

ZAIRE

TRANSITION, WAR AND HUMAN RIGHTS

ABBREVIATIONS	3
SUMMARY	4
RECOMMENDATIONS.....	6
THE STALLED TRANSITION	11
Mobutu Ushers in Mobutu.....	11
The Kengo Government.....	13
The Protocol of Agreement.....	15
Preconditions for Elections.....	16
Reform of the Military and Security Services.....	17
Reform of the Territorial Administration.....	17
Elections on Hold	18
THE WAR	18
The Spreading Violence	19
The Role of Foreign Forces	20
Violations of the Laws of War by All Parties to the Conflict.....	22
Zairian Armed Forces (FAZ) and Militia Attacks on the Banyamulenge	22
Attacks by the ADFL and its Allies on Refugee Camps.....	24
Human Rights Abuses by the Interahamwe and Ex-FAR.....	27
Interference with Humanitarian Aid	28
Attacks on Other Zairian Civilians	29
The Transitional Agenda of the ADFL.....	30

THE RIGHTS DENIED	33
Freedom from Arbitrary Arrests and Detention	33
Freedom of Association and Peaceful Assembly	35
The Emerging Civil Society.....	36
Restrictions on Assembly	37
Freedom of Expression	39
Attacks on the Media and Journalists	40
Confiscation of Political Literature.....	42
Freedom of Movement.....	43
The Right to Nationality	44
SHABA: A REGIONAL PERSPECTIVE	45
Background.....	45
Elections Climate.....	48
Repercussions of the War in Shaba	50
“Pay As You Go”: Justice and General Insecurity.....	52
Arbitrary Detentions	52
Impunity for Abuses	53
Compromising the Independence of the Judiciary.....	54
The Case of Lieutenant Mukelenge	55
Civil Society—Human Rights NGOs	56
THE ROLE OF THE INTERNATIONAL COMMUNITY	56
The European Union.....	57
The United States.....	58
The United Nations.....	59
The O.A.U. and Other Regional Initiatives.....	60
Converging and Diverging Initiatives	61
ACKNOWLEDGMENTS	63

ABBREVIATIONS

- AZADHO: Association Zaïroise de Defense Des Droits de l'Homme, Zairian Association for the Defense of Human Rights
- CDH: Centre des Droits de l'Homme et du Droit Humanitaire, Center for Human Rights and Humanitarian Law
- DSP: Division Spéciale Présidentielle, Special Presidential Division
- 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
- 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 Indépendants, 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

Nearly seven years ago, on April 24, 1990, President Mobutu Sese Seko ostensibly gave in to mounting pro-democracy pressure by announcing the end of the one party state and the beginning of transition to multiparty democracy in Zaire. Seven years into the transition, there have been at least ten different governments but no transition. The president's refusal to step down or to relinquish control of the governments he appointed and manipulated have managed to make a mockery of the promised passage to democracy. The rapid advance of the rebel troops from the east, in turn, threatened to subordinate political change wholly to the passage of arms.

Prime Minister Kengo wa Dondo took office in June 1994 with promises to implement reforms and create an environment that would lead to elections by mid-1995. The promised elections never took place and genuine political participation and debate continued to be severely curtailed by government-imposed restrictions on basic democratic freedoms. The commanders of the military and the security services as well as regional and local administrators continued to be handpicked by the president to ensure consistent ethnic and regional loyalties to him and his political alliance. Military and police deployed throughout the country cracked down on opposition activities routinely and violence against the population continued unabated as unpaid soldiers and civilian agents alike profited from extortion and payoffs, looting and armed robberies. The failed transition left the country with a president whose term in office had long since expired, an unelected parliament, and a prime minister supported only by a minority in parliament. These anomalies were edging the country toward disintegration even before war came to the east.

A rebel coalition, reportedly backed by the governments of Rwanda and Uganda, attacked throughout much of eastern Zaire beginning in October 1996, easily routing Zairian troops, dispersing Rwandan and Burundian refugees and dealing a major blow to the complacent Zairian leadership. The insurgency showed up the hollowness of the political transition underway in the country and further confirmed the predatory nature of Zaire's own armed forces. While there have been human rights abuses committed by both rebel and Zairian troops, the Zairian forces have engaged to a vast extent in pillaging and destruction, including widespread reports of rape. With the insertion of ethnically based militias and mercenaries, the war threatens to launch the country into a period of generalized violence.

The conflict in eastern Zaire came as a culmination of policies of the Zairian government that sought to divert popular protest and challenges to its legitimacy by fanning ethnic and regional tensions. The official discrimination against Zairians of Rwandan origin and the decision to deprive them of their citizenship was yet another application of such policies, and it was these Zairians who at first formed the bulk of the rebel force. As members of other ethnic groups joined the insurgents who took up arms in rejection of these measures, the alliance they formed, the Alliance of Democratic Forces for the Liberation of Congo-Zaire, (ADFL) (l'Alliance des Forces Démocratiques pour la Libération du Congo-Zaire, AFDL), proclaimed its intention of toppling President Mobutu.

Efforts to organize elections within the timetable set by Zaire's Transitional Act (Acte Constitutionnel de la Transition), without having established the minimal conditions required to have made them meaningful as a free and fair vehicle of political participation, were interrupted by the war. Little had been done to create conditions for free and fair elections, although these were to have begun with a constitutional referendum in the month of February 1997 and three rounds of national elections to be completed by July. The credibility of the election process was under attack from Zairian opposition groups, churches and nongovernmental organizations (NGOs), who suspected that the government would impose elections without the necessary preparations in order to insure President Mobutu's reelection. As if to confirm the worst fears of civil society, the government used the pretext of the war to further restrict political freedoms. In the face of mounting popular pressure for a negotiated settlement to the war and a return to the agenda of a genuine transition, the Zairian cabinet in mid-February 1997 banned all public demonstrations and introduced strict censorship guidelines to silence the state-owned and private press. Incidents involving the detention, beating, and humiliation of journalists, students, union activists, and opposition leaders, some of whom enjoyed parliamentary immunity, rose significantly in the first quarter of 1997.

The situation in strategic regions such as Shaba, discussed below, illustrated the scope of abuses and the resistance of the Mobutist administration to changes that could have ensured or allowed fair elections. Human rights

violations by the military and security services were a daily occurrence and did nothing to encourage confidence that these forces would respect the voting rights of citizens. Weeks away from the scheduled date for a constitutional referendum, the local electoral commissions were not functioning, campaigning was prohibited and Mobutu's appointees were still insisting on their prerogatives to organize the elections process.

Shaba also offered a demonstration of the vital role that local human rights and other civic organizations had come to play since the start of the transition in the regions as well as at the national level. These groups maintained constant pressure on the military and civilian authorities, documenting and calling for accountability for human rights abuses. They also pressed the political class for the strict realization of the preconditions which were defined back in 1992 as essential for a genuine transition to democracy and conducted grassroots voter education programs to prepare the population for elections.

President Mobutu and the Zairian government, yielding to battlefield pressures and intense international diplomatic efforts, called for a cease-fire in late March, and the formation of a "national council" to resolve the crisis in Zaire. The efforts by a group of African heads of state to mediate for a peaceful resolution, including Nelson Mandela and Daniel arap Moi were initially denounced by the government of Zaire as an "Anglophone" plot to dismantle the country. The western allies who have been most deeply involved in Zaire, primarily France, Belgium and the United States, succeeded for a brief time in the mid-1990s in concerted action on Zaire, but were unable to find a coherent common position as the current crisis unfolded.

The call for peace is strongest among the populations that are caught up in the war. Placed between a rebel "liberator" who they do not trust and a government "occupation force" that has lived off their backs for more than twenty years, they fear the disproportionate impact a counteroffensive may have. As one NGO leader from Goma, which has been shelled by rebels and bombarded by Zairian government mercenary aircraft, said, "We hear the government talking all the time about 'liberating the land.' What do they plan to do with the people?"¹ With the increasing likelihood of a defeat of the government on the battlefield and the total collapse of Mobutism, the organizations of civil society represent some of the fragile bulwarks against political anarchy and social disintegration.

The world has been mesmerized by two interrelated dimensions of the crisis in Zaire: the humanitarian crisis that dates from the Rwandan genocide, and the massive refugee flows that followed, and the war and political upheaval set in motion by all these factors that today ripples toward the capital, Kinshasa. The flight in 1994 of more than a million Rwandans into Zaire, including an army and militia that had been the instruments of genocide, in turn displaced tens of thousands of Zairians and triggered renewed ethnic conflict in Zaire. International conflict loomed as Rwanda protested Zairian support for the armed Rwandans in the camps that lined its border, and the armed incursions that increased during 1996. In October 1996, a new rebel group comprised of Zaire's ethnic Rwandans, the Banyamulenge, with apparent Rwandan support, attacked the refugees' camps, driving some 600,000 refugees back into Rwanda and sending hundreds of thousands more, still under the control of the armed remnants of the genocidal army, fleeing into the interior of Zaire.

In the months that followed, what had appeared to be an affair largely of Rwandans and their Zairian kin had taken on an expressly Zairian complexion wholly unforeseen by most international observers. Rwandan protests at incursions from Zaire were replaced by Zairian protests at what Kinshasa alleged was an invasion, from both Rwanda and Uganda. The war's displacement of hundreds of thousands of civilians, Rwandans and Zairians alike, beyond the assistance of humanitarian organizations, created conditions in which many faced starvation. Calls for cease fires so that relief agencies could reach the concentrations of civilians were ignored by both sides.

As the Mobutu government crumbles without having fulfilled its pledge to speed the democratization process, the war threatens to forcibly remove whatever remains of his personal system of government. The real challenge for Zaire will be whether the scant progress toward a restoration of the rule of law since 1990 can be salvaged and built upon by whatever new government emerges from the current crisis. The prospects for

¹ Human Rights Watch/Africa interview with the leader of a human rights group based in Goma, January, 1997.

elections, already dimmed by the failure of the Mobutu/Kengo government to support even the basic infrastructure and reform they would require, appear even more distant in the upheaval of the war.

After the fall, in mid-March, of Kisangani, the central Zairian city which had been touted as the military bastion from which Mobutu's government would regain control over the east, the armed opposition was increasingly seen to have the potential to sweep the country. The growing likelihood of an ouster of the ailing Mobutu and the remnants of his government, without waiting for it to collapse of its own weight, added new uncertainties to a transition process which had done little to prepare Zaire for a democratic process and a future under the rule of law.

This report, the outcome of Human Rights Watch missions to Zaire in July 1996 and in December 1996-January 1997, focuses on the internal political dynamics of Zaire that are at the roots of the current crisis; on the failed transition process; and on the building blocks from which a real transition could go forward upon resolution of today's conflict, including the emerging elements of civil society that show real promise for the rebuilding of Zaire.

RECOMMENDATIONS

To the Government of Zaire:

1. Abide by the binding norms of international humanitarian law applicable to the current situation of armed conflict, and in particular:

- prohibit targeting civilians and civilian objects in military operations and indiscriminate attacks, looting, raping, and destruction of civilian property;
- ensure humane treatment for all persons detained or otherwise *hors de combat* in connection with the conflict; torture and extrajudicial execution should never be tolerated;
- permit and facilitate access by relief assistance programs so that noncombatants in war-affected areas may receive food, medicine, and other relief. Relief assistance programs of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and other agencies should be allowed to proceed in accordance with humanitarian need and their respective missions, without hindrance. Provide safe land, river and air access for the provision of humanitarian aid;
- permit the International Committee of the Red Cross to visit persons detained in connection with the conflict;
- prohibit the recruitment and use of child soldiers and to facilitate the demobilization, rehabilitation and return to society of such children;
- investigate the violation of international humanitarian law by members of the government's military and security forces and to hold them criminally accountable for such abuses; government forces that have obstructed the delivery of relief supplies, attacked relief workers or otherwise obstructed the work of humanitarian agencies should be the object of investigation and prosecution;
- cooperate with measures undertaken by the United Nations, the Organization of African Unity and international humanitarian and human rights organizations to monitor, investigate and provide remedies for human rights and humanitarian emergencies in Zaire.

2. Abide by the international human rights treaties to which Zaire is a 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:

- repeal provisions in Zairian law in violation of international standards, including:

- ordinances giving police powers of detention to local authorities, functionaries of federal offices, and the secret police SNIP;

- Law No. 81-002 of June 29, 1981 on Zairian Nationality, in that its effect was to strip many Zairians of their nationality on an arbitrary basis, solely by reason of their ethnicity;

- the decree issued by the information and press minister on February 14, 1997 banning private radio and television stations from producing, broadcasting, or relaying political programs;

- the decision by the Zairian government on February 14, 1997 to ban all public demonstrations and general strikes throughout the Republic of Zaire.

- amend Decree No. 0021 of August 2, 1996 (concerning the identification of nationals, the census and the electoral roll), so that no Zairian will be disenfranchised by reason of their language, ethnicity or for other arbitrary and discriminatory reasons;
- address on an urgent basis inhumane treatment in police cells and prisons. Ill-treatment, in the form of beatings, exposure to the elements or threats, should be stopped. Threats to prisoners' lives or health now present in many detention centers, in the form of poor sanitation, nutrition, ventilation or overcrowding and the lack of medical care, should be remedied. Prisoners' basic needs should be met or they should be released. Those responsible for the inhumane treatment of prisoners should be subject to criminal investigation and prosecution;
- institute safeguards against torture, including by bringing all detainees before a judicial authority without delay; ending routine incommunicado detention; 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;
- respect freedom of expression, lifting arbitrary restrictions on the print media and public broadcasting and ceasing harassment and arbitrary detention of journalists, political commentators and others solely for the expression of their opinions;
- respect freedom of assembly, lifting the arbitrary restrictions imposed by law and in practice on public meetings and halting arbitrary police actions to ban or disperse such meetings and demonstrations;
- respect freedom of association, halting arbitrary arrests, intimidation and acts of violence targeting participants in nonviolent civil organizations;
- recognize the rights of human rights defenders in Zaire to monitor, investigate, and speak out on human rights concerns and freely to associate with others nationally and internationally in the promotion and protection of human rights;
- release all those imprisoned on strictly political grounds or who have not been charged with a recognizable criminal offence;
- abolish the death penalty in any of its forms, including executions after summary court martials and extrajudicial executions by forces under its command. Human Rights Watch opposes the infliction of capital punishment in all cases: because of its inherent cruelty, because it is most often carried out in a discriminatory

manner, and because the fallibility of all criminal justice systems assures that even when full due process of law is respected innocent persons are sometimes executed—and such miscarriages of justice can never be corrected.

To the ADFL:

1. Abide by the binding norms of international humanitarian law applicable to the current situation of armed conflict, and in particular:

- prohibit targeting civilians and civilian objects in military operations and indiscriminate attacks;
- ensure humane treatment for all persons detained or otherwise *hors de combat* in connection with the conflict; torture and extrajudicial execution should never be tolerated;
- permit and facilitate access by relief assistance programs so that noncombatants in war-affected areas may receive food, medicine, and other relief. Provide safe land, river and air access for the provision of humanitarian aid;
- permit the International Committee of the Red Cross to visit persons detained in connection with the conflict;
- prohibit the recruitment and use of child soldiers and facilitate the demobilization, rehabilitation, and return to society of such children;
- refrain from inflicting the death penalty in any of its forms, including executions after summary court martials and extrajudicial executions by forces under its command;
- investigate the violation of international humanitarian law by members of ADFL and allied forces and hold them accountable for such abuses in procedures that meet the minimum standards of due process established in international humanitarian law:

Observe the minimum standards set out in article 3 common to the Geneva Conventions of 1949, paragraph 1(d), which prohibits at any time and in any place whatsoever “the passing of sentences” without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” Such guarantees should include the right to appeal and, Human Rights Watch strongly urges, the elimination of the death penalty.

Respect the authoritative guidance with regard to minimum standards of due process provided by Protocol II Additional to the Geneva Conventions of 1949, Article 6, relating to the prosecution and punishment of criminal offences related to the armed conflict, notably paragraph 2:

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

- (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defense;
- (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
- (c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

- (d) anyone charged with an offence shall have the right to be tried in his presence;
 - (e) no one shall be compelled to testify against himself or to confess guilt;
- cooperate with measures undertaken by the United Nations, the Organization of African Unity and international humanitarian and human rights organizations to monitor, investigate and provide remedies for human rights and humanitarian emergencies in Zaire.

To all opposition forces:

The ADFL and other opposition forces should pledge that upon forming a government they would:

- abide by the international human rights instruments to which Zaire is party and ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Protocol II Additional to the Geneva Conventions;
- support as an urgent priority the development of an independent judiciary;
- ensure that anyone detained is brought promptly before a judicial authority after arrest;
- ensure that no one will be detained without being charged with a recognizable criminal offence and being brought promptly to trial before an independent court;
- implement programs to train law enforcement agents and the military about human rights standards and protection while instituting procedures through which violations of human rights are the subject of effective investigation and criminal prosecution. Training should be in accordance with the norms established in the Code of Conduct for Law Enforcement Officials (adopted by the U.N. General Assembly on December 17, 1979), the Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials (adopted by the U.N. Economic and Social Council on May 24, 1989), and such standards as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth U.N. Congress on the Prevention of Crime and Treatment of Offenders on September 7, 1990);
- introduce on an urgent basis measures to protect all persons under any form of detention by meeting the standards established in the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the U.N. General Assembly on December 9, 1988) and by bringing all detention facilities to the standards established in the Standard Minimum Rules for the Treatment of Prisoners (adopted by the U.N. Economic and Social Council by resolutions of July 31, 1957) and its Procedures for the Effective Implementation of the Standard Minimum Rules;
- derogate provisions in Zairian law that are in violation of international standards;
- repudiate arbitrary measures to strip Kinyarwanda-speaking Zairians—the Banyarwanda—or other minorities of their Zairian nationality. Citizenship must not be revoked on ethnic or other discriminatory grounds;
- investigate and facilitate independent investigations of violations of human rights or humanitarian law by forces of the current government as well as rebel forces with a view to public disclosure of the findings and accountability before the law of those responsible for gross abuses;
- take immediate steps to create conditions conducive to free and fair elections, such as ensuring civilian control over the military and the national gendarmerie, rendering the regional and local administration non-partisan and nationally representative, and affirming the respect of basic political freedoms including freedom of expression, association and assembly;

- encourage the independent work of local and national civic organizations, including nongovernmental organizations dedicated to the promotion and protection of human rights, and remove legal or administrative obstacles to this work;
- encourage the full exercise of internationally recognized standards of free expression by Zaire's print, broadcast and other media;
- take all measures conducive to the widest participation by all Zairians in the political life of their country.

To all Members of the International Community, including the United Nations, the European Union and its member states, the United States, and the Organization of African Unity:

- Call upon both sides of the conflict to permit full, unhampered international investigations of the allegations of widespread civilian massacres in eastern Zaire.
- Insist that the need for accountability of the government of Zaire and the ADFL for human rights abuses committed in territories under their respective control not be set aside in the name of easing a negotiated settlement of the current conflict in Zaire. Those responsible for ethnic slaughter and other gross abuses should not be granted impunity in a deal-making process in which the long-term goals of the rule of law are sacrificed for short-term political expediency.
- Hold all parties to the conflict responsible for attacks by their combatants against civilians. Both the government and the rebels should be pressed to investigate reports of such attacks, to make the findings public, and to bring to justice those responsible.
- Make any commitment of aid to the present or any future government, including election assistance, dependent on concrete steps toward respecting human rights and creating the conditions for free and fair elections, including:
 - reforming the army and the national gendarmerie as non-partisan and nationally-representative forces under civilian control;
 - establishing basic political freedoms, including freedom of speech, particularly making public radio and television available to all points of view; and
 - reforming the regional and local administrations into non-partisan and nationally-representative institutions.
- Monitor closely and make public reports regarding the actual progress toward implementation of programs to prepare for elections.
- Support programs by organizations of civil society in Zaire to promote respect for human rights, propagate a democratic culture, and train independent election monitors.

Specific Recommendations to the United Nations:

To the Security Council:

- Immediately appoint a commission to investigate allegations of widespread civilian massacres in eastern Zaire by all parties and make public the commission's report.

To the U.N. Center for Human Rights:

- Ensure that the U.N. Human Rights Office in Kinshasa is able to perform its important monitoring function. Support the office's budget with sufficient resources for extensive internal travel and improved communications.

THE STALLED TRANSITION

Mobutu Ushers in Mobutu

The announcement of a transition to multiparty democracy in April 1990 appeared to offer a promising alternative to the Popular Movement for the Revolution's personalized one-party system. Since President Mobutu seized the presidency in 1965, he has reigned as an absolute monarch: the ideology of the state was "Mobutism" and, for many years, the constitution actually placed the "Founding President" above the law.

Mobutu's rule relied heavily on his party-machine, the Popular Movement for the Revolution (Mouvement Populaire de la Révolution, MPR), the corruptive power of money and influence peddling, and, most importantly, the armed and security forces who regularly act to silence dissent and instill fear and obedience in the population at large. The president deliberately maintained a divided and weakened professional military to eliminate any possible challenge to his personalized system of power. The Zairian Armed Forces (Forces Armées Zaïroises, FAZ), were undermined, with some of the best educated officers executed or forced to flee. The president also developed elite units, such as the Special Presidential Division (Division Spéciale Présidentielle, DSP); the Civil Guard (Garde Civile); Service for Action and Military Intelligence (Service d'Action et de Renseignements Militaires, SARM), with command structures directly linked to himself and an officers' corps that came almost entirely either from his ethnic group or region. The same was true of the civilian security force, currently known as the National Service of Intelligence and Protection (Service Nationale d'Intelligence et de Protection, SNIP).

The president's control was equally manifest in the regional and local administrations, which were subject to the strict hierarchical authority of the one party state. Provincial governors, their deputies and senior local officials were selected on the bases of loyalty to the party and its chief. Their visible role was to control and repress the population in conjunction with the local military and security commanders, while diverting the national wealth to members of the ruling elite.

Decades of mismanagement and open plundering of the country's huge resources and wealth lead to the collapse of the formal economy early in the 1990s. In its place, a parallel informal economy emerged which at best provided for the minimal survival needs of the people and the maintenance of some basic social services. In 1994, the World Bank described the economy in the following terms:

The overall size of the economy has shrunk to the level of 1958 albeit with a population of 2.9 times larger. . . . Public finances are in disarray. . . . The State is insolvent; most state-owned enterprises and financial institutions are de facto bankrupt. . . .

Enrollment in primary education declined from 95 percent in 1972-73 to 77 percent in 1986-1987 and was projected at 50 percent by year 2000, barring massive remedial actions. When open at all, the schools operate in deplorable conditions, without textbooks and teaching materials and with the students often forced to sit on the floor as desks have been looted. . . .

Health standards deteriorated due to inadequate and declining financing. In 1986, the government was financing only 5 percent of the recurrent costs in the health sector, compared to 50 percent or more in most sub-Saharan African countries. . . .²

The national currency has become nearly worthless. The "New Zaire" (N.Z.) replaced the previous currency in October 1993 at a rate of 1 N.Z. to 3 million "old" Zaires (then worth about one dollar). Hyperinflation has continued

² World Bank, "Zaire: Strategic Orientations for Reconstruction," quoted in J.C. Willame et al, "Zaire: Predicament and Prospects, A Report to the Minority Rights Group (USA)," United States Institute of Peace, *Peaceworks No. 11*, Washington, January 1997, p. 9.

ever since. With the introduction of a one million N.Z. bank note in December 1996, the exchange rate plunged from 100,000 N.Z. to the dollar to 200,000 N.Z.

As the economic crisis worsened, security forces, including elite units, went for months without pay or provisions. Serious problems of collapse of military discipline occurred, and extortion of the population became a fundamental means of survival for the soldiers. Previously, when internal dissent and regional rebellions threatened his hold on power, Mobutu could play the card of cold war rivalries, obtaining the military support and diplomatic backing he needed from foreign allies including France, Belgium, and the U.S. as well as several of their regional allies, notably Morocco, Egypt, Senegal and Israel. Since 1991, overt military support to the Mobutu regime has disappeared, but the president's foreign allies have never entirely turned their back on him.

In the face of mounting popular pressure for democracy Mobutu conceded in 1990 to the convening of "popular consultations." Pro-democracy forces seized on the opportunity to break twenty-five years of public silence on the future of the country. The unexpected outcry forced Mobutu to take further steps, announcing a limited transition to "three-party" democracy on April 24, 1990. The population rallied together to demand a national conference involving all sectors of the society to decide the fate of the country. After struggles that lasted two years and brought more than one million people to the streets of Kinshasa, President Mobutu allowed the National Sovereign Conference (Conference Nationale Souveraine), to go forward. The National Sovereign Conference debated the history and future of the country and drafted the texts which were to guide the transition to democracy. It remains the only basis for the transition that has widespread legitimacy within the population.

Despite frequent interference from the authorities, the National Sovereign Conference succeeded in establishing a transition government and parliament in August 1992, electing opposition leader Etienne Tshisekedi as prime minister. The level of violence increased almost as soon as the new government was inaugurated. Bands of youth in the southern province of Shaba, incited by the Mobutu-appointed governor,³ began to attack "Kasaiens," migrants from the neighboring Kasai region, leading to thousands of internally displaced. The conference adjourned in December 1992 with a declaration that its work will be continued by a transitional legislature called the High Council of the Republic (Haut Conseil de la République, HCR). The 453 members of the council continued to support Tshisekedi, but interventions from the armed forces in the following months effectively managed to obstruct its work.

Massive army-led pillaging disrupted the country beginning in January 1993. In March, the president put an end to the transition process of the National Sovereign Conference. He revived the discredited National Assembly, composed exclusively of handpicked delegates of the ruling party and inaugurated a parallel transition process, the "Conclave," that drafted its own constitution and named Faustin Birindwa as prime minister.

³ See below the section "Shaba, A Regional Perspective."

The new government was rejected by the population and most foreign governments, while the powerless government of Tshisekedi continued to insist on its legitimacy. In order to put an end to the impasse, in the absence of foreign pressure on Mobutu, the opposition Sacred Union of the Radical Opposition and its Allies (Union Sacrée de l'Opposition Radicale et Alliés, USORAL), agreed to compromise with the Mobutists. Negotiations began at the end of 1993 and led to an unwieldy power sharing arrangement, the Protocol of Agreement, (Protocol d'Accord), which consecrated the division of power between the two political "families," the Mobutist forces known as the Forces Politiques du Conclave (FPC) and USORAL.⁴ The opposition agreed to combine the National Assembly with the High Council of the Republic (the successor to the National Sovereign Conference), creating a monstrous body of 738 members, with a majority of members named by President Mobutu. This is the High Council of the Republic - Transitional Parliament (Haut Conseil de la République - Parlement de Transition, HCR-PT, henceforth Transitional Parliament). In exchange, the opposition obtained the right to name the prime minister and safeguards against his removal.⁵ In addition, the Protocol of Agreement established the concept that all decisions of "national importance," including matters of "national sovereignty and the institutional order of the transition" would be made by consensus.⁶ Although the power of the National Sovereign Conference was significantly diluted, its acts and conclusions remained the theoretical basis for laws to be enacted by the transition government and parliament.⁷

The Kengo Government

A new government was established by the transitional parliament under a cloud of controversy on June 14, 1994. The Transitional Act was adopted April 9, 1994, following the principles established by the Protocol of Agreement. But the opposition "family" broke down almost immediately during negotiations over the choice of a prime minister. Contrary to the terms of the Protocol and the Transitional Act, the choice was put to a vote of the newly constituted transitional parliament. With the support of the Mobutist contingent, Léon Kengo wa Dondo, long time prime minister and minister of justice in previous Mobutu governments, was elected with just 332 out of 738 possible votes. The remaining opposition, grouped around Etienne Tshisekedi, boycotted the vote. After long delays, a cowed Supreme Court rejected a legal challenge to Kengo's election.⁸ Meanwhile the opposition continued to deny the legitimacy of Prime Minister Kengo while alternately obstructing and grudgingly participating in the work of the transitional parliament.

Prime Minister Kengo quickly won the support of western governments and the international financial institutions by presenting himself as a reformer, caught between a recalcitrant Mobutu and uncooperative, radical opposition. In the first months of his term, he succeeded in restoring some order to the production of currency and the operations of the Central Bank, both of which had been converted to the private interests of Mobutu and his clique. He even appeared responsive to complaints about human rights abuses, timidly seeking to temper the excesses of the Mobutist military officials. For example, in July 1994, during a visit to Goma, Prime Minister Kengo promised to remove two army units accused of committing human rights violations by the local population, but ultimately failed to do so.

⁴ See para. 18 in: United Nations, "Report on the Situation of Human Rights in Zaire, Prepared by the Special Rapporteur, Mr. Roberto Garretón in Accordance with the Commission Resolution 1995/69," United Nations Publications, New York, 1996, E/CN.4/1996/66; 29 January 1996.

⁵ It requires a vote of three-fourth of all members of the transitional parliament in order to censure the government, to bring charges against the President of the Republic or to modify the Constitution. Protocol d'Accord, Art. 11.

⁶ Protocol d'Accord, Art. 11.

⁷ Transitional Act, Arts. 58 and 75.

⁸ The court's decision was rendered in 1996, a year and a half after the Kengo government was installed.

Eventually, however, the Kengo government began to defend the human rights violations of the regime. The government's evolution is illustrated through its relations with the U.N. Commission on Human Rights and the special rapporteur appointed by the commission. Roberto Garretón was invited to visit Zaire soon after he was appointed special rapporteur for Zaire in the fall of 1994. He was received by officials, including the prime minister, who openly discussed problems related, for example, to the ethnic composition of the armed forces.⁹ With respect to the "flagrant" problem of impunity, the special rapporteur noted in December 1994 that,

So far, the Kengo Government has been unable to control this situation, whose existence it does not deny. The Prime Minister told the Special Rapporteur that one of his Government's objectives was to restore the authority of the State, including control of the armed forces which, in his view, 'should be purged'.¹⁰

The rapporteur noted the good will of the Kengo government, but concluded that human rights violations continued and that "the Government of Prime Minister Kengo has not the slightest influence to put an end to the excess, to prevent them or still less, to punish them. . . ." ¹¹ He also noted serious violations that had occurred since the government had come into office, including the killing of two journalists.

During the course of the next year, the Kengo government reportedly did not respond to any of the special rapporteur's requests for information regarding human rights abuses as they arose. Then the government blocked the rapporteur's efforts to return to the country. He proposed several dates before the government finally responded, on November 8, 1995, too late for the proposed mission to be carried out before the Human Rights Commission meetings. The rapporteur noted "more hostility than in the previous year as evidenced by the absence of response to his request to obtain authorization to visit the country, the extreme delay in the invitation that arrived, the absence of response to communications noting complaints—or even an acknowledgment of receipt, constant questions about his mandate and constant reproaches addressed to the U.N. for submitting Zaire to so-called special treatment."¹²

After his second report was issued, the government launched a major attack on the rapporteur. In the Council of Minister's meeting of March 14, 1996, the prime minister said the "injustice" of the report provoked "disgust."¹³ The prime minister's response was widely published. He demanded that Mr. Garretón "repair the prejudice caused to Zaire by correcting [the report] before its presentation."¹⁴ In his defense of Zaire before the Commission on Human Rights, the minister of justice, Nsinga Udjuu, another long time Mobutist minister, defended the government of Zaire without acknowledging any merit to criticism.

The prime minister singled out for particular criticism Mr. Garretón's treatment of the citizenship problems of the Banyamulenge, the native-Zairian Kinyarwanda-speaking group related to the Tutsi in Rwanda and Burundi. His report was one of the first to comment on the situation of the Banyamulenge, six months before full-scale violence erupted in eastern Zaire. The government did not seek to dissociate itself from the violations cited in the report, but rather attacked Garretón's sources of information. Interior Minister Kamanda wa Kamanda, in particular, criticized the rapporteur's reliance on Zairian human rights NGOs.

⁹ United Nations, "Rapport sur la situation des droits de l'homme au Zaire...", (E/CN.4/1995/67), p. 14.

¹⁰ Ibid., p. 17.

¹¹ Ibid., p. 49.

¹² Page 6.

¹³ Government of Zaire, "Compte rendu de la réunion du conseil des ministres du Jeudi 14 Mars 1996," p. 2.

¹⁴ Ibid.

The passage of time also showed the government's unwillingness to break with the cycle of impunity that the rapporteur identified. Despite promises, the government failed to take any steps to prosecute those responsible for violent suppression of political activity.

The Protocol of Agreement

The stated central purpose of the *Protocol d'Accord* and the Transitional Act is to lay the basis for a peaceful, democratic transition in the shortest time possible. The transition documents lay out a series of basic conditions and understandings, the central goals of which are to reform the armed forces, depoliticize the state administration and create a level playing field for political participation. The original fifteen-month time-frame was doubtless too short to achieve all of the goals of the transition even had the political will existed to do so. However, little at all was accomplished in the first months of the Kengo administration. Eight months after Kengo's selection, the special rapporteur noted that "no steps had been taken."¹⁵ A year later, the rapporteur concluded that 1995 was "a lost year for the transition process."¹⁶ There was no effort made to regulate the military or security forces, no reform of the territorial administration and no approved draft constitution.¹⁷

One step that the government took was to propose a law creating the National Electoral Commission (Commission Nationale des Elections, CNE), in May 1995. The law maintained the distinction—rendered increasingly fictional by Kengo's uncertain loyalties and later splits in the opposition—between the Mobutu political group and the opposition. It established a body of forty-four people coming equally from the two sides. Church groups and NGOs objected strongly to the law because it formally limited the membership of the commission to these two political groups and consequently failed to include unaffiliated members of the civil society. This was particularly pertinent with regard to local branches of the electoral commission due to the absence of meaningful political structures in most of the country's interior.

In July 1995, the transitional parliament voted to prolong the transition for two more years, creating suspicion that the massive body was primarily intent on preserving its own prerogatives. The government then delayed until the end of the year before actually installing the electoral commission, while withholding funds for its functioning. Nevertheless, the commission's members took matters into their own hands, acting with determination to establish an internal bureau and commence the commission's work.

¹⁵ E/CN.4/1995/67, p. 24.

¹⁶ E/CN.4/1996/66, p. 29.

¹⁷ The legislative agenda of the transitional parliament depends on the government's will. Like many of the public institutions in the country, the transitional parliament is highly influenced by pay-offs and bribes. The salary of the deputies, which has varied, is currently at about US \$200/month. One deputy told Human Rights Watch/Africa that the Kengo government must pay an additional \$200/month to maintain the allegiance of its majority. "Some deputies complained recently," he told Human Rights Watch/Africa, "when Kengo didn't pay." For special votes, such as a vote of confidence, the Kengo government has reportedly paid as much as \$500 per vote.

The next few months saw little activity, however. The commission had no funding and no legal texts on which to base its work. The draft constitution and electoral law languished before the parliament where they have yet to be adopted.¹⁸ Meanwhile, the minister of interior established an inter-ministerial committee on elections without the participation or consultation of the electoral commission. As the then vice president of the commission, Professor George Nzongola-Ntalaja wrote, the inter-ministerial committee was “created for the purpose of trespassing on the prerogatives of the National Electoral Commission.”¹⁹ In September 1996, Professor Nzongola resigned, noting the absence of political will and consensus to go forward to elections. “As for the government,” Professor Nzongola stated, “no one can today doubt its lack of sincerity in regard to support for the electoral process.”²⁰

Preconditions for Elections

The protocol that established the basis for the transition is very explicit about the conditions for elections. It lays out a series of “imperative” preconditions on which all sides agreed, including:

- providing security to the population by depoliticizing the army and extending government control over the Civil Guard and police;
- establishing basic political freedoms, including freedom of speech, particularly making public radio and television accessible to all points of view; and
- depoliticizing the regional and local administration.

The protocol also lays out several conditions specific to the electoral process itself. These include:

- obtaining the presence of international observers before, during and after the elections;
- completing the identification of citizens;
- completing the census of the population;
- completing the voter registration; and
- obtaining the following in sufficient numbers: transparent ballot boxes; ballots; vehicles; telecommunications materials; and all other necessary documentation.

Long before the war offered itself as a reason for further delays, the Kengo government had ceased serious efforts to put into place any of these preconditions.

¹⁸ When the government did introduce a draft constitution, it was rejected because it was not the draft prepared by the National Sovereign Conference. Instead, it sought to give back many of the presidential prerogatives which the National Sovereign Conference had proposed to remove. When the transitional parliament submitted the National Sovereign Conference draft with the law for a Constitutional Referendum, Mobutu signed the law, but returned the marked up draft constitution to the parliament without signature.

¹⁹ Statement by Professor Georges Nzongola-Ntalaja on his Resignation from the National Electoral Commission, September 3, 1996. A U.S. election assessment team was more restrained in their judgment. They noted that “Contradictory statements from high-level numbers (sic) of the CIM [Inter-ministerial committee] have contributed to confusion regarding the apparently overlapping mandates of the inter-ministerial commission and the electoral commission on policy as well as planning and implementation of pre-electoral and electoral events. See: Consortium for Elections and Political Process Strengthening, “Zaire: Joint Pre-Election Assessment Mission - September/October 1996,” the International Republican Institute, the International Foundation for Electoral Systems, and the National Democratic Institute.

²⁰ *Ibid.*

Reform of the Military and Security Services

Control of the military and security forces is a central theme of the Protocol of Agreement, which is not surprising in light of the violence used for more than thirty years to stop the democratic process at every juncture. In its articles 17 and 41, the Protocol stresses “the necessity” of depoliticizing the army and subjecting the Gendarmerie Nationale, Civil Guard and security services to government control. There was particular concern for the possibility that security forces would disrupt the elections and the protocol (article 17) required the government to put into place measures to prevent this.

NGO representatives from all eleven regions of Zaire cited insecurity as the major preoccupation of the population in a survey by the leading rights group Voice of the Voiceless for Human Rights, (La Voix des Sans Voix pour les Droits de l’Homme, V.S.V.), and said the main culprits were undisciplined soldiers operating with impunity.²¹ International teams investigating the conditions for elections have all noted the fear of the population concerning the security forces.²² Ethnic and regional allegiance to President Mobutu diminished the likelihood that these forces would stay neutral during vital phases of the electoral process such as guarding polling stations, transporting ballot boxes, and protecting campaigners and voters of all political inclinations.

The National Sovereign Conference decreed early in the transition process that the reform of the military was an essential precondition to guarantee free and fair elections, and reassure the population and opposition groups. Since then, opposition groups have repeatedly called for the reform of the army and other security forces, which they continue to view as ethnically imbalanced and politicized, and hence inclined to favor the presidential alliance and to crack down on their activists.

The Kengo government itself acknowledged the need for the reform, for example, in his early meetings with the special rapporteur, but took no noticeable measures to this end. By March 1996, in response to the U.S. State Department’s 1995 human rights report, Kengo insisted that proposed laws on the creation of a Superior Council for Defense and the reform of the security forces would address many of the problems, but neither draft law has ever been made public or submitted for debate before the transitional parliament.²³

Reform of the Territorial Administration

Nothing has been done to reform the regional and local administrations, called in Zaire the *territoriales*, all of them still dominated by the previous single party regime until the war in the east.

²¹See: Voice of the Voiceless (V.S.V.), “Apercu sur l’état des droits de la personne humaine dans les onze provinces (regions) du Zaire,” Kinshasa, June 1996.

²²See, for example, Consortium for Elections and Political Process Strengthening, “Zaire: Joint Pre-Election Assessment Mission, September/October 1996,” p. 53: “The team encountered considerable apprehension on the part of Zairians from all walks of life concerning the role of the military during elections. Many interlocutors cited concerns that security forces will be undisciplined, violent and intimidating to politicians and voters.”

²³ This draft legislation was cited in the official Compte rendu de la reunion du conseil des ministres du Jeudi, 14 Mars 1996.

In a memorandum submitted to a visiting U.N. delegation in July 1996, the Shaba branch of the Union for Democracy and Social Progress, (Union Pour la Démocratie et le Progrès Social, UDPS), the main opposition party, considered “the equitable and balanced distribution of posts at the level of regional administrations, diplomacy and ministerial positions”²⁴ as one of the conditions on which it said the UDPS would base its participation in the elections. The government’s response to these expectations was to issue promises of imminent moves to “bi-polarize” the territorial administration’s posts, namely those of governors, vice-governors and subregional governors, so that both political groups would be represented.²⁵

Elections on Hold

The most recent schedule for elections was considered to be at least three to four months out of date at the time of the December 1996- January 1997 Human Rights Watch/Africa mission, even if preparations were to have begun in earnest. The said schedule called for a constitutional referendum on February 14, 1997. Presidential and legislative elections were to follow on April 12, 1997, with a second round on May 11, 1997, with local elections on July 7, 1997. At that point the mandate of the transitional parliament was to have come to an end. The constitutional referendum was to be preceded by voter registration and a national census. A pilot census project was to be launched on 15 January 1997. The census was necessary in the view of Zairian authorities—although not all foreign advisers—to identify the 42,000 polling stations, determine the number of parliamentary seats per electoral district and establish a definitive electoral list. Neither the census nor the voter registration was initiated.

In early February, Prime Minister Kengo declared that elections would have to be postponed because of the war. The postponement automatically entailed an extension of the Transitional Act and thus of the president’s mandate, which in the absence of that act would have expired more than five years ago. The effect of the postponement on the legitimacy of the transition process, and in particular of the extension of President Mobutu’s mandate, under any circumstance, was further disillusionment.

THE WAR

The war that erupted in October 1996 followed months of increasing violence in the region, much of which was aimed at Zaire’s Tutsi population. The Banyarwanda—Tutsis and Hutus living in Zaire—constitute powerful and wealthy communities in North and South Kivu. In parts of North Kivu they are estimated to constitute as much as 80 percent of the population. Successive nationality laws in 1972 and 1981 recognized and then effectively withdrew citizenship from all ethnic Rwandans in Zaire.²⁶ Because of this ethnic discrimination, Zairians of Rwandan origin were kept from participating in local elections during the 1980s and the National Sovereign Conference.

²⁴ UDPS, Shaba, “Memorandum remis ce Jeudi, 11 Juillet 1996, a la délégation de L’ONU en mission politique à Lubumbashi.” Copy made available to Human Rights Watch/Africa by the UDPS.

²⁵ Consortium for Elections and Political Process Strengthening, “Zaire: Joint pre-elections assessment mission...,” p. 18.

²⁶ The 1981 Nationality Law (Loi no. 81-002 du 29 Juin 1981 sur la nationalité zairoise), which supplanted the law of 1972, created an ambiguous standard that recognizes citizenship for “any person whose ancestors are, or have been, members of one of the established tribes on the territory of the Republic of Zaire within its borders of 1 August 1885.” Zairian government officials, including the former hard-line foreign minister, Kamanda wa Kamanda, have interpreted the law as excluding ethnic Rwandans, the majority of whom are descendants from people who came in waves of migration that began in colonial times. A smaller portion, including the Banyamulenge, are descended from migrants of the late 18th or early 19th century, or from people who lived in parts of the precolonial Rwandan kingdoms which are now part of eastern Zaire.

Zairians of other ethnic groups attacked these Banyarwanda in North Kivu in March 1993. In the ensuing violence, as many as 7,000 people were killed in the space of several weeks and an estimated 300,000 were displaced.²⁷ In South Kivu, local officials launched a campaign of intimidation against the Banyamulenge—ethnic Zairian Tutsi—backed by the transitional parliament in Kinshasa. On April 28, 1995, the parliament adopted a series of bombastic resolutions targeting ethnic Rwandans and treating them all, including Banyamulenge, in the same category as recent refugees. The resolutions suggested that Banyamulenge had fraudulently secured Zairian citizenship and called for the expulsion of named Banyamulenge, annulment of land contracts and banning of associations. Soon afterwards, the zone commissioner in Uvira ordered a survey of all relevant property.²⁸ Some reports indicated that the Banyamulenge had been arming since the violence began in 1993, however. They went on the attack as the implementation of these measures became imminent. For its part, the Zairian government had insisted from the outset that the war was a foreign invasion originating in Uganda and Rwanda. At times, the government also accused Burundi. Both France and the United States also publicly accused Zaire's neighbors of supporting the rebels, while stopping short of characterizing the larger war as one of invasion.

The rebels seized the major town of Uvira on October 24, 1996, and a week later captured Bukavu, the capital of South Kivu Region. Goma, the main town in the east, fell to the rebels on November 1, and on November 14, the rebels bombarded Mugunga, the biggest refugee camp in the east. An estimated 600,000 frightened refugees surged out of Mugunga and other camps and returned to Rwanda. An estimated 300,000 refugees from the disbanded camps fled further westward into Zaire: among them were reportedly thousands of former members of the Hutu-dominated Rwandan army and militia responsible for the 1994 genocide of Tutsis in that country.

In the face of a string of military successes by the rebel forces in the last quarter of 1996 and the first months of 1997, the Zairian armed forces typically fled rather than fight, but not before turning their anger on the local populations before fleeing with looted property, often in vehicles they seized from humanitarian organizations. By late-March 1997, less than six months after the initial confrontations, the rebels had captured an estimated one third of the country, including Kisangani, the third largest city in Zaire. As they acquired more territory, they had reportedly won an estimated 20,000 troops to their cause from local recruits.

The Spreading Violence

Outside of eastern Zaire, the war led to waves of xenophobic protests, particularly in late 1996 and early 1997. Attacks were carried out on anyone believed to be ethnic Rwandan, and acts of arbitrary arrest and repression increased across the country. Significant numbers of ethnic Rwandans were forced to flee by both government and popular pressure. In Kinshasa, several popular opposition figures were arrested in part because of their ethnicity as were three human rights activists seeking to investigate government claims about prisoners of war.²⁹ Similar arrests accompanied by attacks by mobs occurred in the region of Shaba just to the south of the war zone.

²⁷ For more details, see: Human Rights Watch/Africa and the Fédération Internationale des Ligues des Droits de L'Homme, (FIDH), "Zaire, Forced to Flee, Violence Against the Tutsis in Zaire," *A Human Rights Watch/Africa Short Report*, vol. 8, no. 2 (A), July 1996.

²⁸ "Inventaire des parcelles et terrains sis à Uvira appartenant aux ressortissants Rwandais et Burundais," letter of Shweka Mutabazi, office of the Commissaire de Zone, addressed to the Chef de Service de l'Urbanisme et Habitat/Zone d'Uvira.

²⁹ See details in the section "Rights Denied," below.

The war by March 1997 had displaced hundreds of thousands of Zairians and Rwandan refugees, preventing humanitarian organizations from reaching them. The war also broke the nonviolence that had characterized Zaire's transition and threatened to hasten the feared breakdown of the country into rule by warlords and militias. Previously, despite the absence of effective government structures and the withering impact of systematic military depredations, including often random military violence, there was surprisingly little organized armed violence.³⁰ This was true despite the easy availability of weapons in the region and the guerrilla wars that have affected at least five of Zaire's nine immediate neighbors. In fact, previous reports of arming by Banyamulenge were not taken seriously, in part, because of this phenomenon.³¹

Both the Zairian government and the rebel forces employed ethnically-based militias to fight the war. The government has reportedly recruited Rwandans, almost exclusively Hutu, made up largely of troops of the former Rwandan army (the Rwandan Armed Forces, Forces Armées Rwandaises, Ex-FAR) and Hutu militias who were mobilized in the refugee camps in the border areas. The Zairian authorities also mobilized fighters primarily from the Bembe ethnic group in south Kivu, known as the "Combattants," who previously fought with rebel leader Laurent Kabila. Humanitarian aid workers who visited the port city of Kalemie in north Shaba before the rebel takeover in early February reported that Zairian government boats were used to systematically supply the "Combattants" with weapons.

The rebels, in turn, rely on a coalition of ethnically-based militias that include the Banyamulenge (Zairian Tutsis), the Mai-Mai (primarily Nande) and Ngalima (Hunde and Nyanga) in addition to a core of ADFL fighters who come from a variety of ethnic groups. The increased flow of weapons and the continuation of the war is creating incentives for new militias to arise.

The Role of Foreign Forces

The conflict has also been notable for the role of foreign forces on both sides. The most visible foreign presence has been that of mercenaries recruited by the government of Zaire. The single largest and best-known contingent, a group of Serbian fighters, has also been the most notorious for its disregard of human rights and humanitarian standards. Western press and local human rights groups' reports have detailed atrocities by these forces, in conjunction with Zairian army troops, including torture and summary executions of civilians suspected of sympathies with rebel forces. In addition, General Mahele Lieko Bokungo, at the time Zaire's army chief of staff, was quoted in January as having said that East European mercenaries were flying newly acquired Soviet-era Mi24 helicopter gunships.³² Mercenaries were also reported to have piloted Yugoslav-built fighter jets that bombed, in mid-February, Bukavu, Shabunda, and Walikale.³³

³⁰ The primary exception was the region of Masisi in North Kivu. See Human Rights Watch/Africa and FIDH, "Zaire, Forced to Flee,...." and Amnesty International, "Zaire: lawlessness and Insecurity in North and South Kivu," AI INDEX: AFR 62/14/96, November 1996. Even the massive expulsion of Kasaiens from Shaba was largely unaccompanied by armed conflict. See: Africa Watch (now Human Rights Watch/Africa), "Zaire: Inciting Hatred, Violence Against Kasaiens in Shaba," *A Human Rights Watch Short Report*, vol. 5, no. 10, June 1993.

³¹ Banyamulenge leaders openly acknowledged that families were arming themselves in conversations with western human rights groups and U.N. Special Rapporteur for Zaire Roberto Garretón, at least as early as October 1995.

³² See: Sam Kiley, "Gunships May Give Mercenaries Edge in Zaire Civil War," *The Times*, January 28, 1997.

³³ James C. McKinley Jr., "Zairian Military Jets Bomb Civilians in Rebel-Held Town," *The New York Times*, February 18, 1997.

The raids targeted market places and residential areas and resulted in many civilian casualties. While the ministry of defense in Kinshasa maintained that it hit only military targets in "surgical" air strikes,³⁴ in Bukavu alone nineteen civilians were killed and about fifty others, including women and children, were injured, when, on February 17, three military planes bombed the city. A spokeswoman for the U.N. World Food Program said the attack came at four in the afternoon, and the humanitarian agency Doctors Without Borders said some bombs hit the marketplace.³⁵ A joint statement by local rights groups from Bukavu issued on February 20 stated that bombs also fell on densely populated residential areas in the center of the city.³⁶ Thousands of panic-stricken residents left the city following the raid, which appeared thus to have achieved the objective of demoralizing civilians in rebel-held areas at a time when support for the rebels was reportedly rising. A statement by the ministry of defense had told residents to leave rebel centers. The attack on Shabunda left eight people dead, and many wounded.³⁷

While the atrocious acts of the mercenaries have drawn the focus of the international media, reports of continuing flights of armament reaching Zairian government forces and allied militia in the first months of 1997 suggested continued foreign support, although this could not be confirmed. The Republic of Serbia and other Yugoslav republics were reportedly among the main suppliers of the government of Zaire. Arms and mercenaries deals were reportedly handled by front companies, with the involvement of a number of high-ranking officials. The secrecy was hard to maintain, however, particularly when television footage from Zaire reportedly showed Yugoslav-made Galeb tactical jets still with inscriptions in Serbo-Croatian on their fuselage.³⁸ In Belgium, customs officials blocked in late December 1996 a shipment of used military trucks, which reportedly originated in France, from being exported to Kisangani. The director of customs at Ostende airport, where the incident occurred, said that an internal investigation had established that the vehicles were not going to "humanitarian organizations" as their French exporter stated in official documents but were to be delivered to the "presidency" in Kisangani, at the time the headquarter of the Zairian government's military effort.³⁹

The involvement of Rwandan forces in the conflict, in particular in the initial months in which largely-Banyamulenge forces dispersed the refugees and militarized encampments in the Zairian border area, has been broadly established, although this has not been acknowledged by Rwandan authorities in any way formally or informally. The military training of Zairian Banyamulenge refugees inside Rwanda, as well as their arming by Rwanda, has also been widely reported, although this has not been publicly acknowledged or conclusively documented. A degree of Ugandan involvement has also been alleged, notably by the Zairian government, but little evidence of such involvement has emerged. Citing unnamed diplomats and political analysts, *The Washington Post* said in a March 4, 1997 article that Uganda has aided the ADFL with money, arms, equipment and tactical and communications support, and referred to

³⁴ Voix du Zaïre, Kinshasa, Foreign Broadcasts Information Service (FBIS), "Zaire: Defense Ministry Says Air Force to Intensify Bombing Raids," February, 18, 1997.

³⁵ Agence France Presse (AFP), FBIS, "Zaire: Aid Agency Says Army Planes Bomb Bukavu, Several Wounded," February 17, 1997.

³⁶ AZADHO, "Nouvelles du Zaïre," Kinshasa, vol. 1, no. 2, February 17 to 22, 1997.

³⁷ "Thousands Flee East Zaire Air Raids, Twenty-One Dead," Reuter, Goma, February 18, 1997.

³⁸ Jonathan C. Randal, "Serb Troops Paid to Go to War -- in Zaire," *The Washington Post*, March 18, 1997.

³⁹ "La douane bloque des véhicules militaires pour le Zaïre," *Le Soir*, Brussels, December 31, 1997.

“aerial photographs,” which reportedly have shown Ugandan military trucks crossing into Zaire.⁴⁰ Uganda also reportedly allowed the ADFL to recruit Ugandan veterans as mercenaries.⁴¹

⁴⁰ Stephen Buckley, “Uganda Reportedly Aids Rebels in Zairian War, Sources Say Arms, Money, Advice Provided,” *The Washington Post*, March 4, 1997.

⁴¹ *Ibid.*

Furthermore, as the war intensified, fighters from Angola, another of Zaire's neighbors, appeared to have joined both sides in the conflict. The Angolan government reportedly transported exiled Zairians living in Angola—and possibly Angolan troops—to fight with the ADFL. On the other side, the National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola, UNITA), which has long been supported by Mobutu, reportedly sent fighters to back the Zairian government's forces.⁴²

Violations of the Laws of War by All Parties to the Conflict

Human Rights Watch/Africa investigations and independent reports from other local and international rights groups, international news services, and aid agencies have found both the Zairian government and its militia and mercenary allies and the armed opposition forces responsible for large scale violations of the rules of war in eastern Zaire. Human Rights Watch/Africa, in a joint report with the International Federation of Human Rights, (Fédération Internationale des Ligues des Droits de l'Homme, FIDH), published in March 1997, exposed some of these violations and called on the government of Zaire and the ADFL to investigate the conduct of their own forces and bring to justice those alleged to have perpetrated deliberate attacks on civilians, the murder of prisoners, and other gross violations.⁴³ The report also called on the international community to insist that an independent and thorough investigation be undertaken to examine deliberate killings of civilians and other violations of international humanitarian law. The joint report highlighted the pattern of attacks on the Banyamulenge before open conflict broke out; the continuing abuses by Zairian government forces in alliance with Interahamwe and former Rwandan government forces; the disregard for the protection of civilians in ADFL and allied attacks on the refugee camps in the border areas; and the denial of access to humanitarian relief initiatives by all parties to the conflict. These issues are discussed further below.

Zairian Armed Forces (FAZ) and Militia Attacks on the Banyamulenge

In early September 1996 Zairian local authorities in the province of South Kivu ordered all Banyamulenge to leave the country within a week,⁴⁴ Bembe militia, supported by soldiers of the Zairian army—the Zairian Armed Forces (Forces Armées Zairoises, FAZ), began attacking Banyamulenge villages, killing and raping, and forcing survivors to flee. A woman driven from Uvira Zone reported:

My husband remained in Uvira. I don't know if he is still living. Zairian soldiers came to the house to take him, then they left with him. When the Zairian soldiers came, they raped us, down to a ten-year-old girl. The other girls were tied, for example children a year old, less than a year old, were tied up, too. . . . Many women were threatened, some of them were nearly dead.⁴⁵

Another woman survivor reported that on September 15, Bembe militia and FAZ soldiers rounded up the people from her village, Bibogobogo, and several other villages in Fizi Zone and forced them to march down out of the hills toward Rwanda:

⁴² James Rupert and Lynne Duke, "Angolan Role Raises Ante in Zairian Strife, Conflict Could Cross Borders, Diplomats Say," *The Washington Post*, March 16, 1997.

⁴³ Human Rights Watch/Africa and the Fédération Internationale des Ligues des Droits de l'Homme, "Zaire: 'Attacked by All Sides,' Civilians and the War in Eastern Zaire," *A Human Rights Watch/Africa and FIDH Short Report*, vol. 9, no. 1, March 1997.

⁴⁴ Sam Ngoza, "Zaire's People of Tutsi Origin Say 'Enough is Enough,'" All Africa Press Service, November 12, 1996.

⁴⁵ Human Rights Watch/FIDH interview at Bugarama Transit Camp, Cyangugu, November 4, 1996.

We arrived at Mbogo, it was around 4 p.m. Under their orders, we climbed down the slope. We spent the night along the [Ruzizi]river. It was midnight and they came to take all of the men, and the women were put apart, with two young boys. . . . They took the men on the river and far from the shore they pushed them over into the water, everyone from a boat that was full. They took all the other young boys, refilled the boat and went another time to push them overboard.⁴⁶

A witness named Jean-de-Dieu from Uvira Zone narrowly escaped drowning in a similar incident. On September 9, 1996, a group of Bembe militia took Jean-de-Dieu and approximately 180 other Banyamulenge men, women, and children from their village and detained them in the nearby Shabani Hotel. The men and boys fifteen years and older were selected out and taken by truck to Uvira where they were shown to the Civil Guard, the police, and the army. The prisoners were then taken on to Bugera, near Kamanyola, where the borders of Rwanda, Burundi, and Zaire converge. They were imprisoned in a warehouse for six days without food and hardly any water. According to Jean-de-Dieu, hunger forced the men to eat bat excrement. On September 15, militia came to drown them in the Ruzizi River.

Before throwing us in the water, they tied us up with our arms behind our backs, our legs tied, and our mouths and eyes covered. To kill us, all of us, we were put in a truck. Then they drove the truck into water . . . [to] a flat place . . . and the truck poured us out like sand. We were poured directly into the water. We were thirty-seven people.⁴⁷

After he was dumped into the water, Jean-de-Dieu was able to break the ropes binding his legs and to get to shore. He knocked on two doors and was refused entry. Then at the third house, a family helped him cut the ropes from his arms. He immediately went back to the river and swam across to Burundi, then made his way to Rwanda. According to Jean-de-Dieu, the militia also took three Tutsi families from Kamanyola, threw the men and boys in the river and sent the women of the families to Rwanda.

Zairian soldiers cooperated in attacks on the Banyamulenge with the former government of Rwanda's "Hutu Power" militia, the Interahamwe, which with troops of the former Rwandan army continued to dominate the refugee camps in Zaire until their dispersal. Nyirantore was one of a group of women from Fizi zone who watched as their husbands were drowned in Lake Tanganyika. The women were then taken by boat down shore in the direction of Rwanda. After some distance, the women were brought to shore and put in a house where, soon after, they were attacked by Interahamwe militia. According to Nyirantore,

I saw with my own eyes how the forty-four women were killed. The Interahamwe came with arms. They entered into the house, and then they started to fire on us. The people who were seriously injured, they went to throw them in the river. For myself, I think that God had not decided that I should die that day. Even though I was with the other women when they came to fire on us, there were three women who were left. . . . They shot at us during the night, then they left, and in the morning we left the house.⁴⁸

Another witness reported that Zairian soldiers and Interahamwe attacked his area on September 11. "They lined people up to shoot them—that's when I ran."⁴⁹

⁴⁶ Human Rights Watch/FIDH interview in Cyangugu Hospital, Cyangugu, November 6, 1996.

⁴⁷ Human Rights Watch/FIDH interview at Bugarama Transit Camp, Cyangugu, November 4, 1996.

⁴⁸ Human Rights Watch/FIDH interview at Bugarama Transit Camp, Cyangugu, November 4, 1996.

⁴⁹ Human Rights Watch/FIDH interview. Gisenyi, December 17, 1996.

According to many of the Banyamulenge refugees interviewed for the Human Rights Watch/Africa and FIDH report, Zairian soldiers and border guards robbed them of their money and all other possessions before expelling them into Rwanda. As one reported: "When we encountered the police, it was they who stripped us of our goods, saying we had no right to leave [the camp]. But sometimes you could escape. With the Zairian soldiers, though, it was difficult. They would take everything, down to your pants."⁵⁰

As the Zairian army was driven back steadily by ADFL forces, the government relied increasingly on ex-FAR and Interahamwe to try to halt the advance of the rebels. To this end, it delivered large amounts of arms to Tingi-Tingi refugee camp in February 1997, at times taking over the single airstrip and interrupting the delivery of needed humanitarian supplies. This practice put at risk the lives of civilians in the camp, both by delaying food and medicines that they needed and by increasing the likelihood that the camp would be treated as a military target.⁵¹ The source of these arms shipments, whether from Zairian arms stocks or new shipments from abroad, merits further investigation.

Attacks by the ADFL and its allies on refugee camps

From the beginning of its campaign, the ADFL and its allies have made dispersing refugee populations—and the ex-FAR and militia shielded among them—one of their primary objectives. Because a number of camps were protected by Zairian army troops, the ADFL occasionally engaged in exchanges of fire with these military forces, causing them to flee the camps. They also drove away Interahamwe and ex-FAR, who had exercised control over the camps and prevented refugees from returning home, so making it possible for those who wanted to return home to do so. But they went beyond simply opening a path for those who wanted to return; they also fired on patently undefended camps, after armed militia and soldiers had fled, to force people in the camps to return to Rwanda. These attacks on civilians, described by witnesses from Mpanzi, Inera, Kahindo, Katale, Mugunga, and Sake camps, clearly violated international humanitarian law. Most witnesses reported seeing persons wounded or killed by such unprovoked and unwarranted fire from the ADFL and its allies. Even more disturbing reports were received that individuals among the refugees were seized while returning to Rwanda and taken from transit camps and columns by ADFL forces to unknown destinations.

There is no doubt that in the early stages of the campaign in South Kivu the ADFL attacked undefended refugee camps with gunfire and, according to some witnesses, mortar fire. The experience of Françoise, a young Rwandan girl who became separated from her mother during a rebel attack, is typical of that of many refugees. She reported that in November she fled from one camp to another along the western shore of Lake Kivu as the rebel attack advanced:

Very early in the morning we heard a lot of gunfire. We woke up. We followed the others. We went to Kamanyola. When we got there, a man said "If you stay here, the Inkotanyi [i.e., Rwandan soldiers] will come and find you here." Others left, so we followed. We went on to Inera. At Inera, very early in the morning, they started firing bombs there, too. It was then that I lost my mother.⁵²

⁵⁰ Human Rights Watch/FIDH interview at Nkamira Transit Camp, Gisenyi, November 13, 1996.

⁵¹ Howard W. French, "Zaire Government Is Arming Hutu, Making Human Shields of Refugees," *The New York Times*, February 19, 1997.

⁵² Human Rights Watch/FIDH interview at SOS Children's Village, Gikongoro, December 6, 1996.

ANOTHER WITNESS CORROBORATED THIS ACCOUNT, REPORTING "AT INERA THEY FIRED LOTS OF BOMBS AT US, AND KILLED LOTS OF PEOPLE THERE."⁵³ ACCORDING TO U.N. REPORTS, THE ADFL PURSUED REFUGEES FROM THE SOUTH KIVU CAMPS, DRIVING THEM DEEPER INTO THE FOREST.⁵⁴

IN EVACUATING CAMPS IN NORTH KIVU, THE ADFL SOLDIERS AND ALLIED MILITIA BEGAN TO FORCE REFUGEES BACK TO RWANDA. APPARENTLY IN CONTRAST TO THEIR PRACTICE FURTHER SOUTH, THEY THREATENED AND EVEN ATTACKED THOSE WHO ATTEMPTED TO HEAD INTO THE INTERIOR OF ZAIRE. NDABAHWEJE WAS AMONG A GROUP OF REFUGEES WHO REMAINED IN KAHINDO CAMP AFTER IT WAS OVERRUN BY THE ADFL. ACCORDING TO HIM, ADFL SOLDIERS CAME ON NOVEMBER 11 TO CONVINCE THE REFUGEES TO RETURN TO RWANDA:

SUNDAY THEY CAME TO ENCOURAGE US TO GO HOME, TO GO TO NKAMIRA. THEY CAME TO TELL US THAT ON THE RETURN PATH AND IN RWANDA THERE WAS PEACE, WHILE IN THE CAMP THERE WAS NOTHING TO EAT. . . . THEY TOLD US THAT IT WOULD BE BETTER TO RETURN, THAT IT SHOULD NOT BE NECESSARY FOR THEM TO SHED BLOOD. . . . [I]F WE DID NOT RETURN, IT WOULD BE CONSIDERED A PROVOCATION.⁵⁵

OTHER REFUGEES WHO RETURNED TO RWANDA IN OCTOBER AND NOVEMBER CONFIRMED THAT THEY HAD BEEN WARNED THAT THEY WOULD BE ATTACKED IF THEY REFUSED TO RETURN.

ACCORDING TO WITNESSES, ADFL FORCES AND ALLIED MILITIA DID IN FACT ATTACK REFUGEES WHO TRIED TO MOVE TOWARD THE INTERIOR OF ZAIRE. NARCISSE, A RWANDAN REFUGEE FROM KIGALI, WAS AT KATALE CAMP WHEN IT WAS STRUCK BY MORTAR AND SMALL ARMS FIRE ON SATURDAY, OCTOBER 26. ZAIRIAN SOLDIERS ALONG WITH SOME AMONG THE RWANDANS PUT UP A DEFENSE UNTIL TUESDAY, OCTOBER 29, WHEN THEY RAN OUT OF AMMUNITION. THE FOLLOWING DAY, NARCISSE FLED KATALE WITH HIS FAMILY, HEADING THROUGH THE FOREST TOWARD THE TOWN OF TONGO. ACCORDING TO NARCISSE, THE GROUP HE WAS TRAVELING WITH STOPPED BEFORE ARRIVING AT TONGO, WHEN THEY SAW MILITIA ALLIED WITH THE ADFL ATTACKING REFUGEES AHEAD OF THEM.

THERE WAS A SMALL ENCAMPMENT OF ABOUT FIFTY FAMILIES. . . . THEY DESTROYED IT THE DAY I ARRIVED THERE. I WAS ABOUT TEN KILOMETERS AWAY, BUT I COULD SEE IT WELL, BECAUSE I WAS ON A HIGH MOUNTAIN. THEY FIRED [ON THE REFUGEES] AND SO WE STOPPED WHERE WE WERE. WE WATCHED THE SCENE OF DESTRUCTION. THIS WAS THE ONLY GROUP THAT HAD LEFT THE FOREST TO GO TO TONGO. . . . WHEN THEY [THE MILITIA] SAW THAT WE WERE NOT GOING TO CONTINUE ON, THEY BEGAN TO COME TO CHASE US FROM THE FOREST. THAT IS WHY WHEN THEY WOULD SEE SOME SHEETING OR TENTS, THEY WOULD SEND SOLDIERS TO DESTROY THEM.⁵⁶

ACCORDING TO NARCISSE, IF ADFL SOLDIERS OR MILITIA FOUND REFUGEES ATTEMPTING TO APPROACH TONGO OR OTHER ZAIRIAN COMMUNITIES TO FIND FOOD OR WATER, THEY WOULD ATTACK THEM WITH GUNS AND KNIVES. SOME DAYS LATER, NARCISSE'S OWN WIFE WAS KILLED IN SUCH AN ATTACK.

⁵³ Human Rights Watch/FIDH interview at SOS Children's Village, Gikongoro, December 6, 1996.

⁵⁴ U.N. Department of Humanitarian Affairs, "Emergency Update No. 80 on the Great Lakes," January 20, 1997; Lynne Duke, "Rwandans Driven Deep into Zaire, Villagers Report," *The Washington Post*, November 22, 1996.

⁵⁵ Human Rights Watch/FIDH interview at Nkamira Transit Camp, Gisenyi, November 13, 1996.

⁵⁶ Human Rights Watch/FIDH interviews in Kigali on November 26, 1996 and in Butare on December 3, 1996.

IT WAS DURING THE DAY, AROUND 3 P.M. WE HEARD GUNFIRE, TWO SHOTS FAR FROM US, AND WE WERE AFRAID IT WAS THE START OF AN OPERATION. WE TOOK THE POSSESSIONS WE COULD CARRY AND FLED. . . WE LEFT A GROUP OF WOMEN IN A SMALL WOODS AND WENT TO GET THE REST OF OUR THINGS. WE DID NOT KNOW THAT THE SOLDIERS KNEW THE WOMEN HAD BEEN LEFT. WHEN WE ARRIVED AT THE CAMP WHERE WE HAD BEEN, THEY STARTED TO FIRE HEAVILY ON US. A NUMBER OF PEOPLE WERE INJURED IN THAT ATTACK. I RAN TOWARD A SMALL FOREST NEAR THERE AND I TRIED TO HIDE MYSELF. OTHERS RAN IN ANOTHER DIRECTION AND WERE SHOT. BUT IN THE MEANTIME, THE SOLDIERS ENCIRCLED THE GROUP LEFT IN THE FOREST WITH THE CHILDREN AND TOOK THEM AWAY TO MASSACRE THEM, EVEN THE BABIES! WE WENT TO THE PLACE WHERE THIS [MASSACRE] HAPPENED. WE EVEN FOUND A BABY THERE THAT WAS STILL ALIVE.⁵⁷

NARCISSE CONCLUDED:

EVERY TIME REFUGEES ERECTED CAMPS, OTHERS WOULD COME TO DESTROY THEM. THERE WAS A LITTLE CAMP NEAR KIBUMBA WHERE I FOUND MANY DEAD. THE BANYAMULENCE DESTROYED ALL THE CAMPS TO DISPERSE THE REFUGEES. ALL THE DEAD [IN KIBUMBA] HAD BEEN SHOT.⁵⁸

BY FORCING REFUGEES TO RETURN TO RWANDA, WHEN THEY HAD WELL-FOUNDED FEAR OF BEING PERSECUTED THERE, ADFL FORCES VIOLATED THE INTERNATIONAL CONVENTION PROTECTING REFUGEES. HUMAN RIGHTS WATCH AND FIDH STRESSED IN THE REPORT THE URGENCY OF DISTINGUISHING GENUINE REFUGEES FROM THOSE SUSPECTED OF RESPONSIBILITY FOR THE GENOCIDE AND THOSE INVOLVED IN MILITARY ACTIVITIES IN ORDER TO ACCORD THE REFUGEES THE FULL PROTECTION OF INTERNATIONAL LAW.

THE TREATMENT OF REFUGEES BY THE ADFL AFTER THE DISPERSAL OF CAMPS, AND DURING THE RETURN OF MANY OF THE REFUGEES TO RWANDA, WAS THE OBJECT OF DISTURBING REPORTS FROM MANY PARTS OF THE BORDER AREA. ALLEGATIONS WERE MADE THAT MANY OF THE YOUNG MEN WHO HAD FLED FURTHER INTO ZAIRE WITH THE BULK OF THE INTERAHAMWE AND EX-FAR WERE SEPARATED OUT FROM THE OTHER REFUGEES BY THE REBEL FORCES, OR BY RWANDAN TROOPS OPERATING WITH THEM. THE FATE OF THOSE TAKEN FROM THE CAMPS AND COLUMNS IS UNKNOWN. THE ADFL WAS ACCUSED OF HAVING MASSACRED REFUGEES BOTH IN THE CAMPS AND DURING THEIR LONG TREK HOME.

THE NEW YORK TIMES OF FEBRUARY 12, 1997, FOR EXAMPLE, CITED "CREDIBLE WITNESSES" WHO CLAIMED THAT AS THE REBELS SWEEP INTO THE SMALL TOWN OF SHABUNDA, THEY SEPARATED OUT THE YOUNG HUTU MEN FROM THE GROUP OF REFUGEES THEY WERE ABLE TO ENCIRCLE, AND MACHINE-GUNNED AN UNKNOWN NUMBER.⁵⁹ A correspondent for the Associated Press in mid-March described in gruesome details a mass grave of about a hundred Rwandan refugees, mostly women and children, which he visited near the village of Musenge, some seventy-five miles northwest of Bukavu. A Zairian Red Cross official told the correspondent that the killings occurred in December and January. As the rebels were advancing further west toward the front, he said, they encountered this group of refugees moving in the opposite direction, toward Rwanda, and killed them all indiscriminately. Laurent Karumuna, a doctor working for the rebels, told the correspondent that the killings in Musenge occurred during two battles between the rebels and armed Hutu. "The fighters were mixed in with the women and children," he said, a version which another Zairian Red Cross official corroborated. A traditional village leader, however, told the correspondent, on condition of anonymity, that the rebels told refugees to gather near a compound outside the village where they promised them trucks would be waiting to take them home. When they arrived, they were all killed.⁶⁰

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Howard W. French, "In Zaire's Unconventional War, Serbs Train Refugees for Combat," *The New York Times*, February 12, 1997.

⁶⁰ Karin Davies, "Refugees in Zaire Said Slain," Associated Press, Musenge (Zaire), AP, March 14, 1997. See also, on the Musenge "field of death," Scott Stearns, "Zaire Unrest," *Voice of America*, March 14, 1997.

AZADHO, which is known for its harsh criticism of the government's human rights record, released a report on March 1, 1997 in which it alleged that the rebels of the ADFL had perpetrated large-scale massacres against refugees in eastern Zaire. AZADHO cited grave sites near Mugunga, Kibumba, and Katale camps in the east, and gave dates and testimonies to back its charges. Reports in the European press, citing an anonymous report, raised allegations of systematic killings of refugees by the ADFL.⁶¹

THAT ATROCITIES ON A LARGE SCALE OCCURRED AT THE TIME THE REFUGEE CAMPS WERE DISPERSED WAS FURTHER CONFIRMED DURING A VISIT TO THE AREA IN LATE MARCH 1997, BY ROBERTO GARRETÓN, THE SPECIAL RAPPORTEUR ON ZAIRE, TO LOOK INTO ALLEGATIONS OF ADFL MASSACRES OF RWANDAN REFUGEES. IN A PRESS CONFERENCE IN GENEVA ON APRIL 2, HE CALLED FOR A U.N. INVESTIGATION, SAYING THAT HE HAD "INDUBITABLE EVIDENCE OF MASS GRAVES AND MASSACRES." HE SAID HE COULD NOT CONFIRM THE NUMBERS KILLED, BUT SAID "WHAT IS CERTAIN IS THAT THERE WAS A MASSACRE. WE CANNOT DENY THAT."⁶² HE PERSONALLY VISITED THREE MASS GRAVES NEAR EMPTY REFUGEE CAMPS, BUT HIS ATTEMPTS TO VISIT OTHERS WERE THWARTED, HE SAID, BY THE ADFL ON GROUNDS OF SECURITY RISKS. HE TOLD REPORTERS THAT BASED ON WHAT HE SAW AND TESTIMONIES BY EYEWITNESSES HE CONCLUDED THE ADFL WAS RESPONSIBLE FOR THE KILLINGS.

A spokesman for the ADFL in Geneva denied the charges of ADFL responsibility. He said victims in the mass graves visited by the U.N. investigator were killed by other refugees who wanted to prevent them from returning to Rwanda. The ADFL, he said, will cooperate with any future U.N. probe into the massacres, pending the improvement of security conditions.⁶³

Investigations must look into both indiscriminate killings in the course of attacks on the camps, and allegations that adult men were systematically removed by the ADFL from groups of returnees heading home to Rwanda. Humanitarian organizations reported disproportionately high numbers of women, children and the elderly among many of the groups of refugees forced to return to Rwanda. Although it cannot be discounted that some adult men among the refugees remained in Zaire to join the combat, the reports of relatively few young men returning to Rwanda were also consistent with press reports that many of the men among the refugees had been taken away and were feared to have been killed.⁶⁴ Investigations of the mass graves near the refugee camps, by the United Nations and other independent bodies, may provide the key to establishing the truth behind these killings and to establishing accountability for them.

HUMAN RIGHTS ABUSES BY THE INTERHAMWE AND EX-FAR

EVEN AFTER THE BEGINNING OF THE FLOOD OF RETURNÉES TO RWANDA, INTERHAMWE MILITIA, EX-FAR SOLDIERS AND FORMER GOVERNMENT OFFICIALS CONTINUED TO USE FORCE, INTIMIDATION AND MISINFORMATION TO STOP REFUGEES FROM RETURNING TO RWANDA, ACCORDING TO RETURNING REFUGEES. THIS PRACTICE WAS DOCUMENTED PREVIOUSLY BY HUMAN RIGHTS WATCH AND FIDH.⁶⁵ EVEN AS THE ADFL AND ITS ALLIES DROVE THOUSANDS OF REFUGEES ACROSS THE BORDER INTO RWANDA, THOUSANDS OF OTHERS REMAINED UNDER THE CONTROL OF THE FORCES RESPONSIBLE FOR THE GENOCIDE.

NUBABA, A WOMAN WHO WAS AT KIBUMBA CAMP, REPORTED THAT THE INTERHAMWE FIRED ON REFUGEES IN THE CAMP IN ORDER TO FRIGHTEEN THEM INTO FLEEING WITH THEM:

⁶¹ See: "Zaire: Anonymous Report Provides Details of Refugees Massacres," *Le Soir*, Brussels, February 25, 1997, (in FBIS-AFR-97-037). See also, "Les Nations Unies face à leurs responsabilités, Zaire: un témoin raconte les massacres," *L'Évènement*, Paris, March 10, 1997.

⁶² Lynne Duke, "Mobutu's Foes Jockeying for Position," *The Washington Post*, April 3, 1997.

⁶³ Douglas Roberts, "U.N./Zaire /Massacres," *The Voice of America*, Geneva, April 3, 1997, 7:23 AM EST.

⁶⁴ See, French, "In Zaire's Unconventional War,... " *The New York Times*.

⁶⁵ See Human Rights Watch and the International Federation of Human Rights Leagues, Press Release, November 25, 1996; Human Rights Watch Arms Project, "Rwanda/Zaire: Rearming with Impunity, International Support for the Perpetrators of the Rwandan Genocide," May, 1995.

AROUND 3 P.M., IT WAS GETTING READY TO RAIN, AND WE HEARD THE SOUND OF GUNS. THE INTERAHAMWE WERE ORGANIZING, SAYING TO THE SOLDIERS FROM KIBUMBA CAMP AND SOLDIERS FROM OTHER CAMPS, "GATHER YOUR THINGS AND COME!" AND THEN WE SAW THEM CLIMBING THE MOUNTAINS AND THEY FIRED DOWN ON US. THEY WERE THE FIRST TO FIRE ON US. THEY CRIED LOUDLY: "SEE! THE INKOTANYI, THEY ARE COMING! SEE!" THEY MANIPULATED US TOO MUCH. OUR HEARTS WERE TRULY TRAUMATIZED. SO PEOPLE BELIEVED THEM AND SAID, "YES, IT'S THEM, IT'S THEM!" . . . A YOUNG BOY INTERAHAMWE TOLD ME "GATHER YOUR THINGS! GATHER YOUR COOKING POT AND PUT YOUR THINGS TOGETHER. THINGS ARE GETTING SERIOUS, THIS IS SERIOUS COMBAT." . . . THEY TOLD US THAT THOSE WHO REMAINED WOULD BE KILLED. THE INKOTANYI WOULD KILL THEM.⁶⁶

One witness saw an ex-FAR soldier going through Mugunga camp with a machine gun mounted in a wheelbarrow, threatening refugees who did not immediately follow the retreating troops. ACCORDING TO A REFUGEE FROM KAHINDO,

THEY MADE US AFRAID, THE OLD LEADERS AND THE MILITIA. THEY CAME IN FULL BUSES TO MAKE US AFRAID, TELLING US THAT IN THIS COUNTRY [RWANDA], THEY DID NOTHING BUT KILL. . . . YOU KNOW THAT THE MOUTH CAN BE VERY, VERY DANGEROUS. . . . [IF YOU TALKED ABOUT LEAVING], THE MILITIA WOULD RUSH TO COME TALK TO YOU, SAYING, 'Ha! IF YOU LEAVE, WHAT ARE YOU GOING TO DO?' SOMETIMES, PEOPLE WERE BEATEN.⁶⁷

ANOTHER WOMAN GREW TIRED OF THE INTERAHAMWE'S FREQUENT ATTEMPTS AT DECEPTION:

THE PEOPLE ARE FOOLED, BECAUSE THERE IS NO ONE ELSE TO INFORM THEM AND SHOW THEM OTHER THINGS. EVERY TIME A PERSON TELLS THEM SOMETHING ELSE, THE INTERAHAMWE SAY THAT THIS PERSON IS BAD AND THAT SHE WANTS TO DESTROY THEM. IN THIS WAY, IT WAS DIFFICULT TO DETERMINE THE TRUTH IN THE CAMPS. [BUT] AFTER THE LONG MARCH IN THE VOLCANOES, EVERYONE HAS BECOME VIGILANT. WE HAVE DISCOVERED THAT THE INTERAHAMWE WERE USING US. . . . IT IS A SHAME FOR SOMEONE WHO IS BORN WITH HUMAN INTELLIGENCE. THEY TAKE US FOR COWS THAT THEY CAN DRIVE WHERE THEY WANT AND HOW THEY WANT. . . . AND NOW THEY WANT TO MAKE THE POPULATION PRISONERS, HOSTAGES!⁶⁸

IN ITS JANUARY 20 UPDATE, THE U.N. DEPARTMENT OF HUMANITARIAN AFFAIRS REPORTED THAT A LARGE GROUP OF REFUGEES CAME FORWARD AT KINGULUBE, 170 KILOMETERS EAST OF SHABUNDA, REQUESTING REPATRIATION, AFTER A GROUP OF 1,500 INTERAHAMWE AND EX-FAR LEFT THEIR CAMP TO MOVE INLAND. ACCORDING TO THE REPORT, "THE REFUGEES ALLEGED THEY HAD BEEN CONTROLLED AND INTIMIDATED AGAINST REPATRIATING BY THE EX-FAR. FREE OF EX-FAR CONTROL, THEY WERE NOW REQUESTING ASSISTANCE TO REPATRIATE TO RWANDA."⁶⁹

INTERFERENCE WITH HUMANITARIAN AID

⁶⁶ Human Rights Watch/FIDH interview at the Petite Barrière, Gisenyi, November 15, 1996.

⁶⁷ Human Rights Watch/FIDH interview at Nkamira Transit Camp, Gisenyi, November 13, 1996.

⁶⁸ Human Rights Watch/FIDH interview at the Petite Barrière, Gisenyi, November 15, 1996.

⁶⁹ U.N. Department of Humanitarian Affairs. "Emergency Update No. 80 on the Great Lakes, January 20, 1997.

According to the U.N. High Commissioner for Refugees and other aid organizations, Zairian soldiers have regularly commandeered aircraft and trucks needed to transport food, water, and medicine to the refugees in Tingi-Tingi, Amisi, and elsewhere. The Zairian military limited the amount of fuel available to UNHCR and other groups, severely limiting their ability to use even those vehicles available to them. In addition, the Zairian military periodically limited access to Amisi, Tingi-Tingi, and other areas in which refugees are concentrated.⁷⁰ In turn, when ADFL forces first took control of eastern Zaire, they excluded humanitarian agencies for several weeks, making it impossible for them to deliver needed aid to the refugees who were fleeing the camps.

Attacks on Other Zairian Civilians

Information on abuses against Zairian civilians apart from Banyamulenge, including those displaced by the conflict, is limited but it is enough to indicate that citizens other than Kinyarwanda-speakers also suffered at the hands of armed elements from both sides. A witness present in Bukavu when the town was taken by ADFL forces reported seeing many bodies in the streets, but did not know who was responsible for the deaths. In Goma, FAZ soldiers killed a number of civilians in the market on October 20. When the fighting in the town was finished, a local nongovernmental organization buried more than 2,700 bodies, a considerable number of them civilians. It is not known how many were deliberately killed by the incoming ADFL forces and militia or by the FAZ and allied militia who were fleeing the town. According to a report by AZADHO, ex-FAR and Interahamwe attacked an unarmed convoy of civilians who were fleeing fighting in Goma, heading toward Kitshanga, and killed hundreds of people on November 17, 1996. Zairian planes bombed civilians in Goma on February 17, 1997, killing at least six people and injuring twenty more.

Since the publication of the March 1997 Human Rights Watch/Africa and FIDH report on the war in the east more reports surfaced of widespread abuses against civilians by all parties to the conflict. *Newsweek International* reported that its correspondent saw mass graves left behind by mostly Serb mercenaries and others who fled Kisangani before its fall to the ADFL. Eyewitnesses told the correspondent and others reporters that the mercenaries, whose leader called himself Dominic Yugo, imprisoned young men suspected of sympathizing with the rebels, and executed citizens at random for not possessing identity papers. They said Yugo personally took part in torturing suspects, and shot and killed in cold blood two evangelical pastors while they held their bibles and begged him to spare their lives. Other residents said they saw him herding fifteen young men into a building and later heard gunfire and screams.⁷¹

⁷⁰ U.N. Department of Humanitarian Affairs, "Emergency Update No. 85 on the Great Lakes," January 23, 1997; UNHCR, "UNHCR Worried About Refugees in Eastern Zaire," January 28, 1997; Medecins Sans Frontières, "Situation of the Rwandan Refugees in Tingi-Tingi," January 16, 1997; U.N. Department of Humanitarian Affairs, "Emergency Update No. 91 on the Great Lakes," January 31, 1997.

⁷¹ "Serb mercenaries leave mass graves in Zaire - report," Reuter, New York, March 23, 1997. See also: "Serb mercenaries terrorized Zairians - residents." Reuter, Kisangani, March 18.

Both government and rebel forces recruited child soldiers in total disregard of the prohibition of this practice by international humanitarian law.⁷² In early 1997 the Zairian minister of defense carried out a conscription campaign aimed at recruiting thousands of youths between the ages of fifteen and eighteen years to beef up its embattled forces.⁷³ In April, eyewitnesses in Lubumbashi reported seeing Angolan boy soldiers who had been forced to serve the government forces, some as young as twelve years of age, who were evacuated to the town and housed in a local hotel after deserting the front line.⁷⁴ Correspondents from ADFL-held areas reported on and photographed a number of graduation ceremonies of new recruits in which the rebel alliance inducted boy soldiers. A report on one of the first such graduation which took place in Goma on February 6, 1997, referred to recruits who were “relatively young,” and said some of them were “less than fifteen years old.”⁷⁵

The treatment by both sides in the conflict of prisoners from the front is of concern. Reporting on the arrest and detention of three of its own representatives by the military intelligence branch, SARM, the rights group Voice of the Voiceless said the lives and dignity of these prisoners were at risk because SARM systematically ill-treated them and denied them food and access to medical care. V.S.V. officials, who initially went to SARM headquarters in Kinshasa to inquire about this particular issue, and ended up being detained themselves, reported that the prisoners from the front were all crowded in a small cell. They were constantly intimidated and left without medical attention. One of them was hit on the arm by an iron bar in the SARM detention center, and left in terrible pain for days. Another trembled during the night from the effects of untreated malaria. Prisoners from the front, V.S.V. reported, passed days at length without food, and those who did not have clothes were left naked.⁷⁶ On the rebel side, the International Committee of the Red Cross complained in late March that although the ADFL had given it earlier in the year a general authorization to visit detainees in ADFL-held areas, such visits had still not been permitted at the end of March. The ICRC referred to a “large number” of people who were detained following the fall of Kisangani on March 15, 1997 and whom it could not visit because of lack of access.⁷⁷

⁷² International humanitarian law—notably the Geneva Conventions of 1949 and the two additional protocols of 1977—accord special protection and treatment to children in armed conflict. Protocol II to the Geneva Convention forbids the use of child soldiers under the age of fifteen in internal armed conflicts:

Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities (Article 4(3)(c)).

International human rights law has also taken on the question of child soldiers. Article 38 of the Convention on the Rights of the Child provides:

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.

Human Rights Watch’s position is that no one under the age of eighteen should take part in armed conflict.

⁷³ “Zairian Army Sets Up New Brigades,” Panafican News Agency, Kinshasa, February 4, 1997.

⁷⁴ “Zairians Mob Hotel to See ‘Angolan’ Boy Soldiers,” Reuter, Lubumbashi, April 2, 1997.

⁷⁵ AFP, FBIS, “Zaire: Rebel Leader Reviews ‘Several Thousands’ of New Recruits,” Paris, February 12, 1997.

⁷⁶ Voice of the Voiceless, “Les atrocités au SARM en rapport avec l’état de guerre à l’est du Zaïre,” Kinshasa, November 5, 1996.

⁷⁷ The ICRC, “Update No. 4 on ICRC Activities Related to the Zairian Conflict,” March 29, 1997.

The Transitional Agenda of the ADFL

The string of ADFL military successes from the first day of the rebellion dramatically changed the configuration of the political landscape in Zaire and irrevocably altered the transitional agenda. In particular, the ADFL's capture on March 15, 1997 of Kisangani, the third largest city in the country, and the base of the government's military counteroffensive, was largely viewed by observers as marking a point of no return to the earlier transitional program of a shift to multiparty democracy following a constitutional referendum and parliamentary and presidential elections.

For their part, the rebels did not explain what political system they planned for the country as they expanded their military and political control over the eastern third of Zaire in less than six months. The ADFL gained in popularity as populations weary of extortion and rampant violence perpetrated by soldiers fleeing the rebel advance welcomed the prospects of change that the rebel takeover brought.

When asked, however, about the definition of their national political agenda, and the type of political system they envisaged for Zaire, rebel leaders issued a number of vague and sometimes conflicting statements. During his first visit to Kisangani after its fall to his troops, and in front of a huge rally, Laurent Kabila announced the suspension of political parties until the war ends: "[w]e are in the process of liberation. If we accept political parties, they will tell lies to stop the advance of the Alliance."⁷⁸ A provisional government would be formed, he added, exclusively by the ADFL.

This position was, however, different from the one he stated shortly afterwards before a press conference in which he outlined the ADFL's plans for transitional government. He told reporters that any transition should not last beyond one year. An ADFL transitional government, he said, should include, in addition to members of the ADFL, "only anti-Mobutist and anti-regime people who have never been in power and who never shared power."⁷⁹ If strictly applied, this dividing line would effectively have barred a sizeable majority of the political class in Zaire from participation in the new transitional institutions, including such important opposition leaders as Etienne Tshisekedi. Political expediency and opportunism have blurred the divide between Mobutu's supporters and opponents.

The rebels allowed a measure of participation by the population in the selection of local civilian and municipal administrators in areas under their control. The actual installation of civilian administrations in towns that the Alliance came to occupy indicated a more subtle awareness of the need to accommodate to local politics and sensitivities. The rebel alliance established an expanding civilian base, with civilian supporters of the rebellion attending a series of short seminars on the political program of the ADFL. With teachings emphasizing free and fair elections, basic civil rights, lower taxes, clean government and a military controlled by the civilian arm of the rebellion, the ADFL's program was reportedly effective in winning over scores of converts who have only experienced the contrary under Mobutu's rule. Following its take over of Kisangani, the ADFL flew in 117 supporters to begin spreading the political message of the alliance among the population of the city.⁸⁰ Kabila told reporters that the Zairian people needed this brand of political education because Zairians "have no political education and have been deprived of that education for so long that they could not make a real choice of [their] own."⁸¹

⁷⁸ "Rebel Leader Vows No Cease Fire," the Associated Press, Kisangani, March 22, 1997.

⁷⁹ "Kabila Says He Has No Designs on Zaire Presidency," Reuter, Kisangani, March 22, 1997.

⁸⁰ James C. McKinley Jr., "Zaire Rebels Try to Find Way to People's Hearts, They Seek to Win Trust of Civil Servants," *The New York Times*, March 21, 1997, p. A14.

⁸¹ Lynne Duke, "Violent Echoes of Zaire's Past," *The Washington Post*, March 13, 1997, p. A01.

To prove their seriousness about democracy, officials of the civilian arm of the alliance organized elections for the local government of Kisangani days after the capture of the city by the ADFL. Local political and community leaders were asked to nominate delegates from their neighborhoods, as well as candidates for borough leader, mayor and governor. A group of randomly selected delegates elected the officials. This provisional local government was to remain in office until the end of the war.⁸² A spokesperson for the opposition UDPS in Kisangani reportedly shrugged off the proclaimed exclusion of non-ADFL elements from political participation, saying “we’re all parts of the Alliance now,” and his party reportedly won the leadership of all six boroughs in the local elections.⁸³ In other captured cities, the ADFL installed governors and local officials elected by delegates drawn from the local elite: clergy, businessmen, civil servants and intelligentsia.⁸⁴ Members of the president’s party, the Popular Movement for the Revolution (MPR), were, however, excluded.

The opposition parties in Kinshasa expressed worry at Kabila’s threat to exclude political figures who had shared power with Mobutu from any provisional national government set up by ADFL. The president of the Christian Democratic Party, which backs opposition leader Etienne Tshisekedi, said of the opposition “[w]e are the ones who have brought down Mobutu, the man who used to consider himself the colleague of the gods. We were defeating him with the pen. Is it fair to come in now with the gun and say you’re shutting out those who have fought for democracy?”⁸⁵

Some leaders of the president’s party, too, hoped not to be left out from any provisional government which would emerge in the event of a political settlement of the crisis. Banza Mukalay, vice-chairman of President Mobutu’s party, the MPR, who was also deputy prime minister, offered to share power with the rebels: “we shall meet and after dialogue we will share power. First we will talk to find the mechanism for a cease-fire and then we will share power before elections.”⁸⁶ He explained later that the offer meant the formation of a government of national unity to work out a consensus that would lead to the organization of democratic elections. The rebel leader would have the possibility of campaigning and gaining the presidency in the polls, according to the MPR vice-president, instead of reaching it through “the paths of revolution.”⁸⁷ A spokesperson for the rebels categorically rejected the offer of power-sharing, adding that this was not what the ADFL had fought for.⁸⁸

⁸² Ibid.

⁸³ “Rebel Leader...,” AP, March 22, 1997.

⁸⁴ James C. McKinley Jr., “Zaire’s Rebels Now Face Rebuilding of Their Country,” *The New York Times*, March 18, 1997.

⁸⁵ Garry Pierre-Pierre, “Mobutu, Emerging, Vows to Unite Zaire but Doesn’t Say How,” *The New York Times*, March 24, 1997, p. A9.

⁸⁶ “Zaire Government Ready to Share Power Before Polls,” Reuter, Kinshasa, March 25, 1997.

⁸⁷ *La Une* Radio Network, Brussels, FBIS, “Zaire: MPR’s Mukalay: Kabila Can Stand in Free Elections,” FBIS-AFR-97-085, March 26, 1997.

⁸⁸ “Zaire Rebels Reject Power-Sharing With Mobutu,” Reuter, Lome, March 26, 1997.

Raphael Ghenda, information, communications and propaganda commissioner of the ADFL, offered a rare insight into the political demands and goals of the alliance in a February 25, 1997 press interview. Asked if the ADFL would accept the constitution adopted following the National Sovereign Conference, Ghenda pointed to the existence of several constitutional texts and promised the formation of specialized groups to study which text was most suitable for the new situation. He characterized the relationship of ADFL with the organizations of civil society as excellent, adding that, with the help of these groups, “[w]e have already set up base cells which allow us to control the infiltration of people from the other side. Each cell manager knows the names of the people who live in his street and this will make the census [of the population] easier.”⁸⁹ He denied the suggestion that the neighborhood cells could signal the start of a police state. The ADFL, he said, was “seeking more flexible structures, so that there can be more checks but not surveillance.”⁹⁰

Human Rights Watch/Africa has not itself investigated the political and human rights practices in areas under ADFL control. The banning of political activities described by journalists reporting from ADFL-held areas,⁹¹ and the statements by official spokespersons of the ADFL pointing to the alliance’s intention of barring whole sectors of the population from political participation in transitional arrangements where the ADFL would be the leading actor is of concern. The stalled transitional process that began with the National Sovereign Conference, however flawed, still produced solid benchmarks for the assessment of government performance and for progress toward democracy, the rule of law and the respect of human rights. The preconditions for elections and the principles of basic rights identified by the National Sovereign Conference are no less valid in this new era of transition. As the ADFL extends its control over the country, it will be held accountable for its actions by the Zairian public and international observers in accord with the same criteria to which the proponents of democratization in 1991 first sought to hold Mobutu Sese Seko.

THE RIGHTS DENIED

As the institution of the state under Mobutu virtually collapsed, one of the remaining functions the military continued to exercise was the police function. The population was, however, deeply affected by the rampant criminality of the military, the main perpetrator of violence in the society. In addition, the frequent involvement of military and security forces in abuses of basic political freedoms offered little prospect of their political neutrality in the transitional process. Units from the army and various security services were often involved in the violent dispersal of peaceful marches, the harassment of opposition leaders and human rights advocates, and the arrest of journalists.

Freedom from Arbitrary Arrests and Detention

Zaire has ratified the major international human rights instruments protecting individuals from arbitrary arrest.⁹² Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Zaire is party, provides that:

⁸⁹ Collette Braeckman, “Interview With Raphael Ghenda, General Information Officer of Laurent Kabila,” *Le Soir*, Brussels, February 25, 1997.

⁹⁰ *Ibid.*

⁹¹ See, for example, James C. McKinley Jr., “Mobutu’s Nemesis Keeps His Plans to Himself,” *The New York Times*, April 1, 1997, p. A01.

⁹² Zaire has ratified, *inter alia*, the International Covenant on Civil and Political Rights (ICCPR); the First Optional Protocol to the ICCPR; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Conventions No. 29, 105 and 98; the four Geneva Conventions of 1949; and Protocol I Additional to the Geneva Conventions.

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
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.

The Transitional Act asserts the rights of arrested and detained persons in Articles 13, 14 and 15. Zairian law no. 78-289 of July 3, 1978, governing arrest and detention procedures, provides for specific protections of these rights. The law allows arrest without warrant for serious offenses, defined as those punishable by more than six months of imprisonment, when "serious incriminating evidence" has been presented, or when there is fear that the suspect may escape or there are doubts about his or her identity. Law enforcement officers are required to bring suspects before a magistrate within forty-eight hours. The law empowers only those law enforcement officers with judicial police officer status (*Officier de Police Judiciaire*, OPJ) to make arrests.

In spite of these legal safeguards, law enforcement officers often carry out arbitrary arrests and illegal detentions with impunity. Adding to the extent of the practice is the fact that the law provides a wide range of military as well as civilian officials with the status of "judicial police officer," either in a general or restricted capacity. For example, officers and noncommissioned officers of the National Gendarmerie and its specialized brigades are judicial police with general powers. The gendarmerie was created in 1972 to replace the national police and is present throughout the national territory. Police powers are also given, by virtue of a 1984 law, to senior officers of the Civil Guard.⁹³ Senior officers of the SNIP, the National Service of Intelligence and Protection, are also invested with limited judicial police powers. On the civilian side, the *Ordonnance-Loi no. 82-006*, dated February 25, 1982, invests the general powers of judicial police in communal chiefs, zonal commissioners and their assistants and regional and subregional commissioners and their assistants. A law dating back to the colonial era (*Ordinance of March 21, 1924*), which is still in force, empowers senior agents of practically all government administrations to assume limited judicial police powers. These include officials of the national agriculture, commerce, industry, labor, customs, hygiene, post and telecommunications, finance and economic affairs, aviation, and justice services.

Two recent official notes offered an unusually frank condemnation of the rampant use of arbitrary detentions and ill-treatment of detainees by all categories of judicial police. In an inaugural speech for a training session for judicial police held in Kikwit from April 27 to 29, 1996, a senior magistrate of the ministry of justice pointed to several categories of violations of human rights that judicial police (OPJs), specially those of the gendarmerie, committed routinely. These were summarized as follows by a participant:

1. Arbitrary arrests, including in purely civil affairs. At the lodging of a complaint, the judicial police of the gendarmerie arrest the accused persons without giving them a hearing or informing them of the motive for their arrest. A variant of these arrests is to arrest family members as hostages if the accused person was absent.
2. Torture "in certain detention places in town," to obtain confessions or releases against payment of money.
3. Systematic imposition of fines, accompanied by "confiscations."
4. Falsification of records of interrogations with a view to misleading magistrates.⁹⁴

The official also blamed the judicial police officers in his speech for being "allergic" to inspection of places of detention by officials of the Ministry of Justice and of obstructing the release of detained persons ordered by the ministry.⁹⁵

⁹³ *Ordonnance-Loi du 28 Aout 1984.*

⁹⁴ Human Rights Watch/Africa interview, Kikwit, July 1996.

⁹⁵ *Ibid.*

In response to similar practices in the capital Kinshasa, the minister of justice issued a circular in December 27, 1995 ordering the closure of twenty-six out of seventy-three official detention centers in the capital. The minister said in justification of this decision that the detention centers were singled out by a joint military and civilian commission of inquiry which found conditions in them "incompatible with human dignity." The minister also noted that,

Numerous provisions of law no. 78-289 of July 3, 1978 governing the exercise of the authority of officers and agents of judiciary police in common law jurisdictions are systematically violated with impunity by several judicial police officers, and without any reaction from the competent Ministry of Justice officials. More seriously, some of these officials themselves are known to have perpetrated such violations. The provisions which are violated more frequently are the ones related to arrest, detention and fines.⁹⁶

The circular enumerated the following widespread violations:

1. Many judicial police officers detain arrested persons beyond forty-eight hours, sometimes keeping them in detention for weeks in violation of Article 73 of [law no. 78-289];
2. Several detained persons are denied the right to be examined by a doctor as soon as they express the desire to as prescribed by the law;
3. In numerous places of detention, men and women are locked together;
4. Many judicial police officers who carry out arrests violate the obligation that the law imposes on them of immediately informing family members of the arrested individuals;
5. Several judicial police officers frequently arrest and detain family members of a suspected person as a means of ensuring that the said suspect would turn himself in without being questioned about this conduct;
6. Officials of the ministry of justice are no longer visiting places of detention regularly and at all times to ensure that such places remain healthy and to check on the material, legal, and moral conditions of detained persons.⁹⁷

Conducting an independent inquiry five months later, the leading rights group Voix des Sans Voix found that out of the twenty-six detention places ordered to be closed, eleven continued to function in total disregard of the ministerial directive, and three functioned partially, closing at night.⁹⁸

Freedom of Association and Peaceful Assembly

A major obstacle in the path of political participation has been the government of Zaire's restriction of the freedoms of association and peaceful assembly. The right to free association appears in 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.

The permissible limits on the right to association appear in Article 22 (2):

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety,

⁹⁶ "Circulaire No. 007/CAB/MIN/RI J and GS/95 Portant mesures de controle et de fermeture des cachots et amigos," Ministre de la Justice, Kinshasa, Decembre 27, 1995.

⁹⁷ Ibid.

⁹⁸ V.S.V., "Rapport d'enquête sur l'application de la mesure de fermeture des cachots a Kinshasa," Kinshasa, April, 1996.

public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. . . .

Article 21 of the ICCPR provides:

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 the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.⁹⁹

The freedom to associate and to assemble is guaranteed under Article 10 of the Transitional Act which subjects the exercise of these and other individual and collective freedoms to “the respect of law, public order and good morals.”¹⁰⁰

Although political parties, trade unions, and NGOs were for the first time permitted to register and acquire legal status after 1990, public assemblies by such organizations continued to require permits under a restrictive colonial law applying to all public meetings. Such permits, moreover, were often denied or, even when issued, disregarded by security forces bent on disrupting protest.

The Emerging Civil Society

Human rights and pro-democracy organizations and other civic groups since 1990 were able to function in Zaire in a manner which was inconceivable during the twenty-five years of the one party state. In many regions, the first human rights associations emerged from churches, following the successful organization of nationwide protests on February 16, 1992 by the churches to call for the reconvening of the National Sovereign Conference. Justice and Peace Commissions of the Catholic Church, the Non-Violence Evangelique, and the Commission for the Popularization of Fundamental Rights of the Evangelical Lutheran Church in Zaire are representative examples of this historic link. Because of these links, church-based human rights activism has developed a grassroots structure modeled on the parishes and is able to organize the population at neighborhood levels to confront such problems as public insecurity or the generalized practice by corrupt state agents of overinflating public utilities bills. Professional groups, such as the Association Zairoise de Defense des Droits de l’Homme, the Voix des Sans Voix, and Shaba’s Centre de Droits de l’Homme et du Droit Humanitaire, tend to be membership organizations, recruiting from an urban professional base, with a leadership mainly from the academic and legal professions.

The territorial coverage is still limited. Some national groups, like the AZADHO, branched out in several regions, while V.S.V. developed formal exchanges and partnership links with regional groups which preserved their own structures and programs. The human rights movement remains largely urban, with timid attempts to establish programs and a presence in the countryside.

Human rights groups are able to independently investigate abuses and to publish reports critical of the government. One routine form of their campaigning is letter writing to senior military and civilian authorities to document and denounce violations of basic rights by government officials. Rights groups also issue regular press releases and conduct public awareness activities both at grassroots level and through the broadcast media.

⁹⁹ ICCPR, Art. 21.

¹⁰⁰ Article 10 of the Transitional Act provides: “the Republic of Zaire guarantees the exercise of individual and collective rights and liberties, namely the freedoms of movement, enterprise, information, association, holding meetings, organizing processions and demonstrations, subject to the respect of law, public order and good morals.” Human Rights Watch/Africa [translation](#).

Such activism has invited occasional retaliation against monitors and activists by angry civilian political authorities and unbridled security forces who sought to harass and intimidate them. The governor of Maniema region, for example, refused to authorize the local AZADHO chapter to organize a conference on human rights in mid-1995 and threatened to close it down.¹⁰¹ More recently, on October 28, 1996, agents of military intelligence, SARM, arrested the chairman of V.S.V., together with the coordinator and a consultant when they arrived for a scheduled meeting with the legal adviser of SARM to inquire about the situation of detained rebel fighters. Instead, they were detained for six days on suspicion of espionage, and thrown in the same cells with prisoners from the war zone as well as other categories of detainees.¹⁰²

In the national and regional capitals, church and rights groups, developmental NGOs and unions come together regularly for the exchange of information and coordination of activities in an umbrella forum called, appropriately, "Civil Society." In a number of regions, human rights groups maintain parallel coordination forums which aim to exchange information and coordinate initiatives and campaigns. These have served as a vehicle for the emergence of a dynamic and vocal constituency advocating democratic rights and pressing for elections to take place. The activism of civil society has translated into extensive programs aimed at propagating a democratic culture, voter education, and training of independent monitors. In reaction to their exclusion from the National Elections Commission, civil society groups organized a parallel structure, the Independent Elections Commissions, and pressed ahead with active preparation of the population for the elections. The independent commissions were initially viewed with suspicion by the national electoral commission and the government, but initiatives were undertaken to bridge the trust gap and to clarify the role of the respective actors in the electoral process.

Restrictions on Assembly

Prior to the imposition of an outright ban on public demonstrations throughout the country in mid-February 1997, the government had issued authorizations only sparingly, and in some cases duly authorized marches were broken up by baton-wielding security forces. In Shaba, students of the University of Lubumbashi organized a peaceful march in the city center on January 13, 1997 to reject the imposition of a U.S. \$160 tuition fee per semester. Armed policemen broke up the procession, beating protesters severely and arresting others; some police, in turn, were overpowered and beaten by protesters.¹⁰³ On February 14, the governor of Kinshasa banned a demonstration which a group for the defense of students' rights, (Ligue Zairoise pour les droits des étudiants et des élèves), was planning to organize to protest the government's decision to recruit fifteen-to-eighteen-year-olds for the war. Previously, some thirty soldiers of the Civil Guard broke up a peaceful march organized in Kinshasa by the Solidarity trade union on October 18, 1996. Directed by a major, the soldiers were unnecessarily violent and reportedly stole money and other valuables from demonstrators. Two union leaders arrested were detained at a Civil Guard camp where a rights group reported they were subjected to harsh and degrading treatment.¹⁰⁴

¹⁰¹ V.S.V., "Aperçu sur l'état des droits de la personne humaine dans les onze provinces (régions) du Zaïre," Kinshasa, June, 1995, p. 11.

¹⁰² Press release from V.S.V., Kinshasa, November 5, 1996.

¹⁰³ Center for Human Rights and Humanitarian Law, "Communiqué de Presse No. 001/97," Lubumbashi, January, 1997. Some protesters took away the gun of a soldier after beating him up, and returned it to military authorities only after mediation.

¹⁰⁴ AZADHO, "Communiqué de presse no. 16/96: Des syndicalistes de la Direction Générale des Contributions à nouveau arrêtés et molestés sur ordre de Monsieur Mongbond," Kinshasa, October 22, 1996.

The war provided an added excuse for the government to tighten existing controls on the freedom of assembly, and ultimately to ban public demonstrations altogether throughout the country. The immediate trigger for the ban was a day of successful civil disobedience on February 10 called for by the opposition USORAL. This was widely supported by the population in the major urban areas in Zaire, particularly in the capital Kinshasa.¹⁰⁵ The mass action called for a negotiated settlement for the war in the east and sought the resignation of the prime minister over his conduct of the war effort and the stalling of the electoral process. USORAL also called on the population to boycott the newly introduced bank notes of 100,000, 500,000 and one million new zaires. The protest took the form of a "ghost city" operation that led, much to the government's irritation, to the paralysis of most activities in the public and private sectors.

In an attempt to quell public unrest and mounting pressures for a negotiated solution to the war, the cabinet met on February 14 and issued a ban on all public demonstrations and "ghost city"- style general strikes throughout the republic of Zaire. Jean-Claude Biebie, the official government spokesman, gave the following report on the cabinet meeting to the national radio, Voice of Zaire (Voix du Zaïre):

The prime minister's report focused on the prevailing situation in the eastern part of the country, and its repercussions on the rest of the country. In this respect, and in connection with reports of imminent public demonstrations and ghost city operations in Kinshasa, the government wishes to draw the attention of our compatriots to the fact that our country is currently facing a war inflicted upon us by aggressors from some neighboring countries. It is, therefore, inconceivable that we should allow public demonstrations with all that they might imply. For this reason, and in accordance with previous decisions, the government declares that no public demonstration of any kind shall be authorized anywhere on the national territory during the war period. Whosoever flouts this decision will be considered an enemy collaborator, and shall face the full rigor of the law. In the same vein, the government wishes to draw the attention of heads of public services, administrations, and state companies to their duty of ensuring that workers who are under their authority report for duty every day from Monday to Saturday. . . .¹⁰⁶

The government statement threatened absent workers with dismissal.

In the wake of the government ban on public demonstrations, the transitional parliament adopted a new law in mid-February 1997 that abrogated the highly criticized colonial law often cited to ban demonstrations. The new legislation, which remains to be tested, replaces the requirement of prior official approval with a simple eight-day advance notice to the authorities of the intention of the organizers to hold a demonstration. Meanwhile, heavily armed Civil Guards on March 7, 1997 used batons to disperse hundreds of demonstrators who responded to a call by Zaire's main opposition party, the UDPS, to gather for a march calling for a negotiated settlement of the war. According to witnesses, Adrian Phongo, the party's secretary, and several other party leaders, were beaten and arrested by security agents as they approached the gathering place to lead the march. Government officials said the march was dispersed because it defied the ban on public demonstrations until the end of the war.¹⁰⁷

¹⁰⁵ "Wide Support for Zaire Opposition Strike," Reuter, Kinshasa, February 10, 1997.

¹⁰⁶ Voix Du Zaïre, FBIS, Sub-Saharan Africa, "Zaire: Cabinet Meets, Bans demonstrations, Ghost City Operation," February 15, 1997.

¹⁰⁷ Voice of America, March 7, 1997, at 12:03 PM EST.

On the day of the successful “ghost city” campaign, the Attorney General, the highest legal authority in the government, addressed a letter to the transitional parliament in which he demanded the lifting of the parliamentary immunity of Joseph Olenga Nkoy, chair of the parliamentary opposition group of USORAL, who was viewed as the principal organizer of the protest, so that the government could bring legal charges against him. Government security agents sprang into action, however, before receiving the response of the parliament. On February 16, sixteen soldiers of the SARM stormed into the house of Olenga Nkoy only to find out that he had managed to escape across the river Congo to Brazzaville in neighboring Congo Republic to avoid arrest.¹⁰⁸ From his hideout, the self-exiled parliamentarian stated to Africa No. 1 radio:

Articles 10 and 18 of the Transitional Act give each citizen the right to protest and clearly express his opinion. We simply exercised this right by calling a ghost city operation to see if the people really have confidence in the government or not. [. . .] Each time you defend people’s interests, they send soldiers to pick you up. With such moves, the crisis will deepen in the country.¹⁰⁹

Aziz Kundeli, Prosper Ndumbe, and Lisanga Bonganga, three other opposition parliamentarians who were also actively sought for by military commandos for their role in the protest campaign, were forced to go underground.¹¹⁰ The protest also led to the detention of two militants from the opposition Parti Lumumbiste Unifié (PALU), Jean Mazulu Metila and Edison Ndeke, who were arrested in Kinshasa by gendarmes on February 12 while they were informing small groups of the public about their party’s stance on the war and its impact on the electoral agenda.¹¹¹

Freedom of Expression

Freedom of expression is guaranteed by Article 19 of the ICCPR. Article 19 (2) provides that,

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.

Article 19(3) of the ICCPR sets forth that limitations on this right are permissible only when they

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.

The interpretation of Article 19 over the years has led to a consensus that the peaceful criticism of governmental policy and practice does not amount to a threat to national security.

¹⁰⁸ In a previous incident on November 18, 1996, Olenga Nkoy was kidnaped by agents of SNIP and SARM and detained in the cells of SNIP at Kinshasa/Maziere for three weeks, during which he claimed he was subjected to inhuman, cruel and degrading treatment. See: V.S.V., “Communique de presse no. 7/Z/V.S.V./CD/97: Poursuites contre M. Joseph Olenga Nkoy,” Kinshasa, February 12, 1997.

¹⁰⁹ *Radio Africa No. 1*, FBIS, “Zaire: Parliamentary Leader Escapes Arrest, Takes Refuge in Congo,” Libreville, FBIS- AFR-97-032, February 16, 1997.

¹¹⁰ *Ibid.*

¹¹¹ V.S.V., “Communique de presse no. 8/Z/V.S.V./CD/97: Liberation de deux militants du PALU,” Kinshasa, February 13, 1997.

Article 18 of the Transitional Act provides that “[e]very Zairian has the right of freedom of expression. This right includes the liberty to express his opinion and feelings, namely orally, in writing or by images,” and subjects its full exercise to the respect of “public order, the rights of others and good morals.”

Attacks on the Media and Journalists

While there were significant advances in the respect of freedom of expression in Zaire since 1990, the government consistently sought to reign in critical reporting by the media and to limit the access of political parties to public and private broadcasting. The government has yet to meet earlier promises that it would create an independent media commission to oversee the media and guarantee fair access to all parties.

Print media

Vibrant political debate in Kinshasa and some provincial capitals should not obscure the real limits on debate that remain in the country and would have impeded the election process even had the war in the east not set in motion the collapse of the old regime. Debate in Kinshasa, for example, was largely limited to the print media. Crowds that gathered in front of the newspaper stalls to read the headlines—each paper costs about \$.50—attested to the interest which these hold. But newspapers only reach a small percentage of the literate population, and few reach the interior. Moreover, some subject matters remained largely taboo both for the newspapers and other forms of public discourse. “We can say who did what to whom,” said Jose Ndjomote of AZADHO, “but we can’t put the system in question.”¹¹²

The war in the east ultimately served as a pretext for the government to decree an outright ban on free speech and public demonstrations. It expanded the list of topics the government considered as sensitive. Minister of Defense Gen. Likulia convened a meeting with newspaper editors and officials of private radio and TV stations on February 10 which coincided with a successful opposition strike that paralyzed business in the capital and major cities. He exhorted them to “involve themselves in the defense of the homeland,” noting that “while we make ourselves available to the press for all useful information,” the media would have to be responsible. He said he did not want to “hear or to read lies, wrong information or information of a nature to demoralize the army and the population, or reports to misinform international opinion or to praise the enemy, by hiding news of the atrocities of all kinds [the rebels] commit.”¹¹³

Local rights groups in January 1997 reported the arrest of journalist Emanuel Kachunga. He had denounced abuses committed by the Special Presidential Division in Kasai region in an article published in the newspaper *La Tempête des Tropiques*. A unit of the same DSP arrested him and tortured him before pressure from rights groups secured his release.¹¹⁴ In a statement issued on February 12, 1997, V.S.V. said Zairian journalist Nepa Bagili Mutita, who was the national president of the Mouvement National Congolais-Lumumba, was arrested on February 11 on charges of spreading false rumors about the war and could face up to three years in jail. Mutita’s monthly *La Voix de l’Islam*, Voice of Islam, had published what it called a list of people wanted by the rebel leader Kabila which included the names of the president and the prime minister.¹¹⁵

¹¹² Human Rights Watch/Africa interview, Kinshasa, December, 1996.

¹¹³ AZADHO, “*Nouvelles du Zaire*,” an AZADHO update, Kinshasa, February 20, 1997.

¹¹⁴ Human Rights Watch/Africa telephone interview, New York-Kinshasa, March 4, 1997.

¹¹⁵ V.S.V., “Communiqué de presse no. 006/Z/V.S.V./CD/97: la presse toujours dans le collimateur du pouvoir,” February 12, 1997.

In its vicious drive to intimidate and humiliate independent journalists, government security agents had in a number of cases detained their family members, and in one case, the daughter of a targeted journalist was reportedly raped. The U.S.-based Committee to Protect Journalists (CPJ) protested in a January 30, 1997 letter addressed to the Prime Minister Leon Kengo wa Dondo about the arrest of Jean Mbenga Muagianvita, an independent freelance journalist with the privately-owned papers *La Tempête des Tropiques*, *Umoja* and *L'Exemple*. Soldiers of the SARM raided the house of journalist Muagianvita on January 23, reportedly on the orders of General Bolozei Ngbudu, and detained him at the headquarters of SARM at Kitambo, reportedly in retaliation against an article on President Mobutu's political lobbyists in the United States. Later on the day of the arrest, seven SARM soldiers returned with Muagianvita to his house for a search, and reportedly raped his fourteen-year-old daughter in his presence.¹¹⁶ CPJ also protested with a letter to the prime minister on the same day about the arrest three weeks earlier of the wife and three young children of an exiled journalist Benjamin Sham Sham Lapong in connection with articles that the independent *La Tempête des Tropiques* had published for him. Authorities continued to refuse to reveal the whereabouts of the family of the journalist three weeks after their detention.¹¹⁷

A number of foreign correspondents covering the war were arrested and expelled for their reporting. For articles portraying the demoralized state of the Zairian army in the region of Shaba, a Swiss journalist, a correspondent of the French daily *Libération*, was expelled from Zaire on February 23, 1997. He was arrested in Lubumbashi, capital of the Shaba region, three days earlier and sent to Kinshasa on the next day for expulsion. Officials told him that he "had not respected the proper protocol," and accused him of telling lies.¹¹⁸ He had described in a report broadcast by the BBC World Service the flight of FAZ soldiers from northern Shaba as the rebels advanced in the region and a rash of looting the soldiers reportedly committed in villages along the track of the train they rode in their flight from the front. Ten days earlier, the correspondents of *Radio France Internationale* and *Le Monde* were expelled from Kisangani, then the staging ground of the Zairian army's counteroffensive.

Broadcast media

The government owns the national radio and television networks. However, reception of both is limited largely to the capital Kinshasa due to the advanced stage of disrepair of the systems in place. Regional radio and TV stations are jealously controlled by regional authorities. As could be expected in a vast country with poor communications and with a high illiteracy rate, the population relies mainly on the radio for the reception of national news. Regional and international broadcasts in French, transmitted by the popular Gabonese *Africa No. 1*, *Radio France Internationale*, VOA and the BBC, are closely followed.

Broadcasters on state-owned radio and TV stations who gave access to the opposition or rights groups were often subject to disciplinary measures according to an independent inquiry conducted in mid-1995 by Voix des Sans Voix. In Equateur region, for example, a radio journalist was dismissed for having conducted a live interview with the chairperson of the local umbrella organization of rights groups.¹¹⁹ According to another inquiry by the same rights group, in Upper-Zaire region, José Menga, a radio journalist, was disciplined for having read a statement by the UDPS concerning the new banknotes. Another journalist was suspended for having, while on the air, wished a happy Easter to the president of the UDPS in Kisangani.¹²⁰

¹¹⁶ "CPJ Protests the Arrest of Mr. Muagianvita-Zaire," CPJ's letter to the Prime Minister Leon Kengo wa Dondo, January 30, 1997.

¹¹⁷ "CPJ Protests Arrest of Journalist's Wife and Children - Zaire," CPJ's letter to the Prime Minister Leon Kengo wa Dondo, January 30, 1997.

¹¹⁸ "Swiss Journalist Expelled from Zaire," Reuter, Kinshasa, February 23, 1997.

¹¹⁹ V.S.V., "Aperçu sur l'état des droits de la personne humaine dans les onze provinces (régions) du Zaire," Kinshasa, June 1995, p. 17.

¹²⁰ V.S.V., "Etat de lieu des droits de l'homme dans la région du Haut-Zaire - rapport réalisé à l'issue d'une mission de la

Private radio and television stations, a largely new and developing phenomenon, are still tightly controlled. Most are owned by churches or by business people linked to the regime. The radio stations in Kivu, in contrast, currently occupied by rebel forces, were beginning to explore more active reporting of human rights and election-oriented issues.

On February 15 the Zairian minister of information and press issued a decree banning private radio and television stations from “producing, broadcasting or relaying political programmes.” The decree also banned the private electronic media from broadcasting radio and television newscasts and press reviews. The government quoted the war situation and the need to stem enemy propaganda to justify these drastic measures.¹²¹

The private television station Tele-Kin Malebo (TKM) defied the ban by continuing its popular programs of political debates involving politicians from across the political landscape, and its broadcasts of news and press reviews, all of which was reportedly considered as politically loaded by Zairian officials. On March 3, the minister of information and press signed an order slapping TKM with a three-month suspension. The owner of TKM, Ngogo Luwowa, who is also a member of the transitional parliament, told reporters that he considered the ministerial order illegal and intended to ignore it.¹²²

Confiscation of Political Literature

One of the most telling limits on political debate concerns access to the reports and conclusions of the National Sovereign Conference, which even the Transitional Act treats as the basis for the laws of the transition. The Transitional Act requires the transitional parliament to follow up and supervise the execution of the acts of the National Sovereign Conference and requires the government to “execute the acts of the National Sovereign Conference and the laws of the Republic.”¹²³ Nevertheless, most of the documents from the National Sovereign Conference are virtually unavailable to the public, including the draft constitution and reports of the various working groups. In fact, efforts to reproduce and distribute the materials have been blocked by security forces who treat them as subversive texts. The most flagrant example of this occurred in 1995 when the Belgian government attempted to sponsor the translation and distribution in local languages of the constitutional texts proposed by the National Sovereign Conference.

¹²¹ Voix du Zaïre, FBIS, “Zaire: Private Radio, TV’s Banned From Relaying Newscasts, Others,” (FBIS-AFR-97-032), February 15, 1997.

¹²² Voix du Zaïre, FBIS, “The Information Minister Suspends Private TV For 3 Months,” Kinshasa, (FBIS-AFR-97-063), March 4, 1997. See also: “Zaire Orders Ban on Private TV Station,” Reuter, Kinshasa, March 5, 1997.

¹²³ The role of the transitional parliament includes “pursuing and overseeing the execution of the acts of the National Sovereign Conference...” Transitional Act, Art. 58. The Government executes the “acts of the National Sovereign Conference and the laws of the Republic.” Art. 75.

On November 14, 1995, agents of the military investigation unit SARM seized the translations of the draft constitution and all accompanying materials including computer disks. According to a detailed report made by V.S.V., President Mobutu's son Kongolo Mobutu was directly involved in the seizure. At the time the documents were seized, agents arrested M. Kabila Kakule, an employee of the National Library who was involved in the project and happened to be in the office at the time. Mr. Kabila was questioned by the head of SARM, General Bolozi, a relative of the Mobutu and member of his inner circle. He was allowed only visits from his wife, who was required to pay for this access, until December 26 and then released. During that time, according to the V.S.V., the transitional parliament acknowledged responsibility for the records project and intervened with SARM to no avail. After the intervention of the parliament, SARM officers seized the remainder of the documents as well as the printer's plates from a commercial printer, on the basis of a summons issued by the Attorney General, the highest ranking civilian prosecutorial official.¹²⁴ The documents, printing plates and computer disks have never been released.

Freedom of Movement

Article 12 of the ICCPR establishes freedom of movement as a fundamental human right:

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.

Travel and movement are still effectively restricted, despite the constitutional provision, under Article 10 of the Transitional Act, which guarantees freedom of movement. The government of Zaire requires nationals, residents, and refugees to carry identity cards, although the zonal offices mandated to deliver these are often in short supply of new ones. Citizens who fail to procure a card through no fault of their own are nevertheless liable to harassment and fines. Soldiers guarding checkpoints at ferry ports, roadblock and airports, together with other categories of civilian agents who may be present, often threaten passengers, sometimes at gunpoint, into paying them in cash or in goods as outright extortion or with the pretext of settling imaginary taxes and fines, with no official receipts delivered. Failure of the state to meet the payment of the meager salaries of soldiers and other agents for months at length has led to the development of a situation where they came to depend on this practice for a living. The killing of Zairians who failed to produce identity documents demanded by mercenaries in Kisangani area, before the capture of that city by the rebels in mid-March, is discussed above.

In the region of Upper-Zaire, a 1995 report by Voix des Sans Voix noted that "villagers who attempt to go to Kisangani to sell their products do not have easy access to the town. Roadblocks and harassment of all kinds are so frequent that they avoid leaving their boats [. . .] out of fear of being arrested or of having to submit to extortion."¹²⁵ In the southern region of Shaba, units of the Zairian navy which patrolled lake Tanganyika out of Kalemie, prior to the fall of this important port city of north Shaba to the rebels, reportedly extorted payments from fishermen on the lake or as they disembarked to sell their catch.¹²⁶ A Human Rights Watch/Africa investigation of the human rights situation in the town of Kikwit, Bandundu region, noted that there was a checkpoint at the bridge on river Kwilu:

¹²⁴ V.S.V., "Rapport sur la détention de M. Kabila Kakule et la saisie des textes constitutionnels de la C.N.S. traduits en langues nationales," Kinshasa, January 1996.

¹²⁵ V.S.V., "Etat de lieu..," June 1995, p. 4.

¹²⁶ Human Rights Watch/Africa interview, Lubumbashi, December 1996.

Women returning from the fields outside town are held for ransom, and even children are not spared. At Kilomba, some ten kilometers to the southwest of Kikwit, those who pass must surrender a quarter or even half of what they are transporting to the FAZ commandos and infantry of Colonel Ebeya camp. Those who have nothing to give to the soldiers are often made to stand in the sun for forty-five minutes in punishment. In Idiofa zone, each vehicle is made to pay the equivalent of three dollars, without any receipt. Other checkpoints are erected at river passages. If the river separates two zones, then two envelopes must be prepared. On the Loango which separates Bandundu and Western Kasai regions, a percentage in kind is collected from merchandise (for example, six cups of rice from each bag). All illegal taxes are collected by the gendarmes of the Road Brigade, SNIP and other state agents. On the border post between Tembo and Angola, one must pay \$100 to cross the border.¹²⁷

Similarly, a recent report from Shaba region by the Lubumbashi-based Center for Human Rights and Humanitarian Law noted that between Kolwezi and Lubumbashi, a distance of 250 kilometers, there were six roadblocks where passengers and transporters were made to pay exorbitant amounts to corrupt officials, both military and civilian.¹²⁸ A prosecutor from Kalemie told Human Rights Watch/Africa about the harsh and degrading treatment that individuals who refused to pay risked at checkpoints. Two judges, who were stopped by soldiers at a roadblock for driving during the night without lights, refused to pay them to be allowed to leave. They were reportedly held at the checkpoint for hours, during which time two other men and a woman were also detained for having failed to pay their way through the checkpoint. The two other men detained were stripped naked in punishment.¹²⁹

The Right to Nationality

The Universal Declaration of Human Rights guarantees the right of every person to a nationality and provides that no one shall be arbitrarily deprived of his or her nationality.¹³⁰ This right is binding on all nations as a matter of customary international law. The 1961 Convention on the Reduction of Statelessness provides an authoritative interpretation of the right to a nationality set forth in the Universal Declaration, and provides guidance as to the specific measures that states should adopt in order to reduce statelessness. Relevant provisions of the convention include the following:

- “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.” Article 1.
- “A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.” Article 8(1).
- “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.” Article 9.

The nationality issue demonstrates the intricate ways in which the dynamics of political transition and war are intimately interlocked. As explained above, at the root of the explosion of armed rebellion in eastern Zaire in late 1996 was the denial of the nationality of the Banyamulenge, a group of ethnic Tutsi whose forbearers had lived in the province of Kivu for generations.

¹²⁷ Human Rights Watch/Africa interviews, Kikwit, July 1996.

¹²⁸ Center for Human Rights and Humanitarian Law, "Communique de presse no. 001/97," Lubumbashi, January, 1997.

¹²⁹ Human Rights Watch/Africa interview, Lubumbashi, December, 1996.

¹³⁰ Article 15.

The build-up to democratic elections in the early 1990s had sharpened political rivalries between the various groups in the Kivu region, both north and south. The National Sovereign Conference had made the orderly identification of nationals, a census of the national population and the registration of eligible voters preconditions for free and fair elections. A decree adopted by the transitional parliament in August 1996 stipulated that the establishment of voters lists, the definition of electoral boundaries and the determination of the numbers of seats per constituency for the constitutional referendum and the elections would be based on the outcome of a combined operation to conduct a census, issue identity cards, and to register the population.¹³¹ Article 23 of the decree provides that to be identified as Zairian a person should meet one of the criteria set forth in the restrictive 1981 nationality law. In addition, the claim of nationality should be confirmed by the head of the local community or village or area of residence. Article 6 required as proof of identity either the Zairian nationality certificate or the identity card for citizens.

Applied to the Kivu region, the provisions of the August 1996 decree on the identification of citizens, national census and voter registration would have the obvious result of eliminating the Banyarwanda--the Tutsi and Hutu living in Zaire-- from the voters lists. This would constitute a violation to their rights to nationality and their voting rights as mandated by the Transitional Act and stipulated in Article 25 of the ICCPR . The Banyarwanda had voted in the municipal elections of 1957-58 and in the general elections that led to the independence of Zaire in 1960. Some of their number were elected to parliament and others came to occupy prominent position in the independent state. After the enforcement of the 1981 nationality legislation, however, the ethnic Tutsis of South Kivu were denied the right to stand for office or to vote in both the 1982 and 1987 parliamentary elections. This led to the first incidents of outbursts of popular protests in Mwenga zone in 1982 and in Uvira and Fizi towns in 1987, during which ballot boxes were burnt.¹³²

SHABA: A REGIONAL PERSPECTIVE

The situation in the mineral rich and historically sensitive region of Shaba was illustrative of both the wide scale repression in Zaire and the lack of political will to implement the transitional agenda without delay. Abuses by the military were so much a part of life that officials justified them as natural and inescapable. In addition, there were no visible preparations for elections: opposition political activity was suppressed while the governor individually censored broadcast announcements and campaigned openly for President Mobutu. There was little comprehension of the role of the electoral commission within the administration, even among members appointed to head it locally who were left without any means to do so, including even texts of the relevant laws. The war further disrupted the fragile equilibrium that existed between the military authorities and civilian administration. Following its outbreak in neighboring South Kivu, fleeing soldiers wreaked havoc in northern towns near the front. Meanwhile, the war served as a pretext for attacks against suspected Tutsis and sympathizers as well as serving as a pretext for further suppression of independent political activity.

Background

¹³¹ Article 3, "Decret No. 0021 Du 02 Août 1996 portant organization de l'identification des nationaux, du recensement de la population nationale et de l'enrollement du corps electoral en République Du Zaire."

¹³² United Nations Department of Humanitarian Affairs, Integrated Regional Information Network, "Briefing: The Conflict in South Kivu, Zaire and its Regional Implication," October 7, 1996.

The Shaba region, referred to universally as “Katanga” by residents, has been a critical and contested region of the country from independence. It formerly produced between 60 and 80 percent of the country’s foreign exchange, primarily through the sale of copper and cobalt. Since a brief period of independence from late 1960 to the beginning of 1963, the renewed threat of secession haunted leaders in Kinshasa. The very name of the region was changed in 1971 to eliminate the vestiges of independence,¹³³ and officials from other regions were sent to oversee the military and administrative control of the province. A massive electrical project, the Inga-Shaba line, was structured to insure that Kinshasa could control electricity provided to the mines. In 1977 and 1978, in the only serious threats to the Mobutu regime, the rebaptized Shaba region was the target of two armed rebellions that were suppressed with Western intervention.

The impressive economic infrastructure of Shaba was left to decay in 1980s as politicians extracted the most value possible without reinvestment. One of the principal mines, the Komoto mine, collapsed in September 1991; others are in advanced states of disrepair. The production of copper of nearly 400,000 tons (in the 1980s) fell to almost 30,000 by 1993. As in other parts of the country, army-led looting in 1991 further undermined the modern economy and the confidence of the population, leading to general stagnation.

Due to the mining industry and strong infrastructure which was needed to support it, Shaba developed a high concentration of trained professionals, many of whom had come from the neighboring region of Kasai. Kasaiens were initially brought to Shaba during the colonial period to work the mines. There, they benefited from the education and medical care provided by industry. After independence, they assumed many key positions in the region. The flow of workers from Kasai continued and professionals were joined by large numbers of unskilled laborers and traders who dominated markets across the region.

At the end of 1990 a populist opposition figure, Gabriel Kyungu wa Kumwanza, joined ranks with Nguz Karl-I-Bond, one of the leading Shaban politicians of the Second Republic to form the Union of Independent Federalists and Republicans, (Union des Fédéralistes et Républicains Indépendants (UFERI). Karl-I-Bond broke away from the opposition in November 1991 to become Mobutu’s national prime minister, at which time Kyungu became governor of Shaba. Kyungu immediately shifted from criticism of President Mobutu to attacks on local Kasaiens, relying on the strong sense of resentment felt against them by native Katangans to win him popular support despite his new found allegiance to Mobutu. His movement included organized youth bands, the Jeunesse of the UFERI or “JUFERI,” who were mobilized to harass and, eventually expel Kasaiens from their homes. At the time, his policies jibed well with Kinshasa and President Mobutu, who was fighting off the opposition movement led by Etienne Tshisikedi, himself from Kasai. When Tshisikedi was named prime minister by the National Sovereign Conference in August 1992, what had been the harassment of Kasaiens became a mass expulsion. More than 200,000 Kasaiens were eventually terrorized into fleeing cities and villages across the region in a chilling parallel to the former Yugoslavia’s “ethnic cleansing.” Although the inter-ethnic tension has largely disappeared in the interim, at present only Lubumbashi has a substantial Kasaien population.

Governor Kyungu succeeded in building the strongest locally based movement in the country. However, strains began to emerge within the alliance when the promised economic rewards of the Kasaien departure did not appear. In addition, once Tshisikedi’s power was checked, Kyungu, who now dared even to confront the local military commander in Lubumbashi, became a threat to the long term control of Shaba by the regime. In early 1995, Governor Kyungu was accused of trafficking in weapons. On this basis, he was summoned to Kinshasa in March 1995 and, effectively, held prisoner at the Intercontinental Hotel until July. Soon afterwards, the military commander of the region, General Mosala Mondja Ndonga was also removed.

¹³³ Other names were also changed at that time, but only colonial names which were perceived as “unauthentic.” Katanga is a local name with historic roots in the region near Lubumbashi. “Shaba” means copper in Swahili.

In the power vacuum that emerged, there was a growing confrontation between UFERI and the local authorities. The vacuum was filled by the regional director or “Redoc” of the National Service of Intelligence and Protection, SNIP, Sirumuhugo Mate, who, with the support of the Civil Guard, launched a major crackdown on the UFERI. Two UFERI activists were shot and killed by Civil Guards during a street confrontation on March 31, 1995.¹³⁴ Eighteen youth activists were arrested in July and seriously abused in detention over periods of one to two weeks.¹³⁵ The interim leader of the party, Astrid Tshikung, was arrested while holding a meeting in the Kenya district, and subjected to severe physical abuse, including sexual violence; soldiers reportedly shaved her pubic hair with broken glass and inserted gun barrels into her vagina. Later, when Dr. Tshikung brought a criminal complaint against SNIP director Mate and the government of Zaire, Mate refused to appear in court and twice threatened bailiffs who sought to serve notice of the complaint with violence.¹³⁶

The SNIP crackdown also extended to human rights groups that sought to intervene on behalf of detainees. The Center for Human Rights and Humanitarian Law in Lubumbashi (C.D.H.) was targeted for having sent letters of complaint to authorities in Kinshasa. Amr Razzak, a summer intern from the International Human Rights Law Group in Washington, was arrested on July 14, 1995 and held over night before he was ordered out of the country, on accusations that he was engaged in “arms procurement.” Mate also threatened to arrest the head of the C.D.H., Jean Mbuyu, and to close down the human rights organization.

Once the UFERI party was subdued, Mate was replaced as regional director of SNIP. His replacement Mbaliani restored, at least temporarily, SNIP’s low profile. The governorship was then temporarily filled by Ngoie Mulume, a career functionary and Mobutu stalwart with little real power who was moved up to fill the post until a permanent replacement was named.

Lubumbashi remained the base for an important contingent of the armed forces: the first division. Its First Military Region, (Prémière Région Militaire), covered all of Shaba and Western and Eastern Kasai. The Ninth Region, (Neuvième Circonscription), was the corresponding command over the same area for the national gendarmerie. The SNIP maintained outposts in all subregions and zones. Each zone had a post for the Gendarmes, and another one for the Civil Guards. There were a half dozen military camps situated in and around the city, including Camps Vangu, Mutombo (near the university), Kimbembe (near the airport), and gendarmerie stationed in the neighborhoods of Kamalondo and Belle Aire (Kampemba). The Special Presidential Division had a base near the zoo in the center of town as did the Civil Guard. The Civil Guard was especially important in recent times, serving as a strike force for political repression led by the SNIP.

The language of the armed forces is Lingala, and not the Swahili spoken by the inhabitants of the region, which reinforces a sentiment that they are there as an occupation force. As one lawyer told us, “they don’t like it if you can’t answer them in Lingala.”

Shaba maintains a strong regional identity despite the potential for divisive factors, especially renewed tension between the south of the province, where the primary mineral sites are located, and the north. In addition, communication within the region is difficult. Most of Shaba does not receive state radio or television. Only the primary mining cities are linked by telephone while the rest must communicate by short wave radio. Newspapers, which are few and of a tiny circulation in the capital of Lubumbashi, are virtually absent in the interior. There has been

¹³⁴ “Rapport de la commission d’enquête indépendante sur les incidents de la zone de Katuba”, *La Voix du C.D.H.* no. 7, Lubumbashi.

¹³⁵ *La Voix du C.D.H.* no. 9.

¹³⁶ Human Rights Watch/Africa interview with Jean Mbuyu, then Chair of the Bar Association of Lubumbashi, February 9, 1997.

a fairly dramatic change, however, since a South African firm took over management of the National Railroad which links the major mining areas of the province to the rest of the country. The railroad had ceased reliable operations since 1990, but circulation resumed as soon as management was privatized. The terms of the privatization have never been made public.

Elections Climate

As of February 1997, according to Jean Mbuyu, a leading rights activist and scholar, “there were effectively no official preparations under way for elections in Shaba.”¹³⁷ There was no political campaigning, no public education, and no administrative planning for the preparation of voter lists or electoral districts. Creating an enabling environment for elections was to have depended upon the regional electoral commission which was not yet functional. It was also to depend on the local government which, as amply demonstrated by interviews with officials by Human Rights Watch/Africa, had little understanding of such a role or that of the electoral commission.

The regional electoral commission was hastily formed in December 1996 during a nearly unannounced visit from Kinshasa by representatives of the National Electoral Commission. It was then left without instructions, relevant texts or the means of organizing and maintaining contact with Kinshasa. As Abbé Albert Kaumba, the secretary to the commission explained:

In February, there was a call for nominations at the provincial level. In early April a list was provided by political parties. They said [the electoral commission representatives] would come in June but they didn’t arrive. In October they sent a written invitation to meet with them, but didn’t come. In December they finally arrived—unannounced. Then they left without furnishing any means to the regional commission. They left nothing. They didn’t even leave a copy of the laws.

A patchwork of local commissions was also announced in some locations in the interior of Shaba, as well as in Lubumbashi. The National Electoral Commission faced problems creating the commissions due to a lack of cooperation from the local administration and the mysterious absence of many proposed members. As the visiting vice president of the commission reported, “Out of 600 members, [we] could only install about half, most of the others having withdrawn, being absent or simply not existing.”¹³⁸ Of the others named a number were disqualified as having been effectively illiterate.¹³⁹ The administrative authorities, whose cooperation is essential for the electoral commissions, gave the establishment of the local commissions only passing notice.

Meanwhile, despite the law and the efforts by the National Electoral Commission, the governor continued to deny it a substantial role, insisting that organizing the elections was essentially the task of the local administration. He relegated the commission to the role of election promoters and observers. Governor Ngoie Mulume told Human Rights Watch/Africa, “The National Electoral Commission is supposed to oversee the elections. The organization is the task of the local administration which receives its orders from the Interior Ministry.”¹⁴⁰ The vice president of the National Electoral Commission denounced this attitude the week before: “Unfortunately, this mission appears to have been

¹³⁷ Human Rights Watch/Africa telephone interview, February, 1997.

¹³⁸ Kasongo Nyamvie Tambo, vice president of the National Electoral Commission, press statement delivered in Lubumbashi, December 21, 1996.

¹³⁹ *Ibid.*, p. 6.

¹⁴⁰ Human Rights Watch/Africa interview, Kinshasa, January, 1997.

misunderstood, particularly by the Territorial Authority and the specialized services which continue to speculate about their respective roles in the election despite the existence of [clear] laws and regulations. . . ."¹⁴¹

¹⁴¹ Press Statement of the vice president of the commission, Lubumbashi, December 21, 1996. Page 3.

The opportunities for promotional activities were limited by the governor's decision to ban public meetings which, he explained, was intended to "put a damper" on political activity during the war. UDPS representatives in Lubumbashi told Human Rights Watch/Africa their meetings have been hampered for the past year and half. The last UDPS meeting permitted was at the beginning of August 1996. It was originally scheduled for Friday, July 26, 1997 but, according to the UDPS, refused a permit on the grounds that it had *informed* the local authorities of the meeting rather than applying to *request* approval.¹⁴² The party sought authorization for another event for September. A letter prohibiting this proposed march was delivered to the party minutes before its start, and after supporters had gathered to participate. The urban commissioner banned the march, invoking unspecified security reasons in a letter to the president of the UDPS/Shaba dated August 28. The letter ordered the party not to proceed with its plans for the procession and closed on a menacing note: "I would count on your political maturity to perceive these clear dispositions. Thus, any bad interpretation from your side would have serious consequences for which you will personally assume responsibility."¹⁴³

The political parties of Shaba, like the organizations of civil society, have few alternatives to public meetings in reaching the general population with their message. The official media, which in any event reach only a small perimeter around Lubumbashi, remain under the overall control of the governor. While human rights activists have on occasion been invited to speak on television, they have been obliged to stick to generalities, and pay for their appearance. As one activist told us, "First, we elaborated on the articles of the Universal Declaration. That was all right. But when we began to apply it to conditions in the country, we weren't invited back."¹⁴⁴ It is often a question of the courage of the individual journalist, according to Jean Mbuyu. "These days, the journalists usually insist on recording everything in advance. When you ask why, they tell you about the risks to their job."¹⁴⁵

Political parties can post certain announcements on the television and radio, subject to a fee.¹⁴⁶ But the announcements are censored, apparently with the involvement of the governor himself. Human Rights Watch/Africa was in Governor Mulume's office as he took what appeared to be a routine call from the radio station regarding a paid political announcement. After hesitating about whether the announcement should run, the governor relented instructing the editor to, "take out the bad parts first." There is a private television station operated by the Salesian Fathers, but its content is restricted to exclude "political" materials.

The vice-president of the National Electoral Commission identified a range of impediments to effective political debate during his visit to Shaba. The lack of political debate, he said, "threatens to undermine the normal development of the electoral process. This has a consequence," he added, "of creating apathy, irresponsibility, brutality [*l'abrutissement*], panic and even disengagement of people who then fear the reaction of the public authorities or the specialized services, particularly the security forces." The electoral commission then called on the governor to lift the ban on political meetings and open the airwaves to the open public debate.¹⁴⁷

There was little indication that the governor intended to change his approach. Opposition groups attributed his resistance to a blatant pro-Mobutu bias within the administration. This was in fact quite overt. Although the state administration was theoretically "depoliticized" in 1990, there was hardly any effort to hide the local government's active promotion of President Mobutu and the ruling MPR. The only political symbols in evidence in the city were the

¹⁴² Human Rights Watch Africa interview with UDPS representatives in Lubumbashi, December 1996.

¹⁴³ Letter from the urban commissioner of Lubumbashi to the president of UDPS/Shaba, dated August 28, 1996, copy made available to Human Rights Watch/Africa by the UDPS/Shaba.

¹⁴⁴ Human Rights Watch/Africa interview with Maitre Mbanza, Lubumbashi, December 24, 1996.

¹⁴⁵ Human Rights Watch Africa interview with Jean Mbuyu, February 1997.

¹⁴⁶ The fee is the equivalent of U.S. \$12 for a brief radio announcement.

¹⁴⁷ *Op. Cit.*, Kasongo Nyamvie, press statement.

brightly painted monuments and posters touting the MPR. The governor dismissed these as “vestiges” from the days of the single party, but did not deny openly supporting President Mobutu for election as he traveled across the region, promoting “tolerance.” While the local head of the MPR professed embarrassment about these partisan activities in a separate interview with Human Rights Watch/Africa, the governor simply justified this as a personal matter.

Another bastion of political support for Mobutu continued to be the SNIP, which together with the Civil Guard had been used to crush the resistance of UFERI and was suspected of undermining opposition political activity in general. The regional director, Mbaliani, who was from the president’s region, saw his role primarily in terms of protecting the state as “incarnated” by President Mobutu. He was not willing to detail the means that the SNIP could use in this pursuit, but insisted that they were not limited by the rules of criminal procedure.¹⁴⁸

After arranging and holding a meeting with Mr. Mbaliana, the Human Rights Watch/Africa delegation was summoned to the SNIP headquarters in Lubumbashi late the following evening for questioning. The SNIP agent, who would not give his name, asked questions based on reports he had evidently received from informers. Some of the information was patently untrue, including suggestions that the delegates had communicated with Katangan separatists based in Canada. But even questioning concerning our visit to Lubumbashi this SNIP officer appeared ill-informed or confused. The agent was extremely interested in meetings that we had arranged with political parties and asked repeatedly why the delegation had failed to request a meeting with the MPR. The delegates had, in fact, sought a meeting at the MPR offices, where they had left business cards, a claim he apparently did not believe. When they insisted on their desire to meet with the MPR, he arranged the meeting for us on the spot using his cellular telephone.

In contrast to the government and political parties, NGOs in Shaba were actively promoting voter education in preparation for elections. They had formed an independent electoral body on the model of the Kinshasa-based NGOs in order to oversee the preparation of elections. They had been severely limited in the means at their disposal, however, including documentation for election training.

Repercussions of the War in Shaba

With the outbreak of war, anti-Rwandan protests broke out across the capital of Lubumbashi, as elsewhere. Anyone suspected of contacts with Tutsis was suspect. Although exact figures are not available, students reported that as many as 300 students were pressured out of the university by fellow students. Many of the families of prominent Tutsi figures were harassed and forced to flee, including the Anglican Bishop, the Right Reverend Emmanuel Mbona, a prominent Banyamulenge lawyer named Ruberwa, as well as staff members of the telecommunications company Telecel in Lubumbashi and others. Dozens of others sought to escape but lacked the means to get to the Zambian border.¹⁴⁹ During the first phases of war hysteria mobs on the street also attacked people with features identified with Tutsi.

In addition to Tutsis (or Banyamulenge), other perceived sympathizers with the rebels were also harassed. Jean Mbuyu, former head of the Lubumbashi Bar Association and director of the Center for Human Rights and Humanitarian Law, was singled out by authorities for having defended the rights of Banyamulenge in court. He was blocked at the airport when he tried to leave Lubumbashi and later stopped again and threatened with arrest when he arrived in Kinshasa.¹⁵⁰

¹⁴⁸ Human Rights Watch/Africa interview, Lubumbashi, December, 1996.

¹⁴⁹ Human Rights Watch/Africa interview with woman who helped several Tutsis escape, Lubumbashi, December 1996.

¹⁵⁰ Human Rights watch/Africa telephone interview, February, 1997.

As in similar circumstances of flight, armed forces used the occasion to extort payment and take belongings from those who were fleeing. AZADHO detailed the theft of vehicles, cash, hotel, restaurant and farm items seized from Tutsi businesses, a number of which were ransacked.¹⁵¹ The Civil Guard seized the short wave radio belonging to the Anglican church in the same wave of looting, while claiming that it had not been registered for use on certain wavelengths.¹⁵²

The security services also carried out a wave of arrests and called in others for questioning after the outbreak of conflict. Those detained included two former “Gendarmes Katangais,” a religious figure who had recently visited Kivu, and a number of people apparently seized solely because their name was Kabila. UFERI reported that in November the residents of Ankoro, Kabila’s village of origin were forced out of their homes by SARM and FAZ troops accusing them of being rebel sympathizers.¹⁵³

The northern areas of Shaba were most directly affected by the war. The original rebel targets in South Kivu were 150 kilometers from the border with Northern Shaba. Because of boat traffic along Lake Tanganyika there were close links between Uvira and Kalemie in Shaba, and many of the first soldiers and civilians fleeing Uvira headed toward Kalemie. Soldiers began to arrive on October 20, 1996, “having pillaged their way down,” as one area doctor commented. More than 10,000 refugees and displaced persons eventually made their way to Kalemie.

The first of the fleeing soldiers in the city raised the level of tension and insecurity. According to one judicial official, the soldiers set up impromptu road blocks and competed with the permanent military garrison in holding the population to ransom. Some warehouses were ransacked and vehicles destroyed before officials were able to send many of the displaced troops on to Lubumbashi and elsewhere by train.

Fleeing soldiers arrived in Kalemie in some thirty-two cars and jeeps they had seized from humanitarian agencies in Uvira, including Doctors Without Borders, (Médecins Sans Frontières, MSF) and the International Committee of the Red Cross (ICRC). The vehicles were readily recognizable, because their markings had not been altered. After weeks of efforts to reclaim the vehicles, administrative officials told the agencies that it was not possible. The vehicles were not actually under the control of the armed forces, the officials informed them. Rather, “They are in the hands of people who happen to belong to the armed forces.”¹⁵⁴ At least two vehicles were transferred to Lubumbashi, one of which—belonging to the ICRC—was painted over and converted to the official use of the armed forces. An attempt by the ICRC to bring another vehicle to Kalemie in order to service the displaced and refugee populations, was blocked by troops who simply seized the newly arrived vehicle as well.¹⁵⁵

¹⁵¹ AZADHO, Représentation du Shaba, “Liste indicative des personnes attaquées en raison de leur origine Rwandaise ou de leur morphologie nilotique.” (Information collected between 28 October and 7 November 1996)

¹⁵² Human Rights Watch/Africa interview with church officials, Lubumbashi, December 1996.

¹⁵³ UFERI, “Violation des droits de l’homme Novembre - Décembre - Janvier 1997.”

¹⁵⁴ Human Rights Watch/Africa interview, Lubumbashi, December 1996.

¹⁵⁵ *Ibid.*

The news from northern towns was sketchy. UFERI claimed that the Zairian military had rounded up the population in several towns, including Kapanga, Sandoa and Dilolo in the District of Lualaba, to use them as “human shields” in the war.¹⁵⁶ At the same time, a group of rebels based in the areas of Fizi and Baraka at the southern edge of South Kivu who had once fought for Kabila and the ADFL, were, as of early 1997, according to fleeing civilians and humanitarian groups, fighting against Kabila and his troops. The group, known as the “combattants,” from the Bembe ethnic group, had early in the conflict reportedly disarmed fleeing Zairian soldiers. By early 1997, however, according to the representative of one aid agency, they were being officially supplied with arms by the Zairian armed forces in order to continue the battle.

“Pay As You Go”: Justice and General Insecurity

Local human rights groups in Lubumbashi depicted generalized public insecurity as the main human rights problem faced by the population. The chronic failure of the state to pay even the “theoretical” salaries of public servants, provided the background to the varied means by which state employees elicit a steady unofficial income from their work or find sources of alternative income. Judges charge for services and soldiers use the threat of force and detention to extort payment and goods from the population. The result was a profusion of arbitrary and ad hoc “taxes” and an intricate system of payoffs for state services, extending even to the investigation and prosecution of criminal suspects.

At the apex of the system were the armed forces, which were relied upon to enforce private and public claims, for a fee. But they were not a homogenous group. Some, like the Gendarmerie Nationale, the Force Terrestre and the Brigade Routière reported to the local commander of the Ninth Region or the First Military Region. Others, like the Special Presidential Division, the Civil Guard and the SARM had separate command structures and direct links to the president, giving them an even higher authority. They benefited from near total impunity.

Harassment by the armed forces had become almost routine, so much so that people rarely commented on it, except in the case of spectacular abuses or waves of banditry. Everyone we spoke to knew someone who had been held up or “pillaged” within the past year by men in uniform, sometimes in association with “ordinary” criminals. The director of one humanitarian aid program described the blasé manner in which employees reported that their homes had been ransacked by soldiers. There had been three cases among employees within the recent past, the most recent on December 22. Residents of densely populated neighborhoods like Kenya, Katuba and particularly Kampemba, complained of constant harassment from the police and troops from the military camps that surround them.

Arbitrary Detentions

The Human Rights Watch/Africa delegation documented a typical case during its visit to Lubumbashi: On December 27, Guy Kazadi, a staff member with the C.D.H., was stopped by police at about 11:00 p.m. in his neighborhood, Kenya by a contingent of four policemen. He showed them his identification card but refused to give them any money. The gendarmes searched him thoroughly. They said he must be a suspect to be walking around that late, particularly with a war going on in the east. He resisted them when they tried to take his money. They handcuffed him, beat him severely, then threw him in their jeep and drove around while periodically kicking him. At no point did he tell them he worked for a human rights organization for fear that the soldiers would become even more abusive. Eventually, Kazadi was taken to the police cells in the center of town, after refusing one more chance to pay his way out.

The headquarters of the gendarmerie in Lubumbashi, where Kazadi was held, had five detention cells in all, forming the southern end of the square building, their doors opening into an interior courtyard and with high, barred windows covered with glass panels in the outer walls. These were narrow and badly ventilated two-by-three-meter cells with little light, infested with mosquitoes and fleas. Two were reportedly reserved for detainees of the gendarmerie’s Mobile Brigade and two for people detained by the Special Brigade of Searches and Information of the gendarmerie. A fifth cell was reserved for women detainees.

¹⁵⁶ UFERI, “Violation des droits de l’homme Novembre-Décembre-Janvier 1997”.

Kazadi was thrown into a cell with fifteen other people in various states of health. "They told me I could pay if I wanted to go into a better cell," he told us. He later learned that he was accused of "resisting authority." At five one morning the prisoners were taken out to the courtyard where a trench served as an open sewer: they were beaten with whips and forced to clean it out with their bare hands.

Human Rights Watch/Africa briefly visited to the detention cells after Kazadi succeeded in sending a note to friends and colleagues. Detainees told Human Rights Watch/Africa that a young woman seen weeping against a wall had aborted during the night, probably as a result of harsh treatment by guards and unhealthy prison conditions. She had been detained on the accusation of stealing the equivalent of U.S. \$25, and said guards had refused her any medical assistance as she bled through the night. During the same visit, one man was seen emerging from one of the cells covered in blood, and detainees described the systematic torture of two men detained with them who were accused of robbery.

Kazadi was released after the intervention of lawyers affiliated with the C.D.H., though his belongings, including his national identification card, were not returned to him in the days that followed.

Impunity for Abuses

When asked about insecurity, the governor was sympathetic to the situation of the armed forces. "So long as they aren't paid," he said, "there is nothing that can be done." If there were more reported violations in the current period, he added, it was because "soldiers also need a little extra money for the end of the year."¹⁵⁷

It is not surprising, under such circumstances, as explained by human rights activists, that most crime goes unreported. In fact, efforts to report and pursue investigation are costly for complainants. In one recent case, a community human rights group sought to pursue the authors of a string of local crimes in Katuba. The account that follows is based on interviews with members of this group and documentation provided by them.

The zone of Katuba was the most populous neighborhood of Lubumbashi. A well-armed gang which operated in the area attempted, on the night of September 9, 1996, to break in the Mama wa Huruma dispensary, a health center serving one quarter in Katuba. Scores of unarmed people came out from their homes and drove the assailants off. The gang returned shortly after and broke into fourteen houses, terrorizing families and robbing them of valuables. Members of two families were seriously hurt. In one case, bandits severed a man's Achilles tendons. Witnesses told Human Rights Watch/Africa that the gang consisted of about twenty people, some of whom were uniformed while others were dressed in civilian clothes but had distinctive army boots. Many were armed with Uzi submachine guns. They reportedly tortured some individuals and threatened to kidnap children if valuables weren't surrendered.

The events of this night provoked an outcry. A community rights group, "La Non-violence Evangelique" collected testimony and pursued the case through the justice system. The group went from house to house to interview victims and witnesses and succeeded in identifying suspects. In concert with other civic and church groups, they stepped up their campaign of pressure on administrative and military authorities in Lubumbashi. Representatives of the Katuba community group and La Concertation, the umbrella organization of human rights associations, met with the governor of Shaba region and the commander of the First Military Region, the highest military authority in Shaba, to denounce the participation of military personnel in armed banditry and to call for improved security. The governor decided to call a special meeting of the security committee of the region three days later, on October 12, 1996, which listened to the grievances of the community representatives and decided to reinforce security patrols in the city and to allow civilian participation in these.

¹⁵⁷ Human Rights Watch/Africa interview, Lubumbashi, December 1996.

The group told Human Rights Watch/Africa that when eyewitness accounts led to the identification of four suspects four days after the attack, the community had to come up with money to lodge a complaint against the suspects. They paid between U.S. \$1.50 and U.S. \$4.00 to the gendarmerie for every intervention, and U.S. \$25 to the public prosecutor's office to initiate the legal proceedings. Each time policemen moved to the crime scene, La Non-Violence had to provide an incentive payment for their transportation, although in many instances they were within walking distances. The community representatives estimated that a total of twelve million new zaires, or about U.S. \$120 were disbursed over three months. They commented that such expenses dissuaded victims of banditry at the hands of the army or security services from seeking judicial remedy: "They would rather submit to these injustices than incur other expenses."¹⁵⁸ The only difference in Katuba was the scale of the event, the high degree of mobilization of the community, and the exceptional campaign of pressure led by the local rights groups.

Compromising the Independence of the Judiciary

According to local lawyers and judicial officials, money changed hands in almost all judicial transactions. The salary of the president of a tribunal—if it were paid—would be less than \$40 per month. But, this was largely theoretical since no salaries had been paid since May 1996. Judges did receive lodging in some regions as well as a small transport allowance that was equal to about \$8 per month at the time of our visit.

Human Rights Watch/Africa asked a number of judges and lawyers how courts could be equitable if judges depended on payments from litigants. Judges and lawyers independently responded that a good judge took payment from the party that had the better case. As the president of one court told Human Rights Watch/Africa in his office, "We examine the file and determine who is right. That is the one we bother a bit."¹⁵⁹ "Judges come to see me, often," said one lawyer, "saying, 'Maitre, your client has an excellent case. Tell him to come see me.'"¹⁶⁰

The bad judge "eats off of both plates," as one lawyer explained—or puts the case up for auction, as they say locally— "and renders a judgment for the one that feeds him best."¹⁶¹

The relatively constant level of corruption increased markedly in early 1995 when the new minister of justice, N'Singa Udjuu, another long time minister during the Second Republic, appointed a member of his political party to the powerful position of chief prosecutor of the Court of Appeals in Lubumbashi. The position of chief prosecutor is particularly lucrative because of control over investigations into trafficking in minerals and stolen vehicles across the border into Zambia. Trafficking in cobalt alone is officially said to have reached 10 percent of the total production of cobalt and unofficially assumed to be more than twice that amount.

Speaking on condition of anonymity, one magistrate detailed to Human Rights Watch/Africa how, he claimed, the prosecutor, Kikoka Toni Gaytoni, blocked the investigation of the theft of cobalt. In one dramatic case, he said, the prosecutor ordered the arrest of a guard at the Gecamines factory in Lubumbashi who had been instrumental in stopping a spectacular cobalt theft. The evidence was quickly disposed of and no prosecutions were brought.¹⁶²

The prosecutor's alleged collaboration with traffickers was denounced by the archbishop of Lubumbashi as well as the C.D.H., which obtained detailed information, including telephone numbers and car registrations reportedly used by the prosecutor in the cobalt and stolen car racket. The C.D.H. published the information: although an investigation was subsequently announced, this led nowhere. Relying on his support from the minister of justice, the

¹⁵⁸ Human Rights Watch/Africa interview, Lubumbashi, December, 1996.

¹⁵⁹ Human Rights Watch/Africa interview, Likasi, December, 1996.

¹⁶⁰ Human Rights Watch/Africa interview, Lubumbashi, December, 1996.

¹⁶¹ Ibid.

¹⁶² Human Rights Watch/Africa interview, Lubumbashi, December, 1996.

prosecutor apparently shrugged off the official investigation and reportedly transferred three of the prosecutors suspected of collaborating with the human rights group to distant locations in the province.

In sensitive political cases or cases brought against particularly wealthy clients, judgments were rare, unless they were brought by an equally powerful opponent. Lawyers cited a number of cases that had effectively been frozen, including the case of the UFERI leader Dr. Tchikung against the SNIP soldiers who abused her,¹⁶³ and a number of law suits against one of the most powerful businessmen in the region.

The Case of Lieutenant Mukelenge

The overall pattern of impunity appeared to break down only when collusion among the armed forces and political and economic elites was transformed into open conflict. One such case recently occurred in Likasi, a mining center 100 kilometers from Lubumbashi. In the first week of January, the court of Likasi condemned Lieutenant Mukelenge to life imprisonment for armed robbery, heading a criminal organization, and harboring deserters. Two other accomplices received long prison sentences. The ruling concluded a closely-followed, high profile case.

According to judicial officials and businessmen who spoke to Human Rights Watch/Africa, the officer was reportedly involved in profiteering from the illegal export of cobalt stolen from the storehouses of Gecamine, the leading mining company in the country, which dominates cobalt production in Likasi. Part of the spoils was paid as kickbacks to unidentified senior army officers who secured his strategic posting - reportedly a routine practice. Attempts by his commanding officer in the Likasi garrison to check his activities in this shadowy area were foiled when, judges told Human Rights Watch/Africa, he traveled to Kinshasa and returned with an appointment to SARM, the military intelligence branch accountable only to authorities in Kinshasa. Securing a direct line to Kinshasa had placed him beyond the reach of any local authority, military or civilian.

The months preceding the incidents that led to the arrest and trial of Lieutenant Mukelenge had witnessed a sharp deterioration of public security in Likasi. To stem the theft of cobalt, Gecamine had engaged the consulting services of a South African security company. The actual guarding of the company's warehouses was, however, left to the Civil Guard. While cobalt continued to "leak" steadily from the warehouses, the intervention of the Civil Guard reportedly disrupted long established practices of profit sharing between other soldiers from the local garrison and some businessmen known locally as the "Cobaltistes." Soldiers who were edged out of the cobalt traffic as well as civilian criminals reverted to preying upon the population. A magistrate from Likasi, who talked to Human Rights Watch/Africa on condition of anonymity, said that commanders of the various regular forces told other officials that it was difficult for them to discipline their troops as "they were starving."¹⁶⁴

Lieutenant Mukelenge reportedly operated a gang of armed robbers composed of deserters, soldiers and civilians. The gang reportedly carried out three spectacular armed robberies on the night of 10 to 11 July, 1996, targeting wealthy businessmen of Likasi. They stopped their first victim as he drove into the garage of his house and ordered him to give them the U.S. \$4,800 they knew he had in the car trunk. While they were discussing "whether to kill him," according to sources close to the investigation, he managed to escape from them. They went from there to the house of another "economic promoter," and opened fire with the intention of killing him. He returned their fire, fatally wounding one of his assailants, who was reportedly the personal bodyguard of the lieutenant. The other bandits carried the body to the house of the officer and left it there.

Following the raids, the business community of Likasi, dominated by European businesses, a number of which are implicated in the illicit cobalt trade, declared a strike, paralyzing the city. Under pressure, the SARM abandoned the lieutenant and he was turned over to local authorities. Lieutenant Mukelenge was charged subsequently with armed robbery, heading a criminal organization, harboring deserters, and wasting war munitions. The intervention of

¹⁶³ Human Rights Watch/Africa interview with Me. Nkulu, Lubumbashi, December 1996.

¹⁶⁴ Human Rights Watch/Africa interview, Likasi, December 1996.

members of a privileged and influential sector of the population, usually isolated from the general insecurity of petty banditry, was certainly decisive in bringing about this rare prosecution.

Civil Society—Human Rights NGOs

The human rights groups in Shaba had come to play a pivotal and dynamic role in society by late 1996, at least in the major city of Lubumbashi. There they became accepted mediators between the abused and the authorities. At times, they were called upon by the authorities themselves for the objective stamp which they are perceived to yield. What was distinctive about them are their local roots and means of support. With the exception of AZADHO, the local branch of the Zairian Association for the Defense of Human Rights, they emerged entirely from the community—primarily the legal community and the churches—and supported themselves almost entirely from local funds.

The premier human rights NGO in the region, the Center for Human Rights and Humanitarian Law (C.D.H.), was founded in 1992 by a number of lawyers, including Jean Mbuyu, a young lecturer at the law faculty who was later elected to head the local bar association. During the Kyungu period, the C.D.H. fought vigorously against the expulsion of Kasaiens. Later, the C.D.H. defended the rights of UFERI loyalists under attack from the SNIP and Civil Guard. As a result, they were targeted by the SNIP chief and Maitre Mbuyu was threatened with arrest. Maitre Jean-Claude Muyuambo, interim director of the C.D.H., was, however, subsequently invited to serve on the independent commission to investigate the March 31, 1995 confrontation between JUFERI and the Civil Guard. In the recent past, the C.D.H. has acted to expose and campaign against corruption in the judiciary, focussing on the prosecutor general appointed by the Kengo government.

THE ROLE OF THE INTERNATIONAL COMMUNITY

The international community has failed to aid the transition to democracy in Zaire in an effective manner, not least by failing to press for preconditions for free and fair elections to be met. When the simmering internal political crisis finally exploded into open warfare, the international community engaged in frantic diplomatic efforts to encourage the parties to come to the negotiation table. However, in the pressure for an immediate cessation of hostilities, so that the refugees and displaced persons affected by the war could be reached and assisted, the need to hold both government and rebel forces accountable for reported large scale human rights abuses in areas under their respective control was largely ignored.

Before the outbreak of the war in the east, the Western powers were locked into a policy of support for a government of questionable legitimacy and turned a blind eye to systematic human rights abuses, pressing for elections and a speedy transition without addressing the preconditions to meet for them to have been meaningful. Given that the budget envisaged for the elections amounted to more than \$250 million, which was largely to be financed by the international community, donors will have considerable leverage with whatever authorities emerge from the current crisis to ensure that clear human rights criteria are met before the release of their assistance.

The international community has played a complex role in the Zairian crisis since 1990. Except for assistance to the Rwandan refugees in the East, where vast sums, estimated at US \$2.5 billion, were spent, international assistance to Zaire has been extremely limited. Nevertheless, the international community continued to exert significant influence in all aspects of the Zairian internal debate. The declarations, and frequently the silence, of the United States, France or Belgium in the face of abuses had wide-ranging impact within the country. Many Zairians assumed that the international community was behind much of what was occurring in the country, including the survival of Mobutu as president, the Kengo government (until late in the crisis), and the war itself.

All but humanitarian assistance to Zaire was suspended in late 1991. Until mid-1994, the "Troika" of France, Belgium and the United States maintained surprising cohesion in policies intended to bring about a peaceful transition in the country. When President Mobutu intervened in the transition process initiated by the National Sovereign

Conference and reinstalled the National Assembly in March 1993, his new prime minister, Faustin Birindwa, was uniformly boycotted by the Western nations. The president himself, together with his entourage, were subject to a largely effective international visa boycott. Privately, however, there were disputes within the Troika, particularly accusations about leaks and secret contacts with Mobutu. The potentially most effective action—a freeze on Mobutu's assets abroad—was never implemented.

Concerted opposition to the Mobutu regime began to fray publicly with the eruption of the crisis in Rwanda in April 1994 and further dissolved when Prime Minister Kengo was installed in July 1994. Only France took a public position enthusiastically endorsing the new prime minister. Belgium and the United States, though initially reticent, also came to support him. On April 24, 1995, on the fifth anniversary of the date marking the beginning of the transition, the Troika made a demarche to the "political leadership" of Zaire, faulting primarily the entourage of the president and the leader of the opposition, Etienne Tshisekedi.¹⁶⁵ At that time, the United States praised Prime Minister Kengo for his "courageous effort to implement his ambitious program of political and economic reform and to move Zaire forward to free, fair and transparent elections."¹⁶⁶

In April 1996, France resumed bilateral assistance to Zaire. A spokesperson for the Ministry of Cooperation stated that the French decision did not indicate a determination by Paris that respect for human rights had improved in Zaire.¹⁶⁷ The French re-engagement with Mobutu had already become apparent in 1995, when he was allowed to return to France on several occasions and meet, at first discreetly, and then publicly, with high government officials.

Belgium slightly increased its aid program to Zaire, which totaled approximately \$15 million in 1995, but channeled all aid through NGOs, not through the government. Belgium maintained its visa ban on Mobutu, though others in his entourage had an easier time traveling to Belgium.

The European Union

Since the suspension of E.U. aid to the Zairian government in January 1992, the European Commission allocated U.S. \$309.81 million for rehabilitation and infrastructure programs in Zaire. The E.U. was prepared to contribute an estimated \$35 million toward the Zairian elections, although the money was only to be released if the Zairian government took steps toward conducting fair and transparent elections and if it contributed financially toward the elections. The Zairian government said it would contribute U.S. \$102 million to organize the elections, but had not yet done so. Specific human rights criteria for the release of the E.U. funding were not articulated. In addition to contributing to the special fund established by the United Nations to manage the elections' budget, E.U. assistance for the elections also provided for the establishment of a European Electoral Unit.

¹⁶⁵ Statement by Nicholas Burns, Spokesman, U.S. Department of State, April 24, 1995.

¹⁶⁶ Ibid.

¹⁶⁷ François Raitberger, "Mobutu Hails 'Courageous' French Aid to Zaire," Reuters, April 26, 1996.

The E.U. was prepared to contribute approximately U.S. \$18 million in materials and basic items necessary for the conduct of the census. At the time of writing, it was not clear when such a census might take place. The remaining \$18 million would not be allocated at least until the Zairian government contributed to the elections, but probably also until the situation was deemed to be more ripe for elections and other donors made commitments to contribute as well.¹⁶⁸

On February 17, 1997, the Dutch presidency of the European Union issued a statement about the situation in Zaire, condemning the military buildup and calling for the withdrawal of all outside and mercenary forces and the negotiation of an immediate cease-fire. The statement also called for a political solution to the crisis based on five principles: 1) respect of the territorial integrity of Zaire; 2) respect for the rights of citizens; 3) voluntary repatriation of refugees, without intimidation or risk to their safety; 4) non-aggression between states, including preventing illegal activity by opposition groups based in neighboring countries; and, 5) democratization of all countries in the region and continuation of the transition to democracy and the holding of free and fair elections in Zaire.¹⁶⁹

The E.U. foreign ministers continued to call for an international conference on the Great Lakes, while also urging a cease-fire, negotiations, and access to refugees by humanitarian agencies. In late March, the E.U. foreign ministers again stressed the importance that democratic elections would have for the peace process.¹⁷⁰

The United States

The United States sent an ambassador to Zaire in November 1995, after a hiatus of more than two years, intended to show U.S. displeasure with President Mobutu, the decision was a further vote of support for Prime Minister Kengo. The new ambassador, Daniel Simpson, was an outspoken advocate of elections, but less than a forceful advocate of the measures required to make them meaningful. In public and private statements before the elections were postponed, the ambassador stood firmly for elections to go ahead according to the existing timetable, even in the absence of promised reforms. Statutory prohibitions continued to restrict any direct U.S. assistance or development funding to Zaire, including election assistance, except through NGOs.¹⁷¹

¹⁶⁸ Interview with Bruno Gatta, Zaire Desk, European Commission, DGVIII, March 6, 1997.

¹⁶⁹ Conseil de l'Union Européenne Secretariat General, "Communication à la Presse: Déclaration de la Présidence au nom de l'Union Européenne sur le Zaïre," 6017/97 (Presse 44), Brussels, February 17, 1997.

¹⁷⁰ EU Ministers Hold Another Exchange of Views on Zaire," *European Report*, March 25, 1997.

¹⁷¹ US aid to Zaire was stopped in 1991 under the Brooke Amendment, which prohibits foreign aid to countries in default on their loans to the US government. An electoral assessment team comprised of the National Democratic Institute, the International Republican Institute, and the International Foundation for Electoral Systems went to Zaire in September/October 1996, but since it's only purpose was to report to the US government on the electoral preparations, it was not subject to restrictions on US assistance to Zaire.

With the outbreak of war, there was widespread suspicion in Zaire that the United States was backing the rebels, which set off a wave of anti-American sentiment in November and December 1996. The United States subsequently took a public position critical of the rebels by denouncing alleged abuses of human rights by them. On December 3, State Department spokesman Nicholas Burns pointed to "allegations of human rights abuses in Eastern Zaire by elements of the rebel alliance," and called for the rebel leaders to investigate all such reports and punish those responsible. In addition, the American ambassador made frequent public declarations supporting the Zairian government's position that the country was effectively invaded by Rwanda and Uganda. On January 9, Ambassador Simpson was interviewed on Zairian state television and stated that "We understand perfectly that Zaire has been attacked by Rwanda and Uganda. This poses problems on both the political and the humanitarian front."¹⁷² On March 14, State Department spokesman Nicholas Burns addressed the problem of humanitarian access, noting that Kabila had offered guarantees of access and security and that "we expect him to keep his promises." He said the U.S. would continue to press both sides on the issue.

However, the U.S. was initially reluctant to pressure Kabila on human rights grounds, either directly in its contacts with him or indirectly via Rwanda and Uganda. The U.S. denied that it had significant leverage on Kabila, although U.S. influence was clearly greater than U.S. officials claim. The U.S. government finally raised human rights concerns in a demarche to Kabila at the end of March or the beginning of April, which reportedly focused on stopping abuses and taking action against those responsible for them, allowing access for human rights investigators, and permitting aid to the refugees. A similar demarche was reportedly delivered to the ADFL foreign minister in Kigali.

In February and March, the U.S. became more actively involved in trying to secure a political settlement, starting with a cessation of the hostilities. The U.S. supported the U.N.'s five-point plan (see below), and was actively involved in the negotiations hosted by South Africa in late February. At the time of writing, however, all discussion of elections was overshadowed by the momentum of the rebel forces and the efforts to negotiate a political settlement. On March 3, State Department spokesman Nicholas Burns stated that the continued fighting was undermining chances for a peaceful resolution of the crisis, and called on all parties to cease hostilities and initiate a dialogue. On March 21, Secretary of State Madeline Albright wrote to Mobutu to urge immediate and direct negotiations with the ADFL. She also expressed U.S. support for U.N. special envoy Mohamed Sahnoun's efforts regarding a cease-fire and negotiations.

The United Nations

The U.N.'s Electoral Assistance Division began in 1996 to provide some support to the Zairian electoral process, although that support was limited to a technical assistance office in Kinshasa as of April 1997. This office was to assist the electoral commission in building its own capacity for elections, in terms of the legal framework for elections, training, and civic education.

The U.N.'s position regarding support for the Zairian elections was spelled out in a letter from then Secretary-General Boutros Boutros-Ghali to the Zairian government, dated August 9, 1996, in which he articulated the main preconditions for U.N. assistance: namely, the timely adoption of the legal framework for elections and the government's financial contribution to the National Electoral Commission. The secretary-general also noted that "neither your government nor the United Nations can count on the political and financial support of the international community—a critical condition for the success of elections under the current circumstances in Zaire—if these preconditions are not addressed as soon as possible."¹⁷³ However, the letter made no mention of specific human rights preconditions, other than to call for the elections to be transparent and in accordance with international principles.

¹⁷² "US Ambassador to Zaire Accuses Rwanda and Uganda of Aggression," Reuters, January 10, 1997.

¹⁷³ Letter from Secretary General Boutros Boutros Ghali to Prime Minister Léon Kengo wa Dondo, August 9, 1996.

The U.N. earmarked some \$5 million for Zaire, of which approximately \$2 million had been spent in hiring consultants for technical assistance and another \$1 million was to be spent on a pilot census project. In addition, in early 1997 the U.N. opened a trust fund for the Zairian elections, although the fund had received no contributions from member states as of early March 1997.¹⁷⁴

On August 21, 1996, after more than one and a half years of negotiations, Zaire had agreed to the establishment of a two-person U.N. human rights field office in Zaire.¹⁷⁵ An office was promptly set up with one professional staff member in the country and one more to be hired. The office was originally proposed by Special Rapporteur for Human Rights Roberto Garretón to assist him in collecting information and maintaining contact with the government of Zaire. The primary mandate of the office was to monitor human rights abuses, though some technical cooperation activities were envisaged. It was however, an extremely limited operation.

In January 1997 the United Nations named Mohammed Sahnoun as special envoy for the region jointly with the O.A.U. He expressed his position in favor of a negotiated settlement of the war, and, following extensive consultations during a tour of the region, including a visit to Zaire, drafted a five-point plan for consideration by the Security Council. The council endorsed this on February 18, 1997 in its Resolution 1097 (1997), calling for the:

- immediate cessation of hostilities;
- withdrawal of all external forces, including mercenaries;
- reaffirmation of respect for the national sovereignty and the territorial integrity of Zaire and other States of the Great Lakes region;
- protection and security for all refugees and displaced persons and facilitation of access to humanitarian assistance;
- rapid and peaceful settlement of the crisis through dialogue, the electoral process and the convening of an international conference on peace, security and development in the Great Lakes region.

The O.A.U. and Other Regional Initiatives

President Daniel arap Moi of Kenya hosted a regional summit on the war crisis in eastern Zaire, on November 5, 1996, which was attended by the presidents of Uganda, Rwanda, Zambia and Eritrea. The secretary general of the Organization of African Unity and the prime minister of Ethiopia were also present, but Zaire declined to participate in what came to be known as Nairobi I, invoking the involvement of Uganda and Rwanda in supporting the rebellion. The African leaders urged the U.N. Security Council to deploy a "neutral force" to help repatriate refugees caught in the war zone in east Zaire and called for an immediate cease-fire in the fighting to enable diplomatic efforts to achieve a lasting peace.

¹⁷⁴ Interview with Nour Eddine Driss, Director of U.N. Electoral Assistance Division and head of Electoral Assistance Unit in Zaire, March 7, 1997.

¹⁷⁵ "Protocole d'accord relatif a l'établissement a Kinshasa d'un bureau des droits de l'homme." signed August 21, 1996. Human Rights Watch/Africa 64 April 1997, Vol. 9, No. 2 (A)

Another meeting by African heads of state was convened in Nairobi on December 16. Giving in to international pressures to get involved, South African President Nelson Mandela joined eight other leaders from eastern and central Africa and the secretary general of the O.A.U. to discuss the escalating crisis in the Great Lakes region in "Nairobi II."¹⁷⁶ Zaire again was notable for its absence, despite Mobutu's assurances to President Moi that Prime Minister Kengo would attend. At the last minute, Kengo canceled, denouncing the meeting as an "Anglo-Saxon conspiracy."¹⁷⁷ The heads of state called for respect for the territorial integrity of the states of the Great Lakes region and an end to cross-border incursions. They also called for a peaceful settlement to the conflict in eastern Zaire. In the interim between Nairobi I and II, President Moi had complained that the initiative was largely ignored by the northern states as they planned an intervention force for the region.

While six African foreign ministers were visiting Kinshasa in the third week of February 1997 to follow up on the resolutions of Nairobi II and discuss the possibility of convening a Nairobi III regional summit, South Africa hosted indirect talks between representatives of the alliance and Honore Ngbanda, President Mobutu's nephew and security advisor. This initiative differed from the Nairobi regional talks in that it involved the participation of the rebel alliance, which the Nairobi process ruled out. On the other hand, the O.A.U. said that it would convene a summit of the member states in the Togolese capital Lome within the framework of its Central Organ of the O.A.U. Mechanism for Conflict Prevention, Management and Resolution before the end of March to examine the situation in the Great Lakes.

Converging and Diverging Initiatives

A consensus emerged around the five-point plan as the basis for settlement of the conflict in several subsequent mediation efforts. After initially labeling the U.N.'s peace plan as "timid," the Zairian government accepted it in its declaration of March 5, 1997. Bowing to international pressures, the rebel alliance declared its acceptance of the five-point plan on March 8, but only as a basis for direct negotiations with the government, short of which, the alliance said, it would reject the cease-fire.

The Organization of African Unity endorsed the plan at the fifty-sixth ordinary session of its Council of Ministers which was convened in Tripoli from 24 to 28 February. A measure of the high hopes that the South African mediation initiative raised was the presence of O.A.U./U.N. Special Representative for the Great Lakes region Mohamed Sahnoun, the U.S. assistant secretary of state for African affairs, and the U.S. National Security Council senior director for Africa in Cape Town to bolster the process and apparently also to reconcile international and regional initiatives. These hopes quickly receded, however, as the rebels' military campaign scored additional gains and the Zairian government distanced itself from the talks, saying that the president's envoy was not mandated to represent it.

Nairobi III was convened on March 19 in the absence of the ADFL and Rwanda and Uganda, two of its alleged backers. The six-nation summit called for an end to the conflict in Zaire through the urgent implementation of the U.N. five-point peace plan.¹⁷⁸ The O.A.U. Lome summit of March 26 was attended by fourteen heads of state and delegates from the government of Zaire and the ADFL. While the two sides in the conflict did not meet face to face, the summit

¹⁷⁶ The meeting was attended by Presidents Benjamin Mkapa of Tanzania, Pasteur Bizimungu of Rwanda, Nelson Mandela of South Africa, Isayas Afwerki of Eritrea, Frederick Chiluba of Zambia, Robert Mugabe of Zimbabwe and Yoweri Museveni of Uganda, in addition to Prime Minister Meles Zenawi of Ethiopia, Salim Ahmed Salim of the O.A.U., Julius Nyerer, in his capacity as elder statesman in the region, and Ferdinand Oyono, the foreign minister of Cameroon. See KBC radio, "Great Lakes summit issues joint communique," Nairobi, 17 December 1996, BBC Summary of World Broadcasts, 18 December 1996.

¹⁷⁷ U.S. State Department sources believe that Kengo's cancellation was due to a U.S. internal document leaked to him by the French.

¹⁷⁸ Three presidents attended the summit: Daniel arap Moi of Kenya, Robert Mugabe of Zimbabwe and Pascal Lissouba of Congo. Zaire and Cameroon sent their prime ministers, and South Africa its vice-president.

focused on how to bridge the gap between them on reaching a cease-fire and broader talks on the settlement of the crisis. The final communique from the Lome summit stated that both sides in the conflict pledged to “respect the principle of a cease-fire and the principle of negotiations.”

As the Lome summit concluded, the Kenya News Agency reported that President arap Moi, in agreement with the participants in Nairobi III, had handed the chairmanship of the Nairobi initiative to the U.N. and the O.A.U. This step appeared to indicate the merger of the U.N./O.A.U. and regional diplomatic initiatives. An agreement was reached at Lome that delegations from Kinshasa and the ADFL would enter into direct talks in South Africa in early April. The Special Representative Mohamed Sahnoun would take the leading role in mediating talks which were expected to set forth the preconditions for further talks and prepare for a direct meeting between the president of Zaire and the leader of the ADFL.

In a statement on March 12, the E.U. reiterated its support for the U.N. efforts to achieve peace in Zaire and called on all the parties involved to endorse the plan and implement its various provisions.¹⁷⁹ Meeting in Paris on February 18, senior diplomats from the U.S. and six E.U. countries¹⁸⁰ reaffirmed “their adhesion to the principles that must guide the international community in helping restore peace and stability in Zaire—the very guidelines that inspired the five-point peace plan unanimously agreed by the U.N. Security Council.”¹⁸¹

Such unanimity was tested repeatedly as the diverging interests and agendas of members of the international community took precedence in discussions of particular initiatives. During the first quarter of 1997, France found itself alone when it persistently attempted to secure the participation of other members of the international community in enforcing a cease-fire and organizing a multinational force to “assist the refugees.” It backed a call by the U.N. secretary general for such an intervention force, while the United States and Britain reportedly distanced themselves from the initiative.

¹⁷⁹ “E.U. supports U.N. efforts to solve Zaire crisis,” Reuter, The Hague, March 12, 1997.

¹⁸⁰ Foreign ministry experts from Germany, France, Britain, Belgium, Spain and the Netherlands, then holding the rotating presidency of the E.U., took part in the meeting with U.S. counterparts. See: “U.S., Europeans meet on Zaire in Paris,” Reuter, Paris, February 18, 1997.

¹⁸¹ “U.S., France said overcoming Zaire differences,” Reuter, Paris, February 19, 1997.

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