corpses in the streets the next morning triggered a spontaneous demonstration by civilians who took to the streets to protest the killings. They called for a halt to the abductions and extrajudicial executions which had plagued the city, which in September 1996 was the first to have fallen to the ADFL.<sup>64</sup> The protesters were mainly women and children. ADFL soldiers violently put down the demonstration, killing and injuring dozens of people in the process. Thirty-eight peaceful demonstrators, mainly children, were killed by gunfire, and about a hundred were wounded.<sup>65</sup> When the civilian commissioner of Uvira zone attempted to intervene to stop the carnage, he was seriously wounded himself.

According to a former ADFL official who spoke to Human Rights Watch on condition of anonymity, families were not allowed to bury their dead. ADFL soldiers instead disposed of them in mass graves. The same source also indicated that casualties were much higher than the thirty-eight acknowledged by the government. Fear of government retaliation, he said, prevented many families from coming forward to report the loss of a relative. About a dozen victims were reportedly buried in the burial ground of the Catholic church in Uvira. Scores of other corpses were reportedly trucked to remote rural sites for an anonymous mass burial.

Kinshasa authorities promised to conduct an investigation into the violent suppression of the Uvira demonstration. Among the officials who pressed for an investigation reportedly was General Anselme Masasu Ningaba, the unofficial chief of staff of the ADFL army, a native of Uvira, who reportedly personally knew many of the afflicted families. Ultimately, no investigation took place, and the military commanders responsible for the incident were not questioned or transferred from the city.

### ***Students' Demonstrations, Lubumbashi, August 1997***

In the afternoon of Monday, August 11 a shootout broke out between two groups of ADFL soldiers—one of “Kadogos,” ADFL soldiers recruited in eastern Congo, the other of former “Katangese Gendarmes”—near the campus of Lubumbashi University. In addition to the soldiers wounded and killed in the incident, a group of civilians who were waiting for a bus were caught in the cross fire. Sylvie Tshibola, a student, was seriously injured, and her arm, improperly treated, was later amputated. Martine Punga Nkuba died instantly of her wounds. Though not a student, she regularly visited the university, where her fiancé studied.<sup>66</sup>

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<sup>64</sup>Ethnic tensions had pitted the inhabitants, who are predominantly from the Bavira, Bambebe and Bifulero ethnic groups, against the new administration, controlled by the Banyamulenge. The latter did not appreciate being seen as foreigners in a province where they have deep roots.

<sup>65</sup>“Zaire: Zaire Soldiers Reportedly Kill Thirty in Uvira Demonstration,” AFP, Paris, June 2, 1997.

<sup>66</sup>Human Rights Watch interviews, Lubumbashi, August 18, 1997.

Anger at the killing drove students to chant anti-ADFL slogans, to burn its distinctive flag, and to chant the “Zairoise,” the national anthem under Mobutu. Authorities sent in soldiers to contain the demonstration. Students threw rocks at them and refused to surrender the body of the victim until early on the morning of the 12th.

At five in the morning on the 12th, soldiers surrounded the campus and stormed the dormitories, firing into the air as they made their way to students’ rooms. Following a room-by-room search, they arrested nine students and took them for interrogation at the National Intelligence Agency. They were released late on August 13 after extensive beatings. Monitors from Lubumbashi human rights groups visited the rooms and meticulously registered the impact of live ammunition fired that morning on walls and window frames. One student told them that soldiers had pinned him down and fired into a water bucket, less than ten centimeters from his head.<sup>67</sup>

Additional room searches took place late on Wednesday night and on the night of August 16 to 17. Soldiers stood back as university administrators checked receipts they had asked students to produce to prove their identity and entitlement to the rooms. A similar individual check (“contrôle physique”) of thousands of students, including commuting students, took place at the faculty buildings in the morning of Monday 18.

The atmosphere of fear created by the systematic searches reportedly led dozens of students to leave the campus and the region altogether. In a letter to the governor dated August 18, local rights groups and their umbrella organization Concertation des Associations des Droits de l’Homme du Katanga (CADHOK) charged that a list of suspect students was drawn by members of a “Chembe Chembe,” an ADFL cell of recent establishment in the campus. CADHOK reminded him that the suppression of campus politics under Mobutu had culminated, in 1990, into the famous massacre of students that had done much to catalyze resistance to his regime, the result of a military operation in the same campus of Lubumbashi ordered by a governor.<sup>68</sup>

Individual students received summons to report to the National Intelligence Agency shortly after the controls were imposed. In some cases university administrators interrupted classes to deliver summons to students. Sixteen students were thus arrested, accused of having masterminded the trouble. Unlike the first group, these students were detained for weeks in the cells of the National Intelligence Agency. Sustained pressure by CADHOK, in the form of protest letters and delegations to the National Intelligence Agency, ultimately succeeded in obtaining their release on October 10.

On the night of their release, the students were taken directly from their cells to the local radio and television stations and interviewed on the air by National Intelligence Agency inspectors. They admitted guilt in stirring up anti-ADFL agitation, asked for pardon, and promised not to involve themselves in similar activities in the future, likely as a condition for their release. Some revealed in later interviews with CADHOK member organizations that they were also

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<sup>67</sup>See for more details: Communiqué de Press No. 001/CADHOC/97 (Concertation des Associations de droits de l’Homme du Katanga (CADHOK).

<sup>68</sup>For a detailed account of that massacre, see “Zaire: Repression as Policy,” The Lawyers Committee for Human Rights, New York, 1990, pp.80-91.

made to become “ADFL ambassadors” on the campus and that they were promised monthly payments of U.S. \$100 each for that role.<sup>69</sup>

*UDPS Demonstrations, Kinshasa*

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<sup>69</sup>Human Rights Watch telephone interview, New York - Lubumbashi, October 30, 1997.

During the seven-month civil war the UDPS had organized huge demonstrations and ghost-town operations in Kinshasa, Kisangani, and other cities, to express support for the rebel cause and to call for a negotiated settlement of the war. Mobutu's Civil Guards violently suppressed these demonstrations. In mid-February his last government banned demonstrations and ghost-town operations and threatened to extend the "full rigor of the law" to whomever took part in such demonstrations.<sup>70</sup> Days before the fall of Kinshasa, the capital was brought to a standstill by an opposition strike orchestrated by the UDPS to hasten the fall of Mobutu. A reporter quoted a UDPS militant mobilizing party supporters for a demonstration in March who shouted, "Hello Kabila. You have taken Tingi Tingi. You are taking Kisangani. We are waiting for you in Kinshasa."<sup>71</sup>

UDPS militants did not have to wait for long. The ADFL took Kinshasa in May, and one of its first acts in power was to ban party politics and political activities. In their eagerness to exercise the freedom to peacefully associate and assemble, members of the UDPS, and of other vocal opposition groups, found out soon enough that the ADFL's military and anti-riot police had nothing to envy the Civil Guards for when it came to the violent repression of demonstrations. The lists of those arrested, detained and beaten in the post-liberation period strangely resembled those of the Mobutu era.

Days after the announcement of the new government, UDPS chief Etienne Tshisekedi, himself a former prime minister who is believed by many to personify opposition to Mobutu's dictatorship, said in a news conference that he did not recognize the new authorities, adding, "this government does not exist for me. I ask all the people to resist with their last energy all attempts to impose a government without popular legitimacy."<sup>72</sup> His call was heard. Incensed by the exclusion of their party and its leader from participation in the transitional government, supporters of the UDPS launched several demonstrations in the days that followed Kabila's inauguration. Soldiers dispersed the protest marches, sometimes violently, and made arrests. The protesters seized were usually taken to military camps, often subjected to severe beatings there, and released within days.

It is to be underlined here that the UDPS sought in its protests to direct deeply-seated ethnic resentments against the ADFL by claiming that the country was ruled by "foreigners," a call to ethnic chauvinism previously made in the UDPS's support for the Mobutu government's efforts to strip Zairians of Tutsi origin of their Zairian nationality. A UDPS militant told journalists "[we] are marching to protest about the Rwandans. Mr. Tshisekedi knows the Zairian people do not want to be ruled by foreigners."<sup>73</sup>

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<sup>70</sup>"Zaire: Cabinet Meets, Bans Demonstrations, Ghost City Operations," Kinshasa, Voix du Zaire, February 15, 1997, in FBIS- AFR-97-032, February 19, 1997.

<sup>71</sup>"Troops disperse Zaire March to Back Rebel Talks," Reuter, Kinshasa, March 7, 1997.

<sup>72</sup>"Congo Troops Break up Anti-Government Protest," Reuter, Kinshasa, May 23, 1997.

<sup>73</sup>William Wallis, Reuter, Kinshasa, May 28, 1997.

Shortly after Tshisekedi's participation in a political rally at the University of Kinshasa on June 26, where he addressed several thousand student supporters, fifty heavily armed troops descended on his residence and arrested him and his wife overnight. Observers questioned the real motivation behind the arrest as they judged his speech "extremely conciliatory" towards the new authorities. Tshisekedi, in effect, told students that he was in contact with President Kabila to "harmonize" their views on the country's political institutions.<sup>74</sup>

Tshisekedi's release did not stop a few hundred of his supporters from staging violent protests near his home, in Limete commune in Kinshasa, setting fire to old tires and to five passing vehicles and looting a service station. In the confrontations that followed with riot police, at least one protester was seriously wounded.

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<sup>74</sup>"Zaire: Zaire—Opposition Supporters Stage Violent Protests," AFP, Kinshasa, June 27.

On Friday August 15, 1997, paramilitary elements of the Rapid Response Police violently dispersed militants of the youth branch of the UDPS at the end of a public rally they held in front of its party headquarters in Limete, Kinshasa. Human Rights Watch observed the violence from a distance as the Red-Berets, as they are known locally, armed with automatic rifles, first pushed back a large crowd of bystanders, leaving a few hundred militants in the center, just outside their party office. The latter continued with their meeting, ignoring the menacing presence which had surrounded them. As the event was drawing to a close, soldiers stormed the building, violently beating those present and arresting fifteen young men and women, along with the keynote speaker, Raymond Kahungu Mbemba. Kahungu, a co-founder of the party and national secretary in charge of the youth branch, was taken away with the others to an unknown location. They were freed on October 14, after a checkup period at the Stella hospital in Kinshasa.<sup>75</sup>

Human Rights Watch monitors present at the scene witnessed a scene of unprovoked violence, with soldiers firing into the air and beating militants and bystanders alike with rifle butts. The UDPS claimed that, in the systematic search of the office that followed, soldiers took away a safe containing U.S.\$3,000.<sup>76</sup>

The youth branch of the UDPS had declared in late July, 1997 that it would organize a public event every Friday to “combat the installation of a new dictatorship by the ADFL in the Congo.”<sup>77</sup> The meeting on Friday, August 15 was of particular importance: it coincided with the fifth anniversary of the election of the chairman of the Party, Etienne Tshisekedi, to the post of prime minister by the National Sovereign Conference. Relationships between the UDPS and the ruling ADFL were at a critical stage at the time of the meeting. Official contacts between the two parties to arrange a meeting between Tshisekedi and Kabila were frozen by the president, who said that Tshisekedi imposed unacceptable conditions for the reconciliation of their parties. At the same time, the ADFL continued to attract prominent members of the UDPS to its ranks by appointing them to ministerial and other high-ranking positions.

Deteriorating relations between the ADFL and the UDPS marked the recent evolution of the youth branch of the UDPS. Its members reportedly were the first to organize popular reception committees in mid-May to welcome the triumphant ADFL soldiers in the capital. Sobered by what they saw as indications of the installation of an authoritarian government under ADFL’s control—and Tshisekedi’s exclusion—the youth branch organized a crisis committee to monitor developments and examine ways of bringing the ADFL back to the democratization process. The August 15 meeting was also meant to define the role for the youth branch in the then-ongoing official UDPS/ADFL contacts.<sup>78</sup>

On August 22 Human Rights Watch visited the fifteen UDPS detainees from the meeting of the 15th who were held at the time at the headquarters of Special Investigations (Direction Spéciale d’Investigations et de Renseignements, DSIR). We were able to interview three of them privately. They confirmed reports published in the local press that they were subjected to severe beatings at the police station to which they were taken following their arrest. On Saturday

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<sup>75</sup>Communiqué de Presse No.019/BIS/C/VSV/CD/97, V.S.V., Kinshasa, October 22, 1997.

<sup>76</sup>“Hier à Limete: la Permenance de l’UDPS mise à sac..,” La Référence Plus, Kinshasa, August 16, 1997.

<sup>77</sup>“Principaux Titres de l’Actualite, Vendredi, 25 Juillet 1997,” CNONGD, Kinshasa.

<sup>78</sup>See summary of Raymond Kahungu’s speech in the meeting in “Le Meeting de la JUDPS se Termine par une Rafle . . . .,” *Le Potentiel*, August 16, 1997.



morning, August 16, they said, they were taken to the Ministry of Internal Affairs and were given another round of severe beatings, including blows with electric shock batons, in the courtyard of the main building. They claimed that the deputy minister of internal affairs was present in his office at the time and could hear their cries.

Members of the group were not released until late October. They were not allowed to be heard by a judicial authority to determine reasons for their arrest and were never charged with a recognizable crime. In late September AZAHDO issued a statement in which it expressed fears of “disappearance” of two of the UDPS supporters and concern for the welfare of two others who were reported “seriously sick” at the time. In a pattern reported in many political detentions, the UDPS detainees were pressured to give up their political activities as a condition for their release.

### ***Attack on PALU's March and the Ransacking of the Home of its Leader***

An estimated two thousand members of PALU organized a peaceful march on Friday, July 25, 1997 to deliver a petition to the presidency at the Palais de la Nation in Kinshasa. The document presented the party's political demands as follows:

1. The total respect of human rights and associated freedoms by the new powers.
2. National consultations on the transitional period so that presidential, legislative and local elections would be organized within twelve months.
3. The clear separation of presidential functions, to be assumed by the president of the ADFL, if so he desired, from the government functions, to be exercised under the stewardship of a personality of the Unified Lumumbist Party (PALU); and, consecutively to this, the urgent formation of a government which would genuinely be national, composed uniquely of autochtons, and open to all the lively forces of the Congolese nation who had really fought the Mobutu dictatorship in this country.<sup>79</sup>

Police dispersed some of the marchers near the Gombe cemetery, but they managed to join the main body of the demonstration at the presidency. After the end of the march, a group of participants was intercepted by military sentinels posted in front of the Ministry of Foreign Affairs who opened fire at the unarmed militants.

Hours after the end of the demonstration soldiers raided the residence of Antoine Gizenga in the commune of Limete, firing their weapons at militants and in the air to disperse their gathering. A group of permanent workers of the party were severely beaten with rifle butts, whips, and iron bars, and were made to undress. Soldiers locked the elderly Gizenga and his spouse into a bathroom as they ransacked the house. They reportedly took away all valuables, including children's clothing and kitchen utensils.<sup>80</sup>

The day's casualties according to PALU were: one militant dead from bullet wounds; six party members seriously wounded by bullets; and about a hundred other members lightly wounded.<sup>81</sup>

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<sup>79</sup>"Motion Politique: A L'Attention du Président de L'AFDL et Président de la République Mr. Laurent Desiré Kabila," PALU, July 24, 1997.

<sup>80</sup>Human Rights Watch interview with Antoine Gizenga and his spouse, Kinshasa, August 16, 1997.

<sup>81</sup>"Communique de presse No. 0015/Z/VSV/CD/97," VSV, Kinshasa, July 27, 1997.

In a petition addressed to the president, Gizenga gave a detailed list of personal and party possessions that soldiers removed from his home, which also serves as party head office, and asked for the restitution of that property. He estimated the total value at approximately U.S. \$300,000.<sup>82</sup> Mr. Gizenga told Human Rights Watch that he was particularly hurt because written manuscripts and recordings of his personal memoirs were among the items that soldiers took away. He compared this to a deliberate attempt of robbing the party of its institutional memory and compared the incident to a similar one which took place under Mobutu when a raid of his former home resulted in its structural destruction and the burning of earlier manuscripts of his memoirs. Many militants were killed and beaten, and personal effects, including even toilet seats and wall sockets, were also taken away during that attack<sup>83</sup>

## **Freedom of Movement**

### ***Legal Standards***

Article 12 of the ICCPR establishes freedom of movement as a fundamental human right, essential for the effective enjoyment of other human rights:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

The right to freedom of movement is similarly protected under Article 12 of the African Charter, as well as under Article 13 of the Universal Declaration of Human Rights.

The new government severely restricted the movement of political figures and civil society activists who were detained for a time and released without charge or trial by requiring them to sign written undertakings in which they agreed to limitations on their place of residence and internal movement. The government also required former political detainees to report periodically to local police or security agencies. In two cases at least, detailed below, political opposition leaders were prevented from traveling abroad to participate in international conferences.

### ***Restrictions on Movement***

Joseph Olenghankoy, president of FONUS, and his deputy, Jean Pierre Tchimanga, were arrested on October 10, 1997 as they waited at Kinshasa Airport for a flight to the United States. They were scheduled to take part in a conference on the reconstruction of the Congo organized by the Congolese diaspora. They were whisked away, together with Olenghankoy's bodyguard, and held overnight.

Olenghankoy told reporters upon his release that he was not informed of the reason for their arrest and that he was "tortured" and suffered an injured arm. His passport and travel papers were confiscated. The secretary general of FONUS, John Kwet, also told reporters that Olenghankoy's home in the west of the country and his apartment in Kinshasa were both stripped by uniformed soldiers overnight and in the presence of high officials from the Ministry of Internal Affairs.<sup>84</sup> Olenghankoy was previously arrested in early September and briefly held at the headquarters of the military intelligence.

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<sup>82</sup>PALU document PL/SG/LEO/No. 237/97, copy with Human Rights Watch.

<sup>83</sup>Human Rights Watch interview, Kinshasa, August 16, 1997.

<sup>84</sup>"Kinshasa Police Release Opposition Leaders," AFP, Kinshasa, October 11, 1997 and "Opposition Party Leaders Arrested at Kinshasa Airport," AFP, October 10, 1997.

In mid-November authorities barred opposition Christian Democratic leader, Andrmicro Lokongo, from flying to Paris to attend a gathering of the Christian Democrat International.<sup>85</sup>

Restrictions on the movement of former political detainees appear to be the norm. Antoine Kazadi, the UDPS leader released in August from a three-month detention period in Lubumbashi, was ordered not to leave the town for a month and to report daily to the ANR office. Similarly, rights activists released from detention in Kindu and Bukavu had their movement constrained by post-detention limitations as detailed above.

## **Freedom of Expression and the Press**

### ***Legal Standards***

Article 19 of the ICCPR protects freedom of speech. It provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

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<sup>85</sup>"Democratic Republic of Congo: Pointers - Political Trip Barre," Janes Information Group, Foreign Report, November 11, 1997.

The peaceful criticism of government policies does not provide grounds for restrictions on freedom of expression guaranteed under Article 19 (2). Article 19 (3) sets forth permissible limitations on free expression,<sup>86</sup> requiring that any restriction should be defined by law, must serve one of the legitimate purposes expressly enumerated in the ICCPR; and be “necessary.” Freedom of the press is central to the very concept of imparting information, and hence needs to be particularly protected.

Article 9 of the African Charter simply states:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinion within the law.

One of the main achievements of the democratic movement in the former Zaire was the relative freedom that the private press and private broadcasting sector had wrested from the repressive rule of Mobutu Sese Seko’s government during its last few years of an otherwise flawed transition to democracy. These years had witnessed the emergence of a widely popular private broadcasting sector, consisting of five private radio and five television stations in the capital Kinshasa. The main cities of the interior, including Lubumbashi, Kisangani and Goma, each had their own private broadcasting stations. The new authorities sought to restrict freedom of the press in part through intimidating moves against vocal journalists and critical newspapers. In addition, the government strived to maintain the firm control that its predecessor had on state broadcasting.

The practice of journalism was further hampered by the collapse of the country’s formal economy and infrastructure. Thus the great majority of Kinshasa’s newspapers, which all are published in tabloid form and mostly have only eight pages, do not have working telephones, faxes, or their own word-processing equipment. They rely on income from direct distribution to the public through an extended network of street vendors. Few enterprises advertise in the tabloids. The average price of a dollar per tabloid is beyond the reach of the general public. A familiar scene in Kinshasa’s downtown streets is clusters of individuals grouped around newspaper stands, reading from a distance headlines of newspapers they cannot afford to buy.

### ***Attacks on the Press***

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<sup>86</sup>Article 19 (3) of the ICCPR: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

Shortly after taking over Kinshasa the ADFL government announced an extensive purge of journalists and media workers from the public radio and television company known as the Office Zaïroise de Radio et de Télévision (OZRT). On June 4, the government announced that the OZRT had been made the “property of the Congolese people” and renamed it National Radio and Television of Congo (Radio-Télévision Nationales Congolaises, RTNC).<sup>87</sup> The new authorities also shut down and replaced the only news agency in the country, the Agence Zaïroise de Presse.

One of the first decisions of the new minister of information, Raphael Ghenda, was to ban the broadcasting of commercial advertisements by privately owned radio and television.<sup>88</sup> The minister justified his decision by the need to “put an end, without further delay, to the disorder and anarchy in the commercial sector.”<sup>89</sup> The ADFL’s information coordinator, Leyka Moussa Nyembo, sought to justify the measure by noting that private radio and television stations were owned by supporters of former president Mobutu Sese Seko and did not pay any license fees. He added that “a tax of 30 percent of their turnover may be introduced and money used to finance the public channels.”<sup>90</sup> Authorities in June decided to nationalize Télé Kin Malebo (TKM), a popular private television station owned by Ngongo Luwowo, a former official of the Mobutu era. They charged that Luwowo used his position as minister of information under Mobutu to divert equipment meant for the national television station. TKM officials objected that they were in possession of documents proving that the equipment was legally obtained, but this assertion reportedly did not bend the government’s resolve.<sup>91</sup>

From the onset of the Democratic Republic of the Congo, the bustling private press of Kinshasa maintained a critical tone vis-à-vis the new government that was in line with an independence it inherited from its combative past under Mobutu. The new authorities at first showed some tolerance. Yet this was quickly worn thin by coverage of matters that the government considered “sensitive,” such as security issues or corruption in government ranks.

The written press in particular was the target of unrelenting repression. On May 17, 1997, the day Kabila declared himself president, soldiers ransacked the premises of *Le Soft* press group owned by a former information minister. On July 16, a Wednesday, the leading Kinshasa daily *La Référence Plus* published an article alleging a conflict between two candidates for the position of security advisor to the presidency. André Ipakala, the editor of *La*

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<sup>87</sup>“Zaire: Zaire-Radio, Television Stations Made Property of People,” Kinshasa, Voix du Zaire, June 4, FBIS-AFR-97-157, June 6, 1997.

<sup>88</sup>“Zaire: Zaire-Government Bans Private Radio, TV Commercials,” Kinshasa, Voix du Zaire, May 26, FBIS-AFR-97-147, May 27, 1997.

<sup>89</sup>Ibid.

<sup>90</sup>“Democratic Republic of Congo: Media Purge,” The Reporters Sans Frontières Newsletter, July/August 1997 - No. 18, p. 1.

<sup>91</sup>“Zaire: Zairian Authorities To Nationalize Private TV Station,” Libreville, Africa No. 1 Radio, June 18, FBIS-AFR-97-170, June 19, 1997.

*Référence Plus*, told Human Rights Watch that on the following Monday five agents of the political police, the ANR, arrested him at his office. They failed to produce an arrest warrant when he asked for one before accompanying them.

Four agents, who said they were jurists, interrogated him at the office of the director of the Internal Affairs Department of the ANR. They wanted to know the source of the story and threatened him when he refused to reveal it. Ipakala said that just before the fall of Mobutu, a new press law was passed that required journalists to reveal their sources when asked to by "competent authorities" which the law did not name. Ipakala was released late in the evening of his arrest. The ANR agents who interrogated him asked to meet with the director of publication and the author of the story. The latter ultimately revealed its source, who, according to Ikapala, was sufficiently highly placed that the inquiry was blocked.<sup>92</sup>

Ali Kalonga, director of the official Congolese Press Agency, was detained for weeks in August 1997 for approving for publication a story about the suspension and house arrest of the finance minister following allegations of corruption.

Moise Musangana, the publication director of the daily *Le Potentiel*, told Human Rights Watch that the paper was regularly visited by people who claimed that they were from security agencies or the governing ADFL. They raised questions about the paper's coverage of the ADFL and cautioned journalists. Such visits, he said, were meant to steer the paper's reporting toward an ADFL orientation.<sup>93</sup> The expected outcome of these attacks and intimidating visits appeared to be to induce self-censorship in the private press.

Authorities arrested Polydor Muboyayi Mubanga on September 8, 1997 after *Le Phare*, an independent daily of which he is the editor-in-chief, published an article claiming that President Laurent Kabila was recruiting his own presidential guard. He was reportedly beaten at the time of his arrest. Polydor was later held in a cell at the Tribunal de Premier Instance, the main criminal court in Kinshasa, where detention conditions were notoriously harsh. On September 17 he was officially charged with "spreading false rumors and inciting ethnic hatred," and could face a prison term of up to two years if found guilty.<sup>94</sup>

Polydor Mubanga's arrest triggered a strong campaign of solidarity and pressure for his release. On September 9, the Union of Journalists and Communications Workers protested the journalist's detention. AZAHDO, on September 12, called for the immediate release of Polydor and urged authorities to abandon their "intimidation tactics." On September 18, the local journalist association Média Libre - Média Pour Tous (Free Media - Media For All) staged a "day without newspapers," which was unanimously observed by the Congolese press. The organization said his arrest was in "flagrant violation of the law which safeguards press freedom" in the DRC. International media watchdogs also launched similar appeals. It was, however, not until mid-November, that president Kabila ordered his release when he "advised" the minister of justice to set him free.<sup>95</sup>

As Polydor was being released, authorities arrested in Kisangani on November 18 Bonsange Yema, managing editor of *Mambenga*, *Essor Africain* and *l'Alarme* newspapers, on suspicion of "spying" for the U.N. Investigative Mission. He was released on November 27. Bonsange's arrest was typical of the government's reaction to coverage of its human rights record. As the U.N. prepared to launch its probe in late November and early December, the

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<sup>92</sup>Human Rights Watch interview, Kinshasa, August 13, 1997.

<sup>93</sup>Human Rights Watch interview, Kinshasa, August 15, 1997.

<sup>94</sup>"Request for Action on Behalf of Polydor Muboyayi Mubanga," Amnesty International Urgent Action, September 25, 1997.

<sup>95</sup>See "Democratic Republic of Congo: Kabila Demands Congo Editor be Set Free," Reuter, Kinshasa, November 18, 1997.

government intensified its crackdown against the media in an apparent bid to hinder its participation in the search for truth. The clampdown targeted both the national and international media as the following incidents indicate.

The state broadcasting network dismissed four journalists working for both local and foreign media in late November. According to reports, the acting head of the network accused them of "failing to heed instructions . . . regarding the dissemination of news."<sup>96</sup> The AFP said the four journalists were accused of "distorting" facts following clashes in Kinshasa between two competing army factions and the arrest of Commander Masasu Nindaga, the acting chief of staff of the army. On November 30, the authorities blocked international media broadcasts in the country. The information minister, Raphael Ghenda, said all FM radio broadcasts would be cut "for an indefinite period," and said the decision was motivated by a "disinformation campaign" by "certain foreign media" which sought to undermine his government. The decision affected the BBC, Radio France Internationale and the Voice of America, whose news broadcasts are relayed by local private radio stations. The decision was reportedly reversed days later following discreet diplomatic pressure.

The government also took measures which, if fully implemented, would threaten the very existence of the private press. On August 18, for example, the national police issued an order banning the sale of newspapers on the main streets of Kinshasa. The private press considered this as a "declaration of war" as its distribution is entirely dependent on street vendors.

Lastly, President Kabila warned journalists in the country to report "responsibly" or face disciplinary action. He told a press conference in Kinshasa that the state "was obliged to defend itself against a section of the media which is always quick to demand its rights, but quite unconcerned about accomplishing its duty."<sup>97</sup>

The president did not say what "disciplinary action" his government had in reserve for journalists whose reporting it would deem "irresponsible." This is irrelevant, however. Shortly after he made this threat, soldiers severely beat ten journalists and seized their equipment for simply having attended a press conference, on November 27, 1997, by the opposition Forces of the Future.<sup>98</sup>

## INTERNATIONAL POLICIES

After six months of rule by the ADFL, many members of the international community are still developing policies toward the Congo, especially on the issue of international assistance. Central questions of decision-makers have revolved around what kind of aid should be given, at what point, and under what conditions. Potential donors, humanitarian organizations, and Congo observers have engaged in a debate over what strategy to follow to address the massive rehabilitation and humanitarian needs in the Congo while promoting long-term stability, a transition to democracy, and respect for human rights and the rule of law. Policy proposals vary from those which insist upon real progress by the U.N. mission of inquiry, and in other areas of human rights and democratic reform before some types of aid are given, to those willing to consider the immediate provision of aid to the Kinshasa government with few or no conditions. Human Rights Watch believes that aid to the central government of the Congo should be provided in

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<sup>96</sup>IRIN Update No. 307 for Central and Eastern Africa, Friday December 5, 1997, United Nations, Department of Humanitarian Affairs, Integrated Regional Information Network for Central and Eastern Africa.

<sup>97</sup>See: IRIN Update No. 297 for Central and Eastern Africa, Friday November 21, 1997, United Nations, Department of Humanitarian Affairs, Integrated regional Information Network for Central and Eastern Africa.

<sup>98</sup>See above. Those beaten were: Kamanda wa Kamanda (correspondent of Africa No. 1), Paulin Tuluma, Musangu Fidele (Le Phare), Kota Jonas (Le Potentiel), Beke Eric, Kasongo Denis (Le Defi Africain), Lubunga (correspondent of the BBC-Swahili), Wamwana Baudoin (La Semaine du Rapporteur), Bonane Ya Nganzi Xavie (La Semaine du Rapporteur), Mosi Mosi (BBC and Voice of Germany correspondent). See "Bastonnade Contre Forces du Futur et Journalistes," VSV.

accordance with a set of calibrated benchmarks and be dispersed in a progressive fashion with close monitoring by donors. To do otherwise risks putting the international community in the same position it held under Mobutu, namely contributing to the bank accounts of individual members of a government that refused to respect human rights—civil and political, economic, social and cultural—or to promote democracy.

### **Conditionality, Engagement, and Human Rights**

Many potential donor states have underscored the need to engage the Congolese authorities in order to have influence in the Congo's future direction and the region. Some recent evaluations of the political, economic, and humanitarian situation in the Congo have noted the lack of institutional capacity of the new and inexperienced government, a need for financial and technical assistance, and massive deficiencies in the infrastructure needed for social and economic development. Initiatives to support the existing government with few conditions are based on the theory that financial aid and technical assistance will of itself provide stability, improving national and regional security, permitting economic growth, and ultimately moving the Congo closer to a democracy and the rule of law.

Now is indeed a critical time for the international community to be actively involved in promoting democracy and security in the Congo and the region. As the authorities are setting course for the new Congo, a window of opportunity to influence the direction of the new regime has emerged. The recently appointed Constitutional Commission is the most concrete reminder that the Congolese government will soon be forming and implementing a host of domestic policies and legal guidelines that will serve as the blueprint for the new Congo. It is crucial that the Congo be encouraged to create a blueprint that will put the country on the road toward a democratic society where the rule of law and human rights are respected. The opportunity to influence the new Congo in its formative stages should not be missed.

In the Congo, as elsewhere in the region, political stability demands a firm stand on human rights in order to avoid future rounds of massive killings with the attendant refugee flows, enormous requirements of humanitarian aid, destruction of infrastructure, and delays in establishing the conditions needed for democratization and improved economic performance. Without a foundation on the rule of law, efforts to rehabilitate and develop economically will have this desired impact only in the short-term. As long as those implicated in crimes against humanity and other egregious human rights violations are not held accountable for their actions, rebels and state authorities alike who advocate change through violence or rule by repression will be encouraged to continue to use these methods. A climate of impunity discourages those who seek to participate in political life under the rule of law, whether within the government or in civil society, from organizing and acting effectively against those acting beyond the limits of the law who are intolerant of the rights of others. Local populations, having lived through cycles of violence followed by impunity, are encouraged to follow those who advocate hatred and the use of violence, fearing what will happen if they do not band together, and having no reason to believe that they will be held accountable for their actions.

A firm and consistent policy on human rights will help to limit abuses by those with military power and encourage those who advocate for human rights and democracy to continue pressing for change from within the Congolese and other societies of the Great Lakes Region. To date, however, the international community has not demonstrated the will to take such a stand, apparently suffering from guilt over past failures and a loss of credibility throughout the region. Several key events have contributed to this situation, including the international community's inaction in the face of the Rwandan genocide, its refusal to deal with the military presence in camps in the Congo and subsequent incursions into Rwanda, its tolerance of Rwandan government's abuses, and its weak response to killings of refugees in the Congo.

Some policy makers, conscious of this loss of credibility and collective guilt, argue that their future influence in the region will be assured if immediate and generous aid is provided to the Congo and neighboring states, with few or no clearly articulated conditions. But such financial aid alone will not assure space for democratic change; on the contrary, it will serve to reinforce regimes in the region who continue to use repressive methods or prevent investigations into the most fundamental of human rights violations, such as the massive civilian slaughter in the Congo. Errors of the past cannot be corrected by an infusion of hard currency with few or vague conditions into regimes that have blatantly violated and continue to violate international human rights standards. The past should be



used as a reference point to understand and correct failed policies, not as an excuse to justify the use of violence and repression today.

In the past, firmness on human rights issues linked with threats to withhold aid or political support has produced some positive effects in the region. Examples of this include the prompt and unanimous international condemnation of the attempted military coup in Burundi in 1993 which forced the soldiers back into their barracks within forty-eight hours; firm criticism of Rwandan Patriotic Army killings of civilians in June and July 1996 that brought a marked decrease in abusive military operations in Rwanda; and the continuing pressure by the U.S. and other regional players in 1997 that has spurred the Burundi government to disband regroupment camps. These instances illustrate how the international community can use its influence to protect human rights in the region.

The Congolese people are in desperate need of assistance after years of negligence by state authorities under the Mobutu regime and further destruction of infrastructure during the war. A concerted effort from the international community should immediately reinforce the flow of aid through organizations of Congolese civil society, international NGOs, United Nations agencies, and other nongovernmental channels. This aid should focus on humanitarian needs, poverty alleviation, and human rights initiatives that bring direct assistance in key areas such as health, education, infrastructure, and the rule of law. This financial assistance and other types of support to organizations of civil society will also serve to strengthen moderate voices in the Congo.

In establishing responsible partnerships with the new Congolese authorities, donor countries should hold regular and frank discussions with the Kinshasa government regarding the nature of their assistance and the precise outcomes of such aid. Financial support to the central government of the Congo should be contingent upon the government's meeting a series of calibrated benchmarks. Donors must be willing to monitor and progressively evaluate the impact of their assistance to ensure that aid is well spent and not used to reinforce repressive practices, as was the case under Mobutu. In addition to alleviating poverty and fulfilling humanitarian needs, aid in this sense should serve to reinforce the gradual process of building a state based on the rule of law and democracy. Developing this type of responsible partnership with the Congolese government will bring aid to the Congolese population in the short-run while laying a foundation for good governance and respect for human rights that will permit long-term economic development and security.

Aid should be used both to reinforce positive steps taken by the government toward establishing a democratic society and respecting human rights, as well as a lever to use when set benchmarks are not met. It is critical to use aid strategically over time to ensure compliance to agreed conditions set by donors and the Congolese government. While humanitarian and development aid through nongovernmental channels should flow immediately as described above, bilateral and multilateral assistance to the central government should be contingent upon: (1) demonstrable and tangible progress in the field investigative phase of the U.N. Investigative Mission and ultimately in bringing the perpetrators of the massacres to justice, and (2) improved respect for the rule of law, human rights, and democratic principles by the Congolese government. The latter would include measures such as lifting the ban on non-ADFL political activity; guaranteeing the participation of organizations of Congolese civil society in the reconstruction and re-defining of the new Congo; ceasing harassment of independent voices among the political opposition, media, and civil society; and immediate action on holding the military accountable for human rights abuses. Further bilateral aid for balance of payments support should be contingent upon the progressive development of institutional and legal mechanisms to guarantee the respect for human rights, including the promulgation of the new constitution. A full list of specific recommendations are outlined in the recommendations section above.

Steady monitoring of progress in these areas will be crucial to ensure the responsible use of aid money. In particular, the international community should closely monitor the U.N. investigative process and subsequent efforts to hold accountable those found guilty for war crimes in the Congo, in order to discourage the repetition of mass killings of civilians in the Great Lakes Region. If international aid is given to the Congo without dialogue and conditions, it will serve only to reinforce the repression of rights. The international community's willingness to allow aid money to find its way into the hands of oppressors in the region raises questions regarding the international community's will to address the real problems that threaten peace and security in the region.

## United States

U.S. decision makers have been struggling to develop a policy toward the Congo that accommodates U.S. economic and strategic interests in the Great Lakes Region while encouraging the Congolese government to respect human rights and move towards democracy and elections. The issue has created much debate among administration officials concerning *HOW MUCH HUMAN RIGHTS AND DEMOCRACY CONSIDERATIONS SHOULD INFLUENCE ECONOMIC ASSISTANCE TO KABILA'S NEW GOVERNMENT AND HOW THESE CONCERNS SHOULD BE EXPRESSED*. The government of the Congo, up until the October 25, 1997 agreement negotiated by Ambassador Bill Richardson, had denied access to the U.N. Investigative Mission to investigate allegations of massive civilian killings, the most important human rights issue thus far for Kabila. Additionally, after six months in power, Kabila's government continued to deny many basic rights and make little progress toward establishing a democratic society. While expressing their discontent over these issues, administration officials have dismissed other concerns about human rights violations under Kabila and a lack of transition to a democratic society, such as the exclusive politics practiced by the ADFL. Thus far, the U.S. has been unwilling to set clear benchmarks for aid to the Congo with the exception of cooperation with the U.N. mission.

Since April 1997, the United States has repeatedly expressed its concern over the allegations of massacres during the war in the Congo. More recently, U.S. officials have made statements regarding the importance of the U.N. Investigative Mission in defining policy toward the Congo, linking at least some U.S. assistance to the government's full cooperation with the U.N. mission.<sup>99</sup> *SINCE BEFORE THE ADFL TOOK POWER IN KINSHASA, AND PARTICULARLY IN RECENT MONTHS, THE U.S. HAS ALSO EXPRESSED ITS INTENT TO CONSIDER "CONSTITUTIONAL AND DEMOCRATIC REFORMS" IN DETERMINING WHETHER AID SHOULD FLOW TO THE CENTRAL GOVERNMENT.*<sup>100</sup>

On November 5, 1997, at hearings before the U.S. House Committee on International Relations, U.S. Representative to the United Nations Bill Richardson described the U.S. policy toward the Congo as "cautious engagement."<sup>101</sup> Ambassador Richardson stated to the committee that in his discussions with the Congolese government he had stressed the importance of "full cooperation" with the team and that "it would be more difficult to deepen our bilateral ties and increase aid without access for the team."<sup>102</sup> In fact, U.S. aid to the Congo has been suspended since 1991 under the Brooke amendment, which prohibits foreign aid to states in default on their loans from the U.S. government. The total U.S. aid package to the Congo identified for fiscal year 1997 totaled U.S. \$10 million, most of it to be channeled through nongovernmental organizations and United Nations agencies, thus avoiding restrictions of the Brooke amendment. This aid was directed largely at humanitarian and development projects, with an important percentage supporting an immunization program organized by UNICEF and the World Health Organization.

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<sup>99</sup>SEE HUMAN RIGHTS WATCH AND FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME (FIDH), "What Kabila is Hiding."

<sup>100</sup>U.S. Representative to the United Nations Bill Richardson, hearings before the House Committee on International Relations, November 5, 1997.

<sup>101</sup>Ibid.

<sup>102</sup>Ibid.

At times, U.S. officials made statements recognizing the significance of the U.N. investigation in the Congo as part of a broader effort from the international community to insist on accountability from its partners in the Great Lakes Region. On October 1, State Department Spokesperson James Foley warned that "it would be an enormously significant setback to the goal of achieving accountability in Central Africa" if Kabila evicted the U.N. team.<sup>103</sup> Despite this statement and others from State Department officials such as Ambassador at Large for War Crimes Issues David Scheffer indicating that U.S. assistance would depend on cooperation with the U.N. team, some U.S. officials and diplomats expressed skepticism at linking bilateral aid solely to the issue of progress on the investigation.<sup>104</sup> Some officials appeared to view the mission as a logistical issue to be arranged as quickly as possible in order to permit aid to again flow to the central government. It remains unclear whether the U.S. will have the political will to follow through with its current stated commitment to the U.N. investigation by monitoring progress on the mission and insisting on prosecutions where appropriate.

In addition to concerns expressed by the U.S. about the U.N. investigation, Ambassador Richardson indicated that future aid may depend on a transition toward a democratic state, including constitutional reform. Similar statements were made as early as May 1997 by U.S. Secretary of State Madeleine Albright, who stressed the importance of including non-ADFL members in Kabila's cabinet and government:

We are making it very clear that it is important for the new government to be inclusive, to be concerned and do a lot about democratic practices and human rights. We are going to continue to make that clear and make it also evident that large-scale support by the international community will depend on the way that those three criteria are met.<sup>105</sup>

This attitude was later echoed by Under Secretary of State Thomas Pickering, who stated at July 16 Congressional hearings that U.S. aid would be contingent on a transition to democracy, scheduling elections, and respecting human rights.<sup>106</sup>

At the November 5 hearings, Ambassador Richardson and Special Presidential Envoy Howard Wolpe made reference to progress made by the Congolese government in some of these areas, such as inclusion of non-ADFL members within the government, permitting a generally free press and active NGO movement, and the appointment of a Constitutional Drafting Commission. While expressing his concern regarding the ban on political parties, a lack of due process, and the violation of international humanitarian principles in the Congo, Ambassador Richardson emphasized the positive steps taken by the Congolese government and downplayed remaining human rights and democracy concerns.

While it is important to recognize the huge challenges and institutional limitations of the new Congolese authorities, it is worrisome that the U.S. appears to be turning a blind eye toward some abuses committed today that reflect a lack of political will—or indeed political ill will—on the part of the Congolese authorities, not a lack of governmental capacity. Although U.S. decision-makers appear to have identified many of the general areas to monitor regarding the transition to democracy and respect for human rights, the U.S. has yet to clarify how it plans to monitor and evaluate progress in these and other areas and how aid will be linked to progress on these fronts. In a meeting with Human Rights Watch, U.S. Ambassador Daniel Simpson stated that the U.S. would consider the overall situation in the

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<sup>103</sup>AFP wire story, "U.S. Warns Kabila Aid at Stake over Human Rights Probe," October 1, 1997.

<sup>104</sup>Human Rights Watch meetings with U.S. Ambassadors Richard Bagosian and Daniel Simpson, Washington, D.C., November 12, 1997.

<sup>105</sup>Reuter, "U.S. Tells Kabila Aid is Conditional on Rights," May 20, 1997.

<sup>106</sup>United Press International, "Caution Issued on the Republic of Congo," July 16, 1997.

Congo in setting levels of aid, but had not yet set any benchmarks for the Congolese government.<sup>107</sup> This vagueness increases the likelihood that critical issues of human rights and democratic reform will be minimized and subordinated to other political, economic, and strategic concerns in determining aid.

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<sup>107</sup>Human Rights Watch meeting with U.S. State Department officials in Washington, D.C., November 12, 1997.

It is essential that the U.S. monitor and evaluate progress made by the U.N. investigative team on the ground and follow up the team's report to the U.N. secretary-general. The U.S. has played a key role in helping the mission to move forward and must now make sure that the results of the mission are taken seriously. According to the agreement negotiated by Richardson, the U.N. team cannot make recommendations for prosecution or punitive measures.<sup>108</sup> The U.S. should closely follow the reactions of the U.N. secretary-general and the Security Council to the report and insist that appropriate action be taken to discourage future violence involving crimes against humanity and war crimes in the contention for power in the region.

## Europe

As have their counterparts in Washington, the representatives of some European governments have expressed their concern that the blocked U.N. Investigative Mission has become an obstacle to restarting the flow of aid to the Congo, ignoring the importance of the process of the investigation and appropriate follow-up. While the European Union (E.U.) has ear-marked U.S. \$168 million for assistance to the Congo, whether this aid should be released and under what conditions has yet to be determined. This potential assistance, to be discussed at a World Bank "Friends of Congo" donor's meeting December 3 and 4, 1997, would constitute the most significant aid package available to date for the Congolese government.

At present, aid from the E.U. to the Congo is prohibited by Article 5 the Lomé IV,<sup>109</sup> applied to Zaire due to the lack of respect for human rights and democratic principles under the Mobutu regime. Following the suspension of aid to the Zairian government, assistance from European donors to Zaire was channeled through international and Zairian NGOs, largely in support of health, infrastructure, and poverty alleviation programs. A decision would be required by the European Parliament to lift the suspension of aid to the government of the Congo.

During the war that brought Kabila to power and in the weeks after his takeover, the European Union and several member states expressed both their concern for the lack of access by the U.N. investigative team and their expectations regarding democratic reform in the Congo:

The European Union looks forward to the implementation of President Kabila's commitments to convene a constituent assembly within 60 days and to hold elections within two years. In this regard, respect for human rights and commitment to democracy will be essential. It urges the new authorities to allow the United Nations carry out its work in relation to human rights as a matter of urgency and to guarantee it unhindered access to all regions it wishes to visit. It is on this basis, and bearing in mind the huge problems of rehabilitation, as well as economic and social reconstruction of the country, that the Union hopes to develop its relations with the Democratic Republic of Congo.<sup>110</sup>

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<sup>108</sup>Press statement by U.S. Ambassador Bill Richardson, Kinshasa, October 25, 1997.

<sup>109</sup>The Lomé Convention is the document under which developing states receive aid from the European Union. Article 5 of Lomé IV (the fourth iteration of the convention) makes respect for human rights and democratic principles an "essential element" of the convention.

<sup>110</sup>Agence Europe, "European Union Stipulates what it expects from the New Authorities of Former Zaire," May 24, 1997.

IN THE MONTHS THAT FOLLOWED THE ESTABLISHMENT OF KABILA'S GOVERNMENT, AN E.U. "TROÏKA" OF OFFICIALS FROM LUXEMBOURG, THE NETHERLANDS, AND THE UNITED KINGDOM APPEARED READY TO PLACE RECONSTRUCTION OVER THE NEEDS OF JUSTICE, SENDING ENCOURAGING SIGNALS TO KABILA IN THEIR REPORT WHICH CONCLUDED THAT THE ENVIRONMENT IN THE CONGO WAS LARGELY FAVORABLE FOR REESTABLISHING COOPERATION.<sup>111</sup> MORE RECENTLY, HOWEVER, THE E.U. ADOPTED A POSITION SIMILAR TO THAT OF THE U.S. AND STATED THAT AID TO THE CONGO WOULD BE CONDITIONED UPON KABILA'S COOPERATION WITH THE U.N. INVESTIGATIVE TEAM. A COMMON DRAFT RESOLUTION FROM THE EUROPEAN PARLIAMENT IN LATE OCTOBER 1997 STATED THAT THE E.U.

[c]ONSIDERS THE SUCCESSFUL IMPLEMENTATION OF THE INVESTIGATION LED BY THE U.N. MISSION AS AN ESSENTIAL CONDITION AND PREREQUISITE FOR ANY ASSISTANCE TO THE DRC. . . STRESSES THAT RESPECT FOR HUMAN RIGHTS, FOR DEMOCRATIC INSTITUTIONS, FOR INTERNATIONAL LAW AND THE NON-EXPULSION OF REFUGEES ARE PRE-REQUISITES FOR THE IMPLEMENTATION OF SUCH COOPERATION.<sup>112</sup>

WHILE MAKING REFERENCE TO THE IMPORTANCE OF ESTABLISHING A DEMOCRATIC GOVERNMENT AND THE IMPORTANCE OF THE RESPECT FOR HUMAN RIGHTS, SOME EUROPEAN POWERS HAVE ALSO SHOWN AN IMPATIENCE DUE TO AID BEING LINKED WITH PROGRESS BY THE U.N. MISSION. IN MID-OCTOBER, DUTCH DEVELOPMENT COOPERATION MINISTER JAN PRONK REPLAYED TO KABILA THE NEED FOR A "GOOD, CONCLUSIVE INVESTIGATION" BUT LATER DESCRIBED THE BLOCKING OF THE U.N. TEAM AS "A BARRIER TO THE NORMALIZATION OF RELATIONS BETWEEN THE NEW CONGO AND THE INTERNATIONAL COMMUNITY."<sup>113</sup> MINISTER PRONK WENT FURTHER TO RECOMMEND THAT, IN ADDITION TO HUMANITARIAN ASSISTANCE, AID TO THE CONGOLESE GOVERNMENT,

SHOULD BE STARTED OR STEPPED UP IMMEDIATELY AND WITHOUT ANY FURTHER CONDITIONS. START OR RESUMPTION OF AID SHOULD NOT BE MADE CONDITIONAL ON THE RESULTS OF THE INQUIRY. HOWEVER, IMPLEMENTATION OF THE RECOMMENDATIONS THAT WILL BE FORMULATED ON THE BASIS OF THE INQUIRY WILL DETERMINE THE CONTINUATION OF THIS ASSISTANCE.

THUS FAR, THERE HAS BEEN LITTLE CONCRETE DISCUSSION AMONG EUROPE GOVERNMENTS OF LINKING AID TO SPECIFIC ASPECTS OF DEMOCRATIC REFORM OR RESPECT FOR HUMAN RIGHTS. EUROPEAN NGOs, HOWEVER, INCLUDING THE EUROPEAN NETWORK FOR THE CONGO (RÉSEAU EUROPÉEN POUR LE CONGO, REC), AND THE CONGO-FRANCE NETWORK, RAISED PARTICULAR CONDITIONS TO BE CONSIDERED BY EUROPEAN GOVERNMENTS IN PREPARATION FOR THE WORLD BANK DONOR'S CONFERENCE ON THE CONGO. IN AN OCTOBER 24 MEMO TO EUROPEAN GOVERNMENTS AND THE E.U., THE CONGO-FRANCE NETWORK STATED THAT BI- AND MULTI-LATERAL AID SHOULD BEGIN IN A "PROGRESSIVE AND CAREFUL" MANNER, CONTINGENT ON A NUMBER OF SPECIFIC CRITERIA INCLUDING, AMONG OTHERS, PROGRESS BY THE U.N. INVESTIGATIVE MISSION; FREEDOM OF EXPRESSION AND ASSOCIATION FOR UNIONS, POLITICAL PARTIES, AND RELIGIOUS GROUPS; SEPARATION OF THE ADFL PARTY FROM THE STATE; INDEPENDENCE OF THE JUDICIARY; RESPECT OF AN ELECTORAL CALENDAR LEADING TO FREE AND FAIR ELECTIONS; SETTling OF THE NATIONALITY QUESTION; AND PARTICIPATION BY ORGANIZATIONS OF THE CIVIL SOCIETY. AS OF THIS WRITING, IT REMAINED UNCLEAR HOW THE EUROPEAN UNION WOULD REACT TO THIS MEMO OR IF THEY WOULD REQUIRE THAT THE CONGOLESE GOVERNMENT TAKE SPECIFIC MEASURES BEFORE DIRECT ASSISTANCE IS RE-ESTABLISHED.

## Africa

AMONG MEMBERS OF THE INTERNATIONAL COMMUNITY, AFRICAN STATES HAVE GENERALLY PROVED TO BE THE MOST PATIENT IN CALLING FOR A TRANSITION TO DEMOCRACY IN THE CONGO AND THE LEAST DEMANDING OF THE CONGO IN TERMS OF RESPECT FOR HUMAN RIGHTS, INCLUDING PROGRESS ON THE U.N. INVESTIGATION. BOTH DURING THE WAR AND UP TO THE PRESENT, THE ADFL HAS BENEFITED FROM SUPPORT FROM MANY REGIONAL STATES SEEKING TO INCLUDE THE CONGO IN A GROWING EAST-CENTRAL AFRICA ECONOMIC, POLITICAL, AND MILITARY BLOCK. IN ADDITION TO MILITARY BACKING

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<sup>111</sup>See Human Rights Watch and FIDH, "What Kabila is Hiding."

<sup>112</sup>European Parliament, common resolution of October 23, 1997.

<sup>113</sup>Dirk Vlasblom, "Pronk: UN blunders in Congo," Rotterdam NRC Handelsblad from FBIS, October 22, 1997.

FROM RWANDA, UGANDA, ANGOLA, BURUNDI, AND OTHERS DURING THE WAR, THE ADFL HAS MORE RECENTLY RECEIVED PROMISES OF POLICE OR MILITARY ASSISTANCE AND TRAINING FROM TANZANIA ZIMBABWE, AND UGANDA, AMONG OTHERS.<sup>114</sup>

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<sup>114</sup>Buchizya Mseteka, "Old Habits Die Hard in Kabila's New Congo," Reuters, November 4, 1997.

OAU MEMBERS HAVE BEEN DEFENSIVE OF KABILA'S NEW REGIME OR, AT BEST, HAVE SENT MIXED SIGNALS REGARDING A TRANSITION TO DEMOCRACY IN THE CONGO AND THE RESPECT FOR HUMAN RIGHTS. SEVERAL STATES, NOTABLY SOUTH AFRICA, DOWN-PLAYED HUMAN RIGHTS ABUSES COMMITTED DURING THE WAR AND CALLED FOR PATIENCE IN EXPECTING DEMOCRATIC REFORMS, APPARENTLY IN HOPES OF FOSTERING FRIENDLY DIPLOMATIC TIES AND LUCRATIVE ECONOMIC RELATIONS.<sup>115</sup> SOON AFTER THE ADFL CAME TO POWER, SEVERAL PROMINENT AFRICAN LEADERS EXPRESSED THEIR GENERAL EXPECTATION THAT KABILA WOULD SET UP A DEMOCRATIC COUNTRY BASED ON THE RULE OF LAW. OAU SECRETARY-GENERAL SALIM AHMED SALIM STATED IN MID-MAY 1997 THAT HE HOPED "THAT WHEN MR. KABILA FORMS HIS GOVERNMENT OF TRANSITION, IT WILL BE A BROADLY-BASED ONE, INCORPORATING OTHER IMPORTANT ELEMENTS OF THE CONGOLESE/ZAIRIAN SOCIETY."<sup>116</sup> UGANDAN PRESIDENT YOWERI MUSEVENI, HOWEVER, WHILE ENCOURAGING KABILA TO BE INCLUSIVE IN HIS NEW GOVERNMENT, DEFENDED THE NEW PRESIDENT'S SUSPENSION OF POLITICAL PARTIES, IMPLYING THAT THE CONGO SHOULD ADOPT A SYSTEM SIMILAR TO UGANDA'S: "I MYSELF DON'T LIKE POLITICAL PARTIES...I RESTRICTED THEIR ACTIVITIES. IF MR. KABILA COPIES THAT TYPE OF SITUATION, I WOULDN'T BE SURPRISED."<sup>117</sup> IN SEPTEMBER 1997, THE CONGO WAS ACCEPTED AS THE NEWEST MEMBER OF THE SOUTH AFRICAN DEVELOPMENT COMMUNITY (SADC), AND RECEIVED STATEMENTS OF SUPPORT IN DEFYING THE U.N. INVESTIGATIVE PROBE FROM A NUMBER OF ORGANIZATION OF AFRICAN UNITY MEMBERS MEETING IN KINSHASA IN JULY 1997, AND AGAIN IN AUGUST 1997 FROM SOUTH AFRICAN PRESIDENT NELSON MANDELA.<sup>118</sup> IN EARLY OCTOBER, UGANDA'S PRESIDENT YOWERI MUSEVENI INSISTED THAT THE U.N. PROBE MUST CONSIDER THE FACTS FROM "FROM THE BEGINNING" AND AGREED WITH THE CONGO'S REJECTION OF THE TEAM IF THEY WERE NOT WILLING TO DO SO.<sup>119</sup>

ASIDE FROM BROAD STATEMENTS IMPLYING CONCERN FOR A TRANSITION TO DEMOCRACY, MOST OF THE REGIONAL ECONOMIC, POLITICAL, AND MILITARY SUPPORT FOR THE CONGO CAME WITH LITTLE REFERENCE TO RESPECT FOR HUMAN RIGHTS OR A TRANSITION TO DEMOCRACY. STATEMENTS MADE TO ENCOURAGE THE CONGOLESE GOVERNMENT TO RESPECT HUMAN RIGHTS REMAINED ONLY ENCOURAGEMENTS, WITH NO CONDITIONS BEING ATTACHED TO COOPERATING WITH OR ENGAGING THE CONGO AS A FULL PARTNER IN THE REGION.

In more recent months, as more incriminating evidence was uncovered and published, African leaders have become more restrained and circumspect in their statements regarding the Congo. Some African states made modest calls for cooperation with the U.N. investigation or for democratic reform in the Congo. After his mission to the region in late October 1997, U.S. Ambassador Richardson stated that he had met with the governments of Rwanda, Uganda, Angola, and Ethiopia, all of whom assured Richardson that they supported the new agreement to allow the U.N. investigation to move forward. Officials from states with significant economic interests in the Congo, such as South Africa, continued to claim that it was too early to judge the new president even on the matter of U.N. access. South

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<sup>115</sup>SEE HUMAN RIGHTS WATCH AND FIDH, "WHAT KABILA IS HIDING."

<sup>116</sup>Panafrican News Agency, "OAU Leader Says he is Confident of Democracy in Zaire", May 18, 1997.

<sup>117</sup>Reuters, "Mandela Accuses West of Demonizing Congo's Kabila," May 27, 1997.

<sup>118</sup>SEE HUMAN RIGHTS WATCH AND FIDH, "WHAT KABILA IS HIDING."

<sup>119</sup>Agence France Presse, "UN cites "misunderstanding" on DR Congo probe," October 10, 1997



Africa's Foreign Minister Alfred Nzo stated in mid-November, "I don't agree with the United Nations or anyone who has come to the conclusion that Kabila is not a democrat. . . it is better if they give him a chance."<sup>120</sup>

### **United Nations and Multilateral Institutions**

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<sup>120</sup>United Nations Department of Humanitarian Affairs, Integrated Regional Information Network, Great Lakes Update 292 November 14, 1997.

Since the U.N. special rapporteur on the human rights situation in the Congo, Roberto Garretón, issued a preliminary report in April 1997 on the allegations of massacres and other human rights violations in the Congo, U.N. efforts to fully investigate events during the war have been thwarted by the Congolese government. A series of U.N. missions sent to the region between May and August 1997 were repeatedly promised access to the interior of the country and subsequently restricted to Kinshasa by ADFL authorities. On October 25, 1997, U.S. Ambassador Bill Richardson negotiated yet another agreement with the Congolese government that would allow the U.N. Investigative Mission to move forward. Six days later, U.N. Security Council members welcomed the accord and were encouraged by Richardson to look beyond the mission to establishing new relations with the Congo.<sup>121</sup> The U.N. Mission returned to Kinshasa on November 11, 1997 and was further blocked there for three weeks. Preparatory investigations finally got underway in the area of Mbandaka town in early December.

In early October, the World Bank made an exploratory mission to the Congo and discussed, among other issues, the renegotiation of the Congo's \$14 billion foreign debt with the authorities in Kinshasa. In an October 15 meeting with Human Rights Watch, World Bank officials had stated that they were at exploratory phase in their relations with the Congo and were concerned about the human rights situation. Encouraged by the Richardson-negotiated agreement, however, on Friday October 31 the World Bank announced the dates of a meeting of potential donors to the Congo for December 3 and 4. The meeting was described as an occasion to discuss the economic revival of the Congo and would include a Congolese delegation as well as governments, multilateral donors, creditors, and international financial institutions. According to Reuters, the World Bank's country director for the Democratic Republic of the Congo, Nils Tcheyan, referred to the meeting as "the beginning of a process of gradual engagement on economic issues." Tcheyan underscored the importance of the U.N. investigation going forward as agreed: "Participants will be expecting that the agreement goes forward so that a wider set of issues of importance to the people of Congo can also be discussed."<sup>122</sup>

The meeting finally took place in Brussels on December 4. Representatives from eighteen countries and ten international organizations agreed in principle on a trust fund for the Congo without setting a specific amount. The European Commission is the largest potential donor with U.S. \$168 million of frozen aid pending human rights guarantees. The European Commission said, however, that U.S. \$50 million would be released for the health sector and that it would extend further aid to an infrastructure program. On December 9, the U.S. Secretary of State publicly announced that the United States would contribute U.S. \$10 million to the Congo Trust Fund, pending congressional approval. Several bilateral donor delegations stressed the need for progress on human rights and democratization. Congolese Foreign Minister Bizima Karaha offered his government's commitment to construct a new Congo which will respect human rights. Participants agreed that one of the topics to discuss when the meeting reconvenes in mid-1998 will be progress towards the attainment of that commitment.

Similar to bilateral assistance, aid from multilateral institutions such as the World Bank should be contingent on, at a minimum, (1) demonstrable and tangible progress in the field investigative phase of the U.N. Investigative Mission and ultimately in bringing the perpetrators of the massacres to justice, and (2) improved respect for the rule of law, human rights, and democratic principles by the Congolese government as described above. As balance of payments support directly reinforces the central government, this assistance should be contingent upon the progressive

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<sup>121</sup>United Nations Department of Humanitarian Affairs, Integrated Regional Information Network, Great Lakes: IRIN Update 282 for October 31, 1997.

<sup>122</sup>Reuters, "International Donors Set Talks on Former Zaire," Washington, October 31, 1997.

establishment of institutional and legal mechanisms to guarantee this assistance's positive impact, through good governance, respect for human rights, and the transition to democracy.

Follow-up to the team's investigation, whether it is ultimately an investigation conducted on the ground in the Congo or from outside the country, will be crucial to ending cycles of violence and impunity in the Great Lakes Region. The United Nations must seek to regain its lost credibility due to past failures in the region by making firm calls for accountability on all sides and the establishment of responsibility at all levels, including the international community. U.N. Secretary-General Kofi Annan and the Security Council must follow up the U.N. team's report with appropriate action to establish accountability for war crimes, whoever those responsible may be. This may require the expansion of the Arusha Tribunal, the close monitoring of domestic legal procedures in regional states, or other mechanisms to prosecute and punish those found implicated in massive slaughter or other war crimes.

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