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DEMOCRATIC REPUBLIC OF CONGO

Memorandum to the Inter-Congolese Dialogue: Amnesty International's recommendations for a human rights agenda

1. Introduction

Amnesty International in this document makes recommendations to the parties expected to take part in the Inter-Congolese Dialogue -- talks expected to start towards the end of January 2002 with the aim of resolving the three-year armed conflict in the Democratic Republic of Congo (DRC). The facilitator of the Dialogue, Sir Ketumile Masire, former President of Botswana, was appointed by the Organization of African Unity (OAU) in December 1999. Those involved include the parties to the armed conflict in the DRC -- the DRC Government and armed political groups that are signatories to the 1999 Lusaka Ceasefire Agreement -- as well as representatives of major unarmed political parties and civil society groups in the DRC. The Dialogue provides an opportunity not only to end the fighting in the DRC but also to set up a framework in which the rule of law can be established and in which human rights may be protected.

Amnesty International regularly submits recommendations to governments and other actors involved in preparing constitutional and other legal reforms or peace negotiations in order to ensure that provision is made for the safeguard of human rights, in particular those that fall within Amnesty International's mandate. The organization has sometimes acted at the request of the authorities concerned and at other times on its own initiative. For example, Amnesty International made recommendations to the Burundi Government in 1991 for the constitutional protection of human rights and in 1998 and 1999 for legal reform. In January 2000 and in August 2001 the organization submitted memoranda to the Burundi Government, armed political groups and political parties with recommendations for the protection and promotion of human rights in the context of the implementation of the Arusha Peace Accords.

Between 1986 and 1990, Amnesty International made similar recommendations to, among others, the governments of the Philippines, the former German Democratic Republic and the Federal Republic of Germany, Jordan, Viet Nam, Pakistan, South Korea, Nepal and in respect of the Hong Kong Special Administrative Region. In 1990, the organization submitted observations and comments on a draft Namibia Constitution. In 1994 Amnesty International recommended that the South African Government maintain the unqualified right to life in the country's Constitution, and in 1994 and 1995 that it ratify human rights treaties and ensure their full implementation.

Amnesty International is a worldwide movement of people working to promote internationally recognized human rights. Its mission is to undertake research and action focused

on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination. In this context, Amnesty International seeks the release of prisoners of conscience. These are people imprisoned, detained, or otherwise physically restricted on account of their political, religious or other conscientiously-held beliefs, ethnic origin, sex, colour or language, provided they have not used or advocated violence. The organization works for fair and prompt trials for all political prisoners, including those who may have used or advocated violence, and on behalf of such people detained without charge or trial. It opposes the death penalty, extrajudicial or other deliberate and arbitrary killings, "disappearances" and torture and other cruel, inhuman or degrading treatment or punishment without reservation. Amnesty International condemns and campaigns to prevent torture, deliberate and arbitrary killings and "disappearances" by anyone, including armed political groups, in any part of the world.

Amnesty International bases its work on the principal foundations of international human rights law -- the 1948 Universal Declaration of Human Rights and other international standards that have developed from the provisions enshrined in the Universal Declaration. These include, in particular, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). The DRC is party to these particular treaties and is bound by their provisions. Amnesty International carries out human rights work with complete impartiality as regards political ideologies or groupings.

2. The Inter-Congolese Dialogue

The Inter-Congolese Dialogue provides an opportunity to establish a framework for the rule of law and the protection of human rights in the DRC.

Before and after **a** government led by the *Alliance des forces démocratiques pour la libération du Congo* (AFDL), Alliance of Democratic Forces for the Liberation of Congo, seized power on 17 May 1997, its officials said on a number of occasions that they wished to break with the past mismanagement of the country, formerly known as Zaire. Armed political groups that have taken up arms against the DRC Government since August 1998 have repeatedly claimed that they did so in the interests of the rule of law.

Amnesty International believes that the political, social and economic mismanagement under former President Mobutu Sese Seko continued for so long because government institutions intended to hold leaders accountable were in many cases not allowed to function or were simply non-existent. This lack of accountability contributed to the horrendous violations of human rights and international humanitarian law inflicted on the people in the DRC by local and foreign forces since October 1996. Judicial, law enforcement and other government institutions were largely neglected and misused to perpetrate or perpetuate human rights violations. Amnesty International believes that unless these institutions are allowed to fulfil their obligation to promote

and protect human rights, the cycle of impunity will not be broken and mismanagement of public affairs will continue. It is in the spirit of contributing to efforts by government, opposition and civil society representatives participating in the Inter-Congolese Dialogue to make a clean break with a long history of widespread human rights violations and impunity that Amnesty International is now submitting recommendations for measures to ensure the promotion and protection of human rights for all the people in the DRC.

The Inter-Congolese Dialogue is a major component of the Ceasefire Agreement negotiated and signed in July and August 1999 in Lusaka, the capital of Zambia, by parties to the armed conflict that started in August 1998.[1] The Lusaka Agreement was a culmination of mediation efforts and pressure by foreign governments and inter-governmental organizations to end a war in which several Congolese armed political groups, supported by Burundian, Rwandese and Ugandan government forces , have been seeking to overthrow the DRC Government which itself is supported by the Angolan, Namibian and Zimbabwean government forces. The Inter-Congolese Dialogue is meant to usher in a new political dispensation and an end to a cycle of armed conflict, and to chart a new political future for the DRC. Amnesty International and other human rights organizations are seeking to ensure that it will engender a break with a past characterized by widespread human rights abuses.

Many in the DRC and much of the international community are placing their trust and hope in the Inter-Congolese Dialogue. Amnesty International too believes that it has potential as a forum in which to address human rights issues and to put in place lasting mechanisms for the protection and promotion of human rights. The Inter-Congolese Dialogue also has potential to be an example to the Great Lakes region and beyond on how individuals and groups with differing political views can agree on a common stand against human rights abuses and build a foundation for an end to impunity.

However, concerns remain that human rights principles may be sacrificed in favour of political expediency and a short-term objective to end the armed conflict.

Amnesty International is convinced that there can be no lasting peace without justice and accountability for violations of human rights and international humanitarian law. Too often, protection of human rights and holding the perpetrators of gross abuses accountable are viewed as obstacles to ending armed conflict. Holding today's perpetrators of human rights abuses accountable for their actions and bringing them to justice is an effective deterrent against a cycle of political violence and repeated abuses by those seeking power and other potential perpetrators

[1] The Burundi Government refused to be party to the Ceasefire, claiming that it was not taking part in the hostilities. Numerous armed political groups opposed to the governments of Burundi, Rwanda and Uganda were excluded from participating in the ceasefire negotiations and are referred to in the agreement as "negative forces".

. Failure to address impunity with determination now can only harbour antagonism for generations to come, hinder the process of reconciliation, and lead to further armed conflict and atrocities. It may also perpetuate hostility towards foreign actors perceived or known to have carried out, condoned or facilitated human rights abuses in the country.

It is the responsibility of the international community to ensure that those responsible for war crimes and other violations of international humanitarian law in the DRC by Congolese and foreign forces are brought to justice. Amnesty International therefore welcomes the determination, expressed by the United Nations (UN) Security Council mission in its May 2001 report, that "War criminals must be held accountable. There should be no impunity....". However, the Security Council has not yet taken concrete steps to address the issue of impunity in the DRC. Moreover, the provisions of the Lusaka Ceasefire Agreement, which permit broad amnesties to be granted except for those responsible for genocide (*genocidaires*), are in part an obstacle to achieving the aims of the Inter-Congolese Dialogue and require amendment (see recommendations below).

3. A long history of human rights violations

For many decades, people in the DRC have suffered a seemingly unbreakable cycle of human rights abuses by agents of the government and armed political groups. Most of the abuses, particularly extrajudicial executions and other deliberate and arbitrary killings of usually unarmed civilians, "disappearances", arbitrary arrests, unlawful detentions and torture, including rape, and other forms of cruel, inhuman or degrading treatment or punishment, have continued largely because they were ordered or condoned by political or security force leaders with responsibility to prevent them. Perpetrators are rarely, if ever, brought to justice.

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

Under Belgian colonial rule from the end of the 19th century to 1960, the country, then known as Congo experienced a brutal regime characterized by thousands of extrajudicial executions, mutilations, "disappearances", arbitrary arrests, detention –of prisoners of conscience, torture and other forms of cruel, inhuman or degrading treatment or punishment.

The first five years after Congo's independence in 1960 were some of the most violent in the country's history. Again political leaders and their foreign accomplices were responsible

for ordering or condoning most of the politically-motivated killings, torture and other human rights crimes. No one responsible for these abuses was ever brought to justice. On the contrary, some of the leaders, such as former President Mobutu, who is widely believed to have ordered or condoned some of the worst human rights violations, went on to take their place as respectable "statesmen" on the international stage. He and other leaders persecuted their opponents, including by ordering many of them to be publicly or secretly extrajudicially executed. Some were executed after summary and unfair trials. These included former government ministers Evariste Kimba, André Mahamba, Jérôme Anany and Emmanuel Bamba, who were publicly executed in June 1966. Victims or their relatives were powerless to bring cases before a judiciary they did not expect to be competent, independent or impartial. Victims of human rights abuses and human rights organizations have largely regarded the judiciary to be a tool of repression for the government, usually with no power to bring officials or supporters of the government to justice. The willingness of the Congolese political leaders and the international community to ignore the violations and forget the victims became the linchpin for the continuing cycle of impunity throughout the colonial and post-colonial eras of Congo.

I. Human rights violations under President Mobutu

Within months of coming to power in 1965, former President Mobutu banned political parties and severely restricted the right to freedom of expression and association under the guise of national unity. Those who tried to express views contrary to those of the government or the ruling party were subjected to severe human rights violations. Scores of army officers and political opponents were subjected to extrajudicial executions, public executions following unfair trials, internal banishment (*relégation*), "disappearances", long-term detention without charge or trial, torture and other human rights violations. Some foreign governments supported or condoned these abuses, claiming that unbridled political freedom had caused the civil wars in the early 1960s.

In some cases, international actors, including leaders of foreign governments, now acknowledge that unacceptable civil, political and other human rights violations were allowed to continue unchecked for about 32 years of government under President Mobutu.

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

While much of the world ignored human rights violations under President Mobutu, particularly in the context of the "cold war", Amnesty International continued to report and

campaign on human rights violations in the country, then known as Zaire.[2] In 1986, the organization reported that between July 1984 and July 1985 Zairian government forces had extrajudicially executed, tortured and "disappeared" hundreds of unarmed civilians in and around Moba in northeastern Shaba region (now known as Katanga province). The human rights violations followed armed clashes between government troops and members of the *Parti de la révolution populaire* (PRP), Party of the Popular Revolution. The government initially denied the reports but admitted a few months later that human rights violations had occurred.

In reports published in 1993 and 1994, Amnesty International highlighted human rights violations in North-Kivu, Shaba and South-Kivu regions in the context of politically-motivated armed ethnic conflict.[3] In North-Kivu the initial main targets of human rights abuses by government forces and supporters were members of the Hutu and Tutsi ethnic groups (collectively known as Banyarwanda), while in Shaba it was members of the Luba ethnic group from Kasai. In these and many other reports, Amnesty International appealed to the authorities to end human rights violations and to ensure that abuses were independently and impartially investigated, and that the perpetrators were brought to justice. However, the cycle of impunity continued unabated, indicating high-level political complicity in the abuses.

II. Human rights abuses by the AFDL and its allies

When in September 1996 the AFDL armed group, headed by Laurent-Désiré Kabila and supported by Rwandese and other foreign forces, launched an armed offensive against former President Mobutu's forces, it said it sought to defend the rights of Banyamulenge[4] to Zairian citizenship. Amnesty International received numerous testimonies from Rwandese and Burundian refugees, Congolese nationals and human rights and humanitarian organizations that possibly several hundred thousand refugees and Congolese nationals were massacred by various fighting groups. These included former President Mobutu's forces and members of the AFDL and their allies, particularly the armed political group, the Rwandese Patriotic Army (RPA). The AFDL-led government, headed by President Laurent-Désiré Kabila, came to power in May 1997. It consistently denied that atrocities had been committed by its forces or those of its allies

[2] Reports published by Amnesty International include: *Human rights violations in Zaire*, May 1980; *The ill-treatment and torture of political prisoners at detention centres in Kinshasa*, September 1980; *Zaire -- Reports of torture and killings committed by the armed forces in Shaba region*, March 1986; *Outside the law -- Security force repression of government opponents, 1988-1990*, September 1990 (AI Index: AFR 62/10/90).

[3] *Zaire: Violence against democracy*, 16 September 1993 (AI Index: AFR 62/11/93); *Zaire: Lawlessness and insecurity in North and South-Kivu*, November 1996 (AI Index: AFR 62/14/96).

[4] Banyamulenge are members of the Tutsi ethnic group living in and around the Mulenge mountains in DRC's South-Kivu province.

and obstructed the UN Secretary General's Investigative Team set up in late 1997 to investigate allegations of serious human rights abuses, including large scale unlawful killings that occurred during the armed conflict. After hostilities started between the AFDL-led government and Rwanda in August 1998, the government agreed to cooperate fully with a future investigation (see recommendations below).

Amnesty International has published a number of reports, news releases and urgent actions highlighting many of the abuses allegedly committed by members of the AFDL and their allies, including members of the RPA.[5] In a December 1997 report entitled *Deadly conspiracies in Congolese forests* (AI Index: AFR 62/33/97), Amnesty International detailed numerous cases of unlawful mass and individual killings, torture and "disappearances" or abductions committed by parties to the 1996-1997 armed conflict. Also in December 1997 the organization submitted a memorandum to the DRC government calling for legal reforms and an independent and impartial investigation into violations of human rights and international humanitarian law, particularly those that occurred between October 1996 and May 1997.

III. Human rights abuses since August 1998

Since the resumption of war in August 1998, grave and persistent human rights abuses by governments and armed political groups have continued, even though fighting has significantly abated since the beginning of 2001 in the face of welcome progress in the implementation of parts of the Lusaka Ceasefire Agreement. Although the Agreement specifically calls for the cessation of "all acts of violence against the civilian population by respecting and protecting human rights", many of the parties to the conflict have continued to commit grave human rights abuses. These have violated human rights instruments and fundamental principles of international humanitarian law as reflected in the Geneva Conventions and their Additional Protocols. Numerous unarmed civilians have been extrajudicially killed, or "disappeared"; others have been killed in custody. Torture, including rape, of women, men and children remains widespread. Parties to the conflict have continued to use war to justify the suppression of political dissent and the imprisonment of political opponents as well as human rights defenders. Widespread human rights violations have been committed by the DRC government under the present head of state, President Joseph Kabila, who came to power in January 2001following the assassination of President Laurent-Désiré Kabila. President Joseph Kabila announced in March 2001 the closure of unofficial detention centres but some continue to be used and people continue to be tortured.

[5] These include *Zaire: Violent Persecution by state and armed groups*, 29 November 1996 (AI Index: AFR 62/26/96), and a memorandum to the UN Security Council, 24 March 1997.

Human rights are also violated by Burundian, Rwandese and Ugandan troops present in the DRC who support armed political groups opposing the DRC government. These and other armed groups have in turn committed numerous grave human rights abuses themselves. The main groups supported by the three governments are:

- the Goma-based *Rassemblement congolais pour la démocratie* (RCD-Goma), Congolese Rally for Democracy;
- the *RCD-Mouvement de libération* (RCD-ML), RCD-Movement of Liberation;
- and the *Mouvement pour la libération du Congo* (MLC), Movement for the Liberation of Congo.[6]

Rwandese, Burundian and Congolese armed political groups in the DRC allied to the DRC government or opposed to the Burundian and Rwandese governments, are also responsible for numerous unlawful killings and torture, including rape. These groups include:

- the *mayi-mayi*;
- Rwandese armed political groups that include former government soldiers and militia known as *interahamwe*, accused of responsibility for the 1994 Rwandese genocide;
- and the Burundian armed group, the *Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie* (CNDD-FDD), National Council for the Defence of Democracy-Forces for the Defence of Democracy.

In June 2001 Amnesty International published two reports highlighting the disastrous human rights situation in areas controlled by the DRC Government and also in those occupied by foreign governments and armed groups.[7] One of the issues that Amnesty International highlighted in the report, *Rwandese-controlled eastern DRC: Devastating human toll*, is that Rwandese and Ugandan forces, and armed political groups associated with them, have committed many abuses as a result of efforts to control and exploit areas rich in natural

[6] In April 2001 the RCD-ML and MLC formed a coalition, supported by Uganda, called: *Forces de libération du Congo* (FLC), Forces for the Liberation of Congo. The coalition effectively fell apart when in mid-2001 hostilities broke out between a faction of the RCD-ML and the MLC in North-Kivu province.

[7] *Rwandese-controlled eastern DRC: Devastating human toll*, 19 June 2001 (AI Index: AFR 62/011/2001); *Torture a weapon of war against unarmed civilians*, June 2001(AI Index: AFR 62/012/2001).

resources, such as gold, coltan and diamonds. The organization is concerned that such exploitation may continue to fuel the armed conflict. It welcomes the UN Security Council's decision to extend the work of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, and urges the Panel to investigate the link between these economic activities and the human rights abuses committed in the area.

The UN Secretary-General, in his 30 May 2001 statement to the Security Council, highlighted the appalling plight of child soldiers. Amnesty International has repeatedly raised its concern over child soldiers recruited by virtually all fighting forces in the conflict. The governments of the DRC, Rwanda and Uganda have recruited child soldiers, and so have the armed factions of the RCD, the *mayi-mayi* and CNDD-FDD. The DRC Government and armed political groups have repeatedly reneged on their public promises to end child recruitment and demobilise child soldiers. Some of the child soldiers interviewed by Amnesty International representatives in recent months have been as young as 10 years old. These practices violate international human rights law that prohibits the recruitment and participation of children in hostilities.[8] Some of these practices are recognized as war crimes in the Rome Statute of the International Criminal Court, signed by the DRC, Angola, Namibia and Uganda. Amnesty International welcomes the UN Security Council's demands in its Resolution 1341, addressed to all armed forces and groups, to end recruitment, training and use of children in their armed forces.

4. Recommendations for human rights protection

As highlighted in Chapter 3 above, civil, political and other human rights have for many decades been systematically violated or tolerated by government and security officials legally charged with the responsibility to protect the population. It is incumbent on representatives of the Congolese people at the Inter-Congolese Dialogue to enter into a binding commitment that human rights abuses by the country's nationals or foreign forces will no longer be tolerated and that impunity for past or future abuses is not an acceptable condition for an end to the armed conflict. Delegates should resolve that justice and the rule of law are requisites for peace that will stand the test of time.

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

[8] They also contravene the African Charter on the Rights and Welfare of the Child, which sets 18 years as minimum age for recruitment and participation in hostilities. The Charter has been ratified by Uganda, whose forces have continued to recruit and train child soldiers in both Uganda and in the DRC.

I. Incorporate human rights protection in the Lusaka Ceasefire Agreement

The Lusaka Ceasefire Agreement has often been referred to by representatives of foreign governments and inter-governmental organizations pushing for an end to the DRC war as the "only game in town". In fact, a new “game” can be introduced to ensure that the Agreement is updated to include mechanisms for human rights protection for and by all. Article III of the Agreement provides for an amendment. Amnesty International recommends that a review of the Agreement take place without further delay, and that it should include a provisions that all parties to the armed conflict will cooperate with a UN-led international inquiry into human rights abuses and that relevant governments will submit alleged perpetrators identified by the inquiry for trial in accordance with international standards (see recommendation III below).

The Lusaka Ceasefire Agreement's most fundamental flaw is a failure to recognise that the people of the DRC require and deserve justice for the violation of their fundamental human rights, particularly the right to life and physical integrity. The amended Agreement should acknowledge that forces belonging to many of the signatories to the Agreement -- and not only those referred to as “negative forces”, the armed groups not party to the Agreement -- have been involved in grave violations of international humanitarian law and other human rights treaties, and equally answer a call by ordinary Congolese to see justice done. The Agreement and the Inter-Congolese Dialogue should demand that action be taken in connection with the atrocities committed against tens of thousands -- and possibly hundreds of thousands -- of Rwandese Hutu refugees, as well as Tutsi and other unarmed Congolese civilians during the 1996/1997 armed conflict.

II. End the phenomenon of child soldiers

Amnesty International urges delegates to the Inter-Congolese Dialogue to give particular attention to, and fully cooperate with, the pressing need for demobilisation and rehabilitation of child soldiers. It should especially urge all governments and inter-governmental organizations to provide concrete support for effective programs by the UN and non-governmental organizations to ensure these children’s successful rehabilitation and reintegration in society. The Inter-Congolese Dialogue should recommend to a future DRC Government to ratify and implement the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Its Article 1 says:

> States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 4 of the Protocol states:

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

III. Justice for the victims of human rights abuses

In a 1997 memorandum, Amnesty International's Secretary General urged the UN Security Council to establish a Commission of Inquiry into massive killings of civilians in the eastern part of then Zaire. The UN Secretary-General's Investigative Team was established but met with systematic obstruction from President Laurent-Kabila's government.

In a report published in June 1998, the Investigative Team concluded that between September 1996 and May 1997 "*all the parties to the violence that racked Zaire, and especially its eastern provinces, during the period under consideration have committed serious violations of human rights or international humanitarian law*". The Investigative Team added that "*the killings by AFDL and its allies, including elements of the Rwandan Patriotic Army, constitute crimes against humanity, as does the denial of humanitarian assistance to Rwandan Hutu refugees. The members of the Team believe that some of the killings may constitute genocide, depending on their intent, and call for further investigation of those crimes and of their motivation*". No such investigation took place but rather, after the armed conflict resumed in August 1998, further violations of human rights and international humanitarian law were committed by Congolese and foreign forces -- virtually all of which had been involved in the abuses of 1996/1997.

Delegates to the Inter-Congolese Dialogue and the rest of the international community, particularly the UN, owe it to the hundreds of thousands of victims who were subjected to unlawful killings, "disappearances", torture and other human rights abuses to ensure that justice is done and is seen to be done in accordance with international standards for fairness. Amnesty International recommends that the Inter-Congolese Dialogue request that a UN investigative team be promptly established, and that it include criminal justice, forensic and other experts known for their impartiality and integrity. In view of the gravity and scope of human rights abuses documented since the war resumed in August 1998, the international inquiry should cover

the period until the end of the current armed conflict. The Inter-Congolese Dialogue should require all parties, including foreign governments, to cooperate fully with the international inquiry, which should be conducted in accordance with the Guidelines for the conduct of UN inquiries into alleged massacres. Such an inquiry should be initiated immediately. In particular work could begin in areas where fighting has ceased and where ceasefire monitors of the *Mission de l'Organisation des nations unies au Congo* (MONUC), UN Organization Mission in the Democratic Republic of the Congo, have been deployed.

The international investigation should form the basis for prosecutions and trials of alleged perpetrators in the DRC. The DRC Government and armed political groups should seek assurances from their foreign government allies whose forces have been involved in the DRC conflict that any of their nationals identified by the international inquiry either be brought to justice before the courts in their own countries in accordance with international standards or be extradited for trial in the DRC, under strict guarantees that defendants would not be subjected to human rights violations, including by not being sentenced to death. Where foreign governments fail to ensure that their nationals are brought to justice, mechanisms to arrest and bring to justice suspected perpetrators in third countries or to extradite them to the DRC according to international standards should be invoked.

Effective mechanisms to try the alleged perpetrators

Trying the alleged perpetrators of these grave crimes in these complex cases and doing so in accordance with international standards requires a high level of expertise, professional staff and material resources that are not easy to find in a country still overwhelmed by the legacy of armed conflict and weak state institutions, including the judiciary. Amnesty International recommends that the Inter-Congolese Dialogue delegates urge the international community to take immediate steps to rebuild the judicial system in the DRC to try alleged perpetrators of war crimes and other violations of international humanitarian law (some of which may constitute crimes against humanity), regardless of their position, nationality or the ethnic group to which they belong. Amnesty International urges that international judges, prosecutors and investigators with relevant expertise be part of such trials to help ensure that these complex trials are conducted in accordance with international standards, have the necessary up-to-date expertise, and are perceived to be fully independent and impartial. The death penalty should be explicitly excluded as a punishment for those convicted.

Amnesty International has already requested the UN Security Council to urge UN member states to provide international judicial, investigative and prosecutorial personnel to be attached to the Congolese courts and serve as an additional guarantee for independence, impartiality and adherence to international fair trial standards. Judges, whether Congolese or international, should be appointed from among those respected for their practical criminal justice experience, independence, impartiality and integrity, and could include judges from countries

whose nationals would be indicted by these courts. The courts could sit in special chambers in the capital and provinces. It is important that civil society actors take an active part in this process and that an outreach effort in local languages is made right from the start to ensure that the general public is informed of upcoming trials and be encouraged to provide evidence, including as witnesses in courts of law.

Amnesty International believes that providing such assistance requires a long-term commitment by the international community but probably only involves a fraction of the costs of establishing another *ad hoc* international tribunal similar to the International Criminal Tribunal for Rwanda. Such a tribunal would incur considerable delays in its creation and try only a very limited number of the accused, while local courts are more likely to be capable of trying more alleged perpetrators at all levels. The provision of appropriate international assistance to the local courts -- to be phased out as the Congolese judicial institutions are re-establishing themselves -- will provide lasting benefits to the Congolese judicial system and constitute a bulwark against repetition of the grave crimes committed in the DRC.

IV. The Judiciary

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

The independence of the judiciary is a vital element in the protection of human rights in general and, to ensure respect of certain specific rights in particular, including the right of everyone to be treated equally before the law. Amnesty International believes that the independence of the judiciary constitutes the linchpin of an accessible justice system. Indeed, the independence of the judiciary is expressly recognized in a number of international and regional human rights instruments, including the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR) to which the DRC is a party. Article 7 of the ACHPR guarantees the right of access to "an impartial court or tribunal", and in criminal matters the right to "a competent court or tribunal". Article 14 of the ICCPR specifically guarantees everyone's entitlement to "a fair and public hearing by a competent, independent and impartial tribunal ... in the determination of any charge against him ...". All those accused of crimes should have an unequivocal right to be presumed innocent until proven guilty and the right to a fair trial. Legal provisions governing the selection, appointment, tenure and dismissal of judges in a country are among the significant factors that determine their independence. Such provisions are contained in the UN Basic Principles on the Independence

of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1985 (hereafter referred to as the "Basic Principles").

Political leaders have often exerted intense pressure on members of the judiciary to issue arrest warrants against or convict political opponents, including by threats of or actual detention or dismissal. Political pressure has also been exerted *not* to arrest, or to release without trial, people suspected of criminal offences. These practices have had an immensely demoralizing and corrupting effect on the judiciary, and the DRC authorities and armed political groups need to end them with immediate effect.

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

Any proceedings to remove or discipline judges will require special safeguards including a fair hearing and an independent review of any decisions to remove them (Principles 17 and 20). Practices such as the summary dismissal of more than 300 judicial officials by the government in November 1998, without recourse to a hearing for those affected, should be strictly prohibited. Judicial officials who are trained and employed to dispense fair justice should not themselves be victims of unfair practices, including dismissal, by those in positions of authority. Judges may only be removed for reasons of incapacity or "behaviour that renders them unfit to discharge their duties" rather than for any form of misconduct irrespective of its effect on their fitness for office (Principle 18). Amnesty International would also urge that judges of the lower courts benefit from the same measures aimed at preserving their independence.

Current practices and the future Constitution should ensure guarantees in line with international human rights standards, including those contained in the ICCPR and Principle 10 of the Basic Principles. Persons selected for judicial office should have integrity, ability and appropriate legal qualifications or training. Amnesty International is aware that there are many well-trained Congolese judicial experts, both in the country and abroad. However, during the initial reform phase, the organization urges DRC authorities to request and accept -- and will urge foreign governments and organizations to provide -- the outside experts and material resources when and where they are required. Congolese judicial experts trained, working or

living abroad should be invited and given incentives to return and participate in the rebuilding of their country's judiciary.

In order to ensure that the integrity of the judicial system and the independence of the judiciary are fully protected by the Constitution, the government and future Constitution should prohibit the creation of special courts that displace the jurisdiction of ordinary courts or tribunals and do not meet international standards for fair trial. Such tribunals include the DRC Government's *Cour d'ordre militaire* (COM), Military Order Court, or the RCD-Goma's *Conseil de guerre opérationnel* (CGO), Operational Military Tribunal. These special courts have powers to try people charged with insurrection, whether or not a state of emergency has been declared in the relevant area (see section V below on military powers of arrest). Since the COM was created in August 1997, Amnesty International has on numerous occasions expressed grave concern about its intrinsic unfairness and urged the DRC authorities either to reform or abolish it.

According to Decree 19 setting up the COM, its principal purpose, outlined in Article 3, is "to bring to light all the infractions committed by elements of the 50th brigade of the army, the soldiers of the former Zairean armed forces (FAZ) as well as elements of the police". Although independent defence lawyers have indicated that in generally pre-trial rights have been fully accorded before the chamber of the COM in Kinshasa, the capital, there is serious concern that full pre-trial rights are rarely, if ever, respected by other chambers, in particular by the roving court.

In a trial before a COM chamber sitting in Likasi, Katanga province (previously known as Shaba region), of several dozen defendants, including civilians, accused of plotting to overthrow President Joseph Kabila in early 2001, defence lawyers had access to the defendants and their files only a day before the trial began on 29 August 2001. At the end of the trial, two weeks later, 13 defendants were sentenced to death, five of them *in absentia*. Only the President of the court, out of five sitting judges, was a trained jurist and all the five were serving members of the security forces susceptible to pressure from the political and security authorities.

Some of those sentenced to death, by the COM have been children. Nanasi Kisala, who was 16 years old at the time he allegedly committed manslaughter in Mbandaka in October 2000, was sentenced to death on 27 April 2001. He remains on death row, although international law prohibits the use of the death penalty against defendants under the age of 18 at the time of the crime.

The Decree setting up the COM also prohibits appeal to a higher jurisdiction and defendants have no opportunity to challenge convictions and sentences handed down by the court. Although those convicted can petition for a presidential pardon, in practice some of those sentenced to death have been executed within days, or even hours, of their trial.

Tribunals that do not use the duly established procedures of the legal process should not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals. This is in accordance with the obligations of the DRC under Article 7 of the African Charter on Human and Peoples' Rights (ACHPR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

V. Law enforcement

An effective judiciary requires an effective police force or similar law enforcement body. The creation of numerous paramilitary police forces in former Zaire and subsequently in the DRC since 1997 has been a major contributing factor to human rights abuses. This has been compounded by the fact that the forces have virtually never been accountable to the judiciary. In many cases members of the police forces were serving private as opposed to public interest in the persecution of political opponents and the victimization of personal rivals or enemies.[9] As a result, private or unofficial detention centres, including pits, cargo containers and residences of security officials, mainly used by armed political groups and their foreign government allies in eastern DRC, have proliferated around the country. This lack of accountability, combined with the practice of holding people in private or unofficial detention centres, has contributed directly to the incidence of unlawful killings, "disappearances", arbitrary arrests, unlawful detentions, torture and other human rights abuses. Basic safeguards against such human rights abuses -- such as access to lawyers, family and a doctor and the right to challenge the legality of detention -- are not respected. All detention centres should be subject to inspection and unofficial detention centres should be closed immediately.

Human rights violations are less likely to occur if the security forces -- the army, the security services, the police and the prison services -- are made accountable for their actions to the people whose rights it is their duty to protect. Over the years, the UN has adopted a number of treaties, codes and declarations to prevent the kind of human rights violations mentioned in this memorandum -- arbitrary arrest, detention without trial, ill-treatment and torture, extrajudicial executions and excessive use of force and firearms. These include:

- The Standard Minimum Rules for the Treatment of Prisoners and Procedures for the Effective Implementation of the Rules;

[9] Reports published by Amnesty International about persecution of non-violent government opponents, journalists and human rights defenders by the DRC Government include *Government terrorises critics*, 10 January 2000 (AI Index: AFR 62/01/00). In a report entitled *Rwandese-controlled east: Devastating human toll*, 19 June 2001 (AI Index: AFR 62/011/2001), the organization gives details of persecution, including killings, of civilians accused of opposition to the Rwandese Government and RCD-Goma in eastern DRC.

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

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

In order to attain a capability to protect and promote human rights, the training of a police force should include human rights training. Concern for victims of human rights abuses should be a basic requirement for recruitment into the police and other security forces. All law enforcement officials should have a basic knowledge of the rights it is their duty to protect. Particular attention should be drawn to Article 3 of the Convention against Torture, which states, "An order from a superior officer or public authority may not be invoked as a justification for torture." Middle and senior ranking officials should be given a thorough understanding of human rights standards and ensure that they are scrupulously met.

For several decades the performance of the security forces has been undermined by government not providing them with adequate remuneration, and sometimes not paying them at all for many months at a time. Members of the security forces have resorted to criminal activities, and have arrested, tortured or even killed civilians who failed to give them money or property. In September 1991 members of the security forces protesting against inadequate and irregular pay killed several hundred unarmed civilians and looted property in several cities, including Kinshasa. In eastern and other parts of the country, business leaders paid soldiers and their commanders to prevent similar mutinies, looting of property and human rights violations. Amnesty International has received numerous reports of unpaid combatants and members of the security services belonging to armed political groups, as well as those belonging to foreign government forces, committing serious human rights abuses, including deliberate and arbitrary killings, abductions and torture, to extort money and other private property from civilians in the DRC.

Although there have been no major mutinies by the security forces over pay and conditions in recent years, civilians have continued to be subjected to serious human rights

abuses, including killings and torture. Members of the security forces frequently use the threat of, or actual, violence with military and other weapons to extort money and other valuables. This should change if future DRC security forces feel that they are both valued by and accountable to the society they are mandated to protect. The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials requires that law enforcement officials should be "adequately remunerated and provided with appropriate conditions", that "effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials" and that "particular provisions shall be made ... for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of the provisions shall be made known to the public".

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

Those with OPJ status may arrest anyone suspected of committing an offence punishable by more than six months' imprisonment and place them in custody. They are required by Article 4 of the Code of Penal Procedure to take them directly before a judicial authority (*"le conduire immédiatement devant l'autorité judiciaire compétente"*). Because of the practical requirements of police inquiries, suspects may be detained for up to 48 hours on the orders of an OPJ before they are either released or referred to a representative of the Procuracy (*Ministère public*). Before the AFDL-led government came to power, the procedures for detaining suspects in order to carry out police inquiries (*garde à vue*), including the legal limits on such detentions, appeared to be those set out in Articles 73 to 81 of Ordinance 78/289 of 3 July 1978 relating to the powers of the judicial police.[10] This ordinance stipulates, among other things, that detainees must be examined by a doctor if they so request and that detainees' families must be informed of their arrest. The legal status of this and other ordinances is unclear under the new government. However, there is no legal justification for prolonged detention without charge or trial.

After a maximum of 48 hours, suspects are required to be either released or referred to a representative of the Procuracy. Procurators (*Officiers du ministère public)* can order their continued detention but are required by Article 28 of the Code of Penal Procedure to refer

[10] *L'Ordonnance no. 78/289 du 3 juillet 1978 relative à l'exercice des attributions d'officiers et d'agents de police judiciaire*

all detainees to court within five days so that they may, if necessary, be remanded in custody by a judge. Court remand orders are valid initially for 15 days, but may be renewed for further successive periods of 30 days. From these legal provisions, it is clear that virtually all those held outside the framework of the Code of Penal Procedure are unlawfully detained in violation of both international standards and Congolese national laws.

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

In general, the law places strict limits on the powers of the security forces to detain prisoners and provides for suspects to be referred promptly to a judicial authority. The judicial authorities, officials of the Procuracy and the *Auditorat militaire*, are responsible for ensuring that detentions are carried out in conformity with the law and that legal limits on periods of *garde à vue* are not exceeded. In practice, members of government forces have often carried out arrests and detentions in total disregard of these laws. Armed political groups have stated publicly that they have undertaken the full functions of a government and that they would ensure the proper functioning of the judiciary in areas they control. However, they too have virtually always violated the rights of detainees, including the right to be referred promptly to a judicial authority.

The government's security services, such as the *Agence nationale de renseignements* (ANR), National Intelligence Agency, the *Détection militaire des activités anti-patrie* (DEMIAP), Military Detection of Unpatriotic Activities, have no powers of arrest. Information about crimes detected by them is passed on to the regular police for further investigation and possible action. The functions and powers of the ANR and other security services created by the current government are yet to be clarified. Amnesty International recommends that a statute setting up the ANR and other security services be made public, ensuring that its powers of arrest and oversight by the judiciary conform to international human rights standards and Congolese national laws. The organization makes a similar recommendation to armed political groups and their foreign allies which have publicly stated that their security services in parts of the DRC that they control are obliged to abide by the law.

VI. Human rights body or "ombudsman"

In order to ensure that institutions created to protect and promote human rights do so effectively, the Inter-Congolese Dialogue should demand that a future legislature, in conjunction with the government, should establish a fully independent and impartial body or "ombudsman" office that is empowered to investigate reports of human rights abuses. The office should be staffed by people chosen for their integrity and trusted by all sections of the community. This body or office should use international human rights laws and standards as the basic framework for its mandate and should be empowered to investigate substantive allegations of extrajudicial executions, torture, "disappearances", unacknowledged detentions and deaths in custody, all killings in disputed circumstances by the security forces and other human rights abuses. The power to investigate should apply to all cases -- regardless of the identity of the suspected perpetrators or of the victims.

Such a body should be able to initiate procedures to suspend from service those who are suspected of committing human rights abuses, pending and without prejudice to full investigations. It should have the power to compel attendance of witnesses, including government and security force officials, and production of relevant documents and other evidence required for the inquiry. It should be given the authority to take effective measures to protect witnesses and potential witnesses from all forms of threat and intimidation. It should be empowered to make recommendations concerning the initiation of criminal investigations and prosecutions and should ensure that appropriate measures of redress and rehabilitation are taken.

As stated above, Amnesty International calls for all unofficial and private detention centres to be shut. The proposed ombudsman or human rights body should have full and effective powers to make unannounced visits to places where people are believed to be held in unacknowledged or unofficial detention. The findings of such investigations should be published in full. In the cases of deaths in custody or of people who have died in circumstances indicating that the security forces may have acted unlawfully, the relatives should be allowed to have a qualified representative attend the *post-mortem* examination and have access to the *post-mortem* report.

An investigative body needs political support and resources, but not interference. After admitting that members of the armed forces had committed human rights violations in and around Moba in 1984 and 1985, former President Mobutu created an investigative body known as the *Département des droits et libertés du citoyen* (DLC), Department of Citizens' Rights and Liberties. Referring to a 1986 Amnesty International report, *Zaire -- Reports of Torture and killings committed by the armed forces in Shaba Region*, President Mobutu said in October 1987 that an official inquiry had confirmed that some of the abuses described by Amnesty International had occurred. The inquiry's findings and the types of abuses it had documented were not made public. Although the DLC helped to release political detainees, it failed to prevent arbitrary arrests and unlawful detentions. It also failed to investigate reports of torture,

"disappearances", extrajudicial executions and other violations or to ensure that those responsible were brought to justice. Lacking the political support or public esteem it needed to be effective, the DLC was abolished in 1990.

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

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

In making this recommendation, Amnesty International recognizes the important role that the courts should be empowered and enabled to play in ordering the court appearance or release of detainees kept in unacknowledged detention and at risk of torture or "disappearance". Courts can also order the investigation of human rights violations and bring the perpetrators to justice. However, judicial officials in the DRC frequently fail to exercise their powers under the Code of Penal Procedure to compel members of the security forces to bring suspects before the courts. Members of the security forces who carry out unlawful detentions or other related human rights violations are virtually never brought to justice. In cases of such difficulties, a human rights body or ombudsman would be crucial in the disclosure of the truth and administration of justice.

VII. Protection of the right to life

The right to life, guaranteed by Article 3 of the Universal Declaration of Human Rights**,** Article 6 of the ICCPR and Article 4 of the African Charter on Human and Peoples' Rights, is one of the most fundamental of all human rights. Tens, possibly hundreds, of thousands of people in the territory covered by the DRC have been deprived of their right to life, some after being sentenced to death, but most as victims of extrajudicial executions by government forces or of deliberate and arbitrary killings by armed political groups.

i. The death penalty

Amnesty International is unconditionally opposed to the death penalty, considering it to be a violation of the right to life. It is not only the ultimate form of cruel, inhuman or degrading punishment, it is also irrevocable and always carries the risk that the innocent may be put to death. Over the past decade, and as recently as September 2001, Amnesty International has regularly opposed the use of the death penalty in former Zaire and the DRC, and campaigned against all death sentences and executions in many other countries around the world, including the United States of America**,** China, Burundi, Rwanda and Uganda. The DRC has one of the highest levels of the death penalty in the world -- with more than 200 judicial executions since October 1997.

There has been significant progress towards ending the use of the death penalty in Africa since 1991. During this period, Angola, Côte d'Ivoire, Guinea-Bissau, Mauritius, Seychelles and South Africa abolished the death penalty in law, joining Cape Verde, Namibia, Sao Tomé and Principe and Mozambique, which had abolished it as of 1991. By October 2001, nine African countries were de facto abolitionist. These countries had not carried out executions for 10 or more years, bringing the number of countries which have abolished the death penalty in law or practice in Africa to 23.

As the DRC representatives to the Inter-Congolese Dialogue look ahead to preparing for the drafting of a new Constitution and other legal reforms, Amnesty International recommends that the government desists from using the death penalty and implements a moratorium -- suspension of its use pending further investigation into its effectiveness and effects. Since 1999 the government has repeatedly stated its support for a moratorium but has not take the steps necessary to implement one. Death sentences already imposed by the courts should be commuted. The organization urges President Joseph Kabila to emulate the example of Malawian President Bakili Muluzi who told an Amnesty International delegation visiting Malawi in July 1997 that he would commute the sentences of all prisoners under sentence of death and would not sign any further orders of execution. No judicial executions are known to have taken place in Malawi since 1994.

To avoid situations where the government may come under pressure to use the death penalty, it is important for the Inter-Congolese Dialogue to recommend that a future legislature and government pass legislation abolishing the death penalty. The government should ratify the Second Optional Protocol to the ICCPR, which imposes an international obligation on States Parties to abolish the death penalty. Four African countries, Cape Verde, Mozambique, Namibia and Seychelles, have ratified this treaty, out of a world total of 45.

ii. Extrajudicial executions and other unlawful killings

Amnesty International estimates that since the early 1960s, hundreds of thousands of unarmed civilians have been deliberately and arbitrarily killed by combatants belonging to Congolese and

foreign governments and armed political groups. Victims have included women, children and the physically infirm. Virtually no perpetrators, including those who ordered the killings, have been brought to justice. Governments and armed groups have consistently denied responsibility and failed to order or cooperate with any independent investigation.

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

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

The principle underlying this statement -- that no human rights abuse can be used as a justification for further human rights abuses -- is equally true and applicable to leaders of armed political groups. These include the AFDL before it came to power in May 1997 and subsequently the two RCD factions, the MLC and other armed political groups operating in eastern and northern DRC.

Between 1965 and 1997 thousands of unarmed civilians were killed by the forces of President Mobutu's government. One such case was the killing of students at Lubumbashi university campus, Shaba region, in May 1990. The government failed to allow a full investigation of the incident and its military and government officials refused to cooperate with a parliamentary inquiry. The government also obstructed an investigation by the UN Special Rapporteur on extrajudicial, arbitrary and summary executions. A trial in early 1993 in connection with the attack resulted in the conviction of the then governor of Shaba. However, the trial was seen by many in Zaire as a cover-up for high-level political responsibility for the attack.[11]

Amnesty International has received numerous testimonies and reports of deliberate and arbitrary killings of unarmed civilians by troops belonging to various armed political groups and to foreign governments backing them in eastern DRC since September 1996. Between September 1996 and May 1997 most of the victims were members of the Hutu ethnic group, particularly Rwandese refugees. They were shot, bayoneted or beaten to death. Tens of thousands of refugees were forced to flee into the forests where many later reportedly died from disease, starvation, exposure or exhaustion. After the AFDL came to power in May 1997, many former members of the armed forces and unarmed civilians are reported to have been

[11] See 1992 Amnesty International Report

summarily executed by the forces of the AFDL or their foreign allies in Kinshasa. Amnesty International estimates that tens of thousands of unarmed civilians have been deliberately and arbitrarily killed by various armed groups and government forces, particularly in eastern, southeastern and northern DRC since August 1998.[12]

Amnesty International is urging delegates participating in the Inter-Congolese Dialogue to recommend that the government adopt and implement the organization's 14-Point Program for the Prevention of Extrajudicial Executions. The Program calls on governments to demonstrate their opposition to such killings by officially condemning them. The DRC government should ensure control over the armed forces' chain of command and restrict use of lethal force to situations only where lives are at risk. Death squads (see section VIII below) should be prohibited and secret detention centres abolished.

The government should ensure unrestricted access to detention centres and prisoners by judicial officials, human rights and humanitarian organizations. In particular, the International Committee of the Red Cross, which has previously been blocked from visiting some detainees and prisoners, should be allowed full access to all prisoners without restrictions or delay. In late 2000 Amnesty International's representatives were refused access to political detainees, many of whom appeared to be prisoners of conscience, held at Kinshasa's central prison. In October 2001 another Amnesty International delegation was refused access to political prisoners and detainees held at Buluo prison in Likasi, Katanga province.

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

VIII. Safeguards against "disappearances" and abductions

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

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

[12] See Amnesty International's report, *Deadly alliances in Congolese forests*, 3 December 1997 (AI Index: AFR 62/33/97).

services in Kinshasa snatched dozens of people from their houses or other places, usually at night but also in broad daylight, and the victims were never seen again. The perpetrators, locally known as *hiboux* (owls), often travelled in unmarked vehicles without number plates. Witnesses were generally unable to identify the perpetrators who were usually armed. In early 1996, Amnesty International received reports of the "disappearance" of Tutsi in South-Kivu region. Many remain unaccounted for and it is believed that they were secretly executed by members of the former Zairian security forces and their allied militia. Many more Tutsi, accused of supporting the invasion of the DRC by Rwanda, "disappeared" in Kinshasa and other parts of the country in late 1998 and early 1999.[13]

Since September 1996, Amnesty International has received reports of the "disappearance" and abduction of possibly tens of thousands of civilians in the context of the armed conflict between DRC and foreign government forces and armed political groups. Thousands of unarmed civilians, most of them Rwandese refugees, were abducted by the AFDL and its foreign allies, particularly the RPA. It is feared that many of them were deliberately and arbitrarily killed or died from starvation, exposure or treatable illnesses. For example, as many as 40,000 refugees from Kasese and Biaro camps, south of Kisangani, were reportedly abducted and, or killed by RPA and AFDL combatants, and by Zairian civilians. There was concern in April 1997 that 52 Hutu refugee children abducted by the AFDL from Lwiro hospital, 30km west of Bukavu, who were kept in a closed container, beaten and denied food and drink for three days, could have been subjected to a worse fate if there had not been an international outcry.[14]

Amnesty International has drawn up a 14-Point Program for the Prevention of "Disappearances" (see Appendix II) that the organization believes, if implemented, would help eliminate "disappearances" in the DRC. As in the case of other human rights violations, the Inter-Congolese Dialogue should publicly condemn "disappearances" and abductions, and announce that no future DRC administration will be allowed to tolerate them. The Inter-Congolese Dialogue should resolve that relatives, lawyers and the courts should be promptly informed of a suspect's place of detention. The authorities should set up or support and cooperate with investigations into reports of "disappearances" that have already occurred. The government should ensure that security agencies with arrest powers and the judiciary have a central and a local registry of all arrests. Members of the security forces or other officials failing

[13] See Amnesty International reports, *Lawlessness and insecurity in North and South-Kivu*, November 1996 (AI Index: AFR 62/14/96); *Hidden from scrutiny: human rights abuses in eastern Zaire*, 19 December 1996 (AI Index: AFR 62/29/96); *DRC: War against unarmed civilians*, 23 November 1998 (AI Index: AFR 62/36/98).

[14] See Amnesty International report entitled *Deadly alliances in Congolese forests* (AI Index: AFR 62/33/97), published on 3 December 1997.

to register suspects in custody should be brought to justice. Before any arrest takes place, the arresting officer should be routinely required to reveal his identity to the suspect and relatives or to a local government official. Except in situations where a security officer is obliged to intervene to stop a crime, arrests without a warrant issued by a court should be strictly prohibited in any other (unlawful) circumstances.

IX. Safeguards against torture

Torture is a violation of fundamental human rights, condemned by the UN General Assembly as an offence to human dignity and prohibited under national and international law. Article 5 of the African Charter also prohibits torture and other forms of inhumane or degrading treatment or punishment. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Under former President Mobutu's government and since he was overthrown in May 1997, Amnesty International has received countless testimonies of torture taking place virtually throughout the country. This usually consists of systematic beatings of political opponents or criminal suspects by members of the security forces. Many are stabbed with bayonets or beaten with military belts (*cordelettes*) and gun butts. A number of detainees have reported being subjected to electric shocks. Particularly between late 1996 and 1998, women reported being raped and beaten on the breasts, and men reported being beaten on the stomach and genitals. There have been reports of women being shot in the genitals, usually after being raped, by RCD-Goma or RPA combatants in eastern DRC.

Amnesty International is urging the Inter-Congolese Dialogue to require that the DRC Government implement the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment to which Zaire acceded in March 1996, and to make a declaration under Article 22 of the Convention against Torture, which provides for individual complaints. To be effective, Amnesty International urges that the Convention be made part of domestic law in compliance with its provisions. The DRC Governments and armed political groups taking part in the armed conflict in the DRC should also implement Amnesty International's 12-Point Program for the Prevention of Torture (see Appendix III). The organization believes that implementation of this program and of the Convention against Torture will illustrate the government and armed political groups' commitment to abolish torture in the DRC and worldwide, including by foreign government forces implicated in the on-going armed conflict.

In order to abolish torture in the DRC, the government should ensure that all reports of torture are investigated by an independent body. Detainees should be brought before a judicial authority soon after their arrest and be allowed to inform the authority about their treatment in

custody without reprisal. Detaining authorities should be ordered to ensure that detainees have prompt and regular visits by their relatives, lawyers and doctors. The courts should order investigations of allegations of torture and those suspected to be responsible should be brought to justice promptly. Steps should be taken to ensure that anyone making such allegations is protected from possible reprisals. Delegates participating in the Inter-Congolese Dialogue should declare that a future DRC Government will be required to issue clear public instructions to its security forces that torture will not be tolerated and action will **be** taken against those suspected to be responsible.

X. Safeguards against arbitrary arrests and unlawful detentions

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

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

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

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

> "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by the law.
>
> 2. Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to

appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

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

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

"1.Every individual shall have the right to have his cause heard. This comprises:

a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

b) the right to be presumed innocent until proven guilty by a competent court or tribunal;

c) the right to defence, including the right to be defended by counsel of his choice;

d) the right to be tried within a reasonable time by an impartial court or tribunal."

The African Commission on Human and Peoples' Rights, established pursuant to the ACHPR, has also adopted a resolution on the Rights to Recourse to Procedure and Fair Trial to strengthen the substantive rights guaranteed by the Charter. Significantly, the ACHPR does not allow states to derogate from their treaty obligations even during states of emergency.

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

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

The Body of Principles states that the words " a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence. Furthermore, Principle 11 states:

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

During several decades of working on the former Zaire and the DRC, Amnesty International has received reports of the arbitrary detention of thousands of people suspected of committing crimes against the government or its officials. Virtually none of those unlawfully detained is known to have had their arrest ordered or reviewed by an independent judicial official. Many have spent long periods in detention without charge or trial. Dozens remain in custody, uncharged. Releases of detainees have usually been a result of political, rather than judicial decisions. Victims have included human rights defenders, journalists and members of non-violent opposition political parties who have often been detained as prisoners of conscience for exercising their right to freedom of expression and association.[15]

It is clear that most of the detentions carried out by the security forces without the authorization of the judiciary or any other independent authority do not conform to the human rights principles and standards that have received international recognition, nor to international treaties to which the DRC is legally committed.

There appears to be a widely held misconception, particularly among the security forces, that government agents have a right to carry out arrests without reference to the judiciary and to detain suspects indefinitely while their cases are investigated by members of the security services (see section V above).

[15] See Amnesty International reports , *Zaire: Collapsing under crisis*, 2 February 1994 (AI Index: AFR 62/01/94), and *Government terrorises critics*, 10 January 2000 (AI Index: AFR 62/01/00).

There is no provision in law for the long-term detention of prisoners for investigation by the security forces without the authorization of a judicial or other independent authority, and such detention is a violation of human rights. Such detention is even more serious when, as has been the case in the DRC for many years, detainees have been held incommunicado; incommunicado detention in itself creates conditions in which detainees may be ill-treated or tortured, "disappeared" or extrajudicially executed without their relatives or legal counsel being aware of it or able to seek redress.

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

XI. Safeguards for those deprived of their liberty

It is essential that national legislation and practices provide certain safeguards for all persons deprived of their liberty. These include: the right to be informed of their rights, immediate notification of their families, prompt access to families, lawyers, independent medical attention and a court, and the right to have the legal basis of their detention determined by the courts.

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

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

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

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

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

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

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

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

Article 9 (3) of the ICCPR guarantees that "anyone arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise judicial power ...". The Human Rights Committee has explained in its General Comments 8, paragraph 2, that Article 9 (3) requires that delays in being brought before a judge "must not exceed a few days". Article 9(4) of the ICCPR states that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The Body of Principles has a similar guarantee, in Principle 37, of prompt access

to a judicial or other authority that "shall decide without delay upon the lawfulness and necessity of detention." Moreover, under Principle 32 (1) "[a] detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful".

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

In English and Portuguese-speaking countries, one such mechanism is known as *habeas corpus*. In Spanish-speaking countries the mechanism is known as *amparo*. In other countries, constitutional rights may be invoked before the courts to challenge arbitrary detentions and to seek to prevent torture and "disappearances". Torture is less likely to take place if the security forces responsible for detentions and interrogations could be obliged, at any moment, to bring a detainee before a court of law. In countries where prisoners "disappear" or are secretly killed, as has been the case in the DRC, such a procedure would allow relatives to oblige the security forces to inform the judge whether they have an individual in custody.

Amnesty International believes that the DRC should include a provision to allow such legal challenges in its national laws and Constitution, in accordance with international standards.

Amnesty International is aware that the increasing commercialization of medical services in the DRC, as elsewhere in economically poor countries, has made it less likely that adequate medical expertise and care will be assigned to all detention centres and prisons. The organization urges delegates to the Inter-Congolese Dialogue to make it clear to the authorities responsible for detentions that denial of medical care amounts to cruel, inhuman or degrading treatment, and that the government has a responsibility to bring those responsible to justice. Delegates should appeal to the authorities responsible for detention and imprisonment to cooperate with the international community and with national and international medical and humanitarian organizations to examine the way in which they can contribute to ensuring prompt and appropriate medical treatment for detainees and prisoners. The wider international community, particularly governments and inter-governmental organizations, should be urged to provide resources for medical care to detainees and to demand that the DRC Government on its part respects the full rights of all detainees in accordance with international standards (see

section X above). Medical experts should also report to judicial authorities any illnesses, injuries or deaths that appear to be a result of torture or other forms of ill-treatment with a view to triggering a thorough and impartial investigation and bringing the perpetrators to justice.

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

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

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

Amnesty International is concerned that until May 2001 the DRC had effectively banned opposition political parties, leading to the arrest, detention and ill-treatment of people unwilling to join or opposed to the AFDL or its successor, the *Comités du pouvoir populaire* (CPP), Popular Power Committees. Amnesty International is concerned that members of opposition political parties have been subjected to human rights violations for exercising their right to freedom of expression and association, even after the ban was lifted by President Joseph Kabila earlier this year. A similar ban has remained effective and brutally imposed in areas controlled by armed political groups and their foreign backers. Action by the government and armed political groups to prohibit peaceful assembly has in some cases resulted in serious injury and loss of life.

The government and its armed opponents have also clamped down on activities by human rights groups. Many human rights activists have had to stop their public human rights activities following death threats and intimidation. Many human rights defenders have fled the country, particularly those from eastern DRC, while others have endured detention, torture and other forms of ill-treatment.

Fundamental human rights, such as those mentioned above, must be protected by national legislation and the future Constitution without restrictions, in addition to those provided for by the ICCPR. Outside or before the appropriate constitutional framework, it is necessary

for delegates to the Inter-Congolese Dialogue to recommend that the government urgently review current legislation and its interpretation by judicial, security or government authorities, in order to ensure that laws which authorize imprisonment for activities that constitute peaceful exercise of human rights are abrogated or amended to conform to international or regional human rights treaties, to which the DRC is a party.

XIII. Safeguards against discrimination

The AFDL and other armed political groups have publicly stated that one of the main reasons for taking up arms against the government of former President Mobutu and its successor was the discrimination exercised by the government against members of the Tutsi ethnic group, particularly in South and North-Kivu. Amnesty International does not take a view on whether or not people whose human rights are violated should take up arms to recover or protect their rights. However, it opposes discrimination against particular ethnic or political groups. Indeed, Amnesty International has published reports expressing concern about and condemning the persecution in Kivu of Tutsi and Hutu, collectively known as Banyarwanda, and in Shaba region of members of the Luba ethnic group originating from Kasai.[16] Further killings of known or suspected Banyarwanda -- mostly Tutsi and particularly in and around Kinshasa but also in many other parts of the country -- were carried out by DRC Government forces and their supporters in late 1998 to early 1999. Many were forced to flee the country.

Armed political groups and their foreign backers who took up arms against the DRC Government in August 1998 have themselves persecuted, including by killing, tens of thousands of members of various ethnic groups, particularly in eastern DRC. The victims have usually been accused by the perpetrators -- mainly on the basis of their ethnic origin -- of opposition to the armed political groups or to the occupation of parts of the DRC by foreign government forces. The principle of non-discrimination is guaranteed by Article 2 of the ICCPR, which requires states parties "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

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

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

[16] See *Zaire: Violence against democracy*, 16 September 1993 (AI Index: AFR 62/11/93)

Amnesty International is concerned that parties to the armed conflict have failed to condemn reports of, and take action to prevent, human rights abuses. These include unlawful mass killings of unarmed members of various ethnic groups that have occurred since September 1996.

Human rights abuses against Tutsi and against all other ethnic groups should be subjected to the same standards of investigation and legal recourse and the respective perpetrators of the abuses brought to justice.

Article 14 (1) of the ICCPR provides that:

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

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

For many months after it came to power in May 1997, the AFDL-led government also carried out discrimination against some women. Women dressed in mini-skirts, trousers or leggings were publicly undressed, beaten and tortured by the AFDL. Although some members of the government denied that this was government policy, they are not known to have taken measures to stop the practice and to bring the perpetrators to justice.[17]

XIV. Freedom of conscience, religion and movement

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

XV. Non-derogation of fundamental rights

While some derogation from certain provisions of the ICCPR is permitted in times of public emergency, there are some rights that are so fundamental that they may never be derogated

[17] See Amnesty International report, *DRC: Deadly alliances in Congolese forests*, published on 3 December 1997 (AI Index: AFR 62/33/97).

from in any circumstances. These non-derogable rights include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion.

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

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

XVI. Safeguards against *refoulement*

Amnesty International opposes *refoulement*, the forcible return of any person to a country where he or she may be subjected to human rights violations such as extrajudicial execution, torture, "disappearance", the death penalty or imprisonment as a prisoner of conscience. As a minimum, the DRC's future Constitution should include the guarantees against *refoulement* included in the 1951 Convention relating to the Status of Refugees (the UN Refugee Convention) and its 1967 Protocol, in the 1969 OAU Convention governing the specific aspects of refugee problems in Africa (the 1969 OAU Convention) and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The DRC should also seek to fully and effectively implement the UN Refugee Convention and its 1967 Protocol and the [1968] OAU Convention and other relevant international standards of refugee protection.

During 1995 and 1996 the then Zairian Government arrested several dozen Rwandese Hutu refugees and handed them over to the Rwandese government authorities. Those returned faced an uncertain future and many were subjected to arbitrary arrests and unlawful detention in conditions amounting to cruel, inhuman or degrading treatment. In November 1996, several hundred thousand Rwandese and Burundi refugees were forcibly returned to Rwanda after their camps were systematically attacked by Rwandese government forces and members of the AFDL. Many of those who returned were arbitrarily arrested and unlawfully detained, and others were extrajudicially executed by Rwandese government forces or arbitrarily and deliberately killed by armed opposition Hutu groups and Tutsi civilians.

In May 1997, the AFDL instructed the United Nations High Commissioner for Refugees (UNHCR) to repatriate all Rwandese refugees within 60 days. All these expulsions of Rwandese refugees were clear cases of *refoulement* and violated international law for the protection of refugees. In September 2001, the DRC Government announced that several thousand Rwandese Hutu combatants had been assembled in southeastern DRC with a view to demobilizing them. It was not immediately clear whether the combatants would be forcibly returned to Rwanda. Amnesty International is concerned that any combatants forcibly returned to Rwanda could be subjected to the same fate as those returned since 1996. Whereas Amnesty International commends any measures to bring to justice any of these combatants who may have been involved in committing human rights abuses, including the 1994 genocide in Rwanda, the organization recommends that verifiable guarantees be given by the Rwandese Government that they will not be subjected to human rights abuses such as deliberate and arbitrary killings, unlawful detention, torture, "disappearances" or the death penalty.

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

Similarly, the DRC Government should itself desist from seeking forcible or other unlawful return of DRC nationals residing in foreign countries while a prospect remains that they may be subjected to human rights violations by its forces. Amnesty International is particularly concerned about nearly 30 DRC nationals suspected of involvement in an alleged coup plot in late 2000, who were forcibly returned from the Republic of Congo while under the protection of the UNHCR. The returnees were held incommunicado and tortured by members of the security forces. The victims remain at risk of unfair trial by the *Courts of law d'ordre militaire* (COM), Military Order Court, and the death penalty. The organization calls on the Inter-Congolese Dialogue to demand that those responsible for their torture be brought to justice in accordance with international standards for fair trial, excluding the use of the death penalty.

5. Conclusion

Amnesty International is confident that delegates participating in the Inter-Congolese Dialogue, its facilitators, the DRC Government and those charged with responsibility for drafting, reviewing or implementing laws will find the recommendations in this memorandum useful for their work in the protection and promotion of human rights. The organization urges that those

concerned give these recommendations serious consideration and implement them. Amnesty International remains at the disposal of the stakeholders of the Inter-Congolese Dialogue and others interested in or with responsibility for the promotion and protection of human rights in the DRC and the Great Lakes region to discuss the concerns and recommendations in this memorandum. Amnesty International is committed to supporting the reform process. It will do so particularly by continuing actively to monitor the human rights situation in the DRC and through dialogue with the country's authorities and other leaders. Furthermore, Amnesty International will encourage foreign governments, as well as inter-governmental and non-governmental organizations, to assist the DRC with human and material resources in meeting its public commitment to create a social and political environment in which all Congolese will feel that the cycle of human rights violations and impunity has been broken for ever.

Appendices

Appendix 1

14-POINT PROGRAM FOR THE PREVENTION OF EXTRAJUDICIAL EXECUTIONS

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

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

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

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

1. Official condemnation

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

2. Chain-of-command control

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

3. Restraints on use of force

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

4. Action against "death squads"

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

5. Protection against death threats

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

6. No secret detention

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

7. Access to prisoners

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

8. Prohibition in law

Governments should ensure that the commission of an extrajudicial execution is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The

prohibition of extrajudicial executions and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9. Individual responsibility

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

10. Investigation

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

11. Prosecution

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

12. Compensation

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

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

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

14. International responsibility

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

Appendix 2

14-POINT PROGRAM FOR THE PREVENTION OF "DISAPPEARANCES"

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

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

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

1. Official condemnation

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

2. Chain-of-command control

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

3. Information on detention and release

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and

the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

4. Mechanism for locating and protecting prisoners

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

5. No secret detention

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

6. Authorization of arrest and detention

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

7. Access to prisoners

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

8. Prohibition in law

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

9. Individual responsibility

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

10. Investigation

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

11. Prosecution

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

12. Compensation and rehabilitation

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

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

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

Disappearance, and comply with the recommendations of intergovernmental organizations concerning these abuses.

14. International responsibility

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

Appendix 3

12-POINT PROGRAM FOR THE PREVENTION OF TORTURE BY AGENTS OF THE STATE

Torture is a fundamental violation of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet torture persists, daily and across the globe. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally. Amnesty International calls on all governments to implement the following 12-Point Program for the Prevention of Torture by Agents of the State. It invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and to work for its eradication worldwide.

1. Condemn torture

The highest authorities of every country should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.

2. Ensure access to prisoners

Torture often takes place while prisoners are held incommunicado — unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture takes place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture in law

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

8. No use of statements extracted under torture

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

10. Provide reparation

Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.