

1-8-1990

Constructing the Authoritarian State: Zaire

Peter Rosenblum

Follow this and additional works at: <http://scholar.valpo.edu/twls>

Recommended Citation

Rosenblum, Peter (1990) "Constructing the Authoritarian State: Zaire," *Third World Legal Studies*: Vol. 9, Article 8.
Available at: <http://scholar.valpo.edu/twls/vol9/iss1/8>

This Article is brought to you for free and open access by the Valparaíso University Law School at ValpoScholar. It has been accepted for inclusion in Third World Legal Studies by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.

CONSTRUCTING THE AUTHORITARIAN STATE: ZAIRE

Peter Rosenblum*

Mobutu Sese Seko has ruled Zaire since 1965. His quarter century in power has been characterized by corruption, economic decay and violations of basic human rights. That is not, in itself, exceptional. Other authoritarian states in Africa and elsewhere share many of the same qualities in varying degrees. What is exceptional, however, is the scale. Corruption is legendary; economic decay is all pervasive; degradation of human rights is palpable in every sector of the society.

With democratic changes coming to many parts of the world, the Mobutu government has been under sustained attack since the beginning of 1990. Nevertheless, as this article is written, it continues to fend off the final attack.¹ Even its demise is unlikely to end the authoritarian structures which it put into place.

There are many lenses through which to view the Mobutu phenomenon: product of the cold war, creature of American policy in southern Africa, or the result of a tortured colonial history and a botched decolonization. All of these are important aspects of a story that cannot, however, ignore the internal mechanisms by which President Mobutu has maintained power and created his own brand of authoritarianism. His longevity, itself, is now the exception.

* Lawyers Committee for Human Rights, New York.

The research for this paper was undertaken in connection with a project for the Lawyers Committee for Human Rights. All interviews were conducted by the author together with Makau wa Mutua, then director of the Africa Project at the Lawyers Committee and co-author of the Lawyers Committee's 1990 study of Human Rights in Zaire, *Zaire: Repression as Policy*. The views expressed herein are the author's but they emerge from more than 2 years of collaboration with Makauwa Mutua to whom thanks are due.

1. During the so-called "Popular Consultation" that took place between January and March, 1990, thousands of Zairians presented their startlingly frank views of the President's rule. On April 24, 1990, President Mobutu announced an end to his one-man rule. He called for the revitalization of the three traditional branches of government and announced an immanent return to some form of multi-party rule. Soon afterwards, he also spoke of putting a "human face" on the security forces. Nevertheless, while opposition has mounted and opposition views are expressed openly, Mobutu has not been willing to cede real power or to submit his rule to a contested election.

In the course of more than twenty-five years, President Mobutu has effectively consolidated political power, eliminating most serious individual and political opposition. The system developed quickly from the moment that he took power. He eliminated existing political parties and created his own party, the Popular Movement for the Revolution (MPR). Through successive Constitutional revisions between 1967 and 1974, the MPR became both the sole legal party and the sole "institution" permitted in the country. Not only was every Zairian a member from birth, each Zairian had the constitutional duty to work for its goals. Through the MPR, whose ideology — "Mobutism" — was no more than the "ideas, thoughts and actions" of President Mobutu, the President exercised constitutional authority over every aspect of Zairian political and social life.

The President's success has been due, in part, to his mastery of political intrigue and manipulation. But, in this, as in all elements of domestic affairs, violent repression has never been far below the surface. The enforcers of Mobutism are the army and the overlapping network of security forces, composed of police, presidential guard and intelligence services. In the process of consolidating power in Mobutu's Zaire, the security forces in particular have played a prominent role and have achieved unassailable political power. They are unconstrained by their own mandates, the law, and even the declared policy of the government. In effect, they constitute a shadow government, to which both the appointed government and the population are subject.

This paper is about the security forces which grew with Mobutu's state and played a fundamental role in his consolidation of power between 1965 and 1990. It is a case history on the theme of creating an authoritarian state. It is indirectly about the prospects for sustained democratic change in Zaire, so long as the security forces remain strong and resistant to change. Part one describes the structure and operations of the security forces; part two addresses the judicial role, with particular emphasis on repeated "reforms," purportedly intended to rein in the security force and make them accountable for their violations of law and human rights.

Part I Security Forces in the Second Republic

It was as an officer in the army that Mobutu twice took power in Zaire, first in 1960 and then definitively in 1965. After the 1965 coup, the President depended on the army and frequently appointed ministers from among army colleagues. Subsequently, however, he ended his reliance on the army and came to treat the officers to the same skepticism he

accorded to political adversaries.² While favoring selected units, he acted decisively to prevent any officer or unit from consolidating power. The army was physically, and figuratively, banished to the fringes.

President Mobutu instead began to rely on favored army units and specialized security forces, organized within the National Security Council over which he presided. The Council is composed of his Security Advisor and the heads of the major security organs. The Security Advisor has typically been one of the most powerful individuals in the state, involved not only in a wide variety of questions of internal security, but in other matters as well, even foreign relations.³

The four premier security organs represented in the Council and present throughout most of the country are the *Gendarmerie Nationale*, the *Garde Civile*, the *Service National d'Intelligence et de Protection* (SNIP) and the *Service d'Action et de Renseignements Militaires* (SARM). The first two are police forces with general mandates, while the latter two are "specialized services" whose particular mission is to protect the state against subversive activities.

These forces are the primary focus of this paper, but they are far from being the only security forces of importance. One of the most important security forces, for purposes of protecting the system built by the President, is the Special Presidential Division (DSP), the President's personal defense force. It is reputedly the best trained, the best armed and the best paid of the forces. It is also reputed to be composed entirely of foreigners and men from the President's ethnic group.

There are also a number of specialized divisions of the Zairian Armed Forces (FAZ) as well as specialized security forces attached to certain state enterprises, such as *Gecamine*. Also, during the years of the Second Republic, members of CADER, the security section of the MPR youth movement, figured prominently.

What has characterized each of these forces is its independence with respect to other forces and its direct dependence on the President. These

2. A number were executed in connection with a reported coup attempt. Others, like General Mukobo Mudende, originally from Bandundu, were banished at the point that their credibility at home and abroad became a threat.

3. For most of the Second Republic, the position was filled by Seti Yale, one of the three so-called "White Ngwandi" prominent in state affairs throughout President Mobutu's rule. (The other two are Kengo wa Dondo, *see infra* note 27, who rose to prominence as the Procureur Generale and Justice Minister in the 1970s before serving as Prime Minister for most of the 1980s, and Bemba Saolona, *see infra* note 49, president of Scibe-Zaire Group and the dominant businessman in the country.) His successor, Nkema Liloo, grew to nearly equal prominence before he was replaced by the human rights minister, Nimy Mayidika Ngimbi, in May 1990.

have been important elements in President Mobutu's version of "divide and rule." One high-level official of the MPR described the multitude of security forces as behaving like the jealous wives of a polygamous man.⁴ Each force, he said, competes to identify threats to security that only it can solve. Each force also maintains its own detention facilities and enjoys a high degree of independence in other areas as well. It is this independence and the means at their disposal which the security forces use as a source of profit and power for themselves and the state.

The Police — The Gendarmerie Nationale and Garde Civile

During the colonial and early independence period, the police function was fulfilled primarily by two separate, but overlapping forces. One was a branch of the armed forces known after 1959 as the "Gendarmes." The other was the territorial police, formed in 1926 and responsible to local provincial authorities. A smaller, third force, the "Chief's Police," functioned in rural areas. This third force was, however, largely untrained and unarmed.⁵

The Gendarmes were one of the two arms of the colonial army, the *Force Publique*.⁶ The other arm, the regular military forces or *troupes campées*, played an important role in putting down domestic disturbances,⁷ although they were trained primarily to combat foreign invasions. The Gendarmes, in contrast, were established to fulfill a permanent constabulary function.

Relations were tense between the two police organs and were marked by frequent friction. The Gendarmes were intended to be "national" in composition. Belgian law required that "at least four tribes . . . be represented in each platoon."⁸ While they were to be "at the disposition of the territorial authorities," they remained under the effective control of military authorities.⁹ The military authorities were only permitted to delegate their authority to the territorial authorities under "exceptional" circumstances.¹⁰ The territorial police, in contrast, were a part of the local

4. Interview with Professor Vunduawe te Pemako, in Kinshasa (Aug. 1989).

5. ZAIRE: A COUNTRY STUDY 269 (I. Kaplan ed., 1979) [hereinafter COUNTRY STUDY].

6. The Force Public was rebaptized the *Armée Nationale Congolaise* soon after independence, and was subsequently renamed the *Force Armée Zairoise* (FAZ).

7. C. YOUNG, POLITICS IN THE CONGO 462 (1965).

8. *Id.* at 442.

9. Ordinance 081/130, Mesures administratives collectives; Mission de Police de la Force Publique, art. 1 (Mar. 14, 1958).

10. *Id.*

population, recruited locally by the territorial authorities to fulfill the routine functions of maintaining order.¹¹ They were poorly armed, but they more reliably complied with local administrators' orders. At independence, there were approximately twice as many territorial police as Gendarmes.¹²

The command structure of the *Force Publique* was entirely Belgian throughout the colonial period. The territorial police as well as the Gendarmes were commanded and trained by Belgian officers until independence. While the soldiers of the regular forces rebelled against their Belgian officers soon after independence, the rebellion did not extend to the Gendarmes. Nevertheless, practically all of the experienced Belgian officers departed soon after independence. UN personnel and Nigerian police detachments attempted to fill some of the gaps in the army. Some Belgians returned later, and the United States offered assistance.

In the turmoil that followed independence, the number of provinces increased. With it, provincial leaders increased the number of policemen and police bureaucracies. Young finds that: "Provincial leaders were quick to appreciate the political importance of having an armed force at their disposition."¹³ Massive recruitment of new police units were carried out during the early independence period.

When President Mobutu took control in 1965, one of his top priorities was to gain control of the police and military apparatus. He first reduced the number of provinces, eliminating bureaucratic duplication. In 1966, he nationalized the police forces and placed the new National Police within the Interior Ministry. The number of policemen was set at 20,000 in 1970. Their purpose was to perform all general police functions, including "prevention and detection of crime, the apprehension and prosecution of offenders, the maintenance of public order and the protection of citizens and property."¹⁴ While they were commanded by an Inspector General (the equivalent of a Brigadier General under Zairian law), local units remained responsible to regional authorities.

In 1972, President Mobutu eliminated local authority and accountability entirely and created the basic structure which is still in place. At that time, he created the *Gendarmerie Nationale* which took away civilian

11. See Ordinance, Des Grades - Des Formes de l'Engagement, art. 1 (Aug. 13, 1956).

12. COUNTRY STUDY, *supra* note 5, at 270. Six thousand territorial police as opposed to 3,000 gendarmes.

13. YOUNG, *supra* note 7, at 465.

14. COUNTRY STUDY, *supra* note 5, at 271.

control and brought the police back into the national military.¹⁵ One major result of the changes was to deprive local leaders of control over police. Where previously the political leader at the village or town level could order the police to act directly, he now had to send a request to the local commander, who did not always respond promptly, if at all.¹⁶ Disgruntled political leaders then turned to other security forces, such as CADER, the security force of the MPR youth wing.¹⁷ The *Gendarmerie Nationale* remains the premier national police force. However, within the *Gendarmerie*, special attention has been given to units like the special investigative arm, the *Brigade Spéciale de Recherches et de Surveillance* (BSRS).

In 1984, President Mobutu created a new force, the *Garde Civile*, intended as an elite security force to patrol borders and control smuggling. One reason given for forming the *Garde Civile* was to replace the *Gendarmerie* which had gained a reputation for corruption and incompetence. Another reason was the German government's willingness to provide money for training and equipping a new force.¹⁸ But though it began life as an elite unit, it developed into a parallel police force and quickly gained a reputation for violence and venality equalling that of the *Gendarmerie*.

In August 1989, citing the *Garde's* excesses against the population, the Central Committee of the MPR sought to limit the powers of the chief of the *Garde Civile*, Kpama Baramoto, over the Kinshasa garrison.¹⁹ By 1990, however, Baramoto remained in control and, in fact, had even obtained some control over military intelligence.

In terms of their current jurisdiction, the *Garde Civile* is hardly distinguishable from the Gendarmes. In fact, even the Zairian government stopped trying to distinguish the roles of the two forces. At the time of his visit to Kinshasa in 1990, the UN Special Rapporteur, Mr. Kooijmans, was informed that the *Garde Civile* has a mandate to "assist the *Gendarmerie* in carrying out its general mandate for the control of law and

15. Decree Law 72-031 (July 31, 1972) and Decree Law 72-041 (Aug. 30, 1972).

16. COUNTRY STUDY, *supra* note 5, at 272.

17. *Id.*

18. The *Garde Civile* was initially trained and equipped by West Germany which, according to Colin Legum's report, provided a team of trainers drawn from its special anti-terrorism unit. COLIN LEGUM, AFRICA CONTEMPORARY RECORD: 1985-1986 (1987). After the Germans stopped financing the training, it was undertaken by Egypt.

19. Interview with Kamanda wa Kamanda, then deputy secretary of the MPR, in Kinshasa (Aug. 1989).

order within the country.”²⁰ As he points out, however, the head of the *Garde Civile*, like the heads of the other security forces, reports directly to the President and there is no “hierarchical” link to the *Gendarmerie*.

The Specialized Services: SNIP and SARM

The other principal arm of the security apparatus is composed of political intelligence forces, primarily the *Service National d'Intelligence et de Protection* (SNIP) and *Service d'Action et de Renseignements Militaires* (SARM). While little else about them has changed, the specialized services have had their names altered a number of times since 1960.

The SNIP, which is the premier civilian intelligence unit and is likely to be the most powerful institution in the government, is a direct successor to the colonial *Sûreté*. Like the previous name changes, all of which were intended to signal reform, its currently-benign name, SNIP, was adopted in 1990 following the President's promise to give the security forces a human face. Before its title took on the promise of “protection,” it was recognizable primarily for “documentation,” first as the National Documentation Center (CND) and, after a brief interlude, as the National Documentation Agency (AND). In recent years, there have been reports of the existence of a special strike force within the intelligence unit, known as the *Force d'Intervention Spéciale* (FIS).

The legal duty of the civilian intelligence unit is to “ensure the internal and external security of the state.” Among the specific tasks which it must undertake are collecting and interpreting information relevant to state security and “investigation and determination of violations of state security, and surveillance of people suspected of exercising activities of a nature that may threaten the security of the state.”²¹

Under the Belgians, there were intelligence units attached to the army and the territorial police. But, the *Sûreté* was the elite force, established to provide the colonial administration with political intelligence, and with information on immigration and movement inside the country. It was composed of a small permanent staff of eighty-one European agents and

20. *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, to Zaire, pursuant to Commission on Human Rights resolution 1989/33*, U.N. ESCOR, 46th Sess., Agenda Item 10 (a), § 14, at 4, U.N. Doc. E/CN.4/17/Add.1, (1990) [hereinafter REPORT OF KOOIJMANS].

21. Ordonnance n. 86-161 du 31 mai 1986 portant modification de l'Ordonnance n. 85-189 du 25 juillet 1985 fixant les attributions et l'Organisation de l'Agence Nationale de Documentation, Art. 1.

an "enormous web of informers."²² Soon after independence information gathered by the *Sûreté* surfaced throughout the country, confirming fears that the *Sûreté* was nearly omnipresent.

Prime Minister Lumumba never succeeded in asserting control over the *Sûreté*. In 1961, President Joseph Kasavubu appointed Victor Nendaka, an ally of Mobutu and a staunch anti-Lumumbist, to head the agency. Nendaka succeeded in establishing the *Sûreté* as an independent power base under Mobutu. In 1961, when the Lumumbist Minister of Interior, Christophe Gbenye, sought to dismiss Nendaka, Nendaka turned to Mobutu, who immediately dispatched para-commandos to surround the offices of the Interior Ministry and the *Sûreté*.²³

Two laws expanded the power and independence of the *Sûreté* during the 1960s. In 1961, the government issued *Decret-loi* 1/61, authorizing broad administrative measures against suspected dissidents and explicitly authorizing the *Sûreté* to carry out these measures.²⁴ In 1969, President Mobutu expanded its authority further, by granting it administrative and financial autonomy. Under the 1969 law, budgetary matters are within the exclusive domain of the head of the intelligence unit, who is appointed by the President and responsible exclusively to him.²⁵

In his position as head of the *Sûreté*, Victor Nendaka set a pattern for future leaders of security forces. He was a close advisor to President Mobutu and, although he moved on to a number of other cabinet positions, he retained a base of authority in the security forces. Later, beginning in 1969, the *Sûreté* was headed by Mokolo wa Mpombo, another close advisor to the President, particularly in foreign affairs matters.²⁶

The expansive powers exercised by the *Sûreté* were subject to frequent international criticism and (forcibly) subdued domestic attacks. President

22. Young, *supra* note 7, at 465. According to Professor Young, documents that emerged from security files or were based on security files left behind by the Europeans demonstrate "the extensiveness of the informer network, the penetration of organizations under their surveillance, and the *Sûreté's* access to bank records." *Id.*

23. *Id.* at 468-469.

24. It is this law which continues to "hover" over the conduct of the security forces. Although no longer relied upon explicitly, it appears to be the basis of legal arguments that the security forces have special authority that exceeds the limits of the criminal code. See discussion, *infra* at note 53.

25. Ordonnance-loi No. 69-037 du 9 août 1969 remplaçant la *Sûreté Nationale* par le "Centre National de Documentation" et attribuant l'autonomie administrative et financière à cette institution.

26. Mokolo's MPR biography reports that he made 150 foreign trips on behalf of the President in 8 years. MABI MULUMBA & MUTAMBA MAKOMBO, *CADRES ET DIRIGEANTS AU ZAIRE; QUI SONT-ILS?* 315 (1986). In 1990, when President Mobutu was compelled to institute some political reform, he turned to Mokolo to organize the "popular consultation", described *supra* at note 1.

Mobutu responded with cosmetic changes. In 1969, the President initiated the first of several such changes intended to give the impression that he was reforming the *Sûreté*. At that time, the name was changed to the "*Centre Nationale de Documentation*" (CND). Later, when the CND's leader, Mokolo, came into conflict with the President's security advisor, Seti Yale, President Mobutu settled both scores in a familiar manner. In February 1980, he arrested Mokolo and announced that he was dissolving the CND.²⁷ He then immediately recreated it under two new names: *Centre National de Recherche et Information* (CNRI) and the *Service Nationale d'Intelligence* (SNI). Mokolo was appointed ambassador to France. Two years later, in November 1982, the CNRI and SNI were reintegrated into the newly formed AND and Mokolo returned to Kinshasa as its director.

Mokolo was replaced as Administrator General by Ngbanda Nzambo-ko-Atumba, who served until the end of April 1990. He was then replaced by General Likulia Bolongo, an army general and law professor, as part of the 1990 "reforms" intended to bring a "human face" to the security apparatus.

Side by side with the civilian intelligence unit, Zaire has maintained a military intelligence unit. There are many similarities between the two units, both in their function and in their recent history. The mandate of the military unit extends to foreign and domestic threats. The legal mission of the unit is to "obtain and use any information concerning military security, destroy any cell of sabotage or subversion, prevent any danger threatening the territorial integrity, counteract and reduce any potential action of an enemy or his ally, in the inside or outside the national border." It is placed under the authority of the President as "Supreme Commander of the Armed Forces."

The military intelligence unit was established as a separate force in June 1985 when the *Service de Renseignements Militaires et d'Action* (SRMA) was created. Before that time, the military security was operated from inside the military and was generally known as "G2" at the national level, "T2" at the level of provincial commands, and "S2" at the local level.²⁸

27. The change was announced April 15, 1980. This coincided with a "reform" of the justice ministry, in which the minister, Kengo wa Dondo, one of the two other "White Ngwandi" was removed from office and named ambassador to Belgium. Kengo had earned a reputation for frequent intervention and manipulation of the justice system, first as Procureur de la République and then as Justice Minister.

28. AMNESTY INTERNATIONAL, SUMMARY OF CONCERNS IN THE REPUBLIC OF ZAIRE (Jan. 30, 1987).

Like the *Sureté*, the military unit has undergone numerous cosmetic changes intended to suggest deeper transformations. In 1986, the President announced that he was dissolving SRMA. The announcement followed a purported government investigation into the arbitrary detentions and extrajudicial executions reported by Amnesty International. The President confirmed that some abuses reported by Amnesty had occurred, but he refused to give any details.²⁹ Strangely, as Amnesty noted at the time, the abuses to which the President referred actually occurred before SRMA was even formed.³⁰

In any event, one month later, on November 6, 1986, SRMA was reconstituted under an almost identical name, the *Service d'Action et de Renseignements Militaires* (SARM).³¹ General Mahele Lieko Bokungu, was appointed Commander at that time and retained the position until 1990, when he was appointed to lead the Zairian forces in their support of the government of President Habyarimana in neighboring Rwanda. At that time, Kpama Baramoto was reportedly named to replace him as interim head of SARM.³²

Function and Conduct

The security forces perform a variety of roles in the political and economic life of the country. Some are explicitly political. The security forces have been used to enforce the policy of the ruling party, the MPR, whether or not such policies were actually enacted as law. Others are only indirectly political. They act at the behest of those with economic or political power to extract payments and mete out summary justice. Where, as in Zaire, economic and political power are centralized in the same individuals, the beneficiaries are the same. Finally, the security forces engage in nearly random acts, which are intended exclusively to extract money.

In their various roles, the security forces have used tactics that violate the basic rights of citizens guaranteed not only by international treaties which Zaire has ratified, but by Zairian law as well. The abuses of the security forces, including arbitrary arrest and detention, physical abuse,

29. AMNESTY INTERNATIONAL, *ZAIRE: REPORTS OF TORTURE AND KILLINGS COMMITTED BY THE ARMED FORCES IN SHABA REGION* (Mar. 1986).

30. AMNESTY INTERNATIONAL, *supra* note 28.

31. Ordinance 86-278 (Nov. 6, 1986).

32. According to reports from Kinshasa, Mahele was injured while leading the forces in Rwanda.

torture and kidnapping, are documented in frequent reports by international human rights organizations.³³ They are, as frequently, dismissed by the government of Zaire as "incidental mishaps," or "*bavures*," literally "stains" on an otherwise clean slate.

The Political Role of the Security Forces

Each of the security forces has played an active role in suppressing political opposition and enforcing rigid party ideology. Frequently they act in concert, in actions planned in the National Security Council, or in the Regional Security Councils overseen by the regional governors. At other times, they appear to act independently, or even to compete with each other.

Security forces have suppressed public demonstrations, arrested and detained opposition members, harassed the families and friends of their opposition and suppressed information by arresting journalists and harassing others. A number of Zairians were arrested and detained in the summer of 1989 for meeting with the Lawyers Committee delegation in Kinshasa on a government approved visit for the Lawyers Committee. The delegation itself was attacked in a suspicious incident involving security forces during a subsequent visit in March 1990.³⁴

The *Sûreté* and its successors have played the most extensive role in overseeing political activity and ensuring against opposition. In practice, the civilian intelligence service closely monitors the political and social activities of all sectors of society, including those in positions of political and party authority. As Professor Young wrote of the *Sûreté*, it can exercise substantial leverage over people in power with information "on matters such as Swiss bank accounts and the dubious financial transactions of certain political figures."

The activities of the civilian intelligence have been a source of particular tension between the security police and other arms of state power.³⁵

33. See, e.g., AMNESTY INTERNATIONAL, *LA RÉPUBLIQUE DU ZAIRE: EN MARGE DE LA LOI, LES FORCES DE SÉCURITÉ RÉPRIMENT LES OPPOSANTS AU GOUVERNEMENT* (1988-1990) Index AI: AFR 62/10/90 (Sept. 1990), and LAWYERS COMMITTEE FOR HUMAN RIGHTS, *ZAIRE: REPRESSION AS POLICY* (1990) [hereinafter *REPRESSION AS POLICY*]. For reports of human rights abuses since 1990, see, especially, the reports of the *Ligue Zairoise des droits de l'homme*.

34. See, *REPRESSION AS POLICY*, *supra* note 33.

35. Professor Michael Schatzberg makes this point in connection with the CND surveillance of state-party officials in the territorial administration. M. Schatzberg, *The Long Arm of the Law: Insecurity, Instability, and the Political Police in Zaire*, Address at the Annual Meeting of the International Studies Association (Mar. 24-27, 1982).

The CND filed regular reports on the activities of all members of the National Legislative Council during recess.³⁶ And, as Nguza Karl-I-Bond testified before the U.S. Congress, instead of monitoring the threat of foreign incursions, security forces monitor the private affairs of people in government. They know, he said, "exactly what time I left my house or what time I came back."³⁷ For their surveillance activities, the intelligence service has an effective network of informers throughout the society who are, most likely, paid occasionally for providing information relating to security matters.³⁸

The civilian and military intelligence units have jealously guarded their autonomy, even in the face of rare criticism from political authorities. In 1981, the Central Committee criticized the intelligence units for acting on their own and for failing to report information to political officials. The Central Committee ordered the intelligence service to comply with its official mandate, to coordinate its actions with the National Security Council and to report regularly to the political authorities within the MPR hierarchy.³⁹ None of the specific instructions contained in the directive were incorporated into practice.

Perhaps because of their independence and their reputation for efficiency, intelligence officials have come to fill a number of other functions in the state in addition to seeking out potential opposition. They oversee the work of local party officials and, in the words of Professor Schatzberg, they play the role of a "silent ombudsman," verifying the complaints of citizens and conveying them to higher officials. This is perhaps most surprising, in light of the fear that the intelligence service inspires in the population. But as Professor Schatzberg points out, the civilian intelligence unit is the quickest conduit of detailed information to the Central Government. Reports of the CND, according to Professor Schatzberg who saw a number of them early in the 1970s, were "far more detailed and probing than reports filed by other arms of the state-party."⁴⁰

36. *Id.*

37. HOUSE COMM. ON FOREIGN AFFAIRS, SUBCOMMITTEE ON AFRICA, POLITICAL AND ECONOMIC SITUATION IN ZAIRE: FALL 1981; TESTIMONY OF NGUZA KARL-I-BOND, H.R. DOC. NO. 381-16, 97th Cong., 1st Sess. 23 (1981).

38. Schatzberg, *supra* note 35, at 15.

39. Directives au Conseil Exécutif relatives à la Décision d'état no. 05/CC/81 en matière Politique administrative et judiciaire.

40. Schatzberg, *supra* note 35, at 15. The capacities of the civilian security force may be somewhat overrated; or perhaps they have declined since the time of Professor Schatzberg's research. The author had occasion to hear and read accounts of the AND regarding his visit to Zaire for the

For reasons that are less clear, foreign policy is often delegated to the intelligence service. In interviews with diplomats in Kinshasa during March 1990, the author was told that the most important foreign affairs decisions came out of the office of the President's security advisor, Nkema Liloo, or out of the AND. The same has been true since the late 1970s when these roles were filled by Seti Yale and Mokolo Mpombo. Although there is no inherent reason why intelligence heads would play a role in foreign relations, it is consistent with their position as a shadow government. Their fierce loyalty to the President has earned them a say in all areas of the President's rule:

The role of the intelligence service extends beyond surveillance and advice to action as well, whenever necessary. As discussed below, AND agents have legal police authority to arrest and detain. They also benefit historically from privileges which effectively permit them to detain indefinitely on their own authority. Dissidents have also reported that a special strike force, known as the *Force d'Intervention Spéciale*, has broken up political gatherings and abused those in attendance. In this connection, the military intelligence unit, SARM, has frequently played the same role. In fact, it is hardly distinguishable from the AND with respect to suppression of domestic dissent.

Politics and Profit in Security Force Practice

Many of the abuses of the security forces are not aimed entirely at political repression. Robert Remole, a former State Department official and political officer in Kinshasa, testified to Congress that the income of a soldier would allow the soldier and family to eat a staple diet of manioc or rice, and nothing else. After paying for the food, no money would remain for clothes, rent, or school expenses. "What does he do? He steals." The same is true of all the armed civil servants.⁴¹

Low paid security officials are said to earn as much as 90% of their income from sources other than their official salary. Extortion and theft

Lawyers Committee. Although the AND confidently reported considerable detail — including comments made at meetings, the address where meetings occurred and the number of people attending — many of these details were simply wrong, though neither more or less damning. In some cases, it appeared that those people following the Lawyers Committee delegation lost track of us and then fabricated events in order to save face. In other cases, it appears that the AND received sketchy second hand accounts of meetings.

41. The noted exception is the President's special guard, the DSP, which is reported to be the best paid force. According to AFRICA CONFIDENTIAL, however, at times in 1991 even the DSP, for example, had to find its salary on the streets.

take many forms. Often they are ancillary to political repression. On March 15, 1990, for example, the homes of a half-dozen opposition leaders in Kinshasa were ransacked by security forces, reportedly belonging to a unit of the AND.⁴² One of those attacked, Lusanga Ngiele, described the event in a letter to General Singa Mosambayi, minister in charge of territorial security:

Twelve men, armed with revolvers and weapons of war, masked in military helmets, and dressed half in uniform, half in civilian clothes, surrounded my house with their vehicles. While four of the men remained in the cars, the rest climbed over my fence. . . . Two men pointed revolvers at us while the others moved our belongings to the cars.

They took everything: the hi-fi, suitcases filled with clothes, my wife's jewelry and everything but my pajamas, my briefcases with personal documents, money and a round-trip airplane ticket, Lubumbashi-Kinshasa; a sewing machine, a cassette recorder and video player, not to mention half a sack of dried and salted fish (which only shows their own need); a large portion of my children's clothes and even their school uniforms.

They destroyed the rest: A large Sony television set which weighed too much for them, they smashed with an iron bar; all the dishes broken, the living room furniture shredded with bayonets, armoires and cabinets smashed and tossed up-side down, all the vehicles on the property broken, etc. In brief, an act of indescribable savagery.⁴³

In a large proportion of the overtly political arrests investigated by the Lawyers Committee, security forces took belongings, stole personal jewelry, or ransacked homes and businesses. While perhaps not the primary goal of the arrest, their conduct contributed to reducing the capacities of the opposition, while at the same time compensating under-paid security agents.

The theft that accompanies their maneuvers also serves to support government claims that those who take part are not acting in an official capacity or are not even security agents. The government has frequently suggested that the perpetrators were only "bandits," imitating agents of the state. As a final defense, the government officials fall back on the argument that such actions were merely "*bavures*," and not government policy.

42. The unit of the AND, known as the Special Intervention Force (FIS), appears frequently in accounts of suppressed opposition activities. The attack of March 15, 1991 involved the households of Leon Kadima, Lusanga-Ngiele (François), Kanana Thiongo, Me Kadima Kalalo, Kazadi-Membu, and Malamba-Kassanda.

43. Letter from Lusanga Ngiele to General Mosambayi (Mar. 15, 1990).

In a more routine fashion, security forces are used to collect taxes and ensure compliance with government policies. The taxes themselves are frequently illegal impositions of local party officials. The methods employed to collect them ensure that the agents themselves are compensated at the same time.

Professor Thomas Callaghy described the methods used by the security forces as an "encirclement and dragnet manoeuvre" called a *ratissage*. In this case, the *ratissage* occurred in 1973. The *Gendarmerie* participated together with the predecessor to the AND and the security wing of the MPR youth movement. At about 6:00 a.m. troops "moved systematically from house to house, street to street from one locale to another demanding people to 'present their identification cards in order to see if they had paid their taxes and fulfilled other requirements'." ⁴⁴

The localities were shut down for the day while Gendarmes collected about 2,800 Zaires for the purchase of new ID cards and payment of taxes in three villages. Forty-two people were arrested. From the official point of view the *ratissage* was entirely successful. The local residents, however, claimed that Gendarmes committed robberies, rapes and other offenses against the population. The money extracted for supposedly unpaid taxes, they claimed, was pocketed by local administrators and distributed among the Gendarmes and soldiers who participated in the operation. ⁴⁵

Similar stories are extremely frequent on a smaller scale. One Kinshasa businessman told the author that AND agents showed up at his small store to collect, when he failed to pay purported income taxes. In another case, a customs inspector named Solomobo Mokamo was fired on suspicion of embezzling funds in June 1989. Rather than referring his case to the courts, he was reported to the AND, which took summary action, although there was no question of national security. The AND arrested and detained him in July 1989 and he died in AND custody one month later, reportedly from internal injuries suffered at their hands. ⁴⁶

Security forces also act as agents of private justice enforcing a civil debt or personal vendetta. The U.S. State Department, in its Human Rights Report for 1989, noted a number of such cases. ⁴⁷ One small

44. T. CALLAGHY, *THE STATE-SOCIETY STRUGGLE: ZAIRE IN COMPARATIVE PERSPECTIVE* 287 (1983).

45. *Id.* at 289.

46. REPRESSION AS POLICY, *supra* note 33.

47. The report stated: "The civil guard arrested a number of local and foreign businessmen

businessman in Kinshasa reported to the Lawyers Committee that, during 1986, he suffered severe business losses and was unable to pay creditors. Over a period of six months, he was arrested more than a half dozen times at his home late at night. Each arrest ended quickly after he negotiated and paid a bribe to the arresting agents. Many other such cases arose out of contract violations and debtor default. According to businessmen, it is standard practice to denounce the defaulting party to a security agent. The businessman accompanies the denunciation with a negotiated fee for the arrest.

A number of cases involve so-called "barons" of the regime using the security forces to enforce personal or business interests. In one case, a young woman named Kamunga Mwimpe, a student of architecture in Kinshasa, disappeared on June 23, 1988. The woman was suspected of having an affair with a former general director of the state electricity company (SNEL) who was the husband of a high ranking member of the Central Committee. After she disappeared, security agents told the family that they had kidnapped the young woman at the behest of the wife, Mayuma Kala. The family approached every competent state organ to intervene. They next turned to their priest and eventually told their story at an Amnesty International news conference in Kinshasa in November 1989. Nevertheless, the government never responded.⁴⁸

Another recent case involving a clash of "barons" led to the arrest of a young commercial lawyer and two others in Goma, in the Northern Kivu region. Me Haguma Nkuba represented a powerful local businessman who was involved in a conflict with Bemba Saolona, a close collaborator of the President and perhaps the most powerful businessman in Zaire.⁴⁹

Bemba reportedly dispatched a lieutenant from Kinshasa to stop Me Haguma's client from proceeding. When he failed, he arrested Haguma and two others, placed them on a chartered jet belonging to Bemba's company and flew them to Beni, north of Goma. The three men were held in Beni from April 27 to May 2 and then released. When Haguma

on false charges or for questionable, albeit common, Zairian business practices. They were held in detention until bribes were paid." U.S. DEP'T ST, COUNTRY REPORTS ON HUMAN RIGHTS FOR 1989 415, Doc. H382-2 (1990) [hereinafter COUNTRY REPORTS].

48. Amnesty International interviews with the family of Kamunga Mwimpe, in Kinshasa (Aug. 1989 and Mar. 1990), and in London (Dec. 1989).

49. Bemba, the remaining "white Ngwandi", see *supra* note 3, has known business interests in "almost" every sector of the economy. Among these are the best known commercial names in Zaire.

returned to Goma, he was arrested again and held for a month before he was released and the spurious charges were dropped.

The most common practice by far, however, involves simple extortion with only the thinnest veneer of legitimacy. Identification cards and car permits, for example, are a frequent source of income for Gendarmes. Zairians are required to carry official identity cards at all times. The cards, first distributed in 1973, must be purchased. During the late 1970s and early 1980s, there were frequent reports that Gendarmes established impromptu roadblocks to check ID cards and assess fines against those who had no cards. A clergyman in Goma described the response in his community:

We trained people in an intense campaign to carry their ID cards, because the Gendarmes would use the absence of cards as an excuse to extract money and arrest citizens. Then the Gendarmes started taking IDs from people who had them and ripping them up. So people left their ID cards at home. They felt it would be better to just pay a fine than to lose their ID card *and* have to pay a fine.⁵⁰

In the mid-1980s, the practice became less frequent. Now, according to the Goma clergyman, the practice has been revived. The story is repeated in different forms throughout the country, depending on the region. In the cities, cab drivers face constant road blocks and spot fines for "infractions" that range from having insufficient air in the tires to not painting their cab the correct shade of yellow. In the villages, women pay in-kind tolls as they pass the *Gendarmerie* with produce picked in the field.

In Kinshasa, an entire vocabulary of extortion has developed, centering on food and drink. The armed officer may begin negotiation simply by asking, "*Na kolio yo* — Will I eat *you*?" (Meaning, "What will I eat if you give me nothing?") The lucky negotiator may get off with beer money, "*Madesu ya bana* — beans for the children," or "*Lipa ya bana* — bread for the children." The unlucky ones lose their identity cards, necessary permits or authorizations or end up in a prison cell.

Part II Judicial Recourse and Control over Security Forces

The problem posed by the security forces is not primarily one of laws, but of enforcement. There are laws whose ambiguity is used to protect

50. Interview with Goma pastor, in North Kivu (Mar. 1990). See REPRESSION AS POLICY, *supra* note 33.

security force members from criticism. But this is not the primary impediment to security force accountability. Rather, it could be said that despite the law and despite periodic efforts to subject the security forces to judicial accountability, the security forces continue to exercise practical authority over judicial and political organs. The evidence for this lies in the many instances where an apparently sincere desire to prosecute security force abuses has ended without result. In addition to this, there are the nearly constant pronouncements of reforms intended to bring about accountability. Some of these reform efforts appear sincere, although they never reach the level of the Presidency or the security forces themselves. Finally, judicial officials acknowledge that, notwithstanding any laws in place, the judicial apparatus is incapable of standing up to security force abuses.

The legal authority of the security forces is, itself, not entirely clear. Until recently, it was generally believed that the security forces were entitled to detain indefinitely and were not subject to civilian prosecution. In international forums, however, Zaire has recently claimed that, without exception, the security forces were bound to follow the rules of criminal procedure. In particular instances, however, Zairian authorities have relied on uncited special authority possessed by the security forces which exceeds the limits imposed by the code of criminal procedure.

The most contested legal issue concerns the authority of security forces to arrest and detain. Under the code of criminal procedure, these are judicial functions, carried out by officers of the judicial police (OPJs). Most security agents are OPJs, and that is part of the confusion.

Zairian law requires that anyone arrested be brought immediately before the *Ministère Publique* (prosecutorial office of the magistracy). The arresting officer has up to forty-eight hours under exceptional circumstances.⁵¹ A suspect may be detained for investigation, but only if this is ordered by a magistrate within five days of his arrest. Detention orders must be renewed every fifteen days. In Zaire's first report to the Human Rights Committee of the United Nations pursuant to the International Covenant on Civil and Political Rights, this was the only procedure mentioned.

51. Ordinance 78-289, art. 73 (July 3, 1978). In response to questions raised by the United Nations Human Rights Committee, after presentation of its initial report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR), Professor Lwamba-Katansi stated that arrested persons must be brought before the *Ministère Publique* within 24 hours. U.N. GAOR, Hum. Rts. Comm., 30th Sess., 738th mtg., ¶ 17 at 5, U.N. Doc. CCPR/C/SR.738 (1987).

There is another law on the books with far fewer restrictions. Decree Number 1 of 1961 permits security forces wide latitude to search, restrict and detain anyone who "by his activities threatens state security."⁵² Until at least 1981, the government claimed that Decree Number 1 permitted the intelligence forces, though not the regular police, to detain suspects as long as necessary. But Decree Number 1 is subject to various limitations which have never been fully implemented.⁵³ In 1981, the Central Committee of the MPR — the constitutional "guarantor of Mobutism" and the highest organ besides the Presidency — criticized the security forces for this as well as for their general lack of accountability. The Central Committee called on the security forces to put the provisions of Decree Number 1 into effect, particularly in connection with house searches and detentions.⁵⁴

More recently, the government and the security forces abandoned their reliance on Decree No. 1, but continued to claim that the civilian and military intelligence were permitted to detain indefinitely. After a visit to Zaire in 1987, Amnesty International determined that the AND and SARM "retained powers to detain prisoners incommunicado without charge or trial for as long as they considered necessary."⁵⁵ But despite its efforts, Amnesty was unable to determine the legal basis for the authority.

Finally, perhaps in response to the persistent inquiries of Amnesty International and other international observers, government officials abandoned the claim of extraordinary security force authority. After 1987, they began to tell questioners that all police and security forces were

52. Decree 1/61 (Feb. 25, 1961) relatif aux mesures de sûreté de l'état. Droit de perquisition, d'internement et de mise sous surveillance.

53. The administrative restrictions can only be applied upon the written order of the State Commissioner for Territorial Security, or his designee. The AND Administrator General is a permanent designee under the law. For purposes of "preliminary investigation", a ministerial regulation permits a security agent to detain a suspect for up to five days before obtaining the written order. However, the agent must provide a *procès verbale*, in a form that is referred to in the regulation but not included.

The Decree also requires the institution of an "Oversight Commission" in the office of the First State Commissioner. The Oversight Commission is to be composed of two magistrates and one employee of "Sûreté", under conditions specified by the Decree. Immediately upon instituting the administrative restrictions, the State Commissioner or his delegate must submit all relevant documents to the Commission. The Commission reviews the information and submits an opinion to the First State Commissioner within one month. The First State Commissioner then issues a final order within 8 days. The order may be reviewed by the First State Commission at any time. But, in any event, it must be reviewed after six months. The Oversight Commission was apparently never established.

54. Directives au Conseil Exécutif relatives à la Décision d'Etat no 05.CC.81 en matière Politique administrative et judiciaire (June 8, 1981).

55. AMNESTY INTERNATIONAL REPORT 84 (1988).

bound by the single standard of the Criminal Code, including the forty-eight hour and five-day limits on arrest and detention.⁵⁶

Nevertheless, the ambiguity is not entirely resolved. In certain instances, government officials continue to assert the extraordinary authority of security forces. For example, in August 1989, security forces arrested and detained four Zairians in connection with the author's visit to Zaire on behalf of the Lawyers Committee. All four were arrested and detained in flagrant violation of the Criminal Code. One of the four was held for two months. Nevertheless, government officials told the Lawyers Committee that the men were detained and questioned in accordance with the provisions governing the authority of the security forces.

Practically, it matters little whether or not the security forces are violating the law, since there exists no means of sanctioning the violation. But, in addition, the distinction between political ideology and law was obscured by the 1974 merger of the MPR and the State. One well-known example is the wearing of ties which was functionally prohibited and frequently punished, but never made "illegal." As agents of the State directly dependent on the President, the security forces were charged with enforcing the goals of the Party-State. So, at least until 1990, it made little difference whether security forces were acting according to party doctrine or law.

Finally, agents of the AND and other special forces have a special, extra-legal status, which allows the head of the force to prevent any investigation or prosecution for improprieties. Article 1 of the 1969 law governing the status of intelligence force officials (then known as "CND")

56. The UN special rapporteur, M. Kooijmans reported: "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 detentions of persons." REPORT OF KOOIJMANS, *supra* note 20, at 5.

As to his specific inquiry whether administrative detention was practiced, the Special Rapporteur reported:

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 considered to be obsolete. On the other hand, the Commissaire d'Etat for Territorial Security 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.

REPORT OF KOOIJMANS, *supra* note 20, at 7.

states that police officers or officials of the public prosecutor must "seek the obligatory advice of the Director General" before they can arrest, or even question an agent for an act committed in the course of his duty.⁵⁷ The law creates a strict hierarchy within the agency, according to which agents report to the Director General, who has the status of a cabinet official. He, in turn, determines whether to forward the reports of agents on to other government departments, including the public prosecutor.

The So-Called Reforms

Since at least 1978, the government of Zaire has announced reforms purportedly intended make the security forces accountable to judicial and political organs. One of the earliest so-called reforms was an effort to subject all judicial police officers (OPJs), which includes most security force officers, to effective judicial supervision.

The problem was partly historical and primarily practical. The colonial legacy left Zaire with a network of statutory OPJs which survived into independence. The 1973 Law of Territorial Administration, for example, grants all principal regional authorities the status of OPJ.⁵⁸ The same is true of agents of the AND and its predecessor organs.⁵⁹ As a result, historically, the *Ministère Publique* has been unable to sanction the frequent abuses committed by the OPJs, who are under the administrative hierarchy of other agencies and may, in fact, stand higher in the MPR than the relevant *procureur*.⁶⁰

In 1978 the government issued a regulation that gave the Justice Ministry,⁶¹ through the *Ministère Publique*, the authority to discipline and

57. Ordinance 78-289, art. 44 (July 3, 1978). If the arrest is incident to an activity unconnected with his AND function, the Director General must be "notified".

58. Loi No. 73/015 du 5 January 1973, Portant Organisation Territoriale et Administrative de la République. Under the law, only the lowest regional authority, the *chef de localité* is not an OPJ. The *Chef de Collectivité*, *Commissaire de Zone*, and *Commissaire Sous-Régionaux* as well as their assistants are all OPJs.

59. See, e.g., Ordonnance-loi 69-038 du 9 Août 1969 relatif au statut judiciaire des Agents et Fonctionnaires du Centre National de Documentation, Art. 3.

60. In the Report which accompanies the Regulation of 3 July 1978, the drafters explain that the OPJs are supposed to be the "eye and arm" of the *Ministère Public* and yet the *Ministère Public* had no direct authority over them. According to the Report: "This explains the number of abuses . . . before which the *Ministère Public* is, all too often, impotent for lack of effective constraints on these auxiliaries of the court."

61. The Justice Ministry in Zaire is known as the "Judicial Council." In this article, the president is referred to as the "minister" and the Judicial Council as the "Justice Ministry" although, in fact, the Zairian institutions are somewhat different than might be implied by the titles. Under the first MPR constitution, President Mobutu "presided" over the Judicial Council as he did all other organs of the party-state. Later modifications provided for a separate president of the Judicial Council, who could still exercise direct authority over the affairs of courts as well as prosecutors.

suspend all OPJs.⁶² The regulation requires that all OPJs swear an oath of allegiance to the law and be accountable to the *Ministère Publique*. It also regulates their conduct with respect to arrests, detentions and investigations.

The intent of the regulation was, however, never realized. By 1990, the Justice Minister had still not succeeded in asserting authority over the OPJs, particularly those attached to the security forces. Security force agents simply refused to take the required oath. A prominent lawyer in Bukavu explained this problem:

In law, every OPJ's authority is dependent on the prosecutor of his region. In theory, the prosecutor can summon any OPJ, even those in the military. But although a prosecutor can open a dossier on an OPJ, he cannot, in practice, sanction them. In my experience, I do not know of a single OPJ who has ever been sanctioned for the abuse of power.⁶³

In addition, for reasons that are not entirely clear, civilian courts have no jurisdiction over OPJs who commit criminal offenses.⁶⁴ The Bukavu lawyer, who is a former member of the Central Committee, noted that civilian magistrates have absolutely no control over OPJs. He said:

Infractions between OPJs and civilians go to the military tribunals for adjudication. This should not be the case. These cases should go to the civilian courts. We have been making this argument without success.⁶⁵

Moreover, the lawyer added, "Whenever cases accusing them of illegal conduct goes [sic] to the military tribunals, they always get off."⁶⁶

In February 1980, the President announced the formation of a Joint Commission (*Commission Mixte*) to include representatives of the Justice Department and the CND. It would review laws and regulations on detention as well as individual cases. In addition, it was to be the sole authority over the conduct of house searches.

62. Ordonnance No. 78-289 of 3 July 1978 relative à l'exercice des attributions d'officier et agent de police judiciaire.

63. Lawyers Committee for Human Rights interview with a lawyer, in Bukavu (Mar. 1990) (name withheld upon request).

64. This is true despite a decision of the Central Committee in 1981 ordering civilian courts to take jurisdiction over OPJs for "infractions committed in the exercise" of their duties. Décisions d'état No. 05/CC/81 en matière politique, administrative et judiciaire; 8 June 1981). Under Article 64 of the Constitution, the directive that followed the decision was binding on all relevant government bodies.

65. Lawyers Committee for Human Rights interview with a lawyer, in Bukavu (Mar. 1990).

66. *Id.*

In December 1981, responding to criticism of arrest procedure by Amnesty International, Seti Yale wrote:

I would like to reiterate the Head of State's well-known concern to see the Joint Commission working as soon as possible, whose creation he announced only a few months ago. Naturally, we are sorry to note that this decision has not been implemented as rapidly as the Head of State himself recommended.

The Commission may, at some point, have been formed, but it most certainly did not do anything. In 1987, Zaire reported to the United Nations Human Rights Committee that the Justice Ministry had instituted a Joint Commission in 1984 to supervise and ensure the legality of detentions. The Committee asked Zaire to provide details of the Commission's work. Professor Lwamba-Katansi returned to the Committee months later empty-handed. He explained that "the Commission had to overcome certain practical difficulties in its work. . . . The numerous journeys the Commission had to make created problems, mainly in respect of transport." In many meetings with magistrates and lawyers in Zaire held during 1989 and 1990 to discuss arrest and detention, no one ever mentioned the existence of the Commission to the author.

In 1986, the focus of reform changed. Zaire established the Department of Citizens Rights and Liberties (DCRL), a government organ mandated to resolve human rights disputes by using the prescribed legal procedures or through the cooperation of sister ministries. The DCRL was promoted with great fanfare by the government of Zaire and President Mobutu. It was established largely in response to reports of international bodies like Amnesty International. As a result, it has come as no surprise that, despite the fanfare, in three years of operation it has done little to address the problems posed by the security forces, or even to solve a single human rights abuse.

In his 1989 speech to the United Nations, President Mobutu said the DCRL was "endowed with sweeping powers to accomplish its mission,"⁶⁷ but this was hardly the case. The DCRL entered into "Joint-Action Arrangements," with several security forces, including the *Garde Civile*, the AND, and the *Gendarmerie Nationale*.⁶⁸ Under the Arrangements, the

67. President Mobutu, Speech to the U.N. General Assembly (Oct. 4, 1989).

68. These signed arrangements are in the form of contracts and generally contain four sections. Section 1 establishes periodic meetings at which, to varying degrees, depending on the Protocol, representatives of the DCRL and the relevant security force: (i) review complaints against the security service, (ii) evaluate arrests and detentions, and (iii) review measures taken by the service to improve

DCRL was supposed to meet regularly with a representative of the security force to review detentions and discuss human rights questions. In cases of emergency, the DCRL theoretically had direct access to the detention facility, alone or with an agent of the security force.⁶⁹ But even these modest provisions were never fulfilled in practice. Meetings did not take place as provided,⁷⁰ and the DCRL did not make use of the emergency provisions. This was demonstrated to the author when the four Zairians were arrested during the visit to Kinshasa in August 1989. The DCRL learned of the arrests on a Wednesday, four days after the fact. At that time, no one knew where the men were being held or for what reason. It turned out later that they had been arrested by the AND.

Although the second highest-ranking member of the DCRL knew of the arrests, no immediate and direct action was taken to find the men. Rather, the investigation was referred to the Department of Territorial Security to commence on the following Monday. Even then, no news was conveyed to the author or the families of the men until three of them were released two weeks later.⁷¹

Beginning in 1986, the new Justice Minister announced his intention to attack the problem of arbitrary arrest and detention. On highly publicized visits to detention facilities, the minister, Nsinga Udjuu, released detainees who were not held under legitimate detention orders.

However, even close associates in the Justice Ministry acknowledged that such action had limited effect. One high ranking official stated:

We are instituting measures to deter the security forces from abusing the population and holding people for long periods; now we require them to obey the 48 hour period. We are getting some success in this matter where common criminals are concerned; but when it comes to

its respect for human rights, including, in particular, sanctions taken against officers who have violated the rights of citizens. Section 2 establishes procedures for investigating complaints against the security forces. Sections 3 and 4 set the composition for Joint-Action Commissions and call for cooperation to fulfill the wishes of the President of the Republic to have the rights of all citizens restored.

69. According to the Arrangements, the Political Director of the DCRL has unconditional access to the detention facilities of the Garde Civile and, with certain conditions, to those of the gendarmerie nationale. Visits to the AND detention centers are permitted on prior notice.

70. The DCRL documentation available to the Lawyers Committee refers to only three meetings of Joint-Action Commissions through June 1989. A total of 6 cases were brought to the attention of the relevant security forces during those meetings.

71. DCRL Telex (Sept. 21, 1989). Lawyers Committee communications with the DCRL and the office of Ambassador Mushobekwa (Oct. 2, 1989, Sept. 20, 1989 & Nov. 13, 1989).

cases that concern state security or political matters, the security forces have been unwilling to listen to the Justice Ministry.⁷²

This appears to be borne out by the many stories told to the author where security forces arrested people out of purely economic motives and then threatened to accuse them of political violations if they did not cooperate.⁷³ In that way, we were told, they were insured that the Justice Ministry could not intervene. Many lawyers in Kinshasa, however, questioned whether the Justice Ministry's measures had any systemic effect on the practice of arbitrary arrest, even in cases which were entirely non-political.

One final "reform" that is hardly worth mentioning occurred in 1989, when President Mobutu established the Department of Territorial Security with purported authority over four of the Security Forces (AND, SARM, *Garde Civile*, and the Immigration Service (ANI)). The minister appointed to head the Department was General Singa Mosambayi, a long-time military collaborator of the President's.

The State Department Human Rights report notes the appointment of General Singa, and states: "Late in 1989, this official took preliminary steps toward implementing effective coordinating mechanisms which could enhance the discipline of these forces."⁷⁴ In our interviews, we found little confirmation of the State Department's tentative appraisal. Members of government and the Central Committee were skeptical that the General would succeed in coordinating the activities of the historically independent forces. In any event, in an August 1989 interview, General Singa strongly defended the conduct of the security forces and did not indicate the need for any significant changes.⁷⁵ In March 1991, the DCRL was incorporated into the Department of Justice. Its former leader, however, continued to play an active role in promoting Zaire's human rights record in his position as the President's special Security Advisor.

The Third Republic

On April 24, 1990, after three months of "Popular Consultations," President Mobutu announced the end of the Second Republic and poten-

72. Lawyers Committee for Human Rights interview with Kaniki Unshengwo Ituome, in Kinshasa (Aug. 1989).

73. One such example was recounted to us by Me. Kamanda wa Kamanda, who replaced Nsinga as Justice Minister for a short time in 1990.

74. COUNTRY REPORTS, *supra* note 47, at 413.

75. Lawyers Committee for Human Rights interview with General Singa Boyembe Mosambayi, in Kinshasa (Aug. 1989).

tially far-reaching changes for a new "Third Republic" of Zaire. The most significant change announced by the President was the end to the MPR party-state, and the advent of a three-party system. In keeping with this, the President announced the depoliticization of public services, the armed forces and the security forces, the immediate dissolution of such party organs as the Central Committee and Political Bureau and he gave permission for multiple trade unions to form.

Although the President announced that he would take leave of the MPR and the day-to-day affairs of the government, he retained control over the security forces and the army. He also announced that, as President, he would not be subject to oversight or control by the legislature or the executive. He said of his role in the new system:

Every son and daughter of our country, whether or not a member of a party must acknowledge him. And, whatever happens, as Chief situated above the melee, he must seek to remain the common denominator, that is to say the reassembler, the pacificator, the unifier.⁷⁶

During the course of the Popular Consultation which preceded the April 24th speech, the President toured the country attending public meetings and reported receiving 6,128 memoranda.⁷⁷ The population of Zaire expressed itself with shocking forthrightness about the problems in the country. In public meetings and in memoranda submitted to the President, the people were especially critical of the MPR, government corruption, abuse of human rights by the security forces and the absence of the rule of law. An African diplomat in Kinshasa underscored the open debate when he observed that "this is the first true public debate ever held on Mobutu and his policies, and the results are devastating."⁷⁸

As the President acknowledged in his April 24, 1990 speech and again in his May 3, 1990 speech, reform of the security forces was widely demanded during the Popular Consultations.⁷⁹ In his April 24 speech he merely announced the depoliticization of the forces. In his speech of May

76. President Mobutu, Speech (Apr. 24, 1990) in *LA SEMAINE*, Apr. 25, 1990.

77. *Id.*

78. Lawyers Committee for Human Rights interview with African Diplomat, in Kinshasa (Mar. 1990).

79. One of most widely circulated memoranda, submitted by employees of the Foreign Ministry, attacked the composition of the security forces, noting that they composed primarily of agents who originated from the region of Equateur, home of the President. According to the memorandum, the head of each force was a member of the same ethnic group as President Mobutu. Only Citizen Nkema, security advisor to the President was of a different ethnic group, but he too was from Equateur.

3, 1990, the President returned to the question of fundamental restructuring: "Throughout the course of my tour through the eleven regions of the country and in the multiple audiences which I accorded, people insisted a great deal on the profound restructuring of the security services."⁸⁰ His solution was to announce new appointments:

In response to this concern, and in view of giving these services a more human face, I have just designated two eminent jurists to head, respectively, the National Security Council and the AND. The process of restructuring thus begun will be pursued progressively with the revision of the laws organizing these services in order to guaranty the full exercise of individual liberties.⁸¹

Thus far, the President appears to be duplicating earlier patterns of so-called reform. The newly appointed security heads are long-time stalwarts of the MPR, and the departing chiefs are not straying far from power.

The eminent jurists to which the President referred are Mr. Nimy to replace Nkema Liloo as security advisor and General Likulia to replace Cit. Ngbanda as head of the AND. Mr. Nimy was the minister in charge of the DCRL from 1986 to 1989. Before that time, he was the chief of staff for the Presidency. General Likulia has held a variety of offices in the MPR government and military for a number of years. Moreover, the replaced security chiefs did not fall far from favor. As in earlier shuffles, the replaced security chiefs moved on to other positions of importance within the President's staff. Cit. Ngbanda was appointed to be a political counselor to the President and Cit. Nkema was appointed ambassador to England.

In an interview published in *Jeune Afrique*, the President suggested that change was likely to go no further. When asked about the need to restructure the security forces, the President responded:

The will of the people was very clear on this subject. It demanded the restructuring of the security forces with a view to guaranteeing the full exercise of individual liberties. The changes among the heads of certain of these forces, already announced, will assure this. In addition, we will revise the laws which organize these forces in order to increase their efficiency.⁸²

On May 22, 1990, National Security Council, under Mr. Nimy's guidance, announced a series of measures to end unlawful detention and

80. President Mobutu, Speech (May 3, 1990).

81. *Id.*

82. Interview with President Mobutu, *JEUNE AFRIQUE* 19 (May 21, 1990).

improve judicial supervision of security force practices. What is intriguing about the announced measures is that they contradict the claims made by the government since 1987, that all arrests and detention were made pursuant to the Criminal Code. For example, the Council announced the "abolition of all administrative detention," and the "liberation of all persons detained by security forces for political reasons or for their opinions." The announcement included some new "reforms." It stated that detention centers would be subject to the exclusive control of the judicial authorities. However, as with previous reforms, there is no indication that they have been put into place. In July, a representative of the Zairian government told the United Nations Human Rights Committee that the measures would have to await ratification by the National Assembly.

Conclusion

There is always hope in the announcement of reforms. This time in particular, President Mobutu has unleashed a process that has taken on a momentum of its own. Zairians have come to believe there will be substantial political liberalization in the near future. But it already appears clear that the President will not complete the process willingly. The people of Zaire will have to force the President to fulfill the modest reforms that he promised. As they have for twenty-five years, the security forces will occupy the President's first line of defense and offense, if necessary.

It seems clear from the historical role that the security forces have played notwithstanding the constant announcements of reforms that no real change will come to Zaire until they are dismantled, substantially or completely.