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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY
FORM OF DETENTION OR IMPRISONMENT, TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. P. Kooijmans, pursuant to
Commission on Human Rights resolution 1989/33

Addendum

Visit by the Special Rapporteur to Zaire

Introduction

1. Mr. Peter Kooijmans, Special Rapporteur visited Zaire from 13 to 20 January 1990, in response to an invitation extended to him on 15 August 1989 by the Zairian Government. The visit was prepared and organized by the Department of Rights and Freedoms of the Citizen (Département des Droits et Libertés du Citoyen - DDLIC). During his visit, the Special Rapporteur held discussions with the Vice-Premier Commissaire d'Etat et Commissaire d'Etat aux Droits et Libertés du Citoyen, Maître Nimy Mayidika Ngimbi, and several high officials of the Department, including the Secrétaire d'Etat aux Droits et Libertés du Citoyen, Maître Sabi Ngampoub Mubiem, and the Conseiller-Directeur du Contentieux des Relations Internationales, Professor Lwamba Kutansi. He also held discussions with the Commissaire d'Etat à la Sécurité du Territoire, General Singa Boyende Mosambay, the Président du Conseil Judiciaire, Kamanda wa Kamanda, accompanied by the Premier Président de la Cour Suprême de Justice, Balanda Mikuim Leliel, the Public Prosecutor (Procureur général de la République), Mongulu T'Apangan, the Chief Military Prosecutor (Auditeur général des Forces Armées Zairoises), General Fariala and the Bâtonnier National, Maître Kisimba Ngoy Ndalewe. The Special Rapporteur further held discussions with several high officials of the Secrétariat d'Etat à la Défense Nationale, headed by the Principal Military Advisor, Colonel Lukama, the Président Général de la Garde Civile, Elite de Paix Kpama Baramoto, accompanied by the Secretary-General of the force, Ordonnateur principal de Paix Ngimbi Bitshiana, the Chef d'Etat-Major du Service d'Action et de Renseignements Militaires (SARM), General Mahele Bokunga, accompanied by his Chef de Cabinet, the Administrateur Général of the Agence Nationale de Documentation (AND), Citoyen Mgbanda, accompanied by three high officials of his service, and with high officials of the Gendarmerie Nationale, headed by the Chef d'Etat-Major Adjoint of the force.

2. The Special Rapporteur visited the Makala Central Prison, where he was briefed by the director and members of his staff. He visited the clinic and several wards, and talked privately with a number of inmates. The Special Rapporteur also visited detention places of the Agence Nationale de Documentation (AND) and the Service d'Action et de Renseignements Militaires (SARM) and talked privately to persons being held there.

3. Finally, the Special Rapporteur visited two local offices of the Département des Droits et Libertés du Citoyen (DDLIC), situated in densely populated neighbourhoods of Kinshasa, and was briefed by the directors about their activity.

4. It may be noted that both prior to and during the visit, the Special Rapporteur received information from and held discussions with various non-governmental sources.

5. The Special Rapporteur wishes to express his sincere appreciation and gratitude to the Zairian Government and in particular the DDLIC for the preparation of his visit. The Special Rapporteur is most grateful to Professor Lwamba Katansi who kindly accompanied him, and to Mr. Bakulu of the Protocol Section, who greatly facilitated his contacts with the authorities.

I. HISTORICAL BACKGROUND AND LEGAL AND INSTITUTIONAL FRAMEWORK

6. The first 5 years of Zaire's 30 years' existence as an independent State were characterized by fierce internal war in which at least half a million people reportedly lost their lives. Since President Mobutu Sese Seko came to power in 1965, the internal situation has gradually stabilized. In the next two decades, several upsurges of violent internal unrest occurred but, according to governmental and non-governmental sources, at present there is no activity by any armed opposition. No part of the country is under a state of emergency. Only in one region (North Kivu), was part of the territory along the border with Uganda declared an "operational zone" during the civil war in that country, and is still classified as such. In an operational zone, an Operational War Council (Conseil de guerre opérationnel) is set up, as a special tribunal, to try military personnel on charges linked to activities affecting the State security. In an operational zone, however, the normal law is applicable and the security forces have no more extensive powers than in the rest of the country.

7. During the first half of the last decade, serious violations of human rights, including torture, were alleged to occur in the country. In 1985, the Commission on Human Rights decided to consider the human rights situation in Zaire, in conformity with the procedure provided for in Economic and Social Council resolution 1503 (XLVIII). Since 1987, the number of human rights violations in Zaire steadily decreased. In 1986, the Government decided to establish a separate ministry, the Department of the Rights and Freedoms of the Citizen (Département des Droits et Libertés du Citoyen - DDLC), headed by Vice-Prime Minister (Vice-Premier Commissaire d'Etat), Maître Nimy Mayidika Ngimbi. In 1989, the Commission on Human Rights decided to discontinue its consideration of the human rights situation in Zaire under Economic and Social Council resolution 1503 (XLVIII).

8. Zaire is party to a great number of human rights treaties and conventions. It is a party to the International Covenant on Economic, Social and Cultural Rights as of 1 November 1976 and has also recognized, as of 1 February 1977 the right of individual complaint under the Optional Protocol to the International Covenant on Civil and Political Rights. In 1987, Zaire became a party to the African Charter on Human and Peoples Rights and on 1 February 1989 it reportedly decided to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, according to information received by the Special Rapporteur at the Centre for Human Rights in Geneva, Zaire has not yet deposited its protocol of ratification with the Secretary-General of the United Nations in New York.

9. In 1989, the Special Rapporteur received no allegations that torture actually had been practised, although in two cases an urgent appeal was made to the Government of Zaire to respect the physical and mental integrity of a number of people who had been arrested (E/CN.4/1990/17, paras. 170-171). Effective measures had apparently been taken to eliminate torture and serious maltreatment. The Special Rapporteur highly appreciates the opportunity given to him by the Government of Zaire to evaluate these measures and to have consultations with the authorities about steps which may be taken eventually to strengthen the rule of law in the country.

10. Torture and inhuman and degrading treatment is explicitly and absolutely prohibited by the Constitution (art. 13). In the Penal Code, torture is not mentioned as a separate crime but is considered to be an act which is harmful to a person's physical integrity and is punishable as such (art. 63). If torture or severe maltreatment accompany other illegal acts, like abduction or arbitrary detention, it is considered to be an aggravating element leading to a more severe penalty.

11. According to Zairian law, individuals suspected of having committed a crime punishable by more than six month's imprisonment may be arrested by all members of the various law enforcement forces who have the status of Officier de Police Judiciaire (OPJ) (art. 72 of the Ordonnance 78-289 relative à l'exercice des attributions d'officier et agent de police judiciaire près les juridictions de droit commun). Junior members of these forces who do not have the status of OPJ are called Agents de Police Judiciaire (APJ); they may apprehend suspects, but the formal arrest has to be made by an OPJ. After a maximum of 48 hours following the arrest, during which an initial investigation may be held, suspects must either be released or referred to a magistrate belonging to the office of the Public Prosecutor who may order their continued detention (art. 73, para. 1, and art. 139 of Ordinance 78-289). Such magistrates (who have the status of Inspecteur de Police Judiciaire) must, if further detention is deemed necessary, refer the detainee within 5 days to a judge who may remand him in custody for a period of 15 days. Remand orders may be renewed upon request from the magistrate concerned for further periods of 30 days (arts. 29, 30 and 31 of the Code of Criminal Procedure). The detainee has to be presented to the judge in persona and has the right to be assisted by legal counsel. According to other legal provisions an arrested person has the right to ask for an examination by a doctor immediately after his arrest and the right to have his relatives informed of his arrest.

12. There are a number of law enforcement forces which are authorized to make arrest. A distinction can be made between law enforcement forces with a general mandate and agencies with a specific mandate. The most important of these law enforcement forces are (a) the Gendarmerie Nationale; (b) the Garde Civile; (c) the Agence Nationale de Documentation; (d) the Agence Nationale de l'Immigration and (e) the Service d'Action et de Renseignements Militaires.

Gendarmerie Nationale

13. The Gendarmerie is a branch of the armed forces and was established in 1972 when two other security forces still dating from the colonial period were merged. It has a general mandate for the control of law and order and is represented throughout the country; it is the main police force in the country. Two units of the Gendarmerie have a more specific task: a mobile unit which can intervene in case of civil unrest and a unit which is entrusted with the gathering of intelligence (S-2).

The Garde Civile.

14. The Garde Civile was created in 1984 by the President of the Republic and is directly responsible to him. It does not belong to the armed forces and, like the Gendarmerie Nationale, has a general mandate. It was created in order to assist the Gendarmerie in carrying out its general mandate for the control of law and order within the country. There is, however, no

hierarchical link between the two forces. Apart from its general mandate, the Garde Civile has also some specific tasks, like the investigation of fraud, arms-trafficking, etc. In view of these specific tasks, the Garde Civile, which is still in the process of formation, is now mainly present in the border-areas, although it will gradually be represented throughout the country.

Agence Nationale de Documentation

15. The Agence Nationale de Documentation (AND) was created in November 1983. Its mandate is concerned with matters of national security and it has two branches: the Service de Documentation Intérieure (SDI) and the Service de Documentation Extérieure (SDE). For the purpose of the Special Rapporteur's visit, only the SDI is of relevance. Its main function is the prevention of any act that may harm the State security. There are AND offices in various parts of the country; AND agents are authorized to detain persons who are considered harmful to the national security. It was explicitly stated to the Special Rapporteur that AND only arrests people who have committed a criminal act as described in the Penal Code and never deprives persons of their liberty purely as a preventive measure.

Agence Nationale de l'Immigration

16. This agency, which has roughly the same task as an immigration office, carries out its function in the border areas.

Service d'Action et de Renseignements Militaires

17. The Service d'Action et de Renseignements Militaires (SARM) was created in November 1986 as the successor of another military intelligence agency which was disbanded because of notorious abuses of power by its chief and its members. According to information received by the Special Rapporteur, 12 officers were brought to trial and severely punished and 380 other officers were dismissed. The new service had to recruit and train new personnel. Its main task is to guarantee the security of the armed forces. It is authorized to arrest not only members of the armed forces but also civilians who have committed acts against the security of the army, like incitement to mutiny, the theft of arms belonging to the military etc. It has no units in the country. Being a military intelligence agency, its officers are placed within the various staff units of the armed forces.

18. The existence of a variety of law enforcement forces and security agencies leads to a rather complicated pattern of competence and responsibilities. Investigations are usually carried out by the competent authority even if the arrest has been made by another agency. If the Gendarmerie or the Garde Civile arrest a person who is found to be in possession of weapons, they will transfer the suspect to SARM if the weapons turn out to be weapons used by the army. If this is not so, the case will be investigated by the agency which arrested the person (or, eventually, by AND).

19. It was explicitly stated to the Special Rapporteur that each and every agency is bound in exactly the same way by the legal provisions regarding arrest and detention of persons. That means that in all cases the 48-hour rule and the 5-day term must be respected. If an arrest has been made in violation of the rules provided by the law, this is punishable under article 180 of the Penal Code by imprisonment of up to one year.

20. If a suspect belongs to the military, exactly the same rules apply, except that in such a case the role of the office of the Public Prosecutor is exercised by the Auditorat Militaire (office of the Chief Military Prosecutor) (arts. 198-201 of the Code de Justice militaire). Apart from SARM, the armed forces have their own military police, but since the Gendarmerie Nationale is part of the armed forces, persons belonging to the military can also be arrested by the Gendarmerie.

21. All law enforcement agencies have their own places of detention generally referred to as cachots. In the case of common crimes, the suspect is usually referred to a general prison after a relatively short period and kept there awaiting trial. In cases, however, where a person is suspected of having committed a crime against the security of the State or the armed forces, he may be kept for a considerable time in the cachot of the competent agency pending the completion of the inquiry in view of the sensitive character of the matter. In highly delicate cases, contacts with a lawyer are only permitted after the inquiry is finished, although the lawyer can discuss the case with the agency itself.

22. The activities of the various security agencies are co-ordinated within the Conseil National de Sécurité (CNS), a body which is responsible to the recently established (1989) Commissariat d'Etat à la Sécurité du Territoire et aux Anciens Combattants (Department of Internal Security).

23. The judicial system is co-ordinated by the Conseil Judiciaire, in which the judiciary as well as the Office of the Public Prosecutor and the Chief Military Prosecutor are represented. Its President has a function which is comparable to that of Minister of Justice.

24. Under the authority of the Conseil Judiciaire, all places of detention and prisons have to be visited every fortnight by magistrates of the Office of the Public Prosecutor. Persons who are found to be irregularly detained have to be released immediately.

25. When the investigation is finalized, the suspect is brought to trial. If he is charged with a crime against the security of the State, he will be tried by the Cour de Sûreté de l'Etat (Court of National Security). While according to the law no appeal is possible from the decisions of this court, the Special Rapporteur was informed that a person convicted by the Cour de Sûreté de l'Etat may go into cassation of a sentence with the Supreme Court on the grounds of violation of the law.

26. Although the legal rules are clear and in general must be deemed to be in conformity with international standards, in actual practice they were not complied with. The fact that there were many allegations of illegal and arbitrary arrests, torture and serious maltreatment (which in some cases were found to be correct, leading, inter alia, to the disbanding of the military intelligence agency) led the authorities to decide to establish the Department of Rights and Freedoms of the Citizen (Département des Droits et Libertés du Citoyen - DDLC). The Department, created by ordinance 86/268 of 31 October 1986, started its work in the course of 1987. According to the Head of the Department, Vice-Premier Commissaire d'Etat Maître Nimy Mayidika Ngimbi, DDLC's functions are threefold: informing citizens about their rights; orienting and guiding citizens as to how to deal with the various

organs of the State such as those responsible for justice, security and law and order; and providing remedies when citizens are victims of a violation of their rights.

27. In carrying out its first function, DDLC has published a vade-mecum on human rights (which is to be followed by two other volumes) in the five main languages spoken in Zaire. It has recently also started refresher courses for law enforcement personnel (in particular OPJs) on detention procedures and the treatment of detainees. A commission of co-ordination (commission de concertation) has been set up, in which, *inter alia*, all the law enforcement agencies are represented and which meets on a monthly basis. Agreements (conventions de concertation) have been concluded with a number of governmental organs, including the law enforcement and security agencies, in order to guarantee DDLC the possibility to carry out its mandate smoothly.

28. One of the most recent agreements has been concluded with the newly established Department of Internal Security which is responsible for the most important security agencies. In this agreement, it was stressed that persons may only be arrested in conformity with the law and that no one under any circumstances may be subjected to torture or inhuman or degrading treatment. Under the agreement, DDLC is entitled to monitor compliance with the rules on a monthly basis.

29. DDLC is specifically entitled to visit all places of detention. If there are persons detained who are not duly registered, DDLC can order their immediate release. Visits are either made on a regular, pre-announced basis or without warning. If during a visit a detainee is found to have been tortured or maltreated, DDLC can, under a recently promulgated ordinance (23 September 1989) start a procedure against the perpetrator.

30. DDLC has set up 58 local offices, 26 in Kinshasa and 32 in other areas throughout the country, where individuals can file complaints about violations of their rights. Such complaints are only admissible if all legal and administrative remedies have been exhausted. By the end of 1989, 5,200 complaints had been taken into consideration. Complaints may refer to violations of economic, social and cultural rights as well as of civil and political rights. Percentage-wise, complaints about violations of property rights and employment contracts score highest, followed by complaints about illegal or arbitrary arrest and detention.

31. Since a number of allegations brought to the Special Rapporteur's attention referred to situations where a person had been deprived of his liberty without being charged or brought to trial, the Special Rapporteur specifically asked whether administrative detention was practised and if so, whether this had a basis in the law. From the various replies received, it became clear that there used to be a legal basis in Décret-loi No. 1/61 of 25 February 1961 and that it was regularly applied during the period of civil strife between 1960 and 1965, together with other administrative measures such as internal banishment and house-arrest, but that this legal instrument was now considered to be obsolete. On the other hand, the Minister for Internal Security (Commissaire d'Etat à la Sécurité du Territoire) told the Special Rapporteur that administrative measures, including detention and internal banishment, were sometimes taken on his own authority. These measures were of a temporary nature and the President of the Judicial Council had to be informed. It did not become clear, however, what was the legal basis for this authority other than Décret-loi No. 1/1961.

32. The Special Rapporteur was also informed on that occasion that it may happen that if a person was suspected of offences against State security, the 48-hour rule was not always complied with. In such cases, a report had to be presented to the Minister who decided whether the suspect should be kept for a longer period. Also in such cases, the President of the Judicial Council was informed and through him the office of the Public Prosecutor. There again it remained unclear what the legal basis for this procedure was; obviously, it was not in conformity with the normal rules since the office of the Public Prosecutor was not in a position to evaluate the grounds for the arrest; it also remained unclear whether the suspect had to be presented to a judge within five days after the arrest in persona. On the other hand, the agreement between DDLC and the Department for Internal Security explicitly states that the legal terms for detention must be respected and that the arrested person must be presented to the judge who has to decide on the legality of his detention.

II. EVALUATION AND RECOMMENDATIONS

33. As stated before, the human rights situation in Zaire has considerably improved during the recent years. The Government has taken some meaningful steps to strengthen the existing mechanisms guaranteeing the respect of human rights by introducing new ones. The creation of a separate Department of Rights and Freedoms of the Citizen is, in itself, quite unique and has undoubtedly contributed to a greater awareness of the importance of human rights both with the population and with the authorities. The Department has only been operational for two and a half years and to a certain extent is still in the formation period; it is therefore too early to give a conclusive evaluation of its efficiency. Informing the people about their rights by the dissemination of material which is understandable to everyone is one of the most important requisites for the rule of law. The President of the Bar Association told the Special Rapporteur that although detained persons were entitled to legal assistance as from the moment of their arrest, in actual practice, and due to lack of information, people hardly ever resorted to a lawyer until the moment their case came before a court. Nor was it generally known that a person who did not have the necessary means to employ a lawyer could address the judge or the President of the Bar Association who then had to ask the Bar to designate a lawyer.

34. It is equally important to inform the law-enforcing authorities about the detainee's rights and to instruct them to respect the detainee's inherent dignity. The introduction of training courses for the personnel of the law-enforcement forces is, therefore, of great significance. Such courses should not only be focused on mentality training but also on the teaching of how to conduct interrogations in a manner which recognizes and respects the detainee's rights and dignity.

35. The competence of the Department of Rights and Freedoms of the Citizen to visit and inspect all places of detention concurrently with the legally prescribed periodic visits by magistrates of the Public Prosecutor's office may be an effective preventive measure against illegal arrests and detention. These, in turn, may - and in fact often did in the past - lead to torture and maltreatment. The Special Rapporteur was informed that in all cases when a detainee was not duly registered with the Public Prosecutor's office, the Department could have him released immediately. He was also informed that in all other cases where the legal provisions had seemingly not been complied

with, it was left to the Public Prosecutor's office to decide on the lawfulness of the detention. Moreover, the Department itself could, on its own initiative, table such cases during the meetings with the Judicial Council which were provided for on a monthly basis in the protocol of co-ordination concluded with that body.

36. In view of the fact that the number of alleged cases of illegal or arbitrary arrest or detention is still relatively high, the Special Rapporteur feels that the Public Prosecutor's office should thoroughly scrutinize the legality of all arrests, not only at the moment when they are registered (after the 48-hour term), but also when requests for the renewal of a remand order are made.

37. Of equal importance for the strict compliance with the legal rules is the presentation of the detainee in persona to the competent judge within five days after his arrest since this enables the detainee to inform the judge about the circumstances under which he was arrested and to provide him with all other relevant information. There again, the Special Rapporteur feels that the prevalent rules should be applied more strictly. It has come to his knowledge that in numerous cases detainees were not presented to a judge within the period prescribed by the law, or were not presented to a judge at all, although a remand order was issued.

38. Useful as the competences of the Department are, in essence they are corrective measures which - apart from cases of manifestly illegal detention - would not have been necessary if the Public Prosecutor's office and the judiciary had carried out their mandate satisfactorily.

39. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights 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 that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. It has not become clear to the Special Rapporteur whether the Code of Criminal Procedure explicitly gives a detained person such right to take, on his own initiative or through his lawyer, such proceedings before a court. In view of the fact that the report submitted by the Government of Zaire under article 40 of the International Covenant on Civil and Political Rights makes no mention of such legal provisions (while being very elaborate on other issues), the Special Rapporteur feels entitled to assume that such a provision does not exist. An amendment to the Code of Criminal Procedure to bring it in conformity with article 9, paragraph 4, of the International Covenant on Civil and Political Rights would be an important step to suppress and prevent illegal or arbitrary arrest or detention.

40. All law-enforcement forces have their own places of detention (cachots). As stated before, in the case of common crimes, the suspect is usually transferred to a general prison relatively soon after his arrest. Persons, however, who are suspected of having committed offences against the security of the State or of the armed forces are usually kept in the detention place of the security agency concerned until the investigation has been completed. The Administrateur-Général of Agence Nationale de Documentation told the Special Rapporteur that in such cases it was impossible to transfer the suspect to the place where accused persons awaiting trial were normally kept in view of the fact that such places of detention were relatively open and the régime for

visitors was relatively liberal. In sensitive cases, therefore, the suspect had to be detained at the agency's detention place until the investigation was finalized. The magistrates of the Public Prosecutor's office were, nevertheless, informed and once the inquiry was finished, the suspect was transferred to the Judiciary.

41. In general, the Special Rapporteur feels that it is rather undesirable if suspects are held in places run by the agency which is at the same time the investigating authority. Such a situation may easily lead to undue influence or even duress since living conditions and conditions of detention may be made subservient to the course of the investigation.

42. The Special Rapporteur feels that it would be useful to establish central detention facilities in the main cities for persons suspected of having committed security offences and who would consequently be tried by the Cour de Sûreté de l'Etat. Such detention centres should be placed under the supervision of the Judicial Council just like ordinary prisons. The various detention places of the law-enforcement and security agencies should only be used as a provisional lock-up until the arrest has been legalized. Evidence obtained from the suspect outside such central detention facilities and not confirmed by him during his stay there should not be admitted in court.

43. The Special Rapporteur was informed that a number of secret places of detention which had not been registered with the President of the Judicial Council, as required by the law, had recently been closed, and that those who had run these places of detention would be prosecuted. The Special Rapporteur is of the opinion that severe punishment of persons who exploit illegal places of detention is a highly effective preventive measure. Evidence collected in such places should not be accepted as legally obtained evidence.

44. During his mission, the Special Rapporteur visited the Central Prison of Kinshasa (Makala Prison) and two detention places (cachots) of the Service d'Action et de Renseignements Militaires and of the Agence Nationale de Documentation respectively. He was able to talk to a number of detainees in private. None of them claimed to have been subjected to torture or maltreatment in the places where they were presently kept, although a number of persons who were serving prison sentences in Makala Prison after having been tried by the Cour de Sûreté de l'Etat said they had been tortured during their preventive detention in 1984-85. The two persons kept in the AND detention place were both foreigners awaiting a decision to expel or extradite them. One of them had been kept there for about eight months, the other for about two months. Although according to the papers shown, they had been registered with the Public Prosecutor's office, they said they had never been presented to a judge. The eight persons kept in the SARM detention place had all been arrested or kept in custody (four Angolan soldiers awaiting a decision on their return to Angola) quite recently.

45. Those parts of Makala Prison shown to the Special Rapporteur were clean and well-kept. Living conditions seemed to be acceptable and medical care to be adequate. There is one pavilion for female detainees which is not separated from the other pavilions. Accused persons were not separated from convicted persons, as required by article 10, paragraph 2 (a), of the International Covenant on Civil and Political Rights. They, however, are not required to work whereas for convicted prisoners work is obligatory. According to the prison authorities, juveniles were kept in other detention places. The Special Rapporteur feels that the establishment of a separate detention centre

for accused persons, part of which could be reserved, as a separate unit, for persons suspected of having committed security-related offences, as recommended in paragraph 42, above, would be a commendable measure.

46. As regards the question of administrative detention, the Special Rapporteur feels that the Government should clarify its position on this issue. As long as it is practised, the conditions under which a person may be temporarily detained should be laid down and should be subjected to judicial control by the Supreme Court.

47. The fact that the Department of Rights and Freedoms of the Citizen is authorized to receive complaints from citizens who claim that their fundamental rights have been violated is another indication that meaningful steps have been taken to strengthen the rule of law in Zaire. The Special Rapporteur visited two of the Department's local offices in Kinshasa and talked with the main delegates of these offices. The main delegate is a person who is chosen from people who have a good reputation and authority in society and is assisted by two lawyers and an administrative staff. The local offices are easily accessible to the public. The Special Rapporteur was impressed by the commitment of the persons he met. He was informed that sometimes the authorities to whom the complaint referred were unco-operative and were obviously not yet used to the new developments, he was also informed that members of some of the law-enforcement forces still tended to be rather indifferent to the rights of the citizens who often fell victims to harassment. It could, therefore, be recommendable to strengthen the position of the local offices in order to enable them to take corrective measures on the spot.

48. The Special Rapporteur could not avoid noting that the resources of the local offices were minimal. No means of transport was available and there was no telephone. Under such circumstances, work was extremely difficult and was certainly less effective than if it was done in more adequate conditions. In view of the priority given to human rights issues by the Government, it may be recommended that the local offices be provided with appropriate equipment in order to enable them to carry out satisfactorily their highly important task.

49. In conclusion, it can be said that until recent years, the legal and institutional framework in principle guaranteed the respect for human rights quite satisfactorily, but that in actual practice the system did not work properly. The result was that in a considerable number of cases even the most basic human rights, like the right to physical and mental integrity, were violated. The creation of DDLC can be seen as a remarkably bold effort to revitalize the long-neglected system of checks and balances. The Zairian Government must be commended since it decided to approach the question in a comprehensive way, reflected in the Department's work programme: consciousness-building, training and formation, co-ordination between the various Government organs and redress. It is precisely this comprehensive character which makes the creation of the DDLC a unique experiment. As stated earlier, it is still too early to evaluate the outcome of the experiment. But it can only be successful if all branches of Government are fully prepared to strictly comply with the rules.

50. It has to be recognized that the authorities are hampered in carrying out their programme by the fact that the existing infrastructure is badly deficient and as a developing country Zaire will face tremendous difficulties in improving this infrastructure. As the Special Rapporteur said in previous

reports: everyone should be aware of the fact that respect for civil and political rights depends not only on political will - indispensable as that may be - but often also requires costly investments. It is in particular with regard to this second element that international solidarity can play a decisive role.

51. The phenomenon of torture has considerably decreased in Zaire. Satisfactory as this may be, no government should be content with that statement of fact. It is as important to strengthen the structure which may prevent its recurrence. It is a well-known fact that illegal or arbitrary arrests and detentions may easily lead to situations where torture is likely to be practised. It is therefore only logical that the DDLC has made the extinction of such illegal arrests one of its main objectives. The following recommendations should be seen in that context:

(a) The procedure for the ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be completed at the earliest possible date;

(b) The training of law-enforcement personnel on human rights issues should get high priority;

(c) The provisions of the law with regard to arrest or deprivation of liberty should be strictly complied with. The Public Prosecutor's office should in each case carefully scrutinize the conditions under which the arrest is made and the grounds on which it is made. No person should be remanded in custody until he is seen by the competent judge;

(d) As long as administrative detention is still practised, it should only be applied under independent judicial control by the Supreme Court;

(e) The Code of Criminal Procedure should be amended to give a detained person the right to bring proceedings before a court in order to have the lawfulness of his detention decided upon without delay;

(f) All officials who have not complied with the legal provisions for arrest or detention should be either disciplined or prosecuted, without delay; if they have abused their authority by seriously violating basic human rights, including torture, they should be severely punished;

(g) Special detention centres under the supervision of the Judicial Council should be established for people who are accused of having committed crimes against the security of the State or the armed forces;

(h) Only evidence obtained under interrogation in such detention centres should be admitted in court;

(i) All possible efforts should be made to provide the local offices of the DDLC with the equipment necessary for the effective exercise of their tasks;

(j) The competences of the officials of the DDLC to take corrective measures in cases of abuse of authority by law-enforcement personnel against individuals should be strengthened.