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on civil and  
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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Third periodic report**

**DEMOCRATIC REPUBLIC OF THE CONGO\***

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\* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
INTRODUCTION .....	1 - 10	4
GENERAL INFORMATION .....	1 - 33	5
IMPLEMENTATION OF THE COVENANT .....	34 - 295	9
Article 1: Right of self-determination .....	34 - 41	9
Article 2: Principle of non-discrimination .....	42 - 48	10
Article 3: Equal rights of men and women .....	49 - 55	11
Article 4: Derogations from rights .....	56 - 59	13
Article 5: Restriction of rights .....	60 - 62	14
Article 6: Right to life .....	63 - 72	14
Article 7: Right not to be subjected to torture .....	73 - 92	15
Article 8: Prohibition of slavery, servitude and forced labour .....	93 - 95	18
Article 9: Liberty and security of person .....	96 - 108	19
Article 10: Conditions of detention .....	109 - 120	20
Article 11: Prohibition of imprisonment for failure to discharge contractual obligations .....	121 - 123	22
Article 12: Liberty of movement .....	124 - 127	22
Article 13: Expulsion of aliens .....	128 - 140	22
Article 14: Guarantees of judicial procedure .....	141 - 175	24
Article 15: Principle of the legality of offences and penalties .....	176 - 179	29
Article 16: Recognition everywhere as a person before the law .....	180 - 182	29
Article 17: Respect for privacy .....	183 - 191	29
Article 18: Freedom of thought and religion .....	192 - 195	30

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
Article 19: Freedom of opinion and expression .....	196 - 214	31
Article 20: Prohibition of propaganda for war and advocacy of racial hatred .....	215 - 218	35
Article 21: Freedom of assembly and demonstration .....	219 - 222	35
Article 22: Freedom of association and to form and join trade unions .....	223 - 243	36
Article 23: Protection of the family .....	244 - 269	40
Article 24: Rights of the child .....	270 - 281	42
Articles 25 and 26: Right to participate in public affairs .....	282 - 290	43
Article 27: Rights of minorities .....	291 - 295	45

## INTRODUCTION

1. The third periodic report of the Democratic Republic of the Congo has been submitted 15 years after the second periodic report (CCPR/C/57/Add.1) of 30 May 1989, considered by the Committee at its thirty-ninth session on 17 and 18 July 1990. It thus reflects the late submission of reports due from the Democratic Republic of the Congo. The Committee's concluding observations on the second periodic report are contained in document A/45/40 (paras. 538-583).
2. The delay was due in particular to the loss of autonomy of the former Ministry of Citizen Rights and Freedoms, the merging of which in July 1991 into the Ministry of Justice resulted in the disappearance of its subordinate international covenants follow-up committee, the principal function of which was to prepare human rights reports.
3. The far-reaching political reforms of 24 April 1990 engendered political and institutional instability, which induced the active forces in the country to meet in a national conference to determine the future of the country.
4. In 1992 a constitution emerged from these deliberations, but by 1993 had already been called into question by a political fringe movement, which drafted a parallel constitution. The convergence of the political views of these opposing forces resulted in the adoption on 9 April 1994 of a new transitional constitution.
5. All the country's various constitutions have recognized the fundamental rights of the individual, as stipulated in international conventions.
6. On 17 May 1997 a rebellion originating in the east of the country, as a result of persistent political disquiet, led to a seizure of power in Kinshasa and suspension of all established political institutions, and a change in the name of the country, which again became the Democratic Republic of the Congo, after having been the Republic of Zaire since 1971. A constitutional decree-law was promulgated on the exercise of power. Although there was no specific title on fundamental rights, its article 2 provides that the exercise of individual and collective rights and freedoms is guaranteed, subject to respect for the law, public order and accepted principles of morality.
7. But on 2 August 1998 war again broke out in the east. The country fell victim to aggression by Rwanda, Uganda and Burundi, and at the same time suffered from multiple revolts. Attention was focused on this major crisis and lengthy negotiations were organized at both the international and national levels. On the domestic front political negotiations, known as the "Inter-Congolese dialogue", resulted in the conclusion on 17 December 2002 of the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo, and the adoption on 4 April 2003 of a new constitution.
8. In terms of government machinery for the promotion and protection of human rights, an autonomous ministry, the Ministry of Human Rights, was established on 1 June 1998, followed by the Congolese Human Rights Monitoring Centre, as provided for in articles 154 and 155 of the transitional Constitution.

9. In the meantime, so as to discharge its freely entered into international human rights commitments, on 13 December 2001 the Government established an inter-ministerial committee responsible for the formulation and drafting of initial and periodic reports on human rights and placed it under the authority of the Ministry of Human Rights.

10. The present report takes into account the concerns expressed by members of the Committee during its consideration in July 1990 of the second periodic report.

## **GENERAL INFORMATION**

### **LAND AND PEOPLE**

#### **Land**

11. The Democratic Republic of the Congo, a central African country, straddles the equator. To the north lie the Central African Republic and the Sudan, to the east Uganda, Rwanda, Burundi and the United Republic of Tanzania, to the south Zambia and Angola, and to the west the Indian Ocean, the enclave of Kabinda and the Republic of the Congo.

12. The Democratic Republic of the Congo, a vast country (2,345,409 sq. km) on a continental scale, possesses a largely flat relief. In the centre is a basin, with an average altitude of 230 metres, covered in equatorial forest and with many extensive marshes. The central basin is bordered by staggered plateaux with the exception of the east, where there are volcanic mountains with an average altitude in excess of 1,000 metres.

13. Crossed by the equator, the Democratic Republic of the Congo experiences a hot, humid climate (average temperature of 25°C) and abundant, regular rainfall. Rainfall and temperature fall towards the east. There are two seasons a year: a dry season of almost four months and a long rainy season.

14. The Democratic Republic of the Congo has an extensive network of rivers. The Congo River, 4,700 kilometres in length, and the second biggest in the world after the Amazon in terms of flow, crosses the country from south-east to north-west before emptying into the Atlantic Ocean. The river is fed by several tributaries and is navigable over most of its length.

15. The soil and subsoil contain significant and varied agricultural and mining resources.

#### **People**

##### **1. Demography**

16. In 1956 the population was estimated at 12,768,705 inhabitants. By 1960 it had increased to 14,106,666; the administrative census of 1970 gave a figure of 20,700,500, and the scientific census conducted on 1 July 1984 established the population at 30,731,000. On the basis of projections by specialized agencies, in particular the United Nations Population Fund (UNFPA), the population was estimated at 43,000,000 in 1995, at 47,500,000 in 1999, and at 52,099,000 in 2000, with a projection of 57,589,779 for 2003.

17. The Democratic Republic of the Congo is one of the most populous African countries. The age and sex structure shows a broad-based pyramid, with concave flanks and a narrow summit, reflecting a young population. In 1997, 25.9 million inhabitants were under 18. The natural growth rate is 3.4 per cent (1990-1998), with a fertility rate of 6.4. Life expectancy at birth went from 45 years in 1970 to 41.4 years in 2002 (United Nations Development Programme *Human Development Report 2004*). A breakdown by zone indicates the following:

Since 1993, 60 per cent of the population has been in rural areas and 40 per cent in urban centres with 5,000 or more inhabitants; the degree of concentration in urban centres varies considerably from province to province;

In Maniema the proportion of the population in urban areas is low; in Kinshasa it is high (about one tenth of the entire population);

Rapid growth of the urban population (7 to 8 per cent), the concentration of 28 per cent of the entire urban population in Kinshasa, and the high rate of emigration from rural areas;

The uneven geographical distribution of the population - the highest population densities are in the city of Kinshasa and the provinces of Bas-Congo, Nord Kivu, (Sud Kivu) and Maniema.

## 2. Ethnic groups

18. The population is divided into over 450 tribes, which can be classified in four major groups, each firmly established in a particular territory. The largest tribe (18 per cent) is the Luba (or Baluba) living in Centre Sud; the next largest is the Kongo, living in Bas-Congo (16.6 per cent). The north-west region is inhabited by the Mongo (13.5 per cent), the groups speaking Rwandan and Burundian languages (3.8 per cent), the Zande (6.1 per cent), the Mangbetu and a large number of other ethnic groups. The Chokwe and Lunda are along the frontier with Angola. The pygmies (less than 0.5 per cent) are in Equateur and Orientale provinces.

### Languages

19. In the Democratic Republic of the Congo the official language is French. In addition, some 250 languages and dialects are in widespread use. Of these, 90 per cent are of Bantu origin. Four of them are referred to as "national languages", namely:

Swahili (40 per cent) in the east, in Nord Kivu, Sud Kivu, Katanga, Maniema and Orientale provinces;

Lingala (27.5 per cent) in Kinshasa (the capital) and the neighbouring region, and in Equateur and Orientale provinces;

Kikongo (17.8 per cent) in Bas-Congo and Bandundu;

Chiluba (15 per cent) in the provinces of Kasai Oriental and Kasai Occidental. It should also be noted that in the northern part of the country the many spoken languages belong to the Negro-Congolese family (Ubangian subgroup) and the Nilo-Saharan families (central Sudan group and Nilotic subgroup).

### 3. Religion

20. The Democratic Republic of the Congo is a lay State. Nevertheless five traditional religious denominations are present: Catholic, Kimbanguist, Protestant, Orthodox and Muslim. There are also several religious sects within the country, and some animists.

## II. SOCIO-ECONOMIC INDICATORS

21. The economy is characterized by a structural imbalance in the output of goods and services, and economic development has been extremely patchy. From 1983 to 1989 the situation was relatively stable. Between 1990 and 1996 the country went through a period of economic crisis, marked by inflation and rapid currency depreciation, a fall in output, general unemployment and extreme poverty.

22. This situation, a characteristic feature of the latter years of the Second Republic, was primarily attributable to lax financial and budgetary management, together with unplanned expenditure met by printing money.

23. From May 1997 to July 1998, with the advent of the Alliance des Forces de Libération du Congo (AFDL) regime, there was a marked improvement in the principal economic indicators, particularly in terms of price levels, currency and public finances. This induced the Government to launch a new currency, the Congolese franc, which has an encouraging exchange rate against the major foreign currencies.

24. Unfortunately, since 2 August 1998 the principal economic equilibria have once again been disrupted on account of the attack launched against the country by the Rwanda-Burundi-Uganda coalition joined by rebel forces. The war gave rise to hyperinflation, with serious repercussions for the purchasing power of the population, which it reduced to poverty. At the same time it carried a significant fall (3.15 per cent) in gross domestic product (GDP). The rate of inflation fell from 656.8 per cent in 1996 to 13.7 per cent in 1997 and to 2.2 per cent in July 1998.

25. In the absence of any revival of production and with the climate of war, economic performance has been precarious and uncertain. Thus, the inflation rate rose from 196.3 per cent in September 1999 to 489 per cent in December 1999. This continued until February 2001, with the accession to power of President Joseph Kabila, who took appropriate economic and monetary measures and liberalized the political situation, by relaunching the political negotiations known as the Inter-Congolese Dialogue agreed on subsequent to the ceasefire of 10 July 1999 at Lusaka. Of particular note among these measures are the stabilizing of public finances and the freeing of the exchange rate, which prompted a resumption of cooperation with the Bretton Woods institutions.

#### (a) Macroeconomic indicators

26. The Inter-Congolese Dialogue led to the signing of the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo on 17 December 2002 at Pretoria, South Africa. On the basis of this political agreement a constitution was adopted and

was promulgated on 4 April 2003, facilitating the inauguration of a transition Government including all the belligerent parties, the political opposition and civil society. The economic situation has improved, and at the end of 2003 was as follows:

Money supply: 491.5 million Congolese francs as at 23 September 1998 as against 228.34 million Congolese francs as at 31 December 1997;

Balance of payments in December 2001: exports (US\$ 1,006 billion); imports (US\$ 957 million), representing a surplus of US\$ 49 million;

Investments: with the improvement in macroeconomic parameters since 2001, consolidated by the progressive return of peace, the investment sector has gradually recovered;

External debt: Debt stock as at 31 December 2003: US\$ 9,935.13 million;

Public finances as at 31 December 2003:

Income: 361,231,805,742 Congolese francs;

Expenditure: 361,231,805,742 Congolese francs;

GDP: 8 per cent as at 30 June 2004;

Rate of growth: 5.6 per cent as at 30 June 2004;

Rate of inflation: 4.2 per cent as at 30 June 2004;

Exchange rate: US\$ 1 = 380 Congolese francs as at 30 June 2004;

Per capita income: generally very low, varying between US\$ 82 and 90 per annum.

**(b) Social**

27. The weakening of the social fabric began at the end of the 1970s. It was aggravated by a series of unfortunate events, namely the 1973 Zairianization campaign and the two outbreaks of looting in September 1991 and February 1993, in addition to the two wars of 1996-1997 and 1998-2002. The social sectors worst affected by these crises include health, education, agriculture and the road network.

**(c) Political**

28. Following the attainment of independence by the country on 30 June 1960, the Democratic Republic of the Congo experienced political instability marked by secession and rebellion over much of its territory. This impelled the Congolese army to take power on 24 November 1965 under President Mobutu.

29. President Mobutu instituted a single-party regime which lasted until 24 April 1990, when a return to a multiparty system was announced. The active forces of the country met in the



Sovereign National Conference to debate the future of the country and establish democratic institutions able to guarantee enjoyment of the fundamental rights of citizens and national development. But, against all expectations, this process of democratization took until 17 May 1997, on which date AFDL took power and neutralized the institutions which had emerged from the Sovereign National Conference.

30. A new, two-year transition was announced pending the organization of elections. But the war of 2 August 1998 overturned the entire political agenda and diverted attention until the conclusion of the Global and All-Inclusive Agreement and the new transitional Constitution.

31. The Constitution of 4 April 2003 established a *sui generis* regime, with the following political institutions:

A President of the Republic, whose executive authority is shared with four Vice-Presidents;

A transition Government comprising belligerents, the political opposition and civil society;

A bicameral Parliament: the National Assembly and the Senate;

The courts (art. 64).

32. The transitional Constitution also provides for institutions in support of democracy, namely:

The Independent Electoral Commission;

The Congolese Human Rights Monitoring Centre;

The High Authority for the Media;

The Truth and Reconciliation Commission; and

The Ethics and Anti-Corruption Commission.

33. These institutions are to lead the country into the general elections scheduled to be held between March and September 2005.

## **IMPLEMENTATION OF THE COVENANT**

### **Article 1: Right of self-determination**

34. The Democratic Republic of the Congo has a monistic legal regime. The provisions of the Covenant are applicable since they stand above the law. Article 193 of the transitional Constitution provides that: "Duly concluded treaties and agreements shall, on their publication, take precedence over legislation, subject, in the case of each treaty or agreement, to its implementation by the other party."

35. Article 1, paragraphs 2 and 3, of the transitional Constitution provides that: “The Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo shall constitute the sole authority during the transition in the Democratic Republic of the Congo. During the transition period all powers shall be established and exercised as prescribed in the Global and All-Inclusive Agreement and in this Constitution.”

36. The preamble to the Constitution solemnly reaffirms the commitment of the Democratic Republic of the Congo to the principles of democracy and human rights, as defined in the Universal Declaration of Human Rights of 10 December 1948 and the African Charter on Human and People’s Rights adopted on 18 June 1981, as well as in all the international and regional legal instruments adopted by the United Nations and the African Union which have been duly ratified by the Democratic Republic of the Congo.

37. Article 4 of the Constitution provides that: “The Democratic Republic of the Congo is, within its borders of 30 June 1960, an independent, sovereign, indivisible, democratic, social and lay State.”

38. Article 6 of the Constitution provides that: “No one may violate the territorial integrity, national unity or sovereignty of the Congolese State. Every central, provincial and local authority has the duty to safeguard the integrity, sovereignty and national unity of the Democratic Republic of the Congo on pain, where appropriate, of being subject to charges of treason or high treason.”

39. Article 9 of the Constitution provides that: “The soil and subsoil belong to the State. Conditions governing their concession shall be determined by a law protecting the interests of the local population.”

40. Act No. 93-021 of 20 July 1973, setting out the general regime governing property, land and real estate and securities, provides in its article 53 that: “The soil is the exclusive, inalienable and imprescriptible property of the State.” The Act governs the procedure for the granting of land concessions.

41. The Mining Code, with its implementing measures, governs the granting and exploitation of mining concessions. It also guarantees the rights of the local population to exploit local resources.

## **Article 2: Principle of non-discrimination**

42. Article 17 of the Constitution provides that: “All Congolese are equal before the law and have the right to equal protection of the law. No Congolese may, with regard to education or access to public service, or in any other matter, be subject to discrimination, whether by law or an act of the executive, on the grounds of religion, sex, family origin, social status, residence, opinions or political beliefs, or membership of a race, ethnic group, tribe, or cultural or linguistic minority.”

43. Article 60, paragraph 1, provides that: “All Congolese have the duty to respect and treat their fellow citizens without any discrimination whatsoever and to maintain relations with them that safeguard, promote and strengthen national unity and mutual respect and tolerance.”

44. Article 39, paragraphs 3, 5 and 6, of the Constitution provides that: “No one shall suffer harm at work on the grounds of origin, sex, views or beliefs. The law establishes the statute governing workers and regulates the specific characteristics of the legal regime governing each profession and the exercise of professions requiring academic qualification. Professions must be structured and must operate in accordance with democratic principles.”

45. Article 180 of the Congolese Criminal Code punishes all arbitrary acts and all acts violating the freedoms and rights guaranteed to individuals in laws, decrees, ordinances and regulations, ordered or carried out by a civil servant or public official, by a government official or representative of authority or a law enforcement officer.

46. Administrative appeals (application for reconsideration and appeal to a superior administrative authority), in connection with rights violations, may be exercised by constituents prior to a legal appeal. In addition, an appeal may be filed with the Ministry of Human Rights in case of flagrant violations of human rights.

47. This is the case of Mr. Ndongosi Dialungana who, after an unsuccessful appeal before the district public prosecutor on 20 October 1998 seeking annulment of a customary ruling against him by the Mbanza Ngungu district court, province of Bas-Congo, appealed to the office of the Ministry of Human Rights in Mbanza Ngungu on 2 October 2000. An approach by the Ministry to the prosecutor resulted in a successful outcome to the appeal.

48. Nevertheless, some legal provisions are still discriminatory. For example, article 448 of the Family Code requires a married woman to obtain her husband’s authorization for all legal acts performed by her in person. Efforts are under way to bring Congolese legislation into line with international legal instruments. Thus, in August 2003 workshops were held in Kinshasa on harmonization of the Family Code with the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

### **Article 3: Equal rights of men and women**

49. Article 51 of the transitional Constitution provides that the State has the duty to ensure the elimination of all forms of discrimination against women and respect for the promotion for the rights of women. The State has a general obligation, in particular in the economic, social and cultural domains, to take all appropriate measures to ensure full participation by women in national development. The State takes measures to combat all forms of violence against women in public and private life. Women have a right to proper representation within national, provincial and local institutions.

50. Pursuant to the provisions of the Constitution, women occupy ministerial, parliamentary, judicial and administrative posts, as well as posts in the private sector. However, further efforts must be made to ensure that women are represented in all sectors of national life.

51. The major obstacles blocking participation by women in decision-making arise in particular for the following reasons:

Negative stereotypes of women based on custom and tradition;

Low level of education among women arising from the fact that families prefer to send boys rather than girls to school, girls being bound for early marriages;

The absence, until recent years, of a database and reliable information on women capable of discharging high-level functions;

A lack of self-confidence among women.

52. With a view to tackling these obstacles the Government has launched an action programme to encourage the advancement of women, including through a school enrolment campaign entitled “Every girl in school”.

53. Further, the Ministry of Social Affairs, Status of Women and the Family has published statistics on women executives in the country in the form of a biographical guide. The authors explain their aim as follows: “The preparation of a biographical guide to women executives and leaders in the Democratic Republic of the Congo in general and the city of Kinshasa initially reflects the commitment made by the Government to implement ways and means of promoting participation by women in decision-making, in accordance with the 12 priorities of the Beijing Platform for Action. The study also reflects the common will of the Government and of the United Nations Childrens Fund (UNICEF) to issue reliable data on women executives and leaders in the Democratic Republic of the Congo in the context of the ‘Advocacy for women’ project so as to secure broad participation by women in senior and decision-making positions” (Source: Ministry of Social Affairs, Status of Women and the Family, Biographical Guide to Women Executives and Leaders, City of Kinshasa, February 2002, p. 5).

54. Surveys conducted in the context of this study show that women are clearly underrepresented in various sectors, even in Kinshasa, as shown in the following table (table 1).

**Employment of female executives compared with male executives,  
Kinshasa, by sector**

No.	Sector	Number of women	Number of men	Total	Percentage
01	Teaching	285	4 603	4 888	6
02	Agriculture	14	406	420	3
03	Commercial	3	88	91	3
04	Communication	54	1 183	1 237	4
05	Conservation	6	117	123	5
06	Construction	13	506	519	3
07	Energy	40	1 255	1 295	3
08	Finance	86	3 093	3 179	7
09	Industry	10	230	240	4
10	Medical	180	910	1 090	17
11	Mining	2	183	185	1
12	Services	429	5 954	6 383	7
13	Transport	63	3 008	3 071	2
Total		1 185	21 536	22 721	X=5

*Source:* Ministry of Social Affairs, Status of Women and the Family, Biographical Guide to Women Executives and Leaders, City of Kinshasa, February 2002, p. 7.

55. With regard to national statistics, the proportion of women in public life in 2004 in the various sectors is shown in the following table (table 2).

**Representation of women in different national public institutions**

Transition institutions, March 2004	Total staffing	Women		Men	
		Staffing	Percentage	Staffing	Percentage
Presidential affairs	5	0	0	5	100
Government	61	7	11	57	89
Senate	120	3	2.5	117	97.5
National Assembly	500	60	12	440	88
Judiciary	1 800	200	11	1 600	89
Public and mixed economy enterprises	362	23	6	339	94
Foreign Service	311	37	12	274	88
Army	-	-	-	-	-
Institutions in support of democracy	5	0	0	5	100
Public administration (general departments)	47	6	12	41	88
Regional:	33	11	33	22	67
Governors		0	0	11	100
Deputy-Governors		11	33	11	

*Source:* Ministry of Social Affairs, Status of Women and the Family, national report of the Democratic Republic of the Congo on review and implementation of the Beijing Platform for Action + 10, Kinshasa, February 2004, p. 12.

**Article 4. Derogations from rights**

56. Article 134, paragraphs 1 and 3, of the transitional Constitution provide that: “In accordance with the provisions of article 73 of the present Constitution, the President of the Republic declares war on a decision of the Council of Ministers on the recommendation of the National Defence Council and authorization of the National Assembly and Senate. The rights and duties of citizens in time of war or in the event of invasion or attack on the country by foreign forces shall be governed by an organization act.”

57. Although the Constitution does not explicitly state which rights may be derogated from, in the event of the proclamation of a state of war or emergency, by constitutional tradition there is no authorization for derogation from the following fundamental rights: the right to life, the right to physical integrity (right not to be tortured), the right to equality, the right not to be kept in slavery or servitude, the right not to be imprisoned for acts of commission or omission which did not constitute offences when they were perpetrated, freedom of thought, conscience and religion, and recognition of legal personality.

58. Article 85 of Act No. 96-002 of 22 June 1996 governing exercise of freedom of the press provides that: “In case of a state of emergency necessitated by the requirements of public order, the competent administrative authorities shall be empowered to take administrative measures prohibiting the transmission of a broadcast or programme which is the subject of the measure provided that, within 48 hours, a reasoned notification is submitted to the competent district court issuing the injunction.”

59. It should be noted that during the entire period of the war, that is from 2 August 1998, the date on which hostilities broke out, to 17 December 2002, the official end of the war, with the signing of the Global and All-Inclusive Agreement, neither a state of emergency or state of exception was declared. Thus the Democratic Republic of the Congo remained under an ordinary law regime.

#### **Article 5: Restriction of rights**

60. Title III of the transitional Constitution of 4 April 2003, on public freedoms, rights and fundamental duties of Congolese citizens (arts. 15-63), contains provisions guaranteeing the essential rights and freedoms recognized by the Covenant.

61. As provided for in article 2, paragraph 2, of this Constitution: “Any law not in conformity with the present Constitution is, inasmuch as such non-conformity is established by the Supreme Court of Justice, null and void.”

62. Implementation of this constitutional provision may take place *a priori* or *a posteriori*. In fact the Supreme Court intervenes through its opinions, before a law or regulatory instrument is promulgated, or by its decisions, when it is seized in legal proceedings or defence proceedings, in accordance with article 150, paragraphs 1 and 4, of the Constitution. The procedure of issuing an opinion has been used in particular in connection with the Act on political parties and the Act governing the organization and functioning of the Independent Electoral Commission.

#### **Article 6: Right to life**

63. Article 15, paragraphs 1, 2, 3 and 5, of the transitional Constitution, states that the human person is inviolable. The State has the obligation and duty to respect and protect it. Every individual has the right to life and physical integrity. No one may be deprived of life or liberty other than in the cases provided for and in the forms prescribed by law.

64. Article 175 of Judicial Organization Regulation No. 299/79 of 20 August 1979 containing the rules of procedure of the courts and prosecution services states that a government law officer must in all cases submit an appeal whenever the accused is sentenced to death or life imprisonment. A death penalty delivered at last instance must in all cases be the subject of an appeal for clemency.

65. Article 3, of the Regulation of 9 April 1898 on capital punishment states that when there is proof that a woman condemned to death is pregnant, she shall be executed only after delivering the child.

66. In addition to the comments on the death penalty in the initial report of the Democratic Republic of the Congo on implementation of the Convention against Torture, it should be noted that the Congolese Charter of Human Rights adopted in June 2001, at the National Conference on Human Rights, provides for abolition of the death penalty.

67. Although the Democratic Republic of the Congo has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty and has lifted the moratorium on the death penalty, in practice there have been no executions for over a decade, other than under military jurisdiction. Between 1997 and 2001 the former Military Court ordered an estimated 50 executions for capital offences, there being no precise statistics.

68. In the absence of national statistics on people condemned to death, it should be noted that from 1999 to date the following groups of individuals have been on death row at the Kinshasa Penitentiary and Re-education Centre (CPRK):

Military personnel: 81;  
Police officers: 4;  
Civilians: 21.

*Source:* CPRK records, June 2004.

69. With respect to children under 18, the Decree of 6 December 1950, as amended by Ordinance-Law No. 78/016 of 4 July 1978, on juvenile delinquency, provides for custody and protective measures, even in cases in which a child has committed an offence punishable by death.

70. Article 8 of the Ordinance-Law provides that: "Where a minor has committed an offence punishable by the death penalty or life imprisonment, the judge may, if the child is placed in the custody of the Government, extend such a term beyond the twenty-first birthday of the child up to a maximum term of 21 years."

71. With regard to mother-and-child health, the MICS2 survey showed that 126 children in 1,000 did not live to celebrate their first birthday. The infant and child mortality rate is 213 per 1,000: almost 1 newborn in 5 dies before the age of 5 years. These figures place the Democratic Republic of the Congo among those countries with high infant mortality rates.

72. Maternal mortality is 1,289 deaths per 100,000 live births. This rate, far higher than the African average of 870 per 100,000, is one of the highest in the world (Source: Ministry of Planning, National Survey on Women and Children MICS2/2001, vol. II, Kinshasa, July 2002, pp. 59 and 61).

#### **Article 7: Right not to be subjected to torture**

73. There is no definition of torture in any constitutional, legislative or regulatory instrument referring to torture. Nevertheless, Congolese Jurisprudence, as reported by Professor Likulia Bolongo (*Droit pénal spécial zairois*, Paris, LDGJ, 2nd ed., 1985, p. 180), views as physical torture:

(a) Very serious ill-treatment and acts of cruelty or barbarity, inflicted primarily with the aim of causing suffering (Boma, 4 December 1900, State Jurisprudence, I, p. 102, Boma, 22 July 1902, State Jurisprudence, I, p. 205);

(b) The tightening of a victim's bonds in a painful manner (Léopoldville, 18 September 1928, RJCB 1931, p. 163);

(c) The binding of a person tightly by the wrists, arms and feet with ropes, and then placing the individual in direct sun and leaving him for several hours without food or water (Elisabethville, 23 May 1911, Congo Jurisprudence, 1912, p. 174);

(d) Intentionally putting out the eye of a person under arrest.

It should be noted that these physical tortures do not constitute a specific offence, but, rather, an aggravating circumstance of the offence provided for in article 67, paragraph 1, of the Criminal Code. In the absence of infringement of individual freedom, torture may be prosecuted only as assault and battery.

74. Article 15 of the transitional Constitution provides that: "The human person is inviolable, the State has the obligation to respect and protect it. Every individual has the right to life and physical integrity. No one may be subjected to torture or to cruel, inhuman or degrading treatment. No one may be deprived of life or liberty other than in the cases provided for and in the forms prescribed by law."

75. Article 19 of Decree-Law No. 017/2002, setting out the code of conduct of State officials provides that: "A State official must refrain from threats, abuse, intimidation, sexual or psychological harassment or any other form of violence."

76. Articles 43 to 50 of the Criminal Code, where the arrest and detention are in order, nevertheless, provide for the punishment of homicide and murder, simple and aggravated assault and battery with intent to harm, aggravated homicide, poisoning and administration of harmful substances.

77. Article 67, paragraph 2, of the Criminal Code punishes torture, without providing any definition, as an aggravating factor in the offence of arbitrary arrest and illegal detention.

78. Article 180 of the Criminal Code provides that: "All arbitrary acts and acts that violate the freedoms and rights guaranteed individuals in laws, decrees, ordinances and regulations, ordered or carried out by a civil servant or public official, by a government official or representative of authority or law enforcement officer, shall be punished by a prison term of 15 days to 1 year, and a fine of 200 to 1,000 francs, or by one of these penalties only. If the behaviour constitutes a violation punishable by more severe penalties, the author shall be convicted of those penalties." This provision is similar to the definition given in article 1 of the Convention against Torture in that it penalizes torture committed by officials only, whereas articles 43 to 50 penalize acts of torture committed by anyone.

79. Article 191 of the Military Criminal Code provides that: "Anyone who, in time of war or exceptional circumstances, is guilty of imposing collective fines, abusive or illegal commandeering, confiscation or appropriation, import to or export from the territory of the



Democratic Republic of the Congo, by any means, of goods of any kind, including shares and currency, shall be punished by a term of imprisonment of 10 to 20 years. If such actions are accompanied by ill-treatment or torture or followed by a further offence, the offender shall be punished by death.”

80. Article 192 of the Military Criminal Code provides that: “In time of war or exceptional circumstances forced labour by civilians or deportation for any reason of an individual under arrest or imprisoned without the pronouncement of a regular conviction in accordance with the law and customs of war shall be punished by a prison term of 15 to 20 years. If these acts are accompanied by ill-treatment or torture or followed by a further offence, the offender shall be punished by death.”

81. Article 194 of the Military Criminal Code provides that: “Anyone who, during hostilities, wearing a false uniform, or employing a false name or false official order, arrests, illegally confines or detains an individual, or threatens an arrested, illegally confined or detained individual with death, shall be punished by life imprisonment. The death penalty shall apply when victims of arrest, detention or illegal confinement are subjected to physical torture.”

82. Ordinance No. 78-289 of 3 July 1978 on the exercise of the duties of criminal investigation police officers under ordinary law jurisdictions provides that inquiries must be conducted in accordance with the law and that placement under arrest and in custody must be properly conducted. Article 7 states that persons in custody have the right to be examined by a doctor on request and that should the doctor find that the person in custody has been subjected to abuse or ill-treatment, the doctor must report the fact to the State prosecutor. If the doctor finds that the person in custody may not, for reason of health, be held any longer, the detainee shall be brought before the prosecutor as quickly as possible.

83. Article 80 of the Ordinance provides that: “Government law officers may lawfully visit places of custody at any time. They may satisfy themselves as to their salubrity and the physical and psychological state of the persons held. They shall receive records of meetings with such persons and any complaints (...)”.

84. These provisions clearly penalize acts constituting physical or mental torture by a government official.

85. Further, article 79 of the same Ordinance states that: “Any placement under arrest or in custody of members of the family of a suspect so as to guarantee his appearance is prohibited. A criminal investigation police officer responsible for such an act is subject to the penalties provided for in article 67 of the Criminal Code.”

86. Ordinance No. 344 of 17 September 1965 embodying the prison regulations and regulations on conditional release governs the inspection of short-stay prisons and prisons by government law officers, doctors and regional authorities. Under article 29, if detainees have grievances, they shall be heard in private. The officials shall prepare a report to be submitted to their hierarchical superiors and the Inspector of Prisons, who shall forward it with comments to the Ministry of Justice.

87. Article 51, paragraph 3, of the transitional Constitution provides that: “The State shall take measures to combat all forms of violence against women in public and private life.”

88. Mass rape in the east of the Democratic Republic of the Congo during the war has led to increased awareness in the country.

89. In the context of prevention of and efforts to combat violence against women, information and awareness campaigns are conducted by public institutions and non-governmental organizations for the public and officials in judicial institutions. Thus, the Government, through the Ministries of Human Rights and Social Affairs, Status of Women and the Family, organized a national human rights conference in 2001 and a women’s forum in 2003. In coordination with civil society organizations it launched a national campaign against sexual violence against women and is involved in efforts to combat such violence (Ministry of Social Affairs, Status of Women and the Family, national report of the Democratic Republic of the Congo on review and implementation of the Beijing Platform for Action +10, Kinshasa, February 2004, pp. 5 and 11).

90. Since 2003 the Ministries of Social Affairs, Status of Women and the Family, and of Justice and Human Rights, have taken part in the initiative on efforts to combat rape and violence against women. In this connection the Ministry of Justice organizes retraining throughout the country for judges, supplemented by seminars by non-governmental organizations in the justice sector, with specific pedagogical support.

91. After a lengthy period of inactivity, owing to the protracted war, which lasted from 1998 to 2003, legal proceedings are being undertaken in various parts of the country (e.g. at Kalemie, March 2004, against police officers).

92. The code of medical ethics prohibits subjecting any person to medical or scientific experiments without consent. The annex to Ordinance No. 70-158 of 30 April 1970, setting out the rules of medical ethics, states, in article 20: “The doctor must avoid all unfounded treatment, any imprudent experimentation, and abstain from any medical act that might occasion harm. The doctor may not induce illness or morbid conditions other than: for the sole purpose of scientific observation; with the formal consent of a duly warned subject aware of the risks.”

#### **Article 8: Prohibition of slavery, servitude and forced labour**

93. Article 68 of the Criminal Code provides that: “Anyone who abducts, arrests, or imprisons, or causes to be abducted, arrested or imprisoned, any person with the purpose of selling that person into slavery, or who has any person placed under his authority for such purpose, shall be punished in accordance with the penalties established by and pursuant to the provisions of the previous article.”

94. Article 2, paragraphs 2 and 3, of Act No. 015/2002 of 16 October 2002 containing the Labour Code, prohibits forced or compulsory labour and the worst forms of child labour, which involves slavery in all its forms, the sale or trafficking of children, servitude for indebtedness and bondage.

95. Article 326 of the Labour Code punishes violations of these provisions as follows: “Without prejudice to the application of more severe penalties under criminal legislation, anyone who violates the provisions of article 2, paragraphs 2 and 3, shall be punished by a maximum of six months imprisonment and a fine of 30,000 Congolese francs in constant francs, or by one of these penalties only.

### **Article 9: Liberty and security of person**

96. Article 19, paragraph 2, of the transitional Constitution provides that: “No one may be prosecuted, arrested or held other than as provided for and in the form prescribed by law.”

97. The provisions governing pre-trial detention are contained in the Decree of 6 August 1959 embodying the Code of Criminal Procedure, as amended by Ordinance-Law No. 79-014 of 6 July 1979. Article 28 embodies the principle that pre-trial detention is an exceptional measure. Article 27 sets out the conditions for pre-trial detention as follows: “The accused may be placed in pre-trial detention only if there is significant evidence of guilt and if the alleged offence is punishable by a prison sentence of six months or more. Should the offence be punishable by a sentence of less than six months, pre-trial detention is authorized only if there is reason to believe that the accused will flee or if his identity has not been provisionally or definitively established, or if pre-trial detention is sought as a matter of urgency in the interest of public security.”

98. An initial order for pre-trial detention by a judge is valid only for 15 days. At the end of that period the accused must be brought before the judge for a 30-day extension of the detention. Pre-trial detention may be extended only once if the facts appear to constitute an offence for which the penalty provided for by law does not exceed two months’ forced labour or imprisonment. The judge may authorize or extend pre-trial detention with or without pre-trial release, which may be accorded only on bail.

99. Article 6 of the Decree of 6 August 1959 embodying the Code of Criminal Procedure provides that: “In the event of a flagrant offence or offence deemed to be flagrant and punishable by a minimum of three months’ imprisonment, any person may, in the absence of the judicial authority responsible for acting and of any criminal investigation police officer, seize the presumed author and bring him immediately before the nearest authority.”

100. Article 145 of Act No. 023/2002 of 18 November 2002 setting forth the Military Judicial Code provides that: “In the case of flagrant offences punishable by imprisonment of at least six months and without prejudice to the disciplinary authority of hierarchical superiors, any military criminal investigation police officer is empowered by virtue of that status to arrest military personnel who are authors of such violations or accomplices thereto.”

101. Article 146 states that the duration of such custody may not exceed 48 hours.

102. Article 147 provides that: “On pain of application of the penalties provided for in articles 180 of the present Code and 108 of the Military Criminal Code, hierarchical superiors must comply with any request by a criminal investigation police officer under ordinary law for the handing over of a serviceman when the requirements of a preliminary investigation or a flagrant offence or the execution of a request for judicial assistance so require.”

103. Under article 148 of the Military Judicial Code: “Criminal investigation police officers may not hold servicemen handed over to them for more than 48 hours.” Article 149 of the Code provides that: “On expiry of the period of custody, servicemen arrested in flagrante delicto or against who there is significant and concordant evidence of guilt must be brought before the competent judicial authority.”

104. Article 150 provides that: “Hierarchical superiors must be advised of the transfer.”

105. Lastly, article 156 of the Military Judicial Code states that: “Military criminal investigation police officers may hold persons who are not members of the army only in the manner and under the conditions established in the ordinary Code of Criminal Procedure.”

106. Article 72 of Ordinance No. 78-289 of 3 July 1978 on the authority of a criminal investigation police officer in ordinary law jurisdictions provides that: “Criminal investigation police officers may arrest any person suspected of having committed an offence punishable by a minimum of six months’ imprisonment only provided that there is significant evidence of guilt. They may also, where the violation is punishable by less than six months’ and more than seven days’ imprisonment, arrest a person against whom there is significant evidence of guilt provided that there is a danger of flight or that his identity has not been provisionally or definitively established. The suspect shall be given an opportunity to provide explanations beforehand.”

107. Article 73 provides that: “Criminal investigation police officers must immediately bring persons arrested pursuant to article 72 before the closest government law officer. However, when the needs of the inquiry require and the arrest was not made following a flagrant violation or violation deemed to be such, the criminal investigation police officer may hold the person arrested for a period not exceeding 48 hours. On completion of this period the person in custody must be released or brought before the government law officer, unless this is not possible for the criminal investigation police officer owing to the distances involved.”

108. Under article 74 of Ordinance No. 78-289 of 3 July 1978: “Arrest and custody must be recorded in the report. The criminal investigation police officer must indicate the time at which custody begins and ends as well as the justifying circumstances. The arrest report is read and signed by the person placed under arrest and in custody and by the criminal investigation police officer on the ordinary police report forms.”

#### **Article 10: Conditions of detention**

109. Article 15, paragraph 5, of the transitional Constitution provides that: “No one may be deprived of life or liberty, other than in the cases provided for and in the forms prescribed by law.”

110. According to statistics provided at the workshops and final seminar on reform of the system of justice in the Democratic Republic of the Congo, organized in November 2004 by the Ministry of Justice, there are 13,000 prisoners in the country.

111. Article 20, paragraph 5, of the transitional Constitution provides that: “Every prisoner must be treated in such a manner as to preserve his life, physical and mental health and dignity.”

112. It should be acknowledged that conditions of detention in prisons in the Democratic Republic of the Congo are not very good. Nevertheless, efforts are under way to improve them, in particular through making those running penitentiaries more accountable. Similarly, a seminar to raise awareness of the rights of prisoners was organized for prison staff in October 2004 by the Ministry of Human Rights.”

113. Ordinance No. 344 of 17 September 1965 embodying the prison regulations regime draws a distinction between prison, in which convicted prisoners are held, and short-stay prison, housing persons in pre-trial detention.

114. However, in practice, the two categories of detainees are held in the same place. This is because of infrastructure issues, financial difficulties having made it impossible to update prison facilities.

115. Nevertheless, women are always kept separate from men in all prisons in the country.

116. With regard to children, article 39, paragraph 3, of the Ordinance provides that children under 18 must not be placed in prisons unless there is no State custodial and educational establishment (EGEE) within the jurisdiction of the court of first instance. In the absence of such an establishment, they are to be held in a special wing.

117. Specialized establishments for the detention of minors, known as State custodial and educational establishments, have been set up in various provinces throughout the country. By way of example, the Mbenseke-Futi currently houses 83 minors, the Madimba centre 20. The following table provides a full list of EGEE centres throughout the country.

#### **State custodial and educational establishments (EGEEs)**

No.	EGEE	Province	Capacity	Legislative instrument
1.	Madimba	Bas-Congo	800	Ordinance No. 13/20 of 13 January 1954
2.	Kasapa	Katanga	300	Ordinance No. 11/400 of 3 August 1959
3.	Mbenseke-Futi	Kinshasa	600	Regulation No. 30 of 16 March 1966
4.	Kipuka	Bandundu	350	Regulation No. 287 of 25 October 1967
5.	Bikoro	Equateur	250	Regulation No. 126 of 10 October 1971
6.	Nyangezi	Kivu	300	Regulation No. 029 of 2 March 1972
7.	Kanda-Kanda	Kasaï-Oriental	300	Regulation No. 119 of 19 June 1975
8.	Bifay-Fay	Oriental	300	Regulation No. 173 of 13 October 1975
9.	Tshibashi	Kasaï-Occidental	200	
10.	Kinshasa (for girls)	Kinshasa	300	Regulation No. 014/72 of 2 February 1972
			2 710	

*Source:* Ministry of Justice, Department of Juvenile Delinquency, report, June 2004.

118. Owing to budget constraints, certain centres have been closed and young people held in special prison wings.

119. Abuse has been noted in cases of confinement in police cells; the inspection units of the Ministry of Justice and judicial institutions are seeking to eradicate such abuse.

120. In the aim of encouraging behavioural change and social rehabilitation, convicts and prisoners are introduced to certain trades, such as carpentry and bricklaying. In this connection, the workshop and seminar referred to above on reform of the system of justice recommended an overhaul of such programmes.

#### **Article 11: Prohibition of imprisonment for failure to discharge contractual obligations**

121. In the Democratic Republic of the Congo contractual obligations fall under civil legislation. Accordingly, imprisonment for debt would be illegal, and the author could be prosecuted under article 67 of the Criminal Code.

122. However, cases of detention have frequently been unearthed by State prosecutors, particularly concerning criminal investigation police officers who, owing to inadequate training, sometimes confuse civil debt with fraud.

123. To correct these misapprehensions, training seminars for justice officials are regularly organized by the Ministry of Justice and by the Ministry of Human Rights.

#### **Article 12: Liberty of movement**

124. Under article 16 of the transitional Constitution, exercise of liberty of movement is guaranteed for every individual in the territory of the Democratic Republic of the Congo.

125. Article 33, paragraph 3, states that: "Every Congolese has the right to move freely in the territory of the Republic, to establish residence therein, and to leave and return to the country. Exercise of this right may be limited only in accordance with the law. All Congolese enjoy the same rights wherever they are resident in the national territory."

126. Congolese nationals who leave the Democratic Republic of the Congo do not require a visa.

127. Administrative banishment orders have not been applied since 1998.

#### **Article 13: Expulsion of aliens**

128. Article 58 of the transitional Constitution provides that: "Subject to reciprocity, any alien legally present in the national territory shall enjoy the same rights and freedoms as Congolese nationals, with the exception of political rights. Aliens shall benefit from the protection accorded individuals and their assets on the conditions established by treaties and laws. Aliens must comply with the laws and regulations of the Republic."

129. Article 35 of the Constitution provides that: “The right of asylum is recognized. Subject to national security considerations, the Republic grants asylum in its territory to foreign nationals who are being pursued or persecuted on the grounds of their views, their beliefs, their race, ethnicity or language, or their work on behalf of democracy and in defence of human rights and the rights of peoples, in accordance with the laws and regulations in force. Any person benefiting from the right of asylum is prohibited from undertaking any subversive activity against his country of origin or against any other country from the territory of the Democratic Republic of the Congo (...).”

130. Ordinance-Law No. 83-033 of 12 September 1983 on the Immigration Police regulates expulsion and return (refoulement). The main institutions and offices concerned are: the President of the Republic, the National Information Agency, the Department of Migration, and the Customs and Excise Office.

131. Expulsion of an alien is at the discretion of the President of the Republic.

132. Pursuant to article 3 of Decree-Law No. 002-2003 of 11 January 2003 on the establishment and organization of the Department of Migration, this service is responsible in particular for:

Implementation of government immigration and emigration policy;

Implementation, on Congolese soil, of the laws and regulations governing immigration and emigration;

The Immigration police.

133. Article 15, paragraph 2, of the Ordinance-Law specifies that an alien against whom expulsion proceedings are initiated and who may seek to avoid execution of the measure may be incarcerated in a short-stay prison by the Director of the National Information Agency or his deputy for a period of 48 hours. In case of absolute need, this period may be extended for further periods of 48 hours, up to a maximum of 8 days.

134. Article 16 of the same instrument provides that: “An expulsion order shall only be issued against an alien holding a resident card or a refugee after the National Immigration Commission has issued its opinion. The expulsion order must refer to the Commission’s view.”

135. Expulsion orders may be served by any official or agent of the National Information Agency, the Department of Migration or the Customs Office or by any authorized police officer.

136. If the alien is under arrest, notice shall be served by the warden of the short-stay prison. If the alien leaves the country without having received notice, it may be served through the competent diplomatic or consular authority.

137. Pursuant to article 13 of Ordinance-Law No. 83-033, the immigration officer may make a determination concerning the return to the border of aliens not holding regular entry documents. There is no appeal. An alien subject to such a determination shall immediately be taken to the other side of the border for the purpose of repatriation, any cost being the responsibility of the transport company.

138. Article 13, paragraphs 2 and 3, of Ordinance-Law No. 83-033 provide that: “Within 24 hours of the date of notification, an alien may file an appeal with the regional director of the National Research and Investigation Centre (CNRI) (now the National Information Agency). The time frame for the appeal is open. Pending a decision by the Director, the alien is instructed to reside in a place designated by the regional authorities. The Director’s decision shall be communicated as quickly as possible to the immigration officer, who shall inform the party concerned. The person who has been definitively classified as undesirable shall be escorted to the border post of his choice.”

139. The National Immigration Commission is presided over by the Minister of the Interior or his representative. Pursuant to article 19 of Ordinance-Law No. 83-033, the Commission comprises seven members, representing the following ministries and services:

Regional administration (currently the Ministry of the Interior, Decentralization and Security);

Foreign Affairs and International Cooperation;

Justice;

Economic Affairs, Industry and Trade;

Labour and Social Security;

CNRI (now ANR);

SNI (now DGM).

140. Article 2 of Ordinance No. 67-483 bis of 13 November 1967 on the consultation procedure of the aliens consultative committees provides that: “When proceedings are brought against an alien holding a category B residence card or a refugee, the Ministry of the Interior or his representative, at the proposal of the Director of the Security Service or his deputy shall immediately inform the Aliens Consultative Committee.”

#### **Article 14: Guarantees of judicial procedure**

141. Article 17, paragraph 1, of the transitional Constitution provides that: “All Congolese are equal before the law and have the right to equal protection of the law.”

142. Article 146 of the Constitution states: “Justice is rendered throughout the territory of the Democratic Republic of the Congo in the name of the Congolese people.”

143. Articles 19 to 24 of the Constitution guarantee individual freedom in these terms: “Individual freedom is inviolable and guaranteed by law. No one may be prosecuted, arrested or imprisoned other than by law in the form prescribed. No one may be prosecuted for an act of commission or omission that did not constitute an offence at the time when it was committed and at the time of the proceedings. Any person accused of an offence is presumed innocent until guilt has been established in a final judgement.”



144. Article 20 provides that: “Any person arrested must be informed immediately and at the latest within 24 hours of the reasons for the arrest and of any charge brought against him in a language which he understands. He must immediately be informed of his rights. A person in custody has the right to make immediate contact with his family and counsel. Custody may not exceed 48 hours. On expiry of this period, the person in custody must be released or placed at the disposal of the competent judicial authority. The treatment accorded all prisoners must guarantee the life, physical and mental health and dignity of the prisoner.”

145. Article 21 continues: “All persons deprived of freedom by arrest or detention have the right to appeal before a court which shall rule expeditiously on the legality of the detention and order release if detention is illegal. A person who is a victim of an illegal arrest or detention is entitled to fair and equitable compensation for the injury caused. Every individual has the right to mount his own defence or to secure the assistance of counsel or a defence attorney of his choosing. Every person prosecuted has the right to a hearing in the presence of counsel or a defence attorney of his choice at each stage of criminal proceedings, including police inquiries and pre-trial investigation.”

146. The implementation of this innovative provision, introduced in our positive law by the transitional Constitution, requires reform of Congolese criminal procedure, to distinguish between pre-trial investigation and prosecution. Debate on this topic took place at the workshops on reform of the system of justice referred to above.

147. Article 22 provides that: “No one may be taken against his will from the jurisdiction of the judge assigned to him by law. Everyone shall be entitled to a fair hearing by a competent tribunal and within the time frame established by law.”

148. Article 23 states: “Hearings in courts and civilian and military tribunals shall be public, unless public hearings are deemed to be detrimental to public order and morality. In such cases the court shall order proceedings to be held in camera.”

149. Article 24 provides: “All judgements shall be delivered in public. Judgements shall be delivered in writing and be reasoned. The right to appeal against a judgement is guaranteed to everyone, in accordance with the law.”

150. Reform of the system of military justice, pursuant to Act No. 023/2002 of 18 November 2002, embodying the Military Judicial Code, restored the right of appeal to a higher court, unlike the 1997 procedure of the former Military Court.

151. Article 73 of the Decree of 6 August 1959 embodying the Code of Criminal Procedure provides that: “Each of the parties may be assisted by persons specially authorized by the court in each case to represent them. Unless the defendant objects, the judge may appoint a defender from among leading citizens of the area in which the court sits. If the defender so appointed is a State official, he may not refuse the appointment, on penalty of appropriate disciplinary action.”

152. It should be noted that, since the enactment of Ordinance-Law No. 79-08 of 28 September 1979, legal representation has been exclusively entrusted to qualified individuals, namely lawyers and legal defenders.

153. Article 74 provides that witnesses shall be heard for the prosecution and defence.

154. Pursuant to article 80, judgements shall be delivered no later than eight days following conclusion of the pleadings, and all judgements are subject to appeal or objection.

155. Article 228 of Act No. 023-2002 of 18 November 2002, embodying the Military Judicial Code, provides that: "The court shall hold its hearings on the days and at the times indicated by order of its president."

156. Article 229 of the Code adds: "In time of war a military court may grant a reasonable period to the accused ordered to appear or brought before the court to prepare his defence (...)."

157. Ordinance-Law No. 78-001 of 24 February 1978 on the punishment of flagrant violations provides, in its article 1, that: "Any person arrested subject to the deliberate commission of a flagrant violation or violation deemed to be such shall immediately be handed over to the prosecutor and brought before the court for a hearing. If the court is not in session, it shall convene specially on that day or the next day at the latest."

158. However, the delays often noted in the administration of justice are largely due to:

The small numbers of civilian and military judges, currently estimated at some 1,743 people, for a population of almost 60 million (Source: Supreme Council of Justice, April 2004);

Difficult working conditions owing to inadequate funding;

Delaying tactics by counsel for the parties.

159. In an effort to find solutions to these difficulties, the Government is making efforts to improve working conditions for judges, through:

Recruitment of new staff;

The renewal of infrastructure, which began in April 2000;

The granting to judges from December 2003 of a special bonus pending determination in an organization act of their remuneration.

160. Article 11 of Ordinance-Law No. 78-001 provides that: "In the event of a flagrant violation or a violation deemed to be such, the right of appeal and civil suits for injury are governed by the provisions by the Code of Criminal Procedure, as is the procedure to be followed (...)."

161. Offenders under 18 are tried in accordance with the special procedure established by the Decree of 6 December 1950 on juvenile delinquency.

162. With regard to the independence of the judiciary, article 147 of the Constitution provides that: "The judiciary is independent of the legislature and of the executive. The President of the Republic is the guarantor of the judiciary. In this connection he is assisted by a Supreme

Council of Justice, the organization and functioning of which are governed by an organization act. The judiciary is the guarantor of the individual freedoms and fundamental rights of citizens. In the discharge of their duties judges are subject only to the authority of the law. An organization act determines the statute governing judges and their remuneration.”

163. Article 148 of the Constitution adds: “Judicial authority is exercised by the Supreme Court of Justice, the appeal courts and the military and civilian courts as well as by the prosecution service. Appeal courts and civilian and military courts as well as prosecution services attached to these jurisdictions may only be established in accordance with the law. The nature, attributes, organization, functioning and seats of these courts and prosecution services and the procedures to be followed are determined by law.”

164. In accordance with article 153 of the Constitution, the first president of the Supreme Court of Justice and the Attorney-General of the Republic had already been elected by their peers before being appointed by the President of the Republic.

165. In order to guarantee the impartiality of judges, article 71 of Ordinance-Law No. 82-020 of 31 March 1982 embodying the Code on the Organization and Authority of the Judiciary provides that: “Any judge may be recused for any of the following restrictive causes:

If the judge or his spouse has a personal interest of any kind in the case;

If the judge or his spouse is related either in the direct or collateral line to the third degree to one of the parties, his counsel or agent;

If there is friendship between the judge and one of the parties;

If there is a close subordinate relationship between the judge and one of the parties as a domestic servant or employee;

If there is enmity between the judge and one of the parties;

If the judge has already expressed an opinion in the case;

If the judge has already acted in the case as a judge or witness, interpreter, expert or government official or counsel or legal defender;

If the judge has already acted in the case as a criminal investigation police officer or government law officer.”

166. Article 73 of Ordinance-Law No. 82-020 adds: “A judge falling within the categories enumerated in article 71 must withdraw from the case or be subject to disciplinary proceedings.”

167. The provisions relating to withdrawal also apply to a government law officer making an *amicus curiae* intervention.

168. A defendant who considers that the government law officer assigned to investigate the case, falls within one of the categories provided for in article 71 must submit to the hierarchical

superior a reasoned application for his removal from the investigation of the case. This application must be replied to in a reasoned order, not subject to appeal, to be issued without delay, after the officer in question has been heard.

169. With regard to the recruitment of judges, article 1 of Ordinance-Law No. 88-056 of 29 September 1988 containing the statute of the judiciary provides that: “No one may be appointed judge unless he fulfils the following conditions:

Possession of Congolese nationality;

Over 21 and under 35 years of age;

In full possession of civic rights;

Of exemplary moral character attested to either by a certificate issued by an administrative authority or by an extract from the police records;

Possession of the necessary physical aptitudes;

Holds a doctorate or undergraduate degree in law from a Congolese university or foreign university deemed to be equivalent under Congolese legislation;

In the case of a married woman, produce written authorization from her spouse;

Having passed a competitive recruitment examination, other than in the exceptional circumstance of recruitment on the basis of qualifications only provided for in article 2 (...).”

170. Article 2 of the statute of the judiciary provides for recruitment on the basis of qualifications only should the number of candidates be less than the number of posts to be filled.

171. With regard to disciplinary proceedings, article 40 of the statute of the judiciary provides that: “Any dereliction by a judge of the duties attaching to his position, or of the honour and dignity of his functions, shall constitute misconduct. Depending on the gravity of the circumstances, the following disciplinary penalties shall apply:

Reprimand;

Withholding of a third of one month’s salary;

Suspension without pay for a maximum of three months;

Removal from office.”

172. The judge to whom one of the first three penalties cited above has been applied is not considered in current promotion exercises.

173. Disciplinary authority is exercised by the Supreme Council of Justice. Heads of jurisdictions and prosecution services record any misconduct by judges under their authority.

174. Any finding of misconduct is followed by the opening of an inquiry. Once the inquiry is complete and where there are grounds to proceed, the judge is convoked before the Supreme Council of Justice at the request of the President of the judicial council.

175. Article 56 of the statute of the judiciary states: “In conducting disciplinary proceedings, the persons in charge of the inquiry and the members of the Supreme Council of Justice may not be recused, but must stand down in all the cases provided for in the Code on the Organization and Authority of the Judiciary.”

#### **Article 15: Principle of the legality of offences and penalties**

176. Article 19, paragraph 3, of the Constitution provides that: “No one may be prosecuted for an act or omission that did not constitute an offence at the time it was committed and at the time of prosecution.”

177. Article 24, paragraphs 4 and 5, adds: “No penalty more severe than that applicable at the time of the offence may be imposed. If a new law provides for a lesser penalty in respect of an offence than that established in the law in force at the time of the offence, the judge shall apply the lighter penalty.”

178. These provisions are reflected in the Decree of 30 January 1940 embodying the Criminal Code, which, in its article 1, provides that: “No offence may be punished by penalties that were not embodied in legislation before the offence was committed.”

179. The provisions are also reflected in articles 2 and 3 of Act No. 024-2002 of 18 November 2002 embodying the Military Criminal Code.

#### **Article 16: Recognition everywhere as a person before the law**

180. The transitional Constitution, in its article 18, provides that: “Everyone has the right to the full development of his personality without detriment to the rights of others, public order and public morality.”

181. Article 211 of Act No. 87-010 of 1 August 1987, embodying the Family Code, provides that everyone enjoys civil rights from conception, provided that the person is born alive.

182. Article 212 adds: “Every competent person may exercise his civil rights in accordance with law and custom, other than in the circumstances established by law.”

#### **Article 17: Respect for privacy**

183. Article 34 of the transitional Constitution states: “Everyone has the right to respect for his privacy, inviolability of correspondence, telecommunication and all other forms of communication. These rights may not be impaired other than in the cases provided for by law.”

184. Article 32 of the Constitution provides that: “The home is inviolable. No entry or search may be conducted other than in the forms and under the conditions provided for by law.”

185. In accordance with article 22 of the Decree of 6 August 1959 embodying the Code of Criminal Procedure: “A government law officer may enter and search the domicile or residence of the presumed author of an offence or of a third party. In the case of a non-flagrant violation, assistant prosecutors may conduct visits to and searches of the domicile or residence of a person without that person’s permission only with the authorization of the career law officer under whose authority they discharge their functions, and in his absence, in execution of a reasoned order by the judge presiding over the district court. Visits to domiciles may not be carried out before 5 a.m. or after 9 p.m. other than with the authorization of the judge presiding over the district court.”

186. Article 24 of the same Decree states: “A government law officer may order the seizure of telegrams, letters and all other items entrusted to the postal and telegraph services if they are essential in establishing the truth. He may order that they be held for the period he determines.”

187. Articles 52 et seq. of Enabling Act No. 013-2002 of 16 November 2002 on telecommunications provides that the inviolability of the secrecy correspondence by telecommunication is guaranteed by law. Such inviolability may be breached only by the public authorities in the sole circumstance of the public interest as provided for by law and within the limits established by law.

188. Public operators, and those holding a concession to provide public telecommunications services, and other providers of telecommunications services, together with members of their staff, must respect the secrecy of communications.

189. Intercepting, listening in on, recording, transcribing and divulging correspondence sent by means of telecommunication are prohibited other than with the prior authorization of the Attorney-General of the Republic.

190. Only the requirement for information occasioned by the need for the full divulgence of the truth in a legal case may justify authorization by the Attorney-General of the Republic of the interception, recording and transcription of correspondence sent by telecommunication.

191. A law officer appointed by the Attorney-General shall prepare a record of each interception and recording operation, stating the date and time on which it concluded. The recording shall then be placed under seal.

### **Article 18: Freedom of thought and religion**

192. The right to freedom of thought, conscience and religion is recognized, in particular by the Constitution, which, in article 26, paragraphs 1 and 2, provides that: “In the Democratic Republic of the Congo there is no State religion. Everyone has the right to freedom of thought, conscience and religion. Everyone has the right to manifest his religion and beliefs, alone or in a community, in public and in private, through worship, teaching, practice, observance of rites and a religious life, subject to respect for the law, public order and public morality.”

193. Article 52 of Act 004-2001 of 20 July 2001 applicable to non-profit organizations provides that to obtain legal personality religious non-profit organizations must, in addition to the general conditions established by law for all such organizations, fulfil the following specific requirements:

(a) Prepare a file setting forth the fundamental principles and themes of the religious education to be imparted so as to clearly represent the doctrine of the religious association making application;

(b) Avoid enunciating any rules or imparting any teachings which might contravene the law, public morality and public order;

(c) Refrain from practices and rules that might imperil the life or health of its members.

194. Pursuant to these provisions a number of religious groups have been established and freely conduct their activities.

195. Nevertheless, with the bringing to light of instances of inobservance, the activities of certain religious associations have been suspended and their leaders brought to trial. Such is the case of Pastor Kuthino Fernando, of the Army of Victory Church, who, in 2001, conducted a religious fundamentalist campaign, burned the Koran in a live television broadcast from his church, and who, in 2003, incited the population to civil disobedience. This resulted in legal proceedings against him and a brief suspension of activities by his church.

#### **Article 19: Freedom of opinion and expression**

196. Freedom of expression and freedom of the press are guaranteed by the transitional Constitution and by Act No. 96-002 of 22 June 1996 establishing the modalities for exercise of the freedom of the press.

197. Under article 27 of the Constitution: "Everyone has the right to freedom of expression. This right implies freedom to express opinions and views, orally, in writing and visually, subject to respect for public order, the rights of others and public morality."

198. Article 28 provides: "Freedom of the press is guaranteed. The law establishes the modalities for its exercise. Restrictions on the freedom of the press may be established only to ensure public order, public morality and respect for the rights of others."

199. Article 29 enshrines freedom of information in these terms: "Everyone has the right to information. Freedom of information and of transmission by radio, television, the press or any other form of communication is guaranteed. State audio-visual and printed media are public services to which equitable access is granted to all political and social movements. The status of the public media is established by law, which guarantees objectivity, impartiality and plurality of opinion in the handling and broadcast of information."

200. The provisions of the Constitution on freedom of expression, opinion and the press are reinforced by Act No. 96-002 of 22 June 1996, which pre-dates the Constitution, and to which journalists themselves made a significant contribution.

201. The Act:

Liberalizes the media and authorizes any natural or legal person to establish a press company or a radio station or a television channel; and

Establishes the independence and neutrality of the public media.

202. Article 8 of Act No. 96-002 provides that: “Everyone has the right to freedom of opinion and expression. By freedom of opinion and expression is meant the right to inform, to be informed, to hold opinions, have views and to communicate them without hindrance, whatever the medium used, subject to respect for the law, public order, the rights of others and public morality. With regard to audio-visual communication, freedom is the principle, and prohibition the exception, subject to respect for the law, public order, the rights of others and public morality.”

203. To establish a press company, article 22 requires the applicant to file a statement with the Ministry of Press and Information, with the following information:

- (a) The title of the newspaper or periodical and frequency of appearance;
- (b) The name, date of birth and address of the owner of the publication;
- (c) The name and address of the printers at which the newspaper or periodical is to be printed;
- (d) The registered office of the publication;
- (e) A certificate indicating the nationality of the editor of the publication or of the chief of the company;
- (f) A certificate attesting to the good conduct and sound moral character of the applicants;
- (g) A copy of the statutes of the company or association, previously notarized, if the periodical is published by a company or association;
- (h) A document attesting to the professional journalistic qualifications of the editor of the publication;
- (i) The statement referred to above must be duly signed by both the owner and editor of the publication.

204. Article 51 of the Act states that: “Audio-visual communication is free. Any natural or legal person has the right to produce, transmit, and receive all audio-visual communication outputs (...).”

205. Article 53, on the public audio-visual domain, adds: “Public audio-visual communication is pluralist. It may not, in any circumstance, be monopolized in favour of a single opinion or group of individuals.”



206. For the establishment of an audio-visual company, article 57 provides that the interested party must previously file a statement with the member of Government or regional executive with responsibility for information and the press. The statement must contain the following information:

- (a) The new commercial register number, for commercial radio or television;
- (b) The name of the station or stations;
- (c) The name, date of birth and address of the owner and of the editor of the programmes;
- (d) The registered address of the company, and addresses of the subordinate stations, where they exist;
- (e) A certificate indicating the nationality of the editor of the programmes or head of the company;
- (f) An extract from the police record of the owner, editor of programmes or head of the company;
- (g) A certificate attesting to the good conduct and sound moral character of one of the aforementioned;
- (h) A holder's, installation and operating licence issued by the Ministry of Posts, Telephone and Telecommunication;
- (i) A copy of the statutes of the company or association, previously notarized, if the audio-visual enterprise is operated by a company or association;
- (j) The programme schedule in accordance with the licence issued by the Government, on the proposal of the legal service overseeing the media.

207. Subsequently a plethora of publications have emerged, and the current status of private sector audio-visual media, throughout the country, is as follows (Source: Ministry of Press and Information, report on activities of the Press Activity Oversight and Regulatory Commission, Kinshasa, January 2004, pp. 2 and 3):

- (a) 94 radio stations:
  - Kinshasa - 25;
  - Bandundu - 6;
  - Bas-Congo - 9;
  - Kasaï Occidental - 13;
  - Kasaï Oriental - 17;
  - Katanga - 16;
  - Equateur - 4;
  - Province Orientale - 1;
  - Grand Kivu (Nord Kivu, Sud Kivu and Maniema) - 3;

(b) 45 television channels:

Kinshasa - 21;  
Bandundu - 1;  
Bas-Congo - 3;  
Kasaï Occidental - 4;  
Kasaï Oriental - 4;  
Katanga - 4;  
Equateur - 2;  
Province Orientale - 2;  
Grand Kivu (Nord Kivu, Sud Kivu and Maniema) - 4;

(c) 201 written publications:

109 registered;  
92 not on file with the Ministry of Press and Information.

208. These figures, current as at 30 May 2004, do not take into account foreign television channels broadcasting by cable or over the air, and foreign radio stations, which can be picked up in the capital, Kinshasa, and in certain provinces.

209. Freedom of the press has been consolidated over the years, so much so that on the occasion of International Press Day in May 2004, the non-governmental organization for the protection of the rights of journalists, Journalists in Danger (JED), stated that no journalists were currently imprisoned for press offences.

210. In addition, two private radio and television companies, nationalized in 2000, Canal Kin TV and Radio télé Kin Malebo were restored to their owners in 2002.

211. The opening up of the media to all political viewpoints is a fait accompli. The programme schedule adopted in 2004 provides for equal allocation of airtime for all opinions.

212. Furthermore, the information sector has been complemented by a regulatory body established under article 154 of the Constitution, the High Authority for the Media, one of the institutions in support of democracy which, under article 155, are intended to ensure the neutrality of the media.

213. In the discharge of its function in May 2004 the High Authority for the Media organized a round table with the theme of access to the media by political parties, bringing together senior officials from all the media, representatives of public institutions, political parties and non-governmental organizations.

214. Also during May 2004, the Independent Electoral Commission, in collaboration with the High Authority for the Media, organized a seminar to raise awareness among journalists and the printed media of their role during the elections.

**Article 20: Prohibition of propaganda for war and advocacy of racial hatred**

215. The transitional Constitution and the various laws of the Republic promote peace while prohibiting and condemning any encouragement of violence, or national, racial or religious hatred.

216. Article 53 of the Constitution provides that: “All Congolese have the right to peace and security. No sector of the national territory may be used as a base for subversive or terrorist activities against any other State.”

217. Article 1 of Ordinance-Law No. 66/342 of 17 June 1966 on the suppression of racism and tribalism provides that: “Anyone who through the use of words, gestures, writing, images or emblems or any other means displays racial, ethnic, tribal or regional aversion or hatred, or commits an act such as to promote such aversion or hatred, shall be punished by imprisonment of one month to two years and a fine of 500 to 5,000 francs or one of these penalties only. If the offence was committed by a government official in the discharge of his functions, imprisonment shall be for a minimum term of six months with a minimum fine of 5,000 francs. If the offence resulted in disruption of the authorities, serious disturbance, a secessionist movement or rebellion, the guilty party shall be punished by life imprisonment.”

218. Act No. 96-002 of 22 June 1996 establishing the modalities for exercise of freedom of the press provides in its article 77, paragraph 2, that: “In accordance with articles 22 and 23 of the Criminal Code, book I, anyone who in words, writing, printed matter, drawings, engravings, images, paintings, emblems or any other written, oral or visual medium directly incites discrimination, hatred or violence against a person or group of persons owing to their origin or on the grounds of ethnicity, nationality, race, ideology or religion, shall be punished.”

**Article 21: Freedom of assembly and demonstration**

219. The right of peaceful assembly is recognized. Under article 16 of the transitional Constitution: “The Democratic Republic of the Congo guarantees the exercise of individual and collective rights and freedoms, including the freedom of movement, enterprise, information, association, assembly, procession and demonstration, subject to respect for the law, public order and public morality.”

220. Article 30 of the Constitution provides that: “Freedom of assembly and peaceful demonstration is guaranteed subject to respect for public order. Everyone has the right to participate in a meeting or demonstration without hindrance.”

221. Article 4 of Decree-Law No. 196 of 29 January 1999 regulating demonstrations and public meetings provides that: “Demonstrations and public meetings are subject to filing of a declaration of intent with the competent political and administrative authorities. Demonstrations and meetings organized in public areas may require prior authorization.”

222. Article 6 of the Decree-Law sets out the procedure to be followed: “The competent authority or representative thereof has three days to note the declaration of intent from the date on which it is filed. Where necessary, in addition to the declaration of intent referred to in

article 4, paragraph 2, the competent authority has five days, from the date on which the declaration is filed, to respond. In either case failure to respect the delay results in acknowledgement and automatic authorization.”

**Article 22: Freedom of association and to form and join trade unions**

223. In the Democratic Republic of the Congo political parties, non-profit associations and professional organizations may freely be established, subject to public order and public morality.

224. With regard to political parties, article 11 of the transitional Constitution provides that: “Political pluralism is recognized in the Democratic Republic of the Congo. Every Congolese citizen has the right to establish a political party or join a party of his choice. Political parties participate in the expression of suffrage, the formation of a national consciousness and civic education. They are constituted and freely exercise their activities in respect for the law, public order and public morality. Political parties are bound to respect the principles of a pluralist democracy, and national unity and sovereignty. No one may establish, in any form whatsoever, a single party in all or part of the national territory. Establishment of a single party constitutes high treason, and is punishable by law.”

225. Article 13, paragraph 1, of the Constitution provides that: “Political opposition is recognized in the Democratic Republic of the Congo. Its right to exist, and to pursue its activities and the democratic assumption of power, are inviolable.”

226. Article 12 provides that: “Political parties may receive public funds from the State to finance their electoral campaigns and activities under the conditions established by law.”

227. Act No. 04/002 of 15 March 2004 on the organization and functioning of political parties forms part of the democratization of political life begun on 24 April 1990 by the regime of President Mobutu after over 30 years of a single-party, institutional, monolithic regime.

228. Article 10 of the Act states that: “The right to establish a political party is guaranteed in the Democratic Republic of the Congo.”

229. Pursuant to article 11, any founding member of a political party must, at the time the party is established, fulfil the following conditions:

Have Congolese nationality;

Be 25 years of age or older;

Enjoy civil and political rights;

Enjoy good physical and mental health and be of sound moral character;

Provide evidence of at least a graduate or equivalent level of education or have proven professional or political experience;

Be resident or domiciled in the Democratic Republic of the Congo;

Have no criminal convictions for a deliberate offence in respect of which a final judgement has been issued, other than cases of amnesty or judicial rehabilitation.

230. Pursuant to article 12, the file must contain:

An application for registration signed by at least three founders mandated by their peers;

The notarized statutes duly signed by at least one founding member of the political party per province and the record of the constituent assembly of the party;

The political platform of the party;

A statement of capital, and of the sources of income anticipated by the political party to attain the desired objectives;

A minimum, non-reimbursable, contribution to administrative costs, the amount of which is determined by a decision of the Ministers of Finance and of the Interior and debated in the Council of Ministers. The contribution is paid to the Treasury Department;

The individual files of each founding member, containing the following documents:

A curriculum vitae duly signed and authenticated;

Certification of birth and a passport photograph;

Certification of nationality;

A medical certificate, dated within the last three months, issued by three State or registered doctors;

A certificate of sound moral character issued within the last three months;

An extract from the police records no more than three months old; and

Certification of residence issued by the administrative authorities of the place of residence.

231. Under article 15 of the Act: “The registration notice, the acknowledgement issued by the Ministry of the Interior, the decision of the Supreme Court of Justice and the acknowledgement of filing it with the clerk constitute full official recognition and accord legal personality.”

232. Since promulgation of this Act, 229 political parties have been registered with the Ministry of the Interior (Source: Ministry of the Interior, Office of Relations with Political Parties, Kinshasa, May 2004).

233. With regard to non-profit associations, article 40 of the Constitution provides that: “The right to establish associations is guaranteed. The public authorities shall cooperate with private

associations that contribute to the social, economic, intellectual, cultural, moral and spiritual development of the people and the education of citizens. Such cooperation may take the form of subsidies (...).”

234. Act No. 004-2001 embodying general provisions applicable to non-profit associations and charities establishes the procedure and requirements for obtaining civil personality, in a streamlining of the formalities required under earlier legislation.

235. Article 3 of the Act provides that legal personality is granted by the Ministry of Justice on the recommendation of the minister with responsibility for the relevant sector of activity, whereas under the 1965 and 1999 legislation authority rested with the President of the Republic.

236. Article 4 states that: “An application for the granting of legal personality, duly signed by the members responsible for the administration or management of the association shall be submitted, in duplicate, with acknowledgement, to the Ministry of Justice for referral to the minister with responsibility for the sector. It must be accompanied by:

A list indicating the surnames, second surnames, first names, domicile or residence of the active members of the association. The list is signed by all the active members responsible for the administration or management of the association;

A declaration signed by all the active members indicating family names, professions and domicile or residence of those who, in any capacity, are responsible for the administration or management of the association;

Notarized statutes of the association duly signed by all the active members responsible for the administration or management of the association;

Certificates of sound moral character for all the active members responsible for the administration or management of the association;

A statement of the resources anticipated by the association for the attainment of its objectives, which must be signed at the end or beginning of each half year (...).”

237. Article 5 of the Act provides that: “Pending granting of legal personality, the recommendation of the minister responsible for the sector concerned shall serve as provisional authorization to operate. With regard to non-profit associations registered in the provinces, provisional authorization shall be granted by the governor of the province. Provisional authorization is valid for six months, beyond which legal personality is to be granted. In this case the Ministry of Justice is responsible for issuing the decision granting legal personality in the following month.” This latter provision constitutes a major innovation, since it facilitates freedom of association by compelling the Ministry of Justice to consider applications for legal personality expeditiously. The following table provides figures for registered religious and non-religious associations.

No.	Type of association	Total
1.	Religious non-profit organizations under Congolese law	604
2.	Non-religious non-profit organizations under Congolese law	384
3.	Religious and non-religious non-profit organizations under foreign law	43
	Total	1 031

*Source:* Minister of Justice, Department of Worship and Association, June 2004.

238. With regard to the right to form and join trade unions, the Labour Code, in its article 230, provides that: “Workers and employers, as defined in article 7 of the present Code, have the right to form organizations for the exclusive purpose of study, defence and promotion of their professional interests, as well as the social, economic and moral development of their members.”

239. Article 41, paragraphs 1 and 2, provide that: “Trade union law is recognized in the Democratic Republic of the Congo. All Congolese have the right to found trade unions, companies or other associations and to freely join such organizations to promote their welfare and ensure the defence of their social, economic and cultural interests, on the conditions established by law.”

240. Article 42 states that: “The right to strike is recognized and guaranteed. It may be exercised on the conditions established by law which may prohibit or limit its exercise in the sectors of national defence and security and in all services or public activities of vital interest to the community.”

241. Article 231 states that: “Subject to completion of the formalities specified in the present chapter, no prior authorization is required to constitute a professional organization.”

242. The formalities in question are specified in article 239, which provides that: “Any request for registration by a trade union is to be addressed to the Ministry of Labour and Social Security. The request must indicate the full identity of the members responsible for the administration and management of the trade union, and must be signed by each of them. It must be accompanied by copies of the statutes of the applicant organization, in a number determined by the minister responsible for labour and social security.”

243. To date the Ministry of Labour has registered 212 trade unions and six employers organizations.

### **Article 23: Protection of the family**

244. With regard to protection of the family by society and the State, article 43 of the transitional Constitution provides that: “Every individual has the right to marry the person of the opposite sex of his or her choice, and to found a family. The family, the fundamental unit of human society, is organized in such a way as to ensure its unity and stability. The family is placed under the special protection of the public authorities.”

245. Protection of the family comes into play at the time of its dissolution through divorce inasmuch as the law provides for a long period of conciliation prescribed by articles 555 to 562 of the Family Code.

246. The existence for some years of the Ministry of Social Affairs, Status of Women and the Family reflects the concern of the State to protect the family.

247. Pursuant to article 334, paragraph 1, of the Family Code, every Congolese has the right to marry the person of his or her choice and to found a family.

248. Article 352 of the Code establishes the minimum age for marriage at 18 years for men and 15 years for women. However, with ratification by the Democratic Republic of the Congo of the Convention on the Rights of the Child, and in particular the African Charter on the Rights and Welfare of the Child, the marriageable age for women has also been set at 18 years.

249. Article 336 of the Code provides for criminal penalties in the event of imposition of a marriage partner on a person by any individual other than the father, mother, guardian or other person legally exercising parental authority, or who, in bad faith, prevents the conclusion of a marriage meeting all the legal requirements.

250. If the author of the constraint or opposition is a parent, guardian or other person legally exercising parental authority over the individual, the latter may refer the matter to the family counsel, who shall issue a ruling. In the absence of agreement, the matter shall be referred to the district court.

251. So as to ensure greater protection for marriage, the law provides for registration of marriage in the civil register. To this end for several years awareness campaigns have been conducted throughout the country by the Ministry of Social Affairs, Status of Women and the Family, in partnership with civil society organizations, to encourage couples to comply with this important formality.

252. With regard to equality of marital rights and responsibilities, this applies both to property and to non-property aspects.

253. With regard to equality in terms of ownership of property, article 487 provides for three matrimonial regimes, namely: the separate property regime, communal ownership for acquisitions after marriage, and communal ownership. In this regard men and women, on an equal basis, are free to opt for one or other regime.

254. When spouses have opted for a specific matrimonial regime, the ensuing rights and obligations apply without discrimination.

255. In the interest of the unity of the household, management of communal and separate property is, under article 490, paragraphs 2 and 3, of the Family Code, presumed to be entrusted to the husband, who is the head of the family. However, at the time of opting for a matrimonial regime, spouses may agree that each will manage their own assets.



256. With regard to equality of spouses concerning non-property aspects, article 453, paragraph 1, of the Family Code provides that spouses mutually accept consortium and cohabitation.
257. Articles 454 and 455 add that the wife is obliged to live with her husband and follow him wherever he wishes to reside; the husband is obliged to accept her. Should residence be established by the husband in a manifestly abusive manner or in contradiction of the agreement between spouses, the wife may appeal to the district court against her husband's decision.
258. Article 459 of the Code provides that: "Spouses have a mutual duty of fidelity, respect and affection."
259. On dissolution of marriage, particularly owing to divorce, equality of the spouses is reflected in the right to initiate proceedings accorded each under article 546 of the Code, and in the reasons which may be cited in support of an application for divorce.
260. In liquidating the matrimonial regime, the court may, pursuant to article 581, paragraph 1, of the Code, grant the spouse disadvantaged by divorce a share of the funds belonging to the other spouse, independently of liquidation of the regime applying at the time of divorce.
261. In the event of dissolution of marriage, protection of children is governed by the provisions relating to the effects of divorce and those governing the death of a parent.
262. With regard to divorce, article 585 provides that: "Until the pronouncement of a divorce decree, the father and mother may conclude an agreement on custody of their minor children to be submitted to the court for its approval. In the absence of an approved agreement between the parents, the court shall, in the interest of the child, award custody to one or other parent or to a third person. Such a decision may be taken either at the request of the parents, or the prosecutor, or the court."
263. Article 586, paragraph 1, of the Code states that: "Whoever custody of the children is entrusted to, the father and mother maintain the right to oversee the maintenance and education of their children and must contribute thereto as their circumstances permit".
264. Under article 588 of the Code, the provisions on custody, maintenance and education of children and those relating to visiting rights may be amended in the interest of the child at the request of the father, mother or public prosecutor.
265. Article 589 adds: "When the court takes a decision on minor children, the children may be heard if it is considered necessary."
266. When the marriage is dissolved as a result of the death of one of the parents, the protection of the children is ensured by specific guardianship mechanisms and by the privileged position that children occupy among the deceased person's heirs.
267. With regard to specific guardianship arrangements, article 323, paragraph 1, of the Family Code provides that in the event of the death of one of the persons exercising parental authority, the district court may at any time, at the request either of the representative of the

family counsel of the deceased party, or the request of the surviving party, appoint an assistant guardian responsible for helping the surviving party in the education, maintenance and management of the minor's property.

268. With respect to the protection of children in terms of succession, articles 758 and 759 of the Code provide that the deceased's children born in marriage and those born out of wedlock but acknowledged as his children when he was alive as well as adopted children, who constitute the first category of heirs in succession, receive three quarters of the estate.

269. Further, where the estate is smaller, under article 786 of the Code it passes entirely to the children.

#### **Article 24: Rights of the child**

270. The rights of the child are protected both by the Constitution and by specific legislation. Specific institutions implement the Government's programmes for children in terms of health, education, reintegration and legal protection.

271. Under article 44, paragraph 1, of the transitional Constitution, every child has the right to the protection of his or her family, society and the public authorities.

272. Article 43, paragraph 4, states that: "The care and education to be provided to children constitute a natural right for parents and a duty to be exercised by them under the supervision and with the assistance of the public authorities."

273. Minors without any family, in particular those whose parents have died of HIV/AIDS, are covered by a programme of care by public and private organizations, such as A Better Future for Congolese Orphans (AMO Congo), a non-profit organization which organizes schooling, and the psychological and medical care of children affected by HIV/AIDS and provides support for foster families for such children. AMO Congo operates in three towns: Kinshasa, Lubumbashi and Bas-Congo.

274. Article 44, paragraph 3, provides that: "The State has an obligation to protect the child against prostitution, procuring, homosexuality, incest, paedophilia, sexual harassment and all other forms of sexual perversion."

275. The Decree of 30 January 1940, as amended and updated, and embodying the Congolese Criminal Code, penalizes several acts that infringe the constitutional rights of children. Specifically this is so in articles 167, 168, 171 bis and 174:

Article 167: "Any sexual molestation committed without violence, deception or threats against the person or with the assistance of the person of a child under 14 years of age shall be punished by imprisonment of 5 to 15 years. In the absence of vital records, the age of the child may be determined by medical examination";

Article 168, paragraph 2, provides that: "If the (sexual) molestation was perpetrated on persons or with the assistance of persons designated in the preceding article (art. 167), the penalty shall be 5 to 20 years";

Article 171 bis: “The minimum penalties set forth in articles 167, 168 and 170, paragraph 1 (penalizing rape of minors), shall be doubled: where the guilty parties are ascendants of the person against whom or with the assistance of whom the violation was perpetrated; if they have authority over the person; if they are schoolteachers or paid servants or servants of the persons indicated above (...);”

Article 174: “If the molestation was perpetrated by the father or mother, the guilty party shall also be deprived of any rights and benefits over the person and property of the child accorded by the Decree of 4 May 1895 on parental authority.”

276. It should also be noted that the draft child protection code provides for the punishment of other acts referred to in article 44 of the Constitution, namely: prostitution, procuring, homosexuality, incest, paedophilia, and sexual harassment.

277. Regarding the registration of children in the civil register, article 116 of the Family Code provides that: “Any birth in the territory of the Republic must be reported to the civil registrar in the place of residence of the father or mother within 30 days of the birth.” The declaration must be made by the father or mother, or, in their absence, by the ascendants or near relatives of the child, or by persons present at the birth. The declaration may be made by an agent bearing a written power of attorney, even if it is a private deed by the father or mother.

278. The obligation on these persons to report the birth is enforced by article 114 of the Family Code, which provides for seven days’ imprisonment or a fine.

279. The right of children to a nationality is guaranteed by various provisions of the Family Code. Thus, article 7 provides that any newborn found in the Democratic Republic of the Congo is Congolese.

280. Article 17 of the Code provides that: “By election, the following may acquire Congolese nationality: a child born in the Democratic Republic of the Congo or abroad to parents where one parent is Congolese; a child legally adopted by a Congolese national; a child whose adoptive parents or one of whose adoptive parents has acquired or voluntarily reacquired Congolese nationality.”

281. Article 18, paragraph 1, of the Code provides that: “A minor child, not of full age, where the father is deceased, unknown or stateless, and the mother or father opted for Congolese nationality, automatically acquires the status of Congolese citizen at the same time as the parent.”

### **Articles 25 and 26: Right to participate in public affairs**

282. The preamble to the transitional Constitution reaffirms the commitment of the active forces to construct a sustainable constitutional State based on political pluralism, the separation of powers between the executive, legislature and judiciary, participation by citizens in the exercise of power, and oversight of governments by the governed.

283. Article 17 of the Constitution provides that: “All Congolese are equal before the law and have the right to equal protection of the law. No Congolese may, with regard to education or access to public service, or in any other matter, be subject to discrimination, whether by law or

an act of the executive, on the grounds of religion, sex, family origin, social status, residence, opinions or political beliefs, or membership of a race, ethnic group, tribe, or cultural or linguistic minority.”

284. Article 10, paragraphs 1, 4 and 5, of the transitional Constitution provides in this regard that: “National sovereignty is vested in the people. All power springs from the people, who may exercise it directly by means of referendum and election, and indirectly through their representatives”; that “suffrage is universal, equal and secret (...)”; and that “all Congolese, of either sex, aged 18 years or more, and in possession of their civil and political rights, are electors under the conditions established by law”.

285. The Republic has not organized elections for over 15 years owing to political and institutional instability. Nevertheless, in that the primary objective of the political transition inaugurated by the Global and All-Inclusive Agreement that emerged from the Inter-Congolese Dialogue is the organization of free and democratic elections, a draft electoral law is in preparation.

286. Further, the transitional Constitution provides, in its articles 154 and 155, for an independent electoral commission with the role of guaranteeing neutrality and impartiality in the organization of free, democratic and transparent elections.

287. On the basis of these constitutional provisions, draft organic legislation on the functioning of the Independent Electoral Commission is currently under debate in Parliament. It has been adopted by the National Assembly and referred to the Senate.

288. Article 39, paragraphs 3, 5 and 6, of the Constitution provides that: “No one shall suffer harm at work on the grounds of origin, sex, views or beliefs. The law establishes the conditions applicable to workers and regulates the specific characteristics of the legal regime governing each profession and the exercise of professions requiring academic qualification. Professions must be structured and must operate in accordance with democratic principles.”

289. With regard to equal access to the civil service, Act No. 81-003 of 17 July 1981 embodying the statute governing the career personnel of the State civil service sets out, in its article 8, the following conditions:

Possession of Congolese nationality;

Full enjoyment of civic rights;

Sound moral character;

Minimum age of 16 and maximum age of 30, although the age limit may be set at 35 for recruitment to certain specialized positions on the decision of the Minister for the Civil Service;

Over the age of 35 a candidate may be recruited only by decision of the President of the Republic;

Success in a competitive recruitment examination, other than in the cases of exceptional recruitment on the basis of qualification only provided for in article 9, paragraph 1;

Possession of good health and the necessary physical aptitudes for the functions to be performed.

290. With regard to advancement in grade, article 66 of the Act establishes the following conditions:

A minimum of three years' seniority in the grade immediately below the grade to which the candidate is to be promoted;

A minimum rating of "good" in the three most recent assessments;

Success and a satisfactory ranking in a competitive examination for promotion from one category to another.

### **Article 27: Rights of minorities**

291. The rights of ethnic, religious and linguistic minorities are guaranteed by the general legal system. This is affirmed by the resolution on the protection of minorities adopted on 8 April 2002 by the Inter-Congolese Dialogue, as follows:

"We declare that no person or group of persons may be subject to discrimination in the enjoyment of rights owing to membership of an ethnic, religious or linguistic group;

We declare that all the Congolese communities enjoy equal rights but that in case of need the State may nevertheless envisage temporary incentives to accelerate and promote the equality of communities, particularly the most backward or disadvantaged;

We call upon the members of all the Congolese communities to make an effort to promote harmonious coexistence and national reconciliation;

We proclaim that all the Congolese minorities, whether ethnic, religious or linguistic, are protected in a general human rights framework in accordance with the legislation in force and the international instruments ratified by the Democratic Republic of the Congo."

292. For its part the preamble to the transitional Constitution affirms the desire of the Congolese people "to build one nation in harmony and to consolidate national unity so as to endow our State with a soul", "imbued with cultural and spiritual values deeply rooted in the traditions of solidarity and justice of the Congolese people, and aware of the cultural diversity which is a factor for the spiritual enrichment of our people".

293. Article 14 of the Constitution provides that: "All ethnic groups and nationalities whose persons and territory constituted what became the Congo (now the Democratic Republic of the Congo) on independence should benefit from equality of rights and protection under the law as citizens."

294. The policy of the Government of the Democratic Republic of the Congo consists in promoting and maintaining the cultural identity of each of the 450 tribes and ethnic groups in the country, along with the preservation of their languages.

295. To this end the State encourages the establishment of community radios broadcasting in local languages, and cultural events. It has also for three decades conducted a policy of integrating pygmy groups in national life, in particular in the public administration. Representatives of these groups participate in international meetings organized under United Nations auspices.

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